

PENDING FEE RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
Senate Health & Welfare Committee
65th Idaho Legislature
Second Regular Session – 2020



Prepared by:

*Office of the Administrative Rules Coordinator
Division of Financial Management*

January 2020

SENATE HEALTH & WELFARE COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2020 Legislative Session

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IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

DOCKET NO. 16-0000-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 7-1206, 16-1629, 16-2102, 16-2433, 19-2524, 20-511A, 32-1207, 32-1209, 32-1214G, 32-1217, 39-242, 39-309, 39-1105, 39-1107, 39-1111, 39-1209 through 1211, 39-1210(10), 39-1211(4), 39-1213, 39-3137, 39-3305, 39-3505, 39-3520, 39-5403, 39-5603, 39-5604, 39-7501, 39-9109, 56-202(b), 56-203(2), 56-203A, 56-204A, 56-803, 56-1003, 56-1004, 56-1004A, 56-1005, 56-1005(8), 56-1007, 56-1009, 56-1023, 56-1028, 56-1041, 56-1043, 66-404(7), 15-5-308(4), 15-5-311(5), 15-5-316(5), Title 39, Chapters 3 and 31, Title 66, Chapters 1 and 3, and Title 67, Chapter 52, Idaho Code, and 42 USC Section 9858f.

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

This pending rule adopts and re-publishes the following existing and previously approved and codified chapters promulgated as proposed rules under this docket number under IDAPA 16, rules of the Idaho Department of Health and Welfare:

- IDAPA 16.01.07, *Emergency Medical Services (EMS) – Personnel Licensing Requirements*
- IDAPA 16.02.01, *Rules of the Idaho Time Sensitive Emergency System Council*
- IDAPA 16.02.08, *Vital Statistics Rules*
- IDAPA 16.02.13, *State of Idaho Drinking Water Laboratory Certification Program*
- IDAPA 16.02.14, *Rules Governing Construction and Operation of Public Swimming Pools in Idaho*
- IDAPA 16.02.25, *Fees Charged by the State Laboratory*
- IDAPA 16.02.26, *The Idaho Children's Special Health Program*
- IDAPA 16.02.27, *Idaho Radiation Control Rules*
- IDAPA 16.03.03, *Rules Governing Child Support Services*
- IDAPA 16.03.18, *Medicaid Cost-Sharing*
- IDAPA 16.03.19, *Rules Governing Certified Family Homes*
- IDAPA 16.03.22, *Residential Care or Assisted Living Facilities in Idaho*
- IDAPA 16.04.07, *Rules Governing Fees for State Hospital North*
- IDAPA 16.05.06, *Criminal History and Background Checks*
- IDAPA 16.06.01, *Child and Family Services*
- IDAPA 16.06.02, *Rules Governing Standards for Child Care Licensing*
- IDAPA 16.07.01, *Behavioral Health Sliding Fee Schedules*

This pending rule vacates the following proposed rules previously promulgated as part of the omnibus proposed rulemaking under IDAPA 16, rules of the Idaho Department of Health and Welfare:

- **(VACATED)** IDAPA 16.04.08, *Rules Governing Fees for State Hospital South Services*
- **(VACATED)** IDAPA 16.07.15, *Behavioral Health Programs*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019, Idaho Administrative Bulletin (Special Edition), **Vol. 19-6SE, pages 3142 - 3584.**

- IDAPA 16.01.07, *Emergency Medical Services (EMS) -- Personnel Licensing Requirements* - This includes the update of chapter titles and minor corrections.

- IDAPA 16.02.01, Idaho Time Sensitive Emergency System Council - This chapter title will change to “Idaho Time Sensitive Emergency System Council.” - This includes the update of chapter titles and minor corrections.
- IDAPA 16.02.08, Vital Statistics Rules - There were changes to reduce restrictive language, removed obsolete language, update of chapter titles, and make minor corrections.
- IDAPA 16.02.13, State of Idaho Drinking Water Laboratory Certification Program - This includes the update of chapter titles and minor corrections.
- IDAPA 16.02.25, Fees Charged by the State Laboratory - This includes the update of chapter titles and minor corrections.
- IDAPA 16.02.26, The Idaho Children's Special Health Program - This contains strikeouts of obsolete or redundant language, updates to titles, minor edits, and reduction of restrictive language.
- IDAPA 16.02.27, Idaho Radiation Control Rules - This includes the update of chapter titles and minor corrections.
- IDAPA 16.03.03, Rules Governing Child Support Services - This chapter title will change to “Child Support Services.” This removes obsolete or redundant language, updates to titles, minor edits, and reduces use of restrictive language.
- IDAPA 16.03.18, Medicaid Cost-Sharing - This removes obsolete or redundant language, updates to titles, minor edits, and reduces use of restrictive language.
- IDAPA 16.03.19, Rules Governing Certified Family Homes - This chapter title will change to “Certified Family Homes.” - This includes the update of chapter titles and minor corrections.
- IDAPA 16.03.22, Residential Care or Assisted Living Facilities in Idaho - This chapter title will change to “Residential Assisted Living Facilities.” - There is no change from the Proposed text.
- IDAPA 16.04.07, Rules Governing Fees for State Hospital North - This chapter title will change to “Fees for State Hospital North and State Hospital South.” It will add the rules from IDAPA 16.04.08, Rules Governing Fees for State Hospital South Services.
- *IDAPA 16.04.08, *Rules Governing Fees for State Hospital South Services* - The proposed rule is being vacated and the chapter is being combined with IDAPA 16.04.07. (See previous entry)
- IDAPA 16.05.06, Criminal History and Background Checks - This includes the update of chapter titles and minor corrections.
- IDAPA 16.06.01, Child and Family Services - This removes obsolete or redundant language, updates to titles, minor edits, and reduces use of restrictive language.
- IDAPA 16.06.02, Rules Governing Standards for Child Care Licensing - This chapter title will change to “Child Care Licensing.” This removes obsolete or redundant language, updates to titles, minor edits, and reduces use of restrictive language.
- IDAPA 16.07.01, Behavioral Health Sliding Fee Schedules - This includes the update of chapter titles and minor corrections.
- *IDAPA 16.07.15, *Behavioral Health Programs* - The proposed rules is being vacated.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. This fee or charge is being imposed pursuant to Sections 56-1023, 56-1007, 56-1003, 56-264, 32-1207, 56-203A, 66-327, 66-118, 56-354, 39-1107, 16-2433, 19-2524, 20-511A, 39-3137, 56-253, 56-257, 39-3358, and Title 39, Chapter 2, Idaho Code.

Licensing, Certification, Permit, or Registration Fees:

- IDAPA 16.01.07, Emergency Medical Services (EMS) -- Personnel Licensing Requirements -- Fees paid by emergency medical personnel, for licensure and renewal of licensure.
- IDAPA 16.02.13, State of Idaho Drinking Water Laboratory Certification Program -- Fees paid by laboratories for certification to test drinking water.
- IDAPA 16.02.14, Construction and Operation of Public Swimming Pools -- Establishes reasonable fees for services for all public swimming pools.
- IDAPA 16.02.27, Idaho Radiation Control Rules -- Establishes licensing fees for all radiation producing machines in the State.
- IDAPA 16.03.19, Certified Family Homes -- Fees paid by Certified Family Homes for application and certification.
- IDAPA 16.06.02, Child Care Licensing -- Fees paid by childcare providers for licensing.

Designation Fees:

- IDAPA 16.02.01, Idaho Time Sensitive Emergency System Council -- Fees paid by hospitals for designation under the Idaho Time Sensitive Emergency System.

Records Fees:

- IDAPA 16.02.08, Vital Statistics Rules -- Fees paid to the Department for copies of vital records, searches, and other services.

Fee for Service:

- IDAPA 16.02.25, Fees Charged by the State Laboratory -- Fees paid to the Department for laboratory testing and services.
- IDAPA 16.02.26, The Idaho Children's Special Health Program -- Fees paid by Children's Special Health Program clients for program services.
- IDAPA 16.03.03, Child Support Services -- Fees paid by clients of the Department's child support program.
- IDAPA 16.03.22, Residential Assisted Living Facilities -- Fees paid by providers for building evaluation and survey services.
- IDAPA 16.04.07, Fees for State Hospital North and State Hospital South -- Fees for services provided at State Hospitals.
- IDAPA 16.05.06, Criminal History and Background Checks -- Fees charged by the Department for criminal history and background checks.
- IDAPA 16.06.01, Child and Family Services -- Fees charged by the Department for child protection central registry checks.
- IDAPA 16.07.01, Behavioral Health Sliding Fee Schedules -- Sliding fee schedules for behavioral health services.

Premiums:

- IDAPA 16.03.18, Medicaid Cost-Sharing -- Establishes premium fee schedule for Youth Empowerment Services (YES) program participants.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending fee rule, contact the Administrative Rules Unit, dhwrules@dhw.idaho.gov, 450 W. State Street, 10 Floor, Boise, ID, 83720.

Dated this 16th day of October, 2019.

Tamara Prisock
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**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 7-1206, 16-1629, 16-2102, 16-2433, 19-2524, 20-511A, 32-1207, 32-1209, 32-1214G, 32-1217, 39-242, 39-309, 39-1105, 39-1107, 39-1111, 39-1209 through 1211, 39-1210(10), 39-1211(4), 39-1213, 39-3137, 39-3305, 39-3505, 39-3520, 39-5403, 39-5603, 39-5604, 39-7501, 39-9109, 56-202(b), 56-203(2), 56-203A, 56-204A, 56-803, 56-1003, 56-1004, 56-1004A, 56-1005, 56-1005(8), 56-1007, 56-1009 56-1023, 56-1028, 56-1041, 56-1043, 66-404(7), 15-5-308(4), 15-5-311(5), 15-5-316(5), Title 39, Chapter 3 and 31, Title 66, Chapters 1 and 3, and Title 67, Chapter 52, Idaho Code, and 42 USC Section 9858f.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 16, rules of the Idaho Department of Health and Welfare:

- IDAPA 16.01.07, *Emergency Medical Services (EMS) -- Personnel Licensing Requirements*
- IDAPA 16.02.01, *Rules of the Idaho Time Sensitive Emergency System Council*
- IDAPA 16.02.08, *Vital Statistics Rules, except Subsections 251.05.e and 900*
- IDAPA 16.02.13, *State of Idaho Drinking Water Laboratory Certification Program*
- IDAPA 16.02.14, *Rules Governing Construction and Operation of Public Swimming Pools in Idaho*
- IDAPA 16.02.25, *Fees Charged by the State Laboratory*
- IDAPA 16.02.26, *The Idaho Children's Special Health Program*
- IDAPA 16.02.27, *Idaho Radiation Control Rules*
- IDAPA 16.03.03, *Rules Governing Child Support Services*
- IDAPA 16.03.18, *Medicaid Cost-Sharing*
- IDAPA 16.03.19, *Rules Governing Certified Family Homes*
- IDAPA 16.03.22, *Residential Care or Assisted Living Facilities in Idaho*
- IDAPA 16.04.07, *Rules Governing Fees for State Hospital North*
- IDAPA 16.04.08, *Rules Governing Fees for State Hospital South Services*
- IDAPA 16.05.06, *Criminal History and Background Checks*
- IDAPA 16.06.01, *Child and Family Services*
- IDAPA 16.06.02, *Rules Governing Standards for Child Care Licensing*
- IDAPA 16.07.01, *Behavioral Health Sliding Fee Schedules*
- IDAPA 16.07.15, *Behavioral Health Programs*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

The Department has determined that the referenced chapters are critical and need to be reauthorized.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and

passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget.

The following chapters are critical for continuing business as mandated by statute:

- IDAPA 16.01.07, *Emergency Medical Services (EMS) -- Personnel Licensing Requirements*
- IDAPA 16.02.01, *Rules of the Idaho Time Sensitive Emergency System Council*
- IDAPA 16.02.08, *Vital Statistics Rules*
- IDAPA 16.02.13, *State of Idaho Drinking Water Laboratory Certification Program*
- IDAPA 16.02.14, *Rules Governing Construction and Operation of Public Swimming Pools in Idaho*
- IDAPA 16.02.25, *Fees Charged by the State Laboratory*
- IDAPA 16.02.26, *The Idaho Children's Special Health Program*
- IDAPA 16.02.27, *Idaho Radiation Control Rules*
- IDAPA 16.03.03, *Rules Governing Child Support Services*
- IDAPA 16.03.18, *Medicaid Cost-Sharing*
- IDAPA 16.03.19, *Rules Governing Certified Family Homes*
- IDAPA 16.03.22, *Residential Care or Assisted Living Facilities in Idaho*
- IDAPA 16.04.07, *Rules Governing Fees for State Hospital North*
- IDAPA 16.04.08, *Rules Governing Fees for State Hospital South Services*
- IDAPA 16.05.06, *Criminal History and Background Checks*
- IDAPA 16.06.01, *Child and Family Services*
- IDAPA 16.06.02, *Rules Governing Standards for Child Care Licensing*
- IDAPA 16.07.01, *Behavioral Health Sliding Fee Schedules*
- IDAPA 16.07.15, *Behavioral Health Programs*

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

Licensing, Certification, Permit, or Registration Fees:

- IDAPA 16.01.07, "Emergency Medical Services (EMS) -- Personnel Licensing Requirements"
- Fees paid by emergency medical personnel, for licensure and renewal of licensure
- IDAPA 16.02.13, "State of Idaho Drinking Water Laboratory Certification Program"
- Fees paid by laboratories for certification to test drinking water
- IDAPA 16.02.14, "Rules Governing Construction and Operation of Public Swimming Pools in Idaho"
- Establishes reasonable fees for services for all public swimming pools within the State.
- IDAPA 16.02.27, "Idaho Radiation Control Rules"
- Establishes licensing fees for all radiation producing machines in the State.
- IDAPA 16.03.19, "Rules Governing Certified Family Homes"
- Fees paid by Certified Family Homes for application and certification.
- IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing"
- Fees paid by childcare providers for licensing.
- IDAPA 16.07.15, "Behavioral Health Programs"
- Fees paid by behavioral health programs for applications, on-site reviews, and certification.

Designation Fees:

- IDAPA 16.02.01, "Rules of the Idaho Time Sensitive Emergency System Council"
- Fees paid by hospitals for designation under the Idaho Time Sensitive Emergency System.

Records Fees:

- IDAPA 16.02.08, "Vital Statistics Rules"
- Fees paid to the Department for copies of vital records, searches and other services.

Fee for Service:

- IDAPA 16.02.25, "Fees Charged by the State Laboratory"

- Fees paid to the Department for laboratory testing and services.
IDAPA 16.02.26, "The Idaho Children's Special Health Program"
- Fees paid by Children's Special Health Program clients for program services.
IDAPA 16.03.03, "Rules Governing Child Support Services"
- Fees paid by clients of the Department's child support program.
IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho"
- Fees paid by providers for building evaluation and survey services.
IDAPA 16.04.07, "Rules Governing Fees for State Hospital North"
- Fees for services provided at State Hospital North.
IDAPA 16.04.08, "Rules Governing Fees for State Hospital South Services"
- Fees for services provided at State Hospital South.
IDAPA 16.05.06, "Criminal History and Background Checks"
- Fees charged by the Department for criminal history and background checks.
IDAPA 16.06.01, "Child and Family Services"
- Fees charged by the Department for child protection central registry checks.
IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules"
- Sliding fee schedules for behavioral health services.

Premiums:

- IDAPA 16.03.18, "Medicaid Cost-Sharing"
- Establishes premium fee schedule for Youth Empowerment Services (YES) program participants.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact The Administrative Rules Unit, dhwrules@dhw.idaho.gov, 450 W. State Street, 10th Floor, Boise, ID, 83720.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 16-0000-1900F

16.01.07 – EMERGENCY MEDICAL SERVICES (EMS) – PERSONNEL LICENSING REQUIREMENTS

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. (3-29-12)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 16.01.07, “Emergency Medical Services (EMS) – Personnel Licensing Requirements.” (3-29-12)

02. Scope. These rules include requirements and standards for certification and licensure of emergency medical personnel, the establishment of fees for licensure, renewals of licensure, and education criteria for needed skills to perform duties of specific types of licensure. Emergency medical personnel licensed under these rules work or provide EMS services for agencies licensed by the state. (3-29-12)

002. -- 008. (RESERVED)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

Licensed EMS personnel must comply with the provisions in IDAPA 16.05.06, “Criminal History and Background Checks,” to include: (3-29-12)

01. Initial Licensure. An individual applying for initial licensure described in Section 110 of these rules. (3-29-12)

02. Reinstatement of Licensure. An individual applying for reinstatement of licensure described in Section 131 of these rules. (3-29-12)

03. Certificate of Eligibility. An individual applying for a certificate of eligibility described in Section 150 of these rules. (3-29-12)

04. Additional Criminal Background Check. The EMS Bureau may require an updated or additional criminal background check at any time, without expense to the candidate, if there is cause to believe new or additional information will be disclosed. (3-29-12)

010. DEFINITIONS.

For the purposes of this chapter, the definitions in IDAPA 16.01.02, “Emergency Medical Services (EMS) -- Rule Definitions” apply. (7-1-14)

011. -- 074. (RESERVED)

075. INVESTIGATION OF COMPLAINTS FOR PERSONNEL LICENSING VIOLATIONS.

Investigation of complaints and disciplinary actions for personnel licensing are provided under IDAPA 16.01.12, “Emergency Medical Services (EMS) -- Complaints, Investigations, and Disciplinary Actions.” (7-1-16)

076. ADMINISTRATIVE ACTION IMPOSED FOR LICENSE OR CERTIFICATION.

Any license or certification may be suspended, revoked, denied, or retained with conditions for noncompliance with any standard or rule. Administrative license or certification actions imposed by the EMS Bureau for any action, conduct, or failure to act which is inconsistent with the professionalism, or standards, or both, are provided under Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.12, “Emergency Medical Services (EMS) -- Complaints, Investigations, and Disciplinary Actions.” (7-1-16)

077. STANDARDS OF PROFESSIONAL CONDUCT FOR EMS PERSONNEL.

01. Method of Treatment. EMS personnel must practice medically acceptable methods of treatment and must not endeavor to extend their practice beyond their competence and the authority vested in them by the medical director. EMS personnel must not perform any medical procedure or provide medication that deviated from or exceeds the scope of practice for the corresponding level of licensure established under IDAPA 16.02.02, “Idaho Emergency Medical Services (EMS) Physician Commission.” ()

02. Knowledge and Proficiency. EMS personnel must maintain standards of knowledge and

proficiency as required by this chapter of rules and IDAPA 16.02.02, “Idaho Emergency Medical Services (EMS) Physician Commission.” ()

03. Respect for the Patient. EMS personnel must provide all services with respect for the dignity of the patient, unrestricted by considerations of social or economic status, personal attributes, or the nature of health problems. (3-29-12)

04. Confidentiality. EMS personnel must hold in strict confidence all privileged information concerning the patient except as disclosure or use of this information is permitted or required by law or Department rule. (3-29-12)

05. Conflict of Interest. EMS personnel must not accept gratuities for preferential consideration of the patient and must guard against conflicts of interest. (3-29-12)

06. Professionalism. EMS personnel must uphold the dignity and honor of the profession and abide by its ethical principles and must be familiar with existing laws governing the practice of emergency medical services and comply with those laws. EMS personnel must never perform duties of the profession while under the influence of alcohol, illegal substances, or legal drugs or medication causing impairment of function. (7-1-16)

07. Cooperation and Participation. EMS personnel must cooperate with other health care professionals and participate in activities to promote community and national efforts to meet the health needs of the public. (3-29-12)

08. Ethical Responsibility. EMS personnel must refuse to participate in unethical procedures, and assume the responsibility to expose incompetence or unethical conduct of others to the appropriate authority in a proper and professional manner. Misrepresentation in an application or documentation for licensure by means of concealment of a material fact is a violation of ethical responsibility. (7-1-16)

09. Integrity. EMS personnel must act with honesty and integrity and assure that reports, applications and documentation for which they are responsible are free of fraudulent and false information. (7-1-16)

078. -- 089. (RESERVED)

090. ADVANCE DO NOT RESUSCITATE (DNR) DIRECTIVES.
Licensed EMS personnel must follow the DNR protocol established by the Department. (7-1-16)

091. -- 099. (RESERVED)

PERSONNEL LICENSURE REQUIREMENTS
(Sections 100 - 199)

100. PERSONNEL LICENSURE REQUIRED.
Any individual who provides emergency medical care must obtain and maintain a current EMS personnel license issued by the EMS Bureau, or recognition by the EMS Bureau described under Section 140 of these rules. The levels of Idaho personnel licensure are: (3-29-12)

01. Emergency Medical Responder (EMR). (3-29-12)

02. Emergency Medical Technician (EMT). (3-29-12)

03. Advanced Emergency Medical Technician (AEMT). (3-29-12)

04. Paramedic. (3-29-12)

101. AFFILIATION REQUIRED TO PRACTICE.
Licensed EMS personnel must be affiliated with an EMS agency, and only practice under the supervision of the

agency medical director as required in IDAPA 16.02.02, “Idaho Emergency Medicaid Services (EMS) Physician Commission.” ()

102. (RESERVED)

103. RECOGNITION OF EMS PERSONNEL LICENSURE INTERSTATE COMPACT (REPLICA).

01. Licensed EMS Personnel from a REPLICA State. Licensed EMS personnel from a REPLICA state whose primary affiliation is an Idaho-licensed EMS agency must apply for Idaho EMS licensure within ninety (90) days of affiliation with an Idaho EMS agency. (3-29-17)

02. Out-of-State Primary Affiliation. If EMS personnel licensed in another REPLICA state and they claim an EMS agency in that state as their primary affiliation, Idaho licensure is not required. (3-29-17)

104. (RESERVED)

105. APPLICATION AND INSTRUCTIONS FOR EMS PERSONNEL LICENSURE.

A personnel license or certificate of eligibility application and instructions may be obtained from the EMS Bureau, see online at: <http://www.idahoems.org>. ()

106. TIME FRAME FOR PERSONNEL LICENSURE AFTER SUCCESSFUL COMPLETION OF EDUCATION COURSE.

An individual who has successfully completed an EMS education course is eligible to attempt the standardized examination for the appropriate level of licensure. (7-1-16)

01. Complete Standardized Examination. A candidate must successfully complete all components of the standardized examination in a twelve (12) month period within twenty-four (24) months of completing an EMS training course in order to be eligible for an Idaho EMS personnel license. (7-1-16)

02. Standardized Examination Not Completed. If all components of the standardized examination are not successfully completed in a twelve (12) month period within twenty-four (24) months of course completion, the candidate must repeat the initial training course and all components of the standardized examination in order to be eligible for an Idaho EMS personnel license. (7-1-16)

107. -- 109. (RESERVED)

110. INITIAL PERSONNEL LICENSURE.

Upon successful completion of an approved education course recognized by the EMS Bureau under IDAPA 16.01.05, “Emergency Medical Services -- Education, Instructor, and Examination Requirements,” an individual may apply to the EMS Bureau for licensure. The candidate must meet the following: (7-1-16)

01. Candidate Age Requirements. An individual applying for licensure must meet the following age requirements: (3-29-12)

a. An EMR and EMT candidate must be either sixteen (16) or seventeen (17) years old with parental or legal guardian consent, or eighteen (18) years old. (3-29-12)

b. An AEMT and Paramedic candidate must be eighteen (18) year old. (3-29-12)

02. Declaration of Previous Applications and Licensures. A candidate must declare each state or jurisdiction in which they have applied for, been denied, or held an EMS license or certification. (3-29-12)

03. Authorization for Release of Information. A candidate must provide authorization for the EMS authority in other states or jurisdictions to release the candidate’s registration, licensure, and certification information to the Idaho EMS Bureau. (3-29-12)

04. Provide Current Affiliation with EMS Agency. A candidate must declare all organizations in

which they are allowed to practice as licensed personnel. A candidate must have a current affiliation with a licensed EMS agency that functions at, or above, the level of licensure being sought by the candidate. (3-29-12)

05. Valid Identification. A candidate must have a valid state driver's license, an Idaho identification card issued by a county driver's license examining station, or an identification card issued by the Armed Forces of the United States. (3-29-12)

06. Criminal History and Background Check. A candidate must successfully complete a criminal history and background check according to the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." Denial without the grant of an exemption under the provisions in IDAPA 16.05.06, "Criminal History and Background Checks," will result in denial or revocation of licensure. (3-29-12)

07. Pass Standardized Examination. A candidate must successfully complete the standardized examination for the level of licensure on the application required under IDAPA 16.01.05, "Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements." (7-1-16)

a. A candidate for EMR licensure must have successfully completed the standardized examination at the EMR level or higher within the preceding thirty-six (36) months. (7-1-16)

b. A candidate for EMT licensure must have successfully completed the standardized examination at the EMT level or higher within the preceding thirty-six (36) months. (7-1-16)

c. A candidate for AEMT licensure must have successfully completed the standardized examination at the AEMT level or higher within the preceding twenty-four (24) months. (7-1-16)

d. A candidate for Paramedic licensure must have successfully completed the standardized examination at the Paramedic level within the preceding twenty-four (24) months. (7-1-16)

08. Standardized Exam Attempts For Initial Licensure. A candidate for initial licensure is allowed to attempt to successfully pass the standardized exam as follows: (3-29-12)

a. An EMR candidate is allowed three (3) attempts to pass the exam, after which the initial EMR course must be successfully completed again before another three (3) attempts are allowed. (3-29-12)

b. An EMT candidate is allowed three (3) attempts to pass the exam, after which twenty-four (24) hours of remedial education must be successfully completed before another three (3) attempts are allowed. (3-29-12)

c. An AEMT candidate is allowed three (3) attempts to pass the exam, after which thirty-six (36) hours of remedial education must be successfully completed before another three (3) attempts are allowed. (3-29-12)

d. A Paramedic candidate is allowed three (3) attempts to pass the exam, after which forty-eight (48) hours of remedial education must be successfully completed before another three (3) attempts are allowed. (3-29-12)

09. Submit Required Licensure Fee. A candidate must submit the applicable initial licensure fee provided in Section 111 of these rules. A candidate for EMR or EMT level of licensure has no fee requirement. (3-29-12)

111. APPLICATION FEES FOR PERSONNEL LICENSURE.

01. Initial Licensure. A candidate applying for an initial personnel license must submit the following license fee at time of application: (3-21-12)

a. EMR and EMT have no license fee. (3-21-12)

b. AEMT and Paramedic license fee is thirty-five dollars (\$35). (3-21-12)

02. Renewal. A candidate applying for personnel license renewal must submit the following amount at

the time of application: (3-21-12)

a. EMR and EMT have no license renewal fee. (3-21-12)

b. AEMT and Paramedic license renewal fee is twenty-five dollars (\$25). (3-21-12)

03. Reinstatement. A candidate applying for a personnel license reinstatement must pay the following amount at the time of application: (3-21-12)

a. EMR and EMT have no reinstatement fee. (3-21-12)

b. AEMT and Paramedic reinstatement fee is thirty-five dollars (\$35). (3-21-12)

112. -- 114. (RESERVED)

115. EMS PERSONNEL LICENSE DURATION.

Duration of a personnel license is determined using the following specified time intervals. (3-29-12)

01. Initial License Duration for EMR and EMT Level Licensure. EMR and EMT personnel licenses expire on March 31 or September 30. Expiration dates for EMR and EMT initial licenses are set for not less than thirty-six (36) months and not more than forty-two (42) months from the date of successful certification examination completion in order to establish an expiration date of March 31 or September 30. (3-29-12)

02. Initial License Duration for AEMT and Paramedic Level Licensure. AEMT and Paramedic personnel licenses expire on March 31 or September 30. Expiration dates for AEMT and Paramedic initial licenses are set for not less than twenty-four (24) months and not more than thirty (30) months from the date of successful certification examination completion in order to establish an expiration date of March 31 or September 30. (3-29-12)

03. EMS Personnel License Renewal Duration for EMR and EMT Level Licensure. An EMR and EMT level personnel license is renewed for three (3) years. (3-29-12)

04. EMS Personnel License Renewal Duration for AEMT and Paramedic Level Licensure. An AEMT and Paramedic level personnel license is renewed for two (2) years. (3-29-12)

05. EMS REPLICIA Licensure Duration. EMS personnel from another REPLICIA state who become licensed in Idaho will have their Idaho EMS license expire March 31 or September 30 following the expiration of their EMS license from the original state. (3-29-17)

116. PERSONNEL LICENSE TRANSITION.

Personnel licensed at the AEMT level can opt to either transition to the AEMT-2011 level, or they may remain at the AEMT-1985 level. (3-29-17)

117. (RESERVED)

118. REPLICIA EXPIRATION.

EMS personnel from another REPLICIA state who become licensed in Idaho will have their Idaho license expire in March or September following the expiration of their license in the original state. (3-29-17)

119. (RESERVED)

120. PERSONNEL LICENSE RENEWAL.

Licensed personnel must provide documentation that they meet the following requirements: (3-29-12)

01. Documentation of Affiliation with EMS Agency. A candidate applying for renewal of licensure must be affiliated with a licensed EMS agency which functions at, or above, the level of licensure being renewed. Documentation that the license holder is currently credentialed or undergoing credentialing by an affiliating EMS agency medical director must be submitted as assurance of affiliation for license renewal. (3-29-12)

02. Documentation of Continuing Education for Level of Licensure Renewal. A candidate for renewal of licensure must provide documentation of continuing education consistent with the license holder's level of licensure. All continuing education and skill proficiency requirements must be completed under the provisions in Sections 300 through 325 of these rules. The time frame for continuing education courses must meet the following requirements: (7-1-16)

a. All continuing education and skill proficiency requirements for renewal of an initial Idaho personnel license must be completed as follows: (3-29-12)

i. For EMR or EMT, within the thirty-six (36) months preceding expiration. (7-1-16)

ii. For AEMT and Paramedic, within the twenty-four (24) months preceding expiration. (7-1-16)

b. All continuing education and skill proficiency requirements for successive licenses must be completed between the effective and expiration dates of the license being renewed, or according to Section 116 or 125 of these rules. (7-1-16)

c. All continuing education and skill proficiency requirements for renewal of licenses obtained through conversion of a Certificate of Eligibility must be completed as follows: (3-29-12)

i. For EMR or EMT, within the thirty-six (36) months preceding expiration. (7-1-16)

ii. For AEMT and Paramedic, within the twenty-four (24) months preceding expiration. (7-1-16)

d. A licensee certified by a national EMS certification body may petition the Department to review the certification standards under which the licensee was certified. The Department may waive specific duplicated continuing educational requirements where appropriate. When an external education requirement is found to be more rigorous than these rules, the Department may elect to renew a license based on that education. (7-1-16)

03. Declarations of Convictions or Adjudications. A candidate for renewal of licensure must provide a declaration of any misdemeanor or felony adjudications. (3-29-12)

04. Time Frame for Application of Licensure Renewals. Documentation of license renewal requirements is due to the EMS Bureau prior to the license expiration date. Failure to submit a complete renewal application by the license expiration date renders the license invalid and the individual must not practice or represent himself as a license holder. (3-29-12)

05. Submit Required Licensure Renewal Fees. A candidate must submit the applicable license renewal fee provided in Section 111 of these rules. A candidate for EMR or EMT level of licensure has no fee requirement. (3-29-12)

121. -- 124. (RESERVED)

125. SUBMISSION OF EMS PERSONNEL LICENSURE APPLICATION AND DOCUMENTATION. Each EMS personnel license holder or candidate is responsible for meeting license renewal requirements and submitting completed license renewal documentation to the EMS Bureau by the current license expiration date. (3-29-12)

01. Early Submission for License Renewal. (7-1-16)

a. Licensed EMS personnel may submit renewal application and documentation to the EMS Bureau up to six (6) months prior to the current license expiration date. (7-1-16)

b. Continuing education (CE) taken after early submission of a renewal application may be counted as CE for the next licensure cycle. Prior to the expiration date of the current license, the licensee must submit written notification to the EMS Bureau of the intention to use those CE hours for the next licensure cycle. (7-1-16)

02. EMS Personnel License Expiration Date Falls on a Non-Work Day. When a license expiration date falls on a weekend, holiday, or other day the EMS Bureau is closed, the EMS Bureau will accept applications until the close of the next regular business day following the non-work day. (3-29-12)

126. -- 129. (RESERVED)

130. LAPSED LICENSE.

Licensed personnel who fail to submit a complete renewal application prior to the expiration date of their license cannot practice or represent themselves as licensed EMS personnel. (3-29-12)

01. Failure to Submit an Application and Renewal Documentation. No grace periods or extensions to an expiration date may be granted. After the expiration date the EMS personnel license will no longer be valid. (3-29-12)

02. Application Under Review by the EMS Bureau. Provided the license renewal candidate submitted the renewal application to the EMS Bureau prior to the application deadline, a personnel license does not lapse while under review by the EMS Bureau. (3-29-12)

03. Failure to Provide Application Information Requested by the EMS Bureau. After the expiration date of a license, a candidate for license renewal who does not provide the information requested by the EMS Bureau within twenty-one (21) days from the date of notification to the last known address, will be considered to have a lapsed license. (3-29-12)

04. Reinstatement of Lapsed EMS Personnel License. In order to reinstate at lapsed license, a candidate must submit an application for license reinstatement to the EMS Bureau within twenty-four (24) months of the expiration date of the lapsed license. (3-29-12)

05. Reinstatement of an EMS Personnel License Lapsed for More Than Twenty-Four Months. An individual whose license has been lapsed for more than twenty-four (24) months must retake and successfully complete an initial education course for the level of licensure for reinstatement. The individual must then meet all requirements in Section 110 of these rules for an initial personnel license. (3-29-12)

131. REINSTATEMENT OF A LAPSED EMS PERSONNEL LICENSE.

An individual desiring to reinstate a lapsed personnel license must provide documentation that he meets the following requirements: (3-29-12)

01. Declaration of Previous Applications and Licensures. A reinstatement candidate must declare each state or jurisdiction in which he has applied for, been denied, or held an EMS license or certification. (3-29-12)

02. Authorization for Release of Information. A reinstatement candidate must provide authorization for the EMS authority in other states or jurisdictions to release the candidate's registration, licensure, and certification information to the Idaho EMS Bureau. (3-29-12)

03. Provide Current Affiliation with EMS Agency. A reinstatement candidate must declare all organizations in which they are allowed to practice as licensed personnel. The candidate must have a current affiliation with a licensed EMS agency that functions at, or above, the level of licensure being sought by the candidate. (3-29-12)

04. Documentation of Continuing Education for Lapsed License Reinstatement. A candidate for reinstatement of a lapsed license must provide documentation of continuing education consistent with the license holder's lapsed license. Continuing education requirements are provided in Sections 300 through 325 of these rules. The time frame for meeting the continuing education requirements for reinstatement are as follows: (7-1-16)

a. The candidate must meet continuing education requirements under Sections 320 through 325 of these rules for the last valid licensure cycle; and (7-1-16)

b. Additional continuing education hours in any combination of categories and venues, proportionate to the amount of time since the expiration date of the lapsed license, as follows: (3-29-12)

i. EMR -- Three-quarters (3/4) of one (1) hour of continuing education per month of lapsed time. (3-29-12)

ii. EMT -- One and one-half (1 ½) hours of continuing education per month of lapsed time. (3-29-12)

iii. AEMT -- Two and one-quarter (2 ¼) hours of continuing education per month of lapsed time. (3-29-12)

iv. Paramedic -- Three (3) hours of continuing education per month of lapsed time. (3-29-12)

05. Valid Identification for Reinstatement of Lapsed License. A reinstatement candidate must have a valid state driver's license, an Idaho identification card which is issued by a county driver's license examining station, or identification card issued by the Armed Forces of the United States. (3-29-12)

06. Criminal History and Background Check for Reinstatement of Lapsed License. A reinstatement candidate must successfully complete a criminal background check under the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." Denial without the grant of an exemption under IDAPA 16.05.06 will result in denial of reinstatement of licensure. (3-29-12)

07. Pass Standardized Examination for Reinstatement. A reinstatement candidate must successfully complete the standardized examination for the lapsed level of licensure required under IDAPA 16.01.05, "Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements." A candidate for reinstatement must successfully complete the standardized examination within the time period during which the license was lapsed. (7-1-16)

08. Standardized Exam Attempts For Reinstatement. A candidate for licensure reinstatement is allowed to attempt to successfully pass the standardized exam as follows: (3-29-12)

a. An EMR candidate is allowed three (3) attempts to pass the exam, after which the initial EMR course must be successfully completed again before another three (3) attempts are allowed. (3-29-12)

b. An EMT candidate is allowed three (3) attempts to pass the exam, after which twenty-four (24) hours of remedial education must be successfully completed before another three (3) attempts are allowed. (3-29-12)

c. An AEMT candidate is allowed three (3) attempts to pass the exam, after which thirty-six (36) hours of remedial education must be successfully completed before another three (3) attempts are allowed. (3-29-12)

d. A Paramedic candidate is allowed three (3) attempts to pass the exam, after which forty-eight (48) hours of remedial education must be successfully completed before another three (3) attempts are allowed. (3-29-12)

09. Submit Required Licensure Fee for Reinstatement. A candidate must submit the applicable reinstatement license fee provided in Section 111 of these rules. A candidate for reinstatement of an EMR or EMT level of licensure has no fee requirement. (3-29-12)

10. Expiration Date of a Reinstated License. The expiration date for a lapsed license that is reinstated is determined as provided in Section 115 of these rules. (3-29-12)

132. -- 139. (RESERVED)

140. RECOGNITION OF REGISTRATION, CERTIFICATION, OR LICENSURE FROM OTHER JURISDICTIONS.

01. EMS Personnel Licensed or Certified in Other States. An individual, possessing an EMS personnel license or certification from a state other than Idaho, must have prior recognition or reciprocity granted by

the EMS Bureau prior to providing emergency medical care in Idaho. The following applies: (3-29-12)

a. An individual certified or licensed in a state that has an interstate compact with Idaho that allows reciprocal recognition of EMS personnel may practice as licensed personnel as defined in the interstate compact. (3-29-12)

b. An individual who is currently licensed or certified by another state to provide emergency medical care can apply to the EMS Bureau for limited recognition to practice in Idaho as provided in Subsection 140.02 of this rule. (7-1-16)

02. Limited Recognition in Idaho. An individual, who is currently licensed or certified by another state to provide emergency medical care and applies to practice EMS within the confines of a specific incident, may be granted limited recognition by the EMS Bureau. Limited recognition allows an individual to practice EMS in Idaho only within the confines of the specific incident for which it was issued and only for a specified period of time not to exceed the duration of the incident for which it was issued. (7-1-16)

03. Personnel with NREMT Registration or Current EMS Certification. An individual, possessing a current NREMT registration or a current EMS certification or license from another state at or above the level of licensure they are seeking in Idaho, is eligible for an Idaho EMS personnel licensure if they satisfy the requirements in Section 110 of these rules. (7-1-16)

04. Personnel Licensure Candidate Trained in Other States. A candidate trained outside of Idaho must apply for and obtain an Idaho EMS license as required in Section 110 of these rules prior to providing emergency medical care in Idaho. A declaration that the candidate is fully eligible for EMS licensure in the state in which they were trained, must be obtained from the EMS licensing authority in that state and submitted to the EMS Bureau. (3-29-12)

141. -- 144. (RESERVED)

145. CHANGES TO AN EXISTING LICENSE.

01. Surrender of a Current EMS Personnel License. An individual who possesses a current EMS personnel license may surrender that license at any time by submitting a letter of intent and their license to the EMS Bureau. (3-29-12)

02. Surrender of License to Prevent Investigation or Disciplinary Action. Surrendering or expiration of a license does not prevent an investigation or disciplinary action against the individual. (3-29-12)

03. Relinquish a Current EMS Personnel License for a Lower Level License. An individual who possesses a current license may relinquish that license and receive a license at a lower level with the same expiration date as the original license. The individual must have current affiliation with a licensed EMS agency which functions at, or higher than, the level of licensure being sought. (3-29-12)

04. Relinquishment of a License to a Lower Level License to Prevent Investigation or Disciplinary Action. Relinquishing a personnel license does not prevent an investigation or disciplinary action against the individual. (3-29-12)

05. Reporting Requirements for Changes in Status. Licensed personnel must notify the EMS Bureau within thirty (30) days of a change in name, mailing address, telephone number or agency affiliation. (3-29-12)

06. Personnel License Duration Shortened. The EMS Bureau will issue a license with a shortened licensure duration upon the request of the license holder. (3-29-12)

146. MULTIPLE LICENSES.

An individual may hold more than one (1) level of personnel licensure in Idaho, but can only renew one (1) personnel license at one (1) level. (3-29-12)

147. -- 149. (RESERVED)

150. CERTIFICATE OF ELIGIBILITY REQUIREMENTS.

01. Personnel Licensure Requirements are Met. An individual, who has successfully completed an approved course, and meets all requirements for EMS personnel licensure required in Section 110 of these rules, except for obtaining an agency affiliation provided in Subsection 110.04 of these rules, may apply to the EMS Bureau for a certificate of eligibility. (3-29-12)

02. Certificate of Eligibility Duration. Duration of a certificate of eligibility is determined using the specified time intervals of the personnel licensure level requirements in Section 115 of these rules. (3-29-12)

03. Criminal History and Background Check. An individual applying for a certificate of eligibility must successfully complete a criminal history and background check within the six (6) months prior to the issuance or renewal of a certificate of eligibility, according to the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." Denial without the grant of an exemption under the provisions in IDAPA 16.05.06, "Criminal History and Background Checks," will result in denial of a certificate of eligibility. (3-29-12)

04. Renewal of Certificate of Eligibility. An individual must provide documentation that the following requirements have been met in order to renew a certificate of eligibility: (3-29-12)

a. Continuing education requirements for the level of licensure listed under the license renewal requirements in Section 120 of these rules have been met; and (3-29-12)

b. Successful completion of the standardized examination designated by the EMS Bureau for the certificate of eligibility. (3-29-12)

05. Revocation of Certificate of Eligibility. The EMS Bureau will revoke a certificate of eligibility if the certificate holder is determined to no longer meet eligibility requirements or has obtained a personnel license. (3-29-12)

151. AMBULANCE CERTIFICATION.

01. Ambulance Certification is Required. In order for a licensed EMR to serve as the sole patient care provider who is delivering patient care, the EMR must possess a current ambulance certification issued by the EMS Bureau. (4-11-19)

02. Ambulance Certification Requirements. A licensed EMR applying for and meeting the requirements defined in this section of rule will be issued an ambulance certification. The requirements for ambulance certification are: (4-11-19)

a. Have a valid, unrestricted EMR license; (4-11-19)

b. Have successfully completed an ambulance certification training program, examination, and credentialing; (4-11-19)

03. Duration of Certification. Ambulance certifications are valid as long as the license holder is continually licensed. (4-11-19)

04. Disciplinary and Corrective Action. The Department may impose disciplinary and corrective actions on an ambulance certification based on the procedures for administrative license actions described in IDAPA 16.01.12, "Emergency Medical Services (EMS) – Complaints, Investigations, and Disciplinary Actions." (4-11-19)

152. -- 174. (RESERVED)

175. EMS BUREAU REVIEW OF APPLICATIONS.

01. Review of License Applications. The EMS Bureau reviews each application for completeness and accuracy. Random applications are selected for audit by the EMS Bureau. Applications will also be audited when information declared on the application appears incomplete, inaccurate, or fraudulent. (3-29-12)

02. EMS Bureau Review of Renewal Application. A personnel license does not expire while under review by the EMS Bureau, provided the license renewal candidate submitted the renewal application to the EMS Bureau prior to the application deadline required under Section 130 of these rules. (3-29-12)

176. -- 299. (RESERVED)

**CONTINUING EDUCATIONAL AND SKILLS PROFICIENCY REQUIREMENTS
FOR PERSONNEL LICENSURE
(Sections 300 - 399)**

300. CONTINUING EDUCATION AND SKILLS PROFICIENCY.

01. Continuing Education Must Meet Objectives of Initial Course Curriculum. All continuing education and skills proficiency assurance must be consistent with the objectives of the initial course curriculum or be a logical progression of those objectives. (3-29-12)

02. Documentation of Continuing Education. Licensed personnel must maintain documentation of all continuing education as follows: (3-29-12)

a. An EMR and EMT must maintain documentation of continuing education for four (4) years. (3-29-12)

b. An AEMT and Paramedic must maintain documentation of continuing education for three (3) years. (3-29-12)

03. Transition to New Scope of Practice. Education required to transition to a new scope of practice must meet the following: (3-29-12)

a. Within the same level of licensure, all transition education may count on an hour-for-hour basis in the appropriate categories within a single venue. When transition education hours exceed seventy-five percent (75%) of the total continuing education hours required, all continuing education hours can be in a single venue; and (3-29-12)

b. Education must be completed during a single license duration. (3-29-12)

301. CONTINUING EDUCATION RECORDS ARE SUBJECT TO AUDIT.

The EMS Bureau reserves the right to audit continuing education records to verify that renewal requirements have been met. (3-29-12)

01. Documentation Record. All documentation for continuing education hours must include: (7-1-16)

a. Name of attendee; (7-1-16)

b. Date education was completed; and (7-1-16)

c. Education sponsor or instructor. (7-1-16)

02. Proof of Completion. The following are acceptable formats for proof of completion of continuing education: (7-1-16)

a. Signed course roster; (7-1-16)

- b.** Certificate of completion; (7-1-16)
- c.** Electronic verification of completion of on-line course; (7-1-16)
- d.** Verification of attendance from EMS conference; (7-1-16)
- e.** Verification or proof of providing instruction; or (7-1-16)
- f.** Agency training record validated by agency administrator. (7-1-16)

302. -- 304. (RESERVED)

305. CONTINUING EDUCATION CATEGORIES FOR PERSONNEL LICENSURE RENEWAL.

- 01. Airway.** (7-1-16)
- 02. Cardiovascular.** (7-1-16)
- 03. Trauma.** (7-1-16)
- 04. Medical.** (7-1-16)
- 05. Operations.** (7-1-16)
- 06. Pediatrics.** (7-1-16)

306. -- 309. (RESERVED)

310. VENUES OF CONTINUING EDUCATION FOR PERSONNEL LICENSURE RENEWAL.

Continuing education for all personnel must include at least two (2) of the venues described in Subsections 310.01 through 310.12 of this rule for each licensure period. (7-1-16)

- 01. Structured Classroom Sessions.** (3-29-12)
- 02. Refresher Programs.** Refresher programs that revisit the original curriculum and have an evaluation component (3-29-12)
- 03. Nationally Recognized Courses.** (3-29-12)
- 04. Regional and National Conferences.** (3-29-12)
- 05. Teaching Continuing Education Topics.** The continuing education topics being taught must fall under the categories in Section 305 of these rules. (3-29-12)
- 06. Agency Medical Director-Approved Self-Study or Directed Study.** This venue is not allowed to be used for a certificate of eligibility continuing education requirement. (7-1-16)
- 07. Case Reviews and Grand Rounds.** (3-29-12)
- 08. Distributed Education.** This venue includes distance and blended education using computer, video, audio, Internet, and CD resources (3-29-12)
- 09. Journal Article Review with an Evaluation Instrument.** (3-29-12)
- 10. Author or Co-Author an EMS-Related Article in a Nationally Recognized Publication.** (7-1-16)

- 11. **Simulation Training.** (7-1-16)
- 12. **Evaluator at a State or National Psychomotor Exam.** (7-1-16)

311. -- 319. (RESERVED)

320. LICENSE RENEWAL CONTINUING EDUCATION REQUIREMENTS.

A license renewal candidate must provide documentation of the following continuing education hours provided in the table below during each licensure period. (7-1-16)

TABLE 320				
LICENSE RENEWAL CONTINUING EDUCATION (CE) REQUIREMENTS				
CE CATEGORIES	EMR	EMT	AEMT	PARAMEDIC
	24 TOTAL CE Hours	48 TOTAL CE Hours	54 TOTAL CE Hours	72 TOTAL CE Hours
An individual must complete at least 1 hour of continuing education in each category.				
Airway, Respiration, and Ventilation	No more than 7 CE hours in any single category may be counted toward the total number of CE Hours needed for renewal.	No more than 14 CE hours in any single category may be counted toward the total number of CE Hours needed for renewal.	No more than 16 CE hours in any single category may be counted toward the total number of CE Hours needed for renewal.	No more than 22 CE hours in any single category may be counted toward the total number of CE Hours needed for renewal.
Cardiovascular				
Trauma				
Medical				
Operations: Landing Zone & Extrication Awareness				
Pediatrics	2 hours	4 hours	6 hours	8 hours

(7-1-16)

321. -- 324. (RESERVED)

325. LICENSE RENEWAL SKILLS PROFICIENCY REQUIREMENTS.

A license renewal candidate must demonstrate proficiency in the skills necessary to provide safe and effective patient care at the licensure level consistent with the scope of practice provided in IDAPA 16.02.02, "Idaho Emergency Medical Services (EMS) Physician Commission." ()

326. -- 999. (RESERVED)

16.02.01 – RULES OF THE IDAHO TIME SENSITIVE EMERGENCY SYSTEM COUNCIL

000. LEGAL AUTHORITY.

The Idaho Time Sensitive Emergency System Council (TSE) is authorized under Section 56-1028, Idaho Code, to promulgate rules for the purpose of establishing standards and for the administration of a voluntary time sensitive emergency system of care. Sections 56-1024 through 56-1030, Idaho Code, provide requirements for the TSE Council, its membership, duties, regional TSE committees, standards criteria, and the designation of centers. The Department is authorized to charge and collect fees established by rule under Section 56-1007, Idaho Code, and to establish and collect data for a Time Sensitive Emergency (TSE) Registry under Section 57-2003, Idaho Code.

(3-24-16)

001. TITLE, SCOPE, AND INTENT.

01. Title. The title of these rules is IDAPA 16.02.01, “Idaho Time Sensitive Emergency System Council.” ()

02. Scope. These rules provide for the administration and establishment of standards for a voluntary statewide time sensitive emergency system of care that includes procedures and requirements for designation of trauma, stroke, and heart attack centers including data reporting, fees, appeal process and enforcement procedures, determination of regions to provide an effective access to the TSE system within the state, and operational procedures for regional TSE committees. (3-24-16)

03. Intent. With the maturation of the Time Sensitive Emergency System (TSE), the intent is for the state to have the ability to designate TSE centers without reliance on national accreditation bodies. The TSE Council, upon review of appropriate documentation, may provide reciprocity for facilities in Idaho that also choose to operate under a designation in a neighboring state’s system. (3-24-16)

002. INCORPORATION BY REFERENCE.

The Time Sensitive Emergency System Standards Manual, Edition 2019-1, is incorporated by reference in this chapter of rules. Copies of the manual may be obtained online at <https://tse.idaho.gov/> or from the Bureau of Emergency Medical Services and Preparedness located at 2224 East Old Penitentiary Road, Boise, ID 83712-8249.

(7-1-19)

003. -- 009. (RESERVED)

010. DEFINITIONS.

For the purposes of this chapter, the following terms and definitions apply. (3-24-16)

01. American College of Surgeons (ACS). The American College of Surgeons (ACS) is a national body that sets standards and verifies compliance with published standards. (3-24-16)

02. Department. The Idaho Department of Health and Welfare. (3-24-16)

03. Director. The Director of the Idaho Department of Health and Welfare or their designee. (3-24-16)

04. Division. The Division of Public Health, Idaho Department of Health and Welfare. (3-24-16)

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. (3-24-16)

06. EMS Bureau. The Bureau of Emergency Medical Services (EMS) & Preparedness of the Idaho Department of Health and Welfare. (3-24-16)

07. Facility. A health care organization that is voluntarily seeking designation from the Idaho Time Sensitive Emergency Council. A facility may be any of the following: (3-24-16)

a. Center. A facility designated by the Idaho Time Sensitive Emergency Council is known as a center. (3-24-16)

b. Freestanding emergency department: (3-24-16)

i. Is owned by a hospital with a dedicated emergency department; (3-24-16)

- ii. Is located within thirty-five (35) miles of the hospital that owns or controls it; (3-24-16)
 - iii. Provides emergency services twenty-four (24) hours per day, seven (7) days per week on an outpatient basis; (3-24-16)
 - iv. Is physically separate from a hospital; and (3-24-16)
 - v. Meets the staffing and service requirements in IDAPA 16.03.14, “Hospitals.” ()
 - c. Hospital. As defined in Section 39-1301, Idaho Code, is a facility primarily engaged in providing, by or under the daily supervision of physicians: ()
 - i. Concentrated medical and nursing care on a twenty-four (24) hour basis to inpatients experiencing acute illness; (3-24-16)
 - ii. Diagnostic and therapeutic services for medical diagnosis and treatment, psychiatric diagnosis and treatment, and care of injured, disabled, or sick persons; (3-24-16)
 - iii. Rehabilitation services for injured, disabled, or sick persons; (3-24-16)
 - iv. Obstetrical care; (3-24-16)
 - v. Provides for care of two (2) or more individuals for twenty-four (24) or more consecutive hours; and (3-24-16)
 - vi. Is staffed to provide nursing professional nursing care on a twenty-four (24) hour basis. (3-24-16)
 - d. Rural Clinic. A health care clinic in a rural area that is located more than thirty-five (35) miles from a hospital via maintained roads and is capable of providing emergency care to patients. (3-24-16)
- 08. Heart Attack.** STEMI, a common name for ST-elevation myocardial infarction, is a more precise definition for a type of heart attack caused by a prolonged period of blocked blood supply that affects a large area of the heart and has a substantial risk of death or disability calling for a quick response. ()
- 09. Idaho Time Sensitive Emergency (TSE) System Council.** The Idaho Time Sensitive Emergency System Council established in Section 56-1027, Idaho Code. (3-24-16)
- 10. National Accrediting Body.** An organization whose standards criteria is recognized by the Idaho Time Sensitive Emergency System Council and verifies compliance with those standards. (3-24-16)
- 11. Regional Time Sensitive Emergency (TSE) Committee.** An Idaho regional TSE committee established under Section 56-1030, Idaho Code. (3-24-16)
- 12. STEMI.** STEMI is an ST segment elevation myocardial infarction that is a particular type of heart attack, or MI (myocardial infarction), that is caused by a prolonged period of blocked blood supply. It affects a large area of the heart muscle, and so causes changes on the ECG as well as in blood levels of key chemical markers. This is considered a major heart attack and is referred to in medical shorthand as a STEMI. (3-24-16)
- 13. Stroke.** An interruption of blood flow to the brain causing paralysis, slurred speech, or altered brain function usually caused by a blockage in a blood vessel that carries blood to the brain (ischemic stroke) or by a blood vessel bursting (hemorrhagic stroke). (3-24-16)
- 14. Time Sensitive Emergency (TSE).** Time sensitive emergencies specifically for this chapter of rules are trauma, stroke, and heart attack. (3-24-16)
- 15. Trauma.** The result of an act or event that damages, harms, or hurts a human being resulting in

intentional or unintentional damage to the body resulting from acute exposure to mechanical, thermal, electrical, or chemical energy, or from the absence of such essentials as heat or oxygen. (3-24-16)

16. TSE-Designated Center. A facility that has voluntarily applied for TSE designation, met and is in compliance with the designation criteria and standards of these rules, and that the TSE Council has designated as one (1) or more of the following: (3-24-16)

- a. Level I Trauma Center; (3-24-16)
- b. Level II Trauma Center; (3-24-16)
- c. Level III Trauma Center; (3-24-16)
- d. Level IV Trauma Center; (3-24-16)
- e. Level V Trauma Center; (3-24-16)
- f. Pediatric Level I Trauma Center; (3-24-16)
- g. Pediatric Level II Trauma Center; (3-24-16)
- h. Level I Stroke Center (Comprehensive); (3-24-16)
- i. Level II Stroke Center (Primary); (3-24-16)
- j. Level III Stroke Center (Acute Stroke Ready); (3-24-16)
- k. Level I STEMI Center (Heart Attack Receiving); or (3-24-16)
- l. Level II STEMI Center (Heart Attack Referring). (3-24-16)

17. TSE Registry. The population-based data system defined under Section 57-2003, Idaho Code. (3-24-16)

18. TSE System. An organized statewide approach to treating trauma, stroke, and heart attack patients that establishes and promotes standards for patient transportation, equipment, and information analysis for effective and coordinated TSE care. (3-24-16)

011. -- 074. (RESERVED)

075. TSE COUNCIL.

Under Section 56-1027, Idaho Code, the TSE Council will consist of members appointed by the Governor of Idaho and the chair of each regional TSE committee. (3-24-16)

076. TSE COUNCIL -- RESPONSIBILITIES AND DUTIES.

The TSE Council is responsible for the duties described under Section 56-1028, Idaho Code. (3-24-16)

077. -- 079. (RESERVED)

080. TSE REGIONS.

Under Section 56-1028, Idaho Code, the TSE Council is required to establish TSE regions that provide more effective access to the Idaho TSE system through education, but not for the purpose of promoting competition, restricting, or directing patient referrals within the region. The TSE Council has established six (6) regions in Idaho described in the Time Sensitive Emergency System Standards Manual incorporated under Section 004 of these rules. (3-24-16)

081. TSE REGIONS -- REALIGNMENT OF REGION.

The TSE Council may realign a region by initiation of the TSE Council, or at the request of a regional TSE

committee, a county or local government entity within the region, a TSE-designated center, or a licensed EMS agency within the region. (3-24-16)

01. Requesting Entity. The requesting entity must forward correspondence to the TSE Council specifying the reason for the realignment request. The correspondence must include: (3-24-16)

- a. Existing patient routing patterns used by both EMS agencies and health care centers; (3-24-16)
- b. Distances and transport times involved in patient routing patterns; (3-24-16)
- c. A list of all entities affected by the request; (3-24-16)
- d. A list of all other licensed health care facilities and licensed EMS agencies in the county; and (3-24-16)
- e. Documentation that all affected regional TSE committees are agreeable to the realignment. (3-24-16)

02. Copies of Request for Realignment. The entity requesting the TSE Council for realignment must provide copies of the correspondence to all affected regional TSE committees, county and local governments, licensed health care facilities, and EMS agencies in the requesting entity’s county. (3-24-16)

03. TSE Decision for Realignment. The TSE Council will evaluate the request based on the impact to patient care and will notify all parties of the council’s decision. (3-24-16)

082. REGIONAL TSE COMMITTEES -- ORGANIZATION AND RESPONSIBILITIES.
The regional TSE committees’ organization and responsibilities are described under Section 56-1030, Idaho Code. (3-24-16)

083. -- 099. (RESERVED)

100. DESIGNATION OF TSE CENTERS -- CRITERIA.
Under Section 56-1029, Idaho Code, the TSE Council will designate a hospital as a trauma, stroke, or STEMI (heart attack) center when such hospital, upon proper application and verification, is found by the TSE Council to meet an applicable designation level for trauma, stroke, or STEMI (heart attack) designation criteria established in the Time Sensitive Emergency System Standards Manual incorporated under Section 004 of these rules. (3-24-16)

101. -- 104. (RESERVED)

105. TRAUMA DESIGNATION CENTERS.
To be an Idaho TSE-designated Level I, II, III, IV, V, or a Pediatric Level I or Level II Trauma Center, a facility must meet or exceed required standards published for state designation in the Time Sensitive Emergency System Standards Manual incorporated under Section 004 of these rules. (3-24-16)

106. -- 109. (RESERVED)

110. STROKE DESIGNATION CENTERS.
To be an Idaho TSE-designated Level I, II, or III Stroke Center, a facility must meet or exceed required standards published for state designation in the Time Sensitive Emergency System Standards Manual incorporated by reference under Section 004 of these rules. (3-24-16)

111. -- 114. (RESERVED)

115. STEMI (HEART ATTACK) DESIGNATION CENTERS.
To be an Idaho TSE-designated Level I or II STEMI (Heart Attack) Center, a facility must meet or exceed required standards published for state designation in the Time Sensitive Emergency System Standards Manual incorporated under Section 004 of these rules. (3-24-16)

116. -- 119. (RESERVED)

120. DESIGNATION OF CENTERS -- GENERAL REQUIREMENTS.

01. Application. A facility applying for initial TSE designation must submit an application along with applicable fees for each designation it is requesting. Application process and requirements are provided in the Time Sensitive Emergency System Standards Manual incorporated under Section 004 of these rules. Fee requirements are provided in Section 200 of these rules. (3-24-16)

02. Initial Designation. Initial designation requires completion of appropriate application, submission of appropriate fees, and completion of an appropriate on-site survey based on the Time Sensitive Emergency System Standards Manual incorporated by reference under Section 004 of these rules. (3-24-16)

121. -- 189. (RESERVED)

190. TSE DESIGNATION -- LENGTH OF DESIGNATION.

A TSE center will be designated for a period of three (3) years, unless the designation is rescinded by the TSE Council for non-compliance with the designation standards of these rules or adjusted to coincide with applicable external verification timetables. (3-24-16)

191. RENEWAL OF TSE DESIGNATION.

A TSE center must submit its renewal application and applicable fees no later than six (6) months prior to the center's designation expiration date. Designation will not lapse due to a delay in scheduling the on-site survey, if the delay is through no fault of renewing center. (3-24-16)

192. -- 194. (RESERVED)

195. NOTIFICATION OF LOSS OF CERTIFICATION OR LICENSURE.

Any TSE-designated center that has a loss of certification or licensure must immediately notify the TSE Council by contacting TSE program staff. (3-24-16)

196. -- 199. (RESERVED)

200. DESIGNATION AND TSE ON-SITE SURVEY FEES.

01. Application With National Verification. An applicant applying for a TSE designation that is verified by a national accrediting body must submit the appropriate designation fees with its application for initial designation and renewal. The designation fees are for a three (3) year designation and are payable on an annual basis. TSE designation fees are not to exceed those listed in Subsections 200.03 through 200.05 of this rule. (3-24-16)

02. Application Without National Verification. An applicant who requires a TSE on-site survey prior to designation is required to pay the applicable on-site survey fee at the time of application. TSE designation and on-site survey fees are not to exceed those listed in Subsections 200.03 through 200.05 of this rule. (3-24-16)

03. Trauma Designation and TSE On-Site Survey Fees.

TRAUMA DESIGNATIONS 200.03	DESIGNATION FEE 3-year / Annual (Not to exceed)	TSE ON-SITE SURVEY FEE (Not to exceed)
LEVEL I	\$45,000 / \$15,000	\$3,000 / Not applicable with ACS verification
LEVEL II	\$36,000 / \$12,000	\$3,000 / Not applicable with ACS verification

TRAUMA DESIGNATIONS 200.03	DESIGNATION FEE 3-year / Annual (Not to exceed)	TSE ON-SITE SURVEY FEE (Not to exceed)
LEVEL III	\$24,000 / \$8,000	\$,3000 / Not applicable with ACS verification
LEVEL IV	\$12,000 / \$4,000	\$1,500 / Not applicable with ACS verification
LEVEL V	\$3,000 / \$1,000	\$1,500
PEDIATRIC LEVEL I and LEVEL II	\$36,000 / \$12,000	\$3000 / Not applicable with ACS verification

(3-24-16)

04. Stroke Designation and TSE On-Site Survey Fees.

STROKE DESIGNATIONS 200.04	DESIGNATION FEE 3-year / Annual (Not to exceed)	TSE ON-SITE SURVEY FEE (Not to exceed)
LEVEL I	\$21,000 / \$7,000	\$3,000 / Not applicable with national or acceptable state verification
LEVEL II	\$12,000 / \$4,000	\$3,000 / Not applicable with national or acceptable state verification
LEVEL III	\$1,500 / \$500	\$3,000 / Not applicable with national or acceptable state verification

(7-1-19)

05. STEMI (Heart Attack) Designation and TSE On-Site Survey Fees.

STEMI (HEART ATTACK) DESIGNATIONS 200.05	DESIGNATION FEE 3-year / Annual (Not to exceed)	TSE ON-SITE SURVEY FEE (Not to exceed)
LEVEL I	\$21,000 / \$7,000	\$3,000 / Not applicable with national or acceptable state verification
LEVEL II	\$1,500 / \$500	\$3,000 / Not applicable with national or acceptable state verification

(7-1-19)

06. Designation Fee Payment. After completion of the TSE on-site survey, the TSE Council will notify the applicant facility of the designation determination by letter. The applicant facility must then pay either the annual designation fee or the entire three (3) year designation fee. After designation notification and upon the Department's receipt of the designation fee, designation is effective. The TSE Council will send a certificate of designation and confirmation of the designation period. Annual designation fees for those facilities paying yearly are

due to the Department within thirty (30) days of the date of the invoice in order to maintain designation. Failure to meet this deadline will result in suspension or revocation of designation as provided in Section 285 of these rules. (7-1-19)

201. -- 249. (RESERVED)

250. TSE ON-SITE SURVEY.

The TSE Council will conduct an on-site survey of each TSE-designated center at least once every three (3) years, unless the center has been verified by a national accrediting body to meet or exceed the standards set in these rules. The TSE Council will schedule the on-site survey with the designated center in a timely manner. (3-24-16)

251. TSE ON-SITE SURVEY -- GENERAL REQUIREMENTS.

The TSE on-site survey will consist of and consider each facility's application and compliance with the standards published for state designation and incorporated under Section 004 of these rules for the specific type of designation being requested. The general requirements in Subsections 251.01 through 251.06 of this rule apply: (3-24-16)

01. Survey Team Member Requirements. Survey team members will meet the following inclusion criteria: (3-24-16)

a. A physician surveyor must: (3-24-16)

i. Be certified by the American Board of Medical Specialties or the American Board of Osteopathic Medicine; (3-24-16)

ii. Be board-certified in the specialty area being represented on the review team; (3-24-16)

iii. Be currently active, or active in the last twelve (12) months, in trauma, stroke, or emergency cardiac care at a center that is at or above the level being reviewed; ()

iv. Have no conflict of interest with the facility under review; (3-24-16)

v. Be from another state when performing a survey for Level I or Level II Trauma Center designations; and (3-24-16)

vi. Be from outside the region of the center being verified. (3-24-16)

b. A nurse surveyor or program manager must: (3-24-16)

i. Be currently active, or active in the last twelve (12) months, in trauma, stroke, or emergency cardiac care at a center that is at or above the level being reviewed; and ()

ii. Have no conflict of interest with the facility under review; (3-24-16)

iii. Be from another state when performing a survey for Level I or Level II Trauma Center designations; and (3-24-16)

iv. Be from outside the region of the center being verified. (3-24-16)

02. Communication Between Surveyors and Facilities. In order to standardize ethical practice, all communication between surveyors and facilities prior to the survey must be facilitated by TSE program staff. (3-24-16)

03. Survey Team Member Notification of Potential Conflict of Interest. Upon being assigned to an on-site survey team, a potential team member must notify the TSE Council of any potential conflict of interest regarding any financial, professional, or personal bias that may affect the survey of the applicant's facility. (3-24-16)

04. Notification to Applicant of Survey Team Members. The TSE Council will provide the applicant

with the names of the on-site survey team once they have been selected and at least thirty (30) calendar days prior to the scheduled survey. (3-24-16)

05. Facility Notification to TSE Council of Potential Conflict of Interest. If the applicant believes that a potential surveyor has a financial, professional, or personal bias that may affect the survey, the applicant must notify the TSE Council in writing no later than seven (7) calendar days after the applicant receives the TSE Council's notification of the proposed survey team. (3-24-16)

06. Notification of Decision for Conflict of Interest. The TSE Council will consider the conflict of interest notice and make a decision concerning replacement of the survey team member in question. No person who has a substantial conflict of interest in the operation of any facility under review will participate in the on-site survey of the applicant. (3-24-16)

252. TSE ON-SITE SURVEY – SURVEY TEAM COMPOSITION.

The TSE Council will select an on-site survey team based on the applicant's designation application and specifications provided in these rules and the standards published in the Time Sensitive Emergency System Standards Manual incorporated under Section 004 of these rules. (3-24-16)

253. ON-SITE SURVEY – ADDITIONAL SURVEYS.

The TSE Council may conduct additional, announced or unannounced, full or partial, on-site reviews of TSE designated centers or applicants when there is reason to believe that the center is not in compliance with the designation criteria standards of these rules. (3-24-16)

254. -- 259. (RESERVED)

260. DESIGNATION DECISION.

01. Summary Report. The survey team will present a verbal summary of the survey results to the applicant. The survey team will submit in writing to the TSE Council its recommendation on the center's designation at the completion of the site survey. (3-24-16)

02. Written Report. The TSE Council will consider all evidence and notify the applicant in writing of its decision within thirty (30) calendar days of receiving the survey team's recommendation. (3-24-16)

03. Final Determination. The TSE Council's final determination regarding each application will be based upon consideration of: (3-24-16)

a. The application; (3-24-16)

b. The evaluation and recommendations of the on-site survey team; (3-24-16)

c. The best interests of patients; and (3-24-16)

d. Any unique attributes or circumstances that make the facility capable of meeting special community needs. (3-24-16)

04. Provisional Designation. The TSE Council may grant a provisional designation to a facility with deficiencies it deems correctable. A facility receiving a provisional designation must: (3-24-16)

a. Resolve the deficiencies within the time period specified by the TSE Council; (3-24-16)

b. Submit documentation that the deficiency has been resolved; and (3-24-16)

c. If necessary, submit to an additional focused on-site survey and pay the applicable survey fees. (3-24-16)

05. Denial. If the TSE Council denies an applicant a designation, the provisions of IDAPA 16.05.03,

“Contested Case Proceedings and Declaratory Rulings,” will apply. ()

261. -- 269. (RESERVED)

270. WAIVERS.

01. Granting a Waiver. The TSE Council may grant a waiver from one (1) or more designation criteria for a center applying for TSE designation. (3-24-16)

02. Waiver Application. A center requesting a waiver must submit a completed TSE Waiver Application Form. The TSE Council may require the applicant to provide additional information, and the application will not be considered complete until all required information is provided. (3-24-16)

03. Post Notice. A center requesting a waiver must post a notice of the waiver application at all public entrances to the center and in at least one (1) area that is commonly used by the patients. The notice must: (3-24-16)

- a. Include a meaningful description of the reason for the waiver; (3-24-16)
- b. Be posted on the date the waiver application is submitted; (3-24-16)
- c. Remain posted for a minimum of thirty (30) calendar days; and (3-24-16)
- d. Describe where and to whom comments may be submitted during the thirty (30) calendar days. (3-24-16)

04. Notice Distribution. When the notice is posted, the center must also distribute copies of the notice to prehospital emergency medical service agencies active in the community served by the center. (3-24-16)

05. Waiver Application Submission. The completed waiver application must be submitted to the TSE Council at least thirty (30) calendar days before a TSE Council meeting in order to be placed on the agenda. Applications submitted less than thirty (30) calendar days in advance of a TSE Council meeting will be placed on the next agenda. (3-24-16)

06. Waiver Application Distribution. The TSE Council will make available the public notice of the TSE Council meeting regarding the waiver application to all TSE-designated centers. (3-24-16)

07. Waiver Application Review. The regional TSE committee must review the request and make recommendations to the TSE Council. The TSE Council must make a decision and notify the facility administrator in writing within thirty (30) calendar days of the TSE Council meeting during which the waiver decision is made. (3-24-16)

08. Waiver Conditions. When a waiver is granted, the TSE Council must: (3-24-16)

- a. Specify the terms and conditions of the waiver; (3-24-16)
- b. Specify the duration of the waiver; duration will not exceed the designation period for that center or three (3) years, whichever is shorter; and (3-24-16)
- c. Require the submission of progress reports from the center that was granted a waiver. (3-24-16)

09. Waiver Renewal. A center that plans to maintain a waiver beyond its expiration must submit a new waiver application to the TSE Council no less than three (3) months prior to the expiration of the waiver. (3-24-16)

10. Waiver Revocation. The TSE Council may revoke or suspend a waiver when it determines: (3-24-16)

- a. That continuation of the waiver jeopardizes the health, safety, or welfare of the patients; (3-24-16)

- b. The applicant has provided false or misleading information in the waiver application; (3-24-16)
- c. The applicant has failed to comply with conditions of the waiver; or (3-24-16)
- d. That a change in federal or state law prohibits continuation of the waiver. (3-24-16)

11. Notification and Appeal. When the TSE Council denies, revokes, or suspends a waiver, the TSE Council must provide the center with a written notification of the action and the basis for the action. The notice will inform the facility of the right to appeal and the procedure to appeal the waiver action under the provisions in IDAPA 16.05.03, “Contested Case Proceedings and Declaratory Rulings.” Notification will be made in writing within thirty (30) calendar days of the TSE Council meeting during which the appeal decision is made. ()

271. -- 279. (RESERVED)

280. DENIAL AND MODIFICATION.

01. Denial. The TSE Council may deny an initial or renewal application for a center’s designation when a center: (3-24-16)

- a. Does not meet the criteria for designation required in these rules; (3-24-16)
- b. Application or accompanying documents contain false statements of material facts; (3-24-16)
- c. Refuses to allow any part of an on-site survey; (3-24-16)
- d. Fails to comply with or to successfully complete a plan of correction, or (3-24-16)
- e. Is substantially out of compliance with any TSE rules. (3-24-16)

02. Modification. When a center fails to meet the criteria at the level of designation for which it applied or opts to surrender its designation, the TSE Council may recommend a designation at a lesser level described in Section 290 of these rules, or a complete revocation of state designation. This action, unless agreed to by the applicant, will represent a denial of the application. (3-24-16)

03. Notification and Appeal. When the TSE Council denies an application for designation, the TSE Council must provide the center with a written notification of the denial and the basis for the denial. The notice will inform the facility of the right to appeal and the procedure to appeal the denial under the provisions in IDAPA 16.05.03, “Contested Case Proceedings and Declaratory Rulings.” ()

281. -- 284. (RESERVED)

285. REVOCATION AND SUSPENSION.

01. Revocation. The TSE Council may revoke the designation of a center or a waiver when an owner, officer, director, manager, or other employee: (3-24-16)

- a. Fails or refuses to comply with the provisions of these rules; (3-24-16)
- b. Fails to make annual designation fee payment for those facilities paying yearly; (7-1-19)
- c. Makes a false statement of material fact about the center’s capabilities or other pertinent circumstances in any record or matter under investigation for any purposes connected with these rules; (3-24-16)
- d. Prevents, interferes with, or attempts to impede in any way, the work of a representative of the TSE Council in implementing or enforcing these rules; (3-24-16)

e. Falsely advertises, or in any way misrepresents the facility’s ability to care for patients based on its designation status; (3-24-16)

f. Is substantially out of compliance with these rules and has not rectified such noncompliance; (3-24-16)

g. Fails to provide reports required by the TSE registry or the Department in a timely and complete fashion; or (3-24-16)

h. Fails to comply with or complete a plan of correction in the time or manner specified. (3-24-16)

02. Suspension. The TSE Council may suspend a center’s designation or waiver when it finds, after investigation, that the center has engaged in a deliberate and willful violation of these rules, or that the public’s health, safety, or welfare is endangered. (3-24-16)

03. Notification and Appeal. When the TSE Council revokes or suspends a center’s designation or waiver, it must provide the center with a written notification of the action and the basis for the action. The notice will inform the center of the right to appeal and the procedure to appeal the action under the provisions in IDAPA 16.05.03, “Contested Case Proceedings and Declaratory Rulings.” ()

286. -- 289. (RESERVED)

290. DESIGNATION AT A LESSER LEVEL.

01. Inability to Meet Criteria. The TSE Council may opt to redesignate a center at a lesser level due to the center’s inability to meet current designation criteria, without regard to any waiver previously granted. (3-24-16)

02. Notification and Appeal. When the TSE Council decides to redesignate a center, it must provide the center with a written notification of the action and the basis for the action. The notice will inform the center of the right to appeal and the procedure to appeal the action under the provisions in IDAPA 16.05.03, “Contested Case Proceedings and Declaratory Rulings.” ()

291. -- 999. (RESERVED)

16.02.08 – VITAL STATISTICS RULES

000. LEGAL AUTHORITY.

The Idaho Board of Health and Welfare is authorized under Section 39-242, Idaho Code, to adopt rules that carry out the provisions of Title 39, Chapter 2, Idaho Code, related to vital statistics. ()

001. TITLE.

These rules are titled IDAPA 16.02.08, “Vital Statistics Rules.” (3-30-07)

002. -- 049. (RESERVED)

050. TERMS AND DEFINITIONS.

For the purpose of vital statistics administration, the following definitions are applicable to this chapter: (12-31-91)

01. Assistant Local Registrar. An individual, appointed by the State Registrar of Vital Statistics, who carries out the prescribed functions of the local registrar in the same location as the local registrar, either as an assistant to, or in the absence of, the local registrar. (11-20-87)

02. Attendant at Birth or Stillbirth. Any physician, midwife, or other person who assists in the delivery of a live born infant or stillborn fetus. (12-26-83)

03. Birth Out of Wedlock. A birth occurring when the mother was not married at the time of either conception or birth, or between conception and birth. (12-26-83)

04. Confidential Registry. A file of all notices of putative fathers’ claims to paternity for their child(ren) born out of wedlock and intent to support such child(ren), that is established in the office of the State Registrar of Vital Statistics. (1-10-86)

05. Current Registration. The filing of a certificate less than one (1) year after the event occurs. (12-26-83)

06. Delayed Registration. The filing of a certificate one (1) year or more after the event occurs. (12-26-83)

07. Department. The Idaho Department of Health and Welfare. (12-26-83)

08. Director. The Director of the Idaho Department of Health and Welfare or designated individual. (12-31-91)

09. Expedited Certified Copy. A certified copy of a vital record that has been given priority status for processing and issuance or issued by a local deputy state registrar. ()

10. Local Deputy State Registrar. The local registration officer designated by the Director to serve in a single health district for limited purposes. (11-20-87)

11. Local Registrar. The local registration officer identified in Section 39-247, Idaho Code, appointed by the State Registrar of Vital Statistics to collect certificates of birth, death, and stillbirth, and to carry out duties incidental to registration within a specified territory. (12-26-83)

12. Mortician or Funeral Director. Any person who makes a business of disposing of dead bodies. The term “mortician or person acting as such” refers to any person having charge of the burial, cremation, or other disposition of a dead body. This includes stillborn fetuses. (12-26-83)

13. Nurse Midwife. A nurse practitioner who is certified by the Idaho Board of Nursing to practice midwifery. (12-26-83)

14. Putative Father. The biological father of a child as identified by himself, the natural mother, an adoption agency, or a court. (1-10-86)

15. Registration District. The district (area of land) specified in the letter of appointment to the local registrar over which the local registrar exercises exclusive local control for the purpose of vital record registration.

(12-26-83)

16. Relatives of Deceased Qualified Adult Adoptees. The adoptive parents or grandparents of the adult adoptee. (1-10-86)

17. Relatives of Deceased Qualified Birth Parents. The parents or grandparents of birth parents. (1-10-86)

051. -- 099. (RESERVED)

100. CERTIFICATES, RECORDS, AND FORMS.

01. Form and Content. The Director will prescribe the form and content of official vital records and certificates. (12-26-83)

02. Official Nature of Forms. Other forms and reports may be prescribed and distributed by the State Registrar for reporting vital statistics. These forms and reports may be used only for official purposes. ()

03. Requirements for Preparation of Certificates. All certificates and records relating to vital statistics must be printed legibly in dark, unfading ink. All signatures required must be entered in dark, unfading ink. Unless otherwise directed by the State Registrar, no certificate will be complete and correct and acceptable for registration that: ()

a. Does not have the certifier's name typed or printed legibly under the certifier's signature; (12-26-83)

b. Does not supply all items of information called for thereon or satisfactorily account for their omission; (12-26-83)

c. Contains alterations or erasures; (12-26-83)

d. Does not contain signatures as required; (12-26-83)

e. Is marked "copy" or "duplicate"; (12-26-83)

f. Is a photographic or a carbon copy; (12-26-83)

g. Is prepared on an improper form; (12-26-83)

h. Contains improper or inconsistent data; (12-26-83)

i. Contains an indefinite cause of death that denotes only symptoms of disease or conditions resulting from disease; and (12-26-83)

j. Is not prepared in conformity with statutes, regulations, or with instructions issued by the State Registrar. (12-26-83)

04. Certificates with Defects. Certificates with defects as cited in Subsections 100.03.a. through 100.03.j. of this rule may be withheld from certification until the defect is remedied by persons who have the knowledge and authority to do so. ()

101. -- 149. (RESERVED)

150. ADDITIONAL OFFICES.

01. Determination. The State Registrar will determine whether offices other than the Vital Statistics Unit are needed in this state to aid in the efficient administration of the system of vital statistics. Such determination

will be based on the identification of the most efficient method to meet the needs of the people of this state with respect to the establishment and operation of the system of vital statistics. If the State Registrar determines that additional offices are necessary, such offices will be designated with the approval of the Director. The duties and responsibilities may be assigned to currently existing offices or special branch offices of the Vital Statistics Unit may be established in those areas where they are deemed necessary, or a combination of existing offices and branch offices may be used. In all cases where existing offices are utilized, the employees of such offices are subject to the control of the State Registrar when they are performing functions relating to the system of vital statistics. (12-26-83)

02. Assignment of Duties. The State Registrar, with the approval of the Director, will determine the specific responsibilities and duties of each office. The State Registrar will assign to such offices such duties and responsibilities as may be deemed necessary to ensure the efficient operation of the system of vital statistics. These may include any or all of the following: (12-26-83)

a. Receiving and processing birth, death, and stillbirth records. This would include the receipt of these records from the person responsible for filing the records, checking the records for accuracy and completeness, and forwarding them to the Vital Statistics Unit at intervals prescribed by the State Registrar. (12-26-83)

b. Issuing certified copies of birth, death, or stillbirth records. The records from which the certified copies are issued will be maintained by the Vital Statistics Unit. All forms and procedures used to issue the copies will be provided or approved by the State Registrar. If it is deemed appropriate and feasible, any such office may be provided access to all birth, death, or stillbirth records filed in this state. (12-26-83)

c. Acting as the agent of the State Registrar in their designated area and providing assistance to physicians, coroners, hospitals, morticians, and others in matters related to the system of vital statistics. (12-26-83)

03. Copies of Original Certificates. (12-31-91)

a. Copies from the original certificate will not be made or certified by any firm or person other than the State Registrar of Vital Statistics except under Subsection 150.02.b. of this rule. ()

b. If the State Registrar finds evidence that a certificate was registered through misrepresentation or fraud, the State Registrar has authority to withhold the issuance of a certified copy of such certificate until a determination of the facts has been made. (12-26-83)

151. LOCAL REGISTRATION OFFICERS.

The State Registrar will contract for the services of local registrars who collect certificates of birth, death, and stillbirth, carry out duties incidental to registration within a specified territory (registration district), and perform other duties as assigned by the State Registrar. (12-26-83)

01. Qualifications of Local Registrar. To be and remain eligible for the office of local registrar a person must meet the following minimum qualifications: (12-26-83)

a. Be sufficiently mature and responsible to carry out the duties of the office; and (12-26-83)

b. Be physically able to perform the duties of the office; and (12-26-83)

c. Be able to read, to comprehend what is read, and to write legibly; and (12-26-83)

d. Work in the registration district and be readily accessible. ()

02. Removal of Local Registrar. (12-26-83)

a. If a local registrar does not meet all qualifications as listed in these rules or in the contract, the local registrar may be removed from office upon written notification by the State Registrar. ()

b. When any local registrar fails to perform any of the duties imposed by law, rule, or by the instructions of the State Registrar, the local registrar may be summarily removed from office by the State Registrar.

()

03. Local Deputy State Registrars. The Director may officially deputize local registrars for the purpose of expediting certified copies of death or stillbirth certificates and other purposes as may be deemed necessary by the Director. (11-20-87)

152. -- 199. (RESERVED)

200. TRANSMITTAL OF CERTIFICATES AND LOCAL RECORDS -- REPORTS.

01. Transmittal of Certificates of Death and Stillbirth. Certificates of death and stillbirth must be transmitted by the local registrar to the State Registrar of Vital Statistics within one (1) working day from the date they were received by the local registrar, except when certificates are to be used for expedited copies, in which case they must be transmitted to the State Registrar on the sixth working day from the date they were received by the local registrar. (3-30-07)

02. Expedited Certified Copies of Certificates of Death or Stillbirth. No certified copies of certificates of death or stillbirth can be issued by a local deputy state registrar until the registrar is satisfied that the requesting person(s) has "direct and tangible interest" in the certificate as defined in IDAPA 16.05.01, "Use and Disclosure of Department Records," Subsections 011.01 and 011.03 and Section 283. (3-30-07)

03. Transmittal of Certificates of Birth. All certificates of birth must be transmitted by the local registrar to the State Registrar of Vital Statistics within five (5) working days from the date they are received by the local registrar. (3-30-07)

201. COMPLETION AND CORRECTION OF CERTIFICATES.

01. Correction of Minor Errors on Certificates During the First Year. Except as otherwise provided in these rules, correction of obvious errors or transposition of letters in words of common knowledge, may be made by the State Registrar or an authorized agent within the first year after the date of the event either upon individual observation or query or upon request of any person with a direct and tangible interest as defined in IDAPA 16.05.01, "Use and Disclosure of Department Records," Subsections 011.01 and 011.03, or any person listed in Subsection 201.07.d. of these rules. The method of correction will be determined by the State Registrar, and is not subject to the requirements of Subsection 201.09 of these rules. When such minor corrections are made by the State Registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change must be made on the certificate in such a way as not to become a part of any certification issued. The certificate must not be marked as amended. (3-30-07)

02. Amendment of Registrant's Given Names or Surname on Birth Certificates Within the First Year. (12-26-83)

a. Until the registrant's first birthday, given names or surname may be amended upon written notarized request of: (11-20-87)

i. Both parents; (12-26-83)

ii. The mother in the case of a child born out of wedlock and the father's name is not shown on the certificate; (4-5-00)

iii. The father in the case of the death or incapacity of the mother; (12-26-83)

iv. The mother in the case of the death or incapacity of the father; or (12-26-83)

v. The legal guardian or agency having legal custody of the registrant. (12-26-83)

b. The certificate must be marked as amended. (3-30-07)

- 03. Amendment of Registrant's Given Name on Birth Certificate After the First Year.** (12-26-83)
- a.** After one (1) year from the date of birth, the provisions of Subsection 201.07 of these rules must be followed to amend the given name if the name was entered in error at the time of the preparation of the birth certificate. (3-30-07)
- b.** In all other cases, a legal change of name order from a court of competent jurisdiction must be submitted to change a given name after one (1) year. (12-26-83)
- 04. Addition of Given Names on Birth Certificates.** (12-26-83)
- a.** Until the registrant's seventh birthday, given names, for a child whose birth was recorded without given names, may be added to the certificate upon written notarized request of: (12-26-83)
- i.** Both parents; (12-26-83)
- ii.** The mother in the case of a child born out of wedlock and the father's name is not shown on the certificate; (4-5-00)
- iii.** The father in the case of the death or incapacity of the mother; (12-26-83)
- iv.** The mother in the case of the death or incapacity of the father; or (12-26-83)
- v.** The legal guardian or agency having legal custody of the registrant. (12-26-83)
- b.** The certificate shall be marked as amended. (12-26-83)
- c.** After the registrant's seventh birthday, the provisions of Subsection 201.07 of these rules must be followed to add a given name. (3-30-07)
- 05. Acknowledgment of Paternity.** (12-26-83)
- a.** Subject to the provisions of Subsection 201.05.b. of these rules, a new certificate of birth will be prepared by the State Registrar for a child born out of wedlock in this state upon receipt of an affidavit of paternity signed by both parents and a written request by both parents. The child's surname will be changed on the certificate to that of the father if both parents so request. (3-30-07)
- b.** If another man is shown as the father of the child on the original certificate, a new certificate may be prepared only when a determination of paternity is made by a court of competent jurisdiction, or following adoption. (12-26-83)
- c.** The certificate must not be marked as amended. (3-30-07)
- 06. Amendment of Indicator of Gender.** (4-11-19)
- a.** The State Registrar must issue an amended Idaho certificate of live birth for the change of the indicator of sex upon receipt of the following: (4-11-19)
- i.** For a registrant eighteen (18) years of age and older, a completed and notarized application on a form approved by the State Registrar that includes the following information: (4-11-19)
- (1) The identity of the applicant; (4-11-19)
- (2) The Idaho certificate of live birth to be amended; (4-11-19)
- (3) A declaration that the registrant's indicator of sex on the Idaho certificate of live birth does not match the registrant's gender identity; and (4-11-19)

- (4) The gender indicator as it should appear on the amended certificate of live birth. (4-11-19)
- ii. For a registrant under the age of eighteen (18), a completed and notarized application on a form approved by the State Registrar that includes the following information: (4-11-19)
- (1) The identity of the applicant; (4-11-19)
- (2) The Idaho certificate of live birth to be amended; (4-11-19)
- (3) A declaration that the registrant's indicator of sex on the Idaho certificate of live birth does not match the registrant's gender identity; (4-11-19)
- (4) The gender indicator as it should appear on the amended certificate of live birth; and (4-11-19)
- (5) The consent of all parents listed on the certificate of live birth or the consent of the registrant's legal guardian. If a parent is deceased, a copy of the death certificate must be submitted with the application. If a parent cannot be located, the applicant must also submit a certified copy of an order from an Idaho court of competent jurisdiction ordering that the consent of only one (1) parent is required. (4-11-19)
- b.** The amended certificate of live birth issued under this rule must not be marked amended, must not refer to the original certificate of live birth sex, and must show the amended gender as requested. The certificate of live birth being amended, application, and court order if required, must be placed in a sealed file which may only be opened by an order from an Idaho court of competent jurisdiction. (4-11-19)
- c.** A one-time name change made under an amendment of sex on the certificate of live birth, whether made prior to, at the time of, or subsequent to a change of indicator of gender on a certificate of live birth must not be marked amended and must not refer to the original birth certificate name or indicator of sex. Any additional name changes are governed by Subsections 201.08 and 201.09 of this rule. (4-11-19)
- 07. All Other Amendments.** Unless otherwise provided in these rules or in Section 39-250, Idaho Code, all other amendments to vital records must be supported by: (3-30-07)
- a.** An affidavit setting forth: (12-26-83)
- i. Information to identify the certificate; (12-26-83)
- ii. The incorrect data as it is listed on the certificate; and (3-30-07)
- iii. The correct data as it should appear. (12-26-83)
- b.** If one (1) year has elapsed since the date the event occurred, one (1) or more items of documentary evidence which support the alleged facts and which were established at least five (5) years prior to the date of application for amendment or within seven (7) years of the date of the event. (12-26-83)
- c.** Any item of a medical nature can be amended only upon receipt of an affidavit from the person certifying such item, except that queries originating in the vital statistics office and subsequently completed and signed by the certifier may be used to complete or modify the reported cause of death. The State Registrar may require documentary evidence to substantiate the requested amendment. (3-30-07)
- d.** Applications to amend a specific vital record will be accepted as follows: (12-26-83)
- i. An application to amend a birth certificate may only be made by one (1) or both of the parents, the legal guardian, the registrant if eighteen (18) years of age or older, or the individual responsible for filing the certificate. (12-26-83)
- ii. An application to amend a death certificate may only be made by the informant, the next of kin, the

funeral director or person acting as such who signed the death certificate, or the certifying physician or coroner.
(12-26-83)

iii. An application to amend a stillbirth certificate may only be made by a person listed in Subsections 201.07.d.i. or 201.07.d.ii. of these rules. (3-30-07)

iv. An application to amend a marriage or divorce certificate may only be made by the custodian of the official record from which the certificate was prepared, either of the parties to the marriage or divorce, or the individual responsible for filing the certificate. (12-26-83)

e. The State Registrar will evaluate the evidence submitted in support of any amendment, or require additional documentation. The State Registrar's decision and determination will be based upon serving the objectives of the vital statistics statutes and the best interests of the public. In the event the application is rejected or additional information is required, the State Registrar must advise the applicant of the reason for the action and the right to appeal pursuant to Section 39-250(5), Idaho Code. (3-30-07)

08. Amendment of the Same Item More Than Once. Once an item is amended on a vital record, that item can not be amended again except upon receipt of a court order from an Idaho court of competent jurisdiction. (3-30-07)

09. Methods of Amending Certificates. (12-26-83)

a. Certificates of birth, death, stillbirth, marriage, and divorce may only be amended by the State Registrar as follows: (12-26-83)

i. Preparing a new certificate showing the correct information when the State Registrar deems that the nature of the amendment so requires. The new certificate may be prepared on the form used for registering current events at the time of amendment. Except as provided elsewhere in these rules, the item number of the entry that was amended must be identified on the new certificate. In every case, except as provided elsewhere in these rules or the Idaho Code, the new certificate must show the date the amendment was made and be given the same state file number as the existing certificate. Signatures appearing on the existing certificate must be typed on the new certificate. (3-30-07)

ii. Completing the item in any case where the item was left blank on the existing certificate. (12-26-83)

iii. Drawing a single line through the item to be amended and inserting the correct data immediately above or to the side. The line drawn through the original entry must not obliterate such entry. (3-30-07)

iv. A certificate of birth amended in accordance with the provisions of Section 39-250(4), Idaho Code, must be amended as prescribed in Subsection 201.09.a.iii. of these rules. The fact that the name was changed in accordance with a court order must be stated on the certificate. (3-30-07)

b. Unless prohibited by statute or rule, there must be inserted on the face of the certificate the date the amendment was made and the initials of the person making the change; the certificate must be marked as amended. (3-30-07)

202. -- 250. (RESERVED)

251. FEES FOR COPIES, SEARCHES, AND OTHER SERVICES.

01. Certified Copies. The fee for the issuance of a certified copy of a certificate of death is sixteen dollars (\$16) per copy. This fee incorporates the additional one dollar (\$1) coroner training and education fund fee in accordance with Section 39-252(2), Idaho Code. The fee for the issuance of a certified copy of any other vital record is sixteen dollars (\$16) per copy. (7-1-15)

02. Searches. The fee for a search of the files for a record of any vital event when no record is found,

no copy is made, or a special document search is requested, is sixteen dollars (\$16). (7-1-15)

03. Verifications. (7-1-15)

a. Except for Idaho state agencies and public health districts, the fee for manual or written verification of data from a certificate is ten dollars (\$10). (7-1-15)

b. The fees for electronic verification by the Department's automated systems of data from a certificate of any vital event are based on the national pricing model as follows:

Fees for Electronic Verification	
National Monthly Transaction Volume	Charge per Verification Match Provided to Vital Records Agency
1 - 100,000	\$1.35
100,000 - 500,000	\$1.15
500,000 - 1,200,000	\$1.03
1,200,000+	\$0.87

(7-1-15)

04. Statistical, Research, or Public Health Services. The State Registrar assesses the fee for statistical, research or public health services. The costs are calculated based upon the costs of retrieving the data and the costs of compiling, organizing, and printing the data. Cost may be reduced on a prorated basis to reflect the number of expected requests for the same information or service. (4-7-11)

05. Fees for Other Services. (4-7-11)

a. The fee for filing a report, certificate, or decree of adoption is twenty dollars (\$20). (7-1-15)

b. The fee for establishing a delayed certificate of any vital event is twenty-five dollars (\$25). (7-1-15)

c. For any vital event, the fee for establishing a new certificate due to a court order, a replacement certificate, or an amended certificate is twenty dollars (\$20), except as specified under Subsection 251.05.g.ii. of this rule. (4-11-19)

d. A service fee of three dollars (\$3), in addition to the sixteen dollars (\$16) for a certified copy of a death or stillbirth certificate, must be paid to the local deputy state registrar for securing each expedited certified copy of a vital record. (7-1-15)

e. The fee for a copy of a certificate of any vital event provided upon written request to local, states other than Idaho, or federal government agencies in accordance with Section 39-270(b), Idaho Code, is sixteen dollars (\$16). (7-1-15)

f. Fees for correction of a certificate of any vital event. (7-1-15)

i. The fee for a replacement certified copy of a certificate of any vital event when the incorrect certified copy is returned for exchange within sixty (60) days of a correction of an error is five dollars (\$5) per certified copy. (7-1-15)

ii. There is no charge for a correction of an error or errors on a certificate of any vital event when the required documentation is received within the first year after the date of the event. (7-1-15)

iii. The fee for correction of an error or errors on a certificate of any vital event, when the required documentation is received one (1) year or more after the date of the event, is twenty dollars (\$20) per submitted correction request. (7-1-15)

g. Fees for priority processing or special handling. (7-1-15)

i. A service fee of ten dollars (\$10) per certificate or document will be added for priority processing or special handling of a request for a certified copy or copies of a certificate of any vital event, a request for a disinterment permit, a request to file a registry form, or a request regarding another vital event related form or document, other than those identified in Subsection 251.05.g.ii. of this rule. This fee will be in addition to the current fee or fees for each certified copy, search, or filing requested, or any combination thereof. This fee is forfeited and a new service fee must be paid for priority processing or special handling in the event that the requester takes longer than ninety (90) days to respond to a request for additional information, or documentation, or both. ()

ii. A service fee of twenty-five dollars (\$25) per certificate will be added for priority processing to establish a new or amended certificate of any vital event due to a report, certificate or decree of adoption, delayed certificate filing, a court order, a paternity affidavit or rescission, a subsequent marriage affidavit or a correction of a certificate. This fee is in addition to the current fee or fees for the legal amendment processing or request for a certified copy or copies, or both. This fee is forfeited and a new legal amendment service fee must be paid for priority processing or special handling in the event that the requester takes longer than ninety (90) days to respond to a request for additional information or documentation or both. (4-11-19)

06. Waiver of Fee Requirement. Fees may be waived for Idaho state agency and public health district administrative use requests. Statistical information prepared for public health planning purposes may be published and distributed without charge whenever the Director determines that the publication and distribution is in the public interest. (7-1-15)

252. -- 299. (RESERVED)

300. REGISTRATION OF BIRTHS.

01. Certifier's Signature. The person certifying the facts of birth according to Section 39-255, Idaho Code, must sign the birth certificate. No stamps or other types of facsimile signatures may be used. The State Registrar may require additional evidence of the birth when the birth did not occur in an institution and was not attended by a person who regularly attends births. (11-20-87)

02. Signature of Certifier. When a birth occurs in an institution, the signature of the certifier on the medical record of birth may satisfy the requirements of Section 39-255(a), Idaho Code. (11-20-87)

03. Signature of the Informant. When a birth occurs in an institution and the institution maintains a working paper (worksheet) signed by either parent (named on the birth certificate) as informant, and the working paper (worksheet) is part of the medical record, the signature of the informant on the working paper (worksheet) may satisfy the requirements of Section 39-255(c), Idaho Code. (11-20-87)

301. REGISTRATION OF FOUNDLINGS.

01. Form of Certificate. A special foundling certificate must be filed for any infant of unknown parentage. It must include, as a minimum, the following items: (12-26-83)

- a. The name designated for the infant; (12-26-83)
- b. The estimated date of birth; (12-26-83)
- c. The sex and race of the infant; (12-26-83)
- d. The address where the infant was found; (12-26-83)
- e. The name and address of the person or agency assuming custody of the infant; (12-26-83)

f. A short description of the circumstances surrounding the finding of the infant, including the date of the finding; and (12-26-83)

g. The signature of the informant and the date the certificate was signed. (12-26-83)

02. Responsibility for Filing. The person or authorized representative of the agency assuming custody of the infant must sign the certificate and file it within fifteen (15) days of the finding with the State Registrar. ()

302. -- 399. (RESERVED)

400. NEW CERTIFICATES OF BIRTH FOLLOWING MARRIAGE OF NATURAL PARENTS.

01. Requirements. If the natural parents marry after the birth of a child born in this state, a new certificate of birth will be prepared for the child by the State Registrar upon receipt of an affidavit of paternity signed by the natural parents of said child, together with a certified copy of the parents' marriage record. However, if another man is shown as the father of the child on the original certificate, a new certificate will be prepared only when a determination of paternity is made by a court of competent jurisdiction, or following adoption. (12-26-83)

02. Common-Law Marriage. If the natural parents establish a marriage by common law after the birth of a child, an affidavit of common-law marriage, provided by the Vital Statistics Unit and signed by the natural parents, may be substituted for the certified copy of the parents' marriage record required in Subsection 400.01 of this rule. ()

401. ADOPTION OF PERSONS BORN IN IDAHO.

01. Examination of Adoptive Child Born in Idaho for Whom No Original Certificate of Birth Can Be Located. (12-26-83)

a. The physician's report of the physical examination of the adoptive child, conducted under Section 39-258, Idaho Code, must indicate the sex, the estimated age, the race, and the existence or absence of obvious congenital malformations or anomalies of the child. (12-26-83)

b. The State Registrar may require the adoptive parents to furnish a court order that identifies natural parents, date of birth, place of birth, and those facts found by the physician's physical examination. (12-26-83)

02. Corrections on Adoptive Certificates. (12-26-83)

a. Minor corrections may be made within one (1) year after the establishment of the adoptive birth certificate in accordance with Subsection 201.01 of these rules. ()

b. Change of name amendments may be made by a court order amending the original adoption order or by a new order of a court, according to Subsection 201.09 of these rules. ()

c. All other amendments (except the registrant's name) will be made according to Subsections 201.07 through 201.09 of these rules. ()

d. In order to protect the confidential nature of adoptive births, the State Registrar may elect not to mark the record amended when carrying out amendments under Section 401 of this rule, when the indication of amendment would not be in the best interest of the registrant. ()

402. REGISTRATION SYSTEM FOR ADULT ADOPTEES.

01. Search for "the Other Birth Parent." The State Registrar will not participate in the search for "the other birth parent." The adoption service units of the Department may participate in such searches when requested to do so by a birth parent or the adult adoptee. Costs of the search will be provided by the birth parent or

adult adoptee seeking the match. Such service costs will be set by the adoption service unit and are based upon the actual cost of the search and cost of notification of the registrant(s). (1-10-86)

02. Completion of Match. When dated evidence of a completed search is presented to the State Registrar and “the other birth parent” has not been found, then and only then will a match be completed as cited in Section 39-259A(e) and (f), Idaho Code. (1-10-86)

a. When one (1) of the birth parents cannot be found according to Section 39-259A(b)(3), Idaho Code, no information about the missing birth parent will be released to either registrant. (1-10-86)

b. When one (1) birth parent is deceased, proof of death must be established by a certified copy of the death certificate or a verification of the fact of death from the Vital Statistics official of the state where death occurred. Such proof is the responsibility of the registered birth parent. (1-10-86)

03. Siblings of Adult Adoptee. When it appears that there is a match between siblings, the State Registrar may confirm the match from the sealed adoption record on file in the Vital Statistics Office and make appropriate notification to the siblings. However, if the birth parent(s) has not also voluntarily registered, no identifying information about the birth parent(s) will be provided to the adult adoptee or the sibling, except where proof of death of the birth parent(s) is found. (1-10-86)

04. Notification. When it appears to the State Registrar that a match has occurred, the State Registrar will notify the registrants by certified mail of the opportunity to withdraw from the register prior to proceeding with full notification of the registrants. Such withdrawal must be made by written notarized request and must be received by the State Registrar within thirty (30) days of the date of registrant’s receipt of notification from the State Registrar. Such withdrawal is exempt from the usual withdrawal fee. (1-10-86)

05. Registration Time. Birth parents or relatives of qualified birth parents may register at any time after an adoption has taken place, whether prior to or after the adoptive person reaches the age of eighteen (18). Adopted persons may register after they have reached their eighteenth birthday. (1-10-86)

06. Fees. An initial filing fee of ten dollars (\$10) is paid by or on behalf of each registrant and must be submitted with the registration form. An update fee of ten dollars (\$10) is charged whenever a registrant requests in writing a revision, update, or withdrawal of a previous registration. (12-31-91)

07. Release of Information. When it appears there is a match between registered adult siblings and no birth parent information has been registered, before release of identifying information to any registered adult sibling, the State Registrar will require proof from the registrant(s) of the identity and the relationship of the registrant to other registrants. At least two (2) documents providing such proof must be viewed and recorded by the State Registrar. Such documents may include sworn statements, court decrees, copies of birth certificates, marriage licenses, school records, and voter registration cards. ()

403. -- 449. (RESERVED)

450. REGISTRATION OF DEATHS AND STILLBIRTHS.

01. Acceptance of Incomplete Death Certificate. If all the information necessary to complete a death certificate is not available within five (5) days after the date the death occurred, the person in charge of interment or removal of the body from the district in which the death occurred must file the certificate as prescribed by the State Registrar with all information that is available, provided that the medical certification of the cause of death has been signed by the person responsible for such certification. If the cause of death is unknown or undetermined, the cause of death must be shown as unknown or undetermined on the certificate. The person responsible for the medical certification of the cause of death must also sign the authorization for final disposition of the body. If the body is to be cremated, the coroner must also give additional authorization. (4-2-08)

a. A supplemental report providing the cause of death information missing from the original certificate must be filed by the person responsible for medical certification of the cause of death with the State Registrar within fifteen (15) days of the filing of the death certificate on a form provided or approved by the State

Registrar. (4-2-08)

b. A supplemental report providing all other information missing from the original certificate must be filed with the State Registrar by the person responsible for filing the certificate within thirty (30) days of the date the death occurred or as otherwise authorized by the State Registrar on a form provided or approved by the State Registrar. (4-2-08)

c. The State Registrar will make the information on the supplemental report(s) a part of the existing death certificate and will file the supplemental report(s) with the death certificate. The State Registrar will also mark the death certificate to show that supplemental information was added. (4-2-08)

02. Signatures Required on Death Certificates. (12-26-83)

a. The mortician, or person acting as such, must sign the death certificate. No stamps or other types of facsimile signatures may be used. (4-2-08)

b. The responsible person must sign the medical certification of the cause of death. Failure to do so will invalidate the record as a legal document. No stamps or other types of facsimile signatures may be used. (4-2-08)

03. Signatures Required on Stillbirth Certificates. (12-26-83)

a. The mortician's signature must meet the following criteria: (12-26-83)

i. The mortician, or person acting as such, must sign the certificate. No stamps or other types of facsimile signatures may be used. (4-2-08)

ii. When a hospital disposes of a stillborn fetus, in accordance with Section 39-268(3), Idaho Code, the hospital authority must complete and sign the certificate as mortician. (4-2-08)

b. The person responsible according to Section 39-260, Idaho Code, for the attendant or medical certification, must sign the certificate. No stamps or other types of facsimile signatures may be used. (12-26-83)

451. INDUCED ABORTION REPORTING FORMS -- COMPILATIONS.

01. Form of Report. The contents of the report of induced abortion must comply with Section 39-261, Idaho Code. (12-26-83)

02. Nature of Reports. The completed forms submitted to the Vital Statistics Unit are statistical reports, not certificates. Copies of the reports will not be issued. (12-26-83)

03. Patient Identification. No information will be collected that would identify the woman who had the abortion. (12-26-83)

04. Compilations. No compilations will be released for public use that identify the institution where the induced abortion was performed, the physician who performed the induced abortion procedure, or the person completing the report of induced abortion. (12-26-83)

452. -- 500. (RESERVED)

501. MARRIAGE LICENSE RECORDING FEES.

The county recorders will charge a recording fee of two dollars (\$2) for each marriage certificate. (12-31-91)

502. -- 599. (RESERVED)

600. DIVORCE CERTIFICATE FILING FEE.

Effective July 1, 1985, the Clerk of the Court will charge a fee of one dollar (\$1) for each divorce certificate filed in accordance with Section 39-266, Idaho Code. (12-31-91)

601. -- 649. (RESERVED)

650. LATE OR DELAYED REGISTRATION OF BIRTH.

01. Late Registration -- Fifteen Days to One Year. (12-26-83)

a. Certificates of birth filed after fifteen (15) days, but within one (1) year from the date of birth, will be registered on the standard form of live birth certificate in the manner prescribed in Section 39-255, Idaho Code. Such certificate will not be marked as delayed. (12-26-83)

b. In any case where the certificate is signed by someone other than the attendant or person in charge of the institution where birth occurred, a notarized statement setting forth the reason must be attached to the certificate. The State Registrar may require additional evidence in support of the facts of birth. (12-26-83)

02. Form of Delayed Certificate of Birth. All certificates registered one (1) year or more after the date of birth will be registered on a delayed certificate of birth form prescribed by the Director. (12-26-83)

03. Who May Request the Registration of and Sign a Delayed Certificate of Birth. (12-26-83)

a. Any person born in this state whose birth is not recorded in this state, or the parent, guardian, next of kin of that person, or older person acting for the registrant and having personal knowledge of the facts of birth, may request the registration of a delayed certificate of birth, subject to these rules and instructions issued by the State Registrar. (12-26-83)

b. Each delayed certificate of birth must be signed and sworn to before a notary public by the person whose birth is to be registered if such person is eighteen (18) years of age or older and is competent to sign and swear to the accuracy of the facts stated therein; otherwise, the certificate must be signed and sworn to by one (1) of the following in the indicated order of priority: (12-26-83)

i. One (1) of the parents of the registrant; or (12-26-83)

ii. The guardian of the registrant; or (12-26-83)

iii. The next of kin of the registrant; or (12-26-83)

iv. Any older person over eighteen (18) years of age having personal knowledge of the facts of birth. (12-26-83)

04. Facts to be Established for a Delayed Registration of Birth. The minimum facts that must be established by documentary evidence are the following: (12-26-83)

a. The original full name of the registrant; (12-26-83)

b. The date of birth and place of birth; (12-26-83)

c. The full maiden name of the mother; and (12-26-83)

d. The full name of the father, unless the registrant was born out of wedlock, in which case the name of the father will not be entered on the delayed certificate except as provided in Sections 39-250, 39-255, or 39-257, Idaho Code, and rules adopted in accordance with these statutes. ()

05. Delayed Registration Following a Legal Change of Status. (12-26-83)

a. When evidence is presented reflecting a legal change of status by adoption, legitimation, paternity determination, acknowledgment of paternity, or a court-ordered change of name, a new delayed certificate may be established to reflect such change. (1-10-86)

b. In such cases changing legal status, when no birth certificate is found, the delayed certificate may be filed reflecting the information established by the legal change. (12-26-83)

06. Documentary Evidence -- Requirements. (12-26-83)

a. To be acceptable for filing, the name of the registrant and the date and place of birth entered on a delayed certificate of birth must be supported by at least: (12-26-83)

i. Two (2) pieces of documentary evidence, only one (1) of which may be an affidavit of personal knowledge, if the record is filed within seven (7) years after the date of birth. (12-26-83)

ii. Three (3) pieces of documentary evidence, only one (1) of which may be an affidavit of personal knowledge, if the record is filed seven (7) years or more after the date of birth. One (1) document must be dated within seven (7) years after the date of birth. (11-20-87)

b. Facts of parentage must be supported by at least one (1) document. This document may be one (1) of the documents above other than an affidavit of personal knowledge. (12-26-83)

07. Documentary Evidence -- Acceptability. (12-26-83)

a. The State Registrar may establish a priority of best evidence. (12-26-83)

b. Documents presented, such as census, hospital, church, and school records, must be from independent sources and must be in the form of the original record or a certified copy of the original or a notarized statement from the custodian of the record or document. (12-26-83)

c. All documents submitted in evidence, other than an affidavit of personal knowledge, must have been established at least ten (10) years prior to the date of application or have been established prior to the applicant's seventh birthday. (11-20-87)

d. An affidavit of personal knowledge, to be acceptable, must be made by a parent of the applicant or an older person other than a parent, who is over eighteen (18) years of age and must be signed before a notary public. In all cases, the affiant must be at least ten (10) years older than the applicant and have personal knowledge of the facts of birth. (11-20-87)

08. Abstraction of Documentary Evidence. (12-26-83)

a. The State Registrar, or a designated representative, will abstract on the delayed certificate of birth a description of each document submitted to support the facts shown on the delayed birth certificate. This description will include: (12-26-83)

i. The title or description of the document; (12-26-83)

ii. The name and address of the affiant, if the document is an affidavit of personal knowledge, or of the custodian, if the document is an original or certified copy of a record or a notarized statement from the custodian; (12-26-83)

iii. The date of the original filing of the document being abstracted; and (12-26-83)

iv. The information regarding the birth facts contained in the document. (12-26-83)

b. All documents submitted in support of the delayed birth registration will be returned to the applicant after review, provided, however, that the State Registrar may make and keep on file abstracts or photocopies of any such documents. (12-26-83)

09. Certification by the State Registrar. The State Registrar, or a designated representative, will by

signature certify: (12-26-83)

- a. That no prior birth certificate is on file for the person whose birth is to be recorded; (12-26-83)
- b. That the State Registrar or a designated representative has reviewed the evidence submitted to establish the facts of birth; and (12-26-83)
- c. That the abstract of the evidence appearing on the delayed certificate of birth accurately reflects the nature and content of the documents. (12-26-83)

10. Dismissal After One Year. Applications for delayed certificates that have not been completed within one (1) year from the date of application may be dismissed at the discretion of the State Registrar. Upon dismissal, the State Registrar will so advise the applicant, and all documents submitted in support of such registration will be returned to the applicant. (12-26-83)

651. LATE OR DELAYED REGISTRATION OF DEATHS.

The registration of death after the time prescribed by statute or rule must be made on the standard certificate of death form in the following manner: (12-26-83)

01. Minimum Evidence Required. (7-1-93)

a. If the person responsible for the medical certification of death, according to Section 39-260, Idaho Code, and the attending mortician or person who acted as such are available and they do complete and sign the certificate of death; and (12-26-83)

i. If the certificate is filed within one (1) year after the date of death or finding of the body, the certificate of death may be completed without additional evidence and filed with the State Registrar; or (12-26-83)

ii. If the certificate is filed one (1) year or more after the date of death or finding of the body, the medical certifier and the mortician or person who acted as such must state in accompanying affidavits that the information on the certificate is based on records kept in their files. (12-26-83)

b. If either the medical certifier or the attending mortician, or person acting as such (or both), is unavailable, the certificate may be filed by the next of kin of the deceased and must be accompanied by: (12-26-83)

i. An affidavit of the person filing the certificate, swearing to the accuracy of the information on the certificate; and (12-26-83)

ii. Two (2) documents that identify the name of the deceased and the date and place of death. (12-26-83)

02. Additional Evidence. In all cases, the State Registrar may require additional documentary evidence to prove the facts of death. (12-26-83)

03. Summary Statement. A summary statement of the evidence submitted in support of the delayed registration will be entered on the certificate, and the certificate will be marked as delayed. (12-26-83)

652. -- 699. (RESERVED)

700. LATE AND DELAYED REGISTRATION OF MARRIAGE.

01. Late Registration. Until one (1) year has elapsed from the date of the ceremony, marriage certificates will be accepted for filing by the State Registrar in accordance with Section 39-262, Idaho Code, and will not be marked as delayed. (12-26-83)

02. Delayed Registration. The registration of a marriage after one (1) year must be made on the regular certificate of marriage form in the following manner: (12-26-83)

a. The certificate must be filed with the county recorder where the marriage license was originally issued. (12-26-83)

b. To be acceptable for registration by the State Registrar, the delayed certificate of marriage must be supported by a notarized statement from two (2) people other than the bride and groom who know that a marriage ceremony was performed and the date and place of the marriage ceremony. One (1) of these statements must be from an actual witness to the marriage ceremony. (1-10-86)

c. When the officiant is not available to sign the delayed certificate of marriage, the delayed certificate of marriage must be signed by an actual witness to the marriage ceremony, other than the bride and groom. (1-10-86)

03. Additional Evidence. In all cases, the State Registrar may require additional documentary evidence to prove the facts of marriage. (12-26-83)

04. Summary Statement. A summary statement of the evidence submitted in support of the delayed registration will be entered on the certificate, and the certificate will be marked as delayed. (12-26-83)

701. LATE AND DELAYED REGISTRATION OF DIVORCE.

01. Late Registration. Until one (1) year has elapsed from the date of the divorce decree, divorce certificates will be accepted for filing by the State Registrar in accordance with Section 39-265, Idaho Code, and will not be marked as delayed. (12-26-83)

02. Delayed Registration. The registration of a divorce after one (1) year must be made on the regular certificate of divorce form in the following manner: (12-26-83)

a. The divorce certificate must be filed by the court directly with the State Registrar; and (12-26-83)

b. The certificate must be accompanied by a certified copy of the final decree of divorce. (12-26-83)

03. Additional Evidence. In all cases, the State Registrar may require additional documentary evidence to prove the facts of divorce. (12-26-83)

04. Summary Statement. A summary statement of the evidence submitted in support of the delayed registration will be entered on the certificate, and the certificate will be marked as delayed. (12-26-83)

702. -- 799. (RESERVED)

800. DELAYED REGISTRATION OF STILLBIRTH.

The requirements for filing a delayed certificate of stillbirth are the same as those for a delayed certificate of death, except that the section on paternity is governed by Section 39-260, Idaho Code. (12-26-83)

801. -- 849. (RESERVED)

850. REMOVAL OF DEAD BODY OR FETUS FROM PLACE OF DEATH OR STILLBIRTH.

Before removing a dead body or fetus from the place of death or stillbirth, the funeral director, or person acting as such, must, in accordance with Section 39-268, Idaho Code: (4-2-08)

01. Obtain Assurance That Death Is from Natural Causes.
Obtain assurance from the attending physician, physician assistant, advanced practice registered nurse, or their designated associate, responsible for medical certification of the cause of death or stillbirth: ()

a. That the death or stillbirth is from natural causes; and (4-2-08)

b. That the attending physician, physician assistant, advanced practice registered nurse, or their

designated associate, will assume responsibility for certification of the cause of death or stillbirth; or ()

02. Notify the Coroner. Notify the coroner when: (4-2-08)

a. The case falls within the jurisdiction of the coroner in accordance with Section 39-260, Idaho Code; (4-2-08)
or

b. The death or stillbirth is due to natural causes; and (4-2-08)

i. There was no attending physician, physician assistant, or advanced practice registered nurse during the last illness; or ()

ii. There was no physician, physician assistant, or advanced practice registered nurse in attendance at the stillbirth; or ()

iii. When the attending physician, physician assistant, advanced practice registered nurse, or their designated associate, is not available or is physically incapable of providing assurance that the death or stillbirth is from natural causes or providing permission to remove the dead body or fetus from the place of death or stillbirth. ()

03. Receive Permission to Remove the Dead Body or Fetus. Receive permission to remove the dead body or fetus from the place of death or stillbirth from: (4-2-08)

a. The attending physician, physician assistant, advanced practice registered nurse, or their designated associate, if the death is from natural causes and all assurances in Subsection 850.01 of this rule have been met; or ()

b. The coroner, if the case falls within the jurisdiction of the coroner, in accordance with Section 39-260, Idaho Code, or if the death or stillbirth is due to natural causes and one (1) of the conditions listed in Subsections 850.02.b.i. through 850.02.b.iii. of this rule has been met. (4-2-08)

851. AUTHORIZATION FOR DISINTERMENT AND REINTERMENT.

01. Disinterment and Reinterment of a Dead Body or Fetus. Upon receipt of a notarized application, or an order of a court of record of this state, the State Registrar will issue a permit for the disinterment and reinterment of a dead body or fetus. The permit will be issued only to the mortician who is identified on the application or order as the mortician in charge of the disinterment. The application for the permit must be signed by the applicant and the mortician in charge of the disinterment. The applicant for the permit must be either: (3-30-07)

a. The person or persons who have the highest authority under the provisions of Section 54-1142, Idaho Code; or (3-30-07)

b. A person authorized by Section 39-269, Idaho Code, to request a special disinterment for legal purposes, in which case the application must state facts showing that the ends of justice require disinterment. (3-30-07)

02. Mass Disinterment and Reinterment. Upon receipt of a notarized application, or an order of a court of record of this state, the State Registrar may issue a single permit for the disinterment and reinterment of all remains included in a mass disinterment. The permit will be issued only to the mortician who is identified on the application or order as the mortician in charge of the disinterment. The application or order for the permit must identify the remains of each body to the extent possible and specify the place of disinterment and reinterment. The application for the permit must be signed by the applicant and the mortician in charge of the disinterment. The applicant for the permit must be either: (3-30-07)

a. The person or persons who have the highest authority under the provisions of Section 54-1142, Idaho Code, for each of the deceased; or (3-30-07)

b. A person authorized by Section 39-269, Idaho Code, to request a special disinterment for legal purposes, in which case the application must state facts showing that the ends of justice require disinterment. (3-30-07)

03. Nature of Permit. The authorization issued in accordance with the statutes and rules governing disinterment is permission for disinterment, transportation and reinterment. (3-30-07)

852. -- 999. (RESERVED)

16.02.13 – STATE OF IDAHO DRINKING WATER LABORATORY CERTIFICATION PROGRAM

000. LEGAL AUTHORITY.

Under Section 56-1003, Idaho Code, the Idaho Legislature has delegated to the Board of Health and Welfare the authority to set standards for laboratories in the State of Idaho. Under Section 56-1007, Idaho Code, the Department is authorized to charge and collect fees for services rendered by the Department. (4-7-11)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 16.02.13, “State of Idaho Drinking Water Laboratory Certification Program.” (4-7-11)

02. Scope. These rules establish a process for certification and standards of operation for laboratories certified by the State of Idaho to test drinking water. (4-7-11)

002. INCORPORATION BY REFERENCE.

01. Selected Sections from the Code of Federal Regulations, Title 40, Part 141 -- National Primary Drinking Water Regulations, July 1, 2010 Edition. 40 CFR 141 and 143 may be accessed in electronic format at <https://ecfr.io/Title-40/cfrv25#0>. The following sections from the Code of Federal Regulations are hereby incorporated by reference: (4-7-11)

- a. 40 CFR 141.6 (h), effective dates; (4-7-11)
- b. 40 CFR 141.27, alternate testing program; (4-7-11)
- c. 40 CFR 141.21(f)(3), total coliform rule; (4-7-11)
- d. 40 CFR 141.23, inorganic methods; (4-7-11)
- e. 40 CFR 141.24, organic methods; (4-7-11)
- f. 40 CFR 141.25, methods for radioactivity; (4-7-11)
- g. 40 CFR 141.131, disinfection by-products; (4-7-11)
- h. 40 CFR 141.74(a), surface water treatment rule; (4-7-11)
- i. 40 CFR 141.89, lead and copper; (4-7-11)
- j. 40 CFR 141.402(c)(2), ground water; (4-7-11)
- k. 40 CFR 141.704, long-term surface water treatment rule 2; (4-7-11)
- l. 40 CFR 141.803, aircraft drinking water rules; (4-7-11)
- m. 40 CFR 141, Appendix A to Subpart C, expedited method approval; and (4-7-11)
- n. 40 CFR 143.4, secondary contaminants. (4-7-11)

02. Manual for the Certification of Laboratories Analyzing Drinking Water EPA 815-R-05-004, Fifth Edition, January 2005. The Manual for the Certification of Laboratories Analyzing Drinking Water EPA 815-R-05-004, Fifth Edition, January 2005, including Supplement 1 EPA 815-F-08-006, June 2008, is hereby incorporated by reference. It may be accessed in electronic format at <https://www.epa.gov/dwlabcert/laboratory-certification-manual-drinking-water>. (4-7-11)

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Analyst. A person responsible for testing, quality control, and reporting of analytical results. (4-7-11)

- 02. Board.** The Idaho Board of Health and Welfare. (4-7-11)
- 03. Certification Authority for the State of Idaho (CA).** The CA has signature authority for all certification decisions as required for primacy in 40 CFR 142.10 (b)(3)(i). The Bureau Chief of the Idaho Bureau of Laboratories is the certification authority for the State of Idaho. (4-7-11)
- 04. Certification Officer (CO).** The CO is the person responsible for on-site evaluations and providing technical support and guidance to a certified drinking water laboratory (CDWL). (4-7-11)
- 05. Certified Drinking Water Laboratory (CDWL).** A facility that examines drinking water for the purpose of identifying or measuring microbiological, chemical, radiological, or physical parameters, and is certified by the State of Idaho. (4-7-11)
- 06. Department.** The Idaho Department of Health and Welfare. (4-7-11)
- 07. Department of Environmental Quality (DEQ).** The state agency that has primacy and is primarily responsible for administrating and enforcing regulations related to environmental quality. (4-7-11)
- 08. Director.** The Director of the Idaho Department of Health and Welfare, or their designee. (4-7-11)
- 09. Discipline.** Areas of certification for the testing of drinking water, i.e., microbiology, radiochemistry, inorganic chemistry, and organic chemistry. (4-7-11)
- 10. Drinking Water Coordinator (DWC).** The drinking water coordinator is an Environmental Health Specialist at a public health district assigned to monitor public water systems. (4-7-11)
- 11. Idaho Bureau of Laboratories (IBL).** The IBL is a bureau in the Division of Public Health in the Idaho Department of Health and Welfare. (4-7-11)
- 12. LIMS.** Laboratory Information Management System. (4-7-11)
- 13. Laboratory Supervisor.** A person who directs the day-to-day activities of a CDWL. (4-7-11)
- 14. Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water that is delivered to any user of a public water system. (4-7-11)
- 15. On-Site Evaluation.** The physical, quality control, and data audit of a laboratory, including all aspects of operation related to the testing of drinking water samples. (4-7-11)
- 16. Primacy.** The responsibility for ensuring that Safe Drinking Water Act (SDWA) laws are implemented and the authority to enforce a law and related regulations (40 CFR 142.2) applicable to public water systems within the state. (4-7-11)
- 17. Proficiency Test (or Testing) (PT).** Sample(s) provided to demonstrate that a laboratory can successfully analyze the sample(s) within the acceptance limits specified in the regulations. The qualitative or quantitative composition of the reference material is unknown to the laboratory at the time of the analysis. (4-7-11)
- 18. Public Water System (PWS).** A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. (4-7-11)
- 19. Quality Assurance (QA).** An integrated system of management activities that involves planning, quality control, quality assessment, reporting, and quality improvement to ensure a product or service meets defined standards of quality with a stated level of confidence. (4-7-11)
- 20. Quality Control (QC).** The overall system of technical activities whose purpose is to measure and

control the quality of a product or service so that it meets the needs of the users. QC also includes operational techniques and activities that are used to fulfill the requirement of quality. (4-7-11)

21. Quality Assurance Plan (QA Plan). A comprehensive plan detailing the aspects of quality assurance required to adequately fulfill the needs of a program. This document is required before a laboratory can be certified or reciprocity is granted. (4-7-11)

22. Reciprocity. An extension of certification by the CA to an accredited or certified out-of-state laboratory based upon satisfactory review of documentation that demonstrates compliance with these rules. (4-7-11)

23. Regulatory Agency. The Idaho Department of Environment Quality (DEQ). (4-7-11)

24. Regulatory Authority (RA). The assigned drinking water Analyst III at a regional DEQ office. (4-7-11)

25. Standard Operating Procedure (SOP). A written document that describes the method of an operation, analysis, or action whose techniques and procedures are thoroughly prescribed and that is officially approved as the method for performing a routine or repetitive test. (4-7-11)

26. Standard Methods (SM). SM refers to a standard method of water testing published in the Standard Methods for the Examination of Water and Wastewater, as incorporated by reference under Section 004 of these rules. (4-7-11)

27. Subcontracting. The procedure whereby a laboratory certified by the State of Idaho may send samples to another laboratory that is certified or has been granted reciprocity by the State of Idaho for analysis. (4-7-11)

011. -- 099. (RESERVED)

REQUIREMENTS FOR CERTIFICATION OF DRINKING WATER LABORATORIES
(Sections 100 - 199)

100. APPLICATION FOR CERTIFICATION.

01. Required Information on Application. An application for first-time certification for microbiology, inorganic chemistry, organic chemistry, or radiochemistry must be submitted to the CA on a form provided by the IBL. The following information must be included: name, location, and contact information of the drinking water laboratory, name of the owner, listing of methods/analytes for which certification is requested, documentation of the education, experience, and training of the laboratory supervisor for each discipline for which certification is being requested. (4-7-11)

02. Time Frame for Renewal of Application for Reciprocity. Applications for renewal of reciprocity must be received by the IBL at least thirty (30) days before the current certificate expires. (4-7-11)

03. Reapplication for Additional Analytes or to Change Methods. An in-state laboratory seeking to change methods or to add analytes utilizing the same method for which the laboratory is currently certified must submit a written application requesting the change in certification and include a copy of the SOP with QC requirements specific to the method. (4-7-11)

04. Reapplication for Certification. A laboratory that has been downgraded to provisional or has been decertified for an analyte or method, or both, must provide written documentation to the CO of the corrective actions within the specified period. A laboratory that has been decertified in entirety must re-apply following the same procedure as a laboratory applying for first-time certification. (4-7-11)

05. Reciprocity for Out-State-Laboratories. Each out-of state laboratory seeking reciprocity with Idaho must submit the same information as an in-state drinking water laboratory applying for first-time certification. (4-7-11)

101. CERTIFICATION FEES.

01. Annual Base Fee. All CDWLs must pay an annual base fee of fifty dollars (\$50) per discipline and twenty dollars (\$20) per analyte per method for which certification is requested. Certification is valid for one (1) year from the date of issuance. (4-7-11)

02. Non-Refundable Application Fee. Each new laboratory that is seeking certification or reciprocity must include a non-refundable application fee of two hundred dollars (\$200) per discipline with the application. (4-7-11)

102. TYPES OF CERTIFICATION.

01. Certified. A certified laboratory meets the regulatory performance criteria described in these rules. (4-7-11)

02. Provisionally Certified. A provisionally certified laboratory has deficiencies, but demonstrates the ability to consistently produce valid data within the acceptance limits in these rules. (4-7-11)

03. Not Certified. A laboratory with the status of “not certified” can not produce consistently valid data, or is not following method protocol, or both. Such laboratories cannot analyze compliance samples. (4-7-11)

04. Interim Certification. The CA may grant interim certification to a laboratory if the laboratory has appropriate instrumentation, is using approved methods, has adequately trained personnel to perform the analyses, and has satisfactorily analyzed PT samples for the contaminants involved. The CO will review the laboratory’s quality control data before granting this type of certification and will conduct an on-site evaluation as soon as possible. (4-7-11)

05. Reciprocity. Reciprocity may be granted by the CA to out-of-state laboratories if such laboratories are certified or accredited by an approved regulatory agency and meet the regulatory performance criteria described in these rules. (4-7-11)

103. SUBCONTRACTING.

01. List of Subcontractors. Laboratories who subcontract work must maintain a list of subcontractors and documentation of the subcontracting laboratories' certification or reciprocity with the State of Idaho. (4-7-11)

02. Identification Requirements for Subcontracting Laboratory. The laboratory performing the subcontracted analysis must be identified by name and EPA identification number on the final report. (4-7-11)

03. Availability of the Report from the Subcontracting Laboratory. The report from the subcontracting laboratory must be available to the client upon request. (4-7-11)

04. Availability of all Subcontracting Laboratory Records. All subcontracting laboratory records must be available to the COs. (4-7-11)

104. -- 109. (RESERVED)

110. ON-SITE EVALUATION.

01. On-Site Audits and Evaluations. COs will perform audits of the premises and operations of new laboratories or laboratories requesting continuing certification for the purpose of determining if there is enough security to maintain the integrity of the samples and data. The frequency of the on-site evaluation is at the discretion of the CA or a minimum of every three (3) years. In addition, the CO will evaluate the: (4-7-11)

a. Physical set up of the laboratory; (4-7-11)

- b.** Quality assurance program; (4-7-11)
- c.** Personnel qualifications; (4-7-11)
- d.** Equipment considerations; and (4-7-11)
- e.** Adequacy of data handling. (4-7-11)

02. Written Report of Findings from the On-Site Evaluation. The CO will generate a written report of findings from the on-site evaluation. The report will detail areas requiring a written response and specify the length of time the laboratory has to respond. The length of time for the laboratory to respond will be proportional the number and severity of deviations. If the conditions observed during an on-site evaluation are such that an immediate down grade or decertification is warranted the laboratory will be notified by certified mail within thirty (30) days by the CA. (4-7-11)

111. -- 119. (RESERVED)

120. PERSONNEL QUALIFICATIONS.

01. General Supervisor Qualifications. (4-7-11)

a. A supervisor must be on-site frequently enough to satisfactorily perform the required duties outlined below. The CO must be notified if the supervisor is unable to be on-site for a period greater than three (3) consecutive weeks. (4-7-11)

b. Supervisors are responsible for ensuring that all laboratory personnel have demonstrated proficiency for assigned functions and that all data reported by the laboratory meet the required quality assurance criteria and regulatory requirements. (4-7-11)

c. If a formal complaint is received from the regulatory agency, then the CO will notify the responsible laboratory supervisor and request a report describing the incident, the probable cause, and the corrective action to be taken to ensure the situation is resolved. The incident report must be received by the CA within thirty (30) days of the laboratory being notified of the problem. The CO in conjunction with the CA will evaluate the response and if found to be acceptable, no further action will be required of the laboratory. If the response is incomplete, the CO will provide in writing the additional steps that must be completed for certification status to remain uninterrupted. (4-7-11)

d. No drinking water supervisor will be responsible for the supervision of more than two (2) certified drinking water laboratories unless specifically approved by the CA. (4-7-11)

e. If a microbiology supervisor is not available, a consultant having the same qualifications may be utilized. The laboratory must submit the academic qualifications and work experience of the potential consultant to the CA. In addition, the laboratory must define and submit a list of the specific functions the consultant will be performing along with a schedule of routine visits. If the information is found to be acceptable, the CA will notify the laboratory director or owner in writing. A record of all consultant visits and communications must be maintained and be available for review during the on-site evaluation. The record must include a brief description of on-site findings and include any telephone or electronic consultation. Each entry must be dated and signed by the consultant. (4-7-11)

02. Supervisor Qualifications by Discipline. (4-7-11)

a. The supervisor of a microbiology laboratory must have a bachelor's degree from an accredited college in microbiology, biology, or equivalent. Supervisors who have a degree in a subject other than microbiology must have had at least two (2) college-level microbiology courses in which environmental microbiology was part of the curriculum. In addition, the supervisor must have a minimum of two (2) weeks training at a federal agency, state agency, or academic institution in the microbiological analysis of drinking water or eighty (80) hours of on-the-job-training in water microbiology at a certified laboratory, or other comparable training acceptable to the CA. (4-7-11)

b. The supervisor of a chemistry laboratory must have at least a bachelor's degree from an accredited college with a major in chemistry or equivalent and at least one (1) year of experience in the analysis of drinking water. In addition, the supervisor must have a working knowledge of quality assurance principles. (4-7-11)

c. The supervisor of a radiochemistry laboratory must have at least a bachelor's degree from an accredited college with a major in chemistry, or equivalent, and should have at least one (1) year of experience in the measurement of radioactive analytes in drinking water. In addition, the supervisor must have a working knowledge of QA and QC principles as applied to all radiochemical practices and procedures conducted in the laboratory. (4-7-11)

03. Analyst or Equivalent Job Title. (4-7-11)

a. An analyst performing microbiological testing must have a minimum of a high school education or equivalent, at least three (3) months of bench experience in environmental microbiological testing, and thirty (30) days on-the-job training in drinking water microbiology under the direction of an experienced analyst. If an analyst has a bachelor's degree in microbiology, or related field, the three (3) month bench training may be shortened to thirty (30) hours at the discretion of the laboratory supervisor. Before analyzing compliance samples, the analyst must demonstrate competency by successfully completing a PT. ()

b. Analysts in each of the chemical disciplines should have at least a bachelor's degree with a major in chemistry, or equivalent, and at least one (1) year of experience in the analysis of drinking water for the discipline in which they are working. If the analyst is responsible for the operation of analytical instrumentation, they must have completed specialized training offered by the manufacturer or another qualified training facility or have successfully served an apprenticeship under an experienced analyst. The duration of this apprenticeship should be proportional to the sophistication of the instrument. Data produced by analysts and instrument operators while in the process of obtaining the required training or experience are acceptable only when reviewed and validated by a fully qualified analyst or the laboratory supervisor. Documentation of training must be maintained for each analyst and available for evaluation by the CO. (4-7-11)

04. Chemistry Technician. Technicians in each of the chemical disciplines must have at least a high school diploma or equivalent, have completed a method-training program under an experience analyst, and have six (6) months bench experience in the analysis of drinking water. The method-training record for each analyst should be recorded in a training file and available for evaluation by the CO. (4-7-11)

121. -- 129. (RESERVED)

130. REPORTING, NOTIFICATION, AND DISTRIBUTION OF LABORATORY RESULTS.

01. Submission of Test Results in Approved Format. The drinking water supervisor in each of the disciplines of certification is responsible for submission of all test results performed on samples submitted by PWSs, including subcontracted samples, in a format approved by the DEQ Drinking Water Program. Reports must be submitted to the appropriate regulatory authority or drinking water coordinator in a timely manner not to exceed ten (10) business days after the completion of testing or upon receipt of results from subcontract laboratories. (4-7-11)

02. Notification of High Contaminant Levels. The chemistry supervisor or designee must notify the appropriate regulatory agency or drinking water coordinator by phone as soon as feasible of any nitrate and nitrite level exceeding the current MCL including subcontracted samples. Notification must also be made when any other regulated chemical or radiological contaminant exceeds four (4) times the MCL. (4-7-11)

03. Notification of Positive Microbiological Results. The microbiological supervisor or designee is responsible for an immediate telephone notification to the appropriate regulatory agency in the case of a positive result for a microbiological test. If the RA or DWC is not available, the results must be given to the person designated by the RA or DWC to take the information. (4-7-11)

131. -- 139. (RESERVED)

140. LABORATORY QUALITY ASSURANCE.

01. The QA Plan. Each laboratory certified or having reciprocity with the State of Idaho must have and adhere to a QA plan. Laboratories seeking certification will be required to submit such a plan for review as part of the application process. (4-7-11)

02. Required Items for the QA Plan. The EPA Manual for the Certification of Laboratories Analyzing Drinking Water lists the items that must be included: (4-7-11)

- a. Laboratory organization and responsibility; (4-7-11)
- b. SOPs with dates of last revision; (4-7-11)
- c. Laboratory sample receipt and handling procedure; (4-7-11)
- d. Instrument calibration procedures; (4-7-11)
- e. Analytical procedures; (4-7-11)
- f. Data reduction, validation, reporting and verification; (4-7-11)
- g. Type of quality control (QC) checks and frequency of use; (4-7-11)
- h. List of schedules of internal and external system and data quality audits and inter laboratory comparisons; (4-7-11)
- i. Preventive maintenance procedures and schedules; (4-7-11)
- j. Corrective action contingencies; and (4-7-11)
- k. Record-keeping procedures. (4-7-11)

03. Chain-of-Custody Procedures. Each laboratory must have a procedure in place in the event the submitter requires an evidence chain-of-custody. (4-7-11)

04. Maintenance of Records. Each laboratory must: ()

a. Maintain a record keeping system that allows the history of the sample and associated data to be readily understood through documentation. This would include access to LIMS, both present and prior systems, all electronic data including backup, QC documents and all associated calculations, maintenance records including replacement history of instruments, submission forms, submission forms to subcontracting laboratories, final reports from subcontracting laboratories, and final reports generated by the certified laboratory. ()

b. Retain all records for a minimum of five (5) years from generation of the last entry in the records. ()

c. Notify public water system clients before disposing of records. ()

d. Be aware of and adhere to specific record retention as required for specific analytes or disciplines. ()

05. Proficiency Testing (PT). Proficiency test samples must be successfully analyzed annually per analyte per method for which the laboratory is certified. All PT samples must be obtained from an approved supplier, and must be analyzed in the same manner as routine samples by the primary analyst assigned to the specific analysis. If testing is rotated among a number of analysts the supervisor will be responsible for determining who completes the PT. Records must include the name of the analyst who completed the testing. The results of the PT must be sent directly from the supplier to the CO. The methods listed on the laboratory's certificate must be the methods used for PT samples. (4-7-11)

141. -- 149. (RESERVED)

150. EVALUATION.

01. Documentation of Corrective Action. If a CDWL is found to be noncompliant, it will be notified in writing by the CA of the number and seriousness of the deviations. The noncompliant laboratory will be required to submit documentation of correction to the CA or their designee within the time limit specified by the CA.

(4-7-11)

02. Adequacy of Corrective Action. Upon receipt of documentation of corrective action, the CO in conjunction with the CA will review the response to determine the adequacy of the corrective action taken. The laboratory will be eligible for certification if the response is found to be complete. If the response is incomplete or inadequate, the laboratory will be notified in writing of the additional changes required along with a specified time for completion.

(4-7-11)

03. Unacceptable PT Result. In the event of an unacceptable PT, the laboratory must submit an incident report to the CO that includes a description of the incident and corrective action taken. A second PT must be completed within sixty (60) days of the laboratory being notified of the failure. If the second PT is successfully analyzed no further action will be taken. If a second PT is not analyzed or if the second PT is also unacceptable, the laboratory will be downgraded in accordance with Section 210 of these rules.

(4-7-11)

04. Continued Certification of Other Tests. A CDWL that has an unacceptable PT result per analyte per method may remain certified for performance of all tests for which satisfactory performance has been demonstrated through the annual successful PT testing.

(4-7-11)

151. -- 199. (RESERVED)

**REQUIREMENTS FOR DRINKING WATER LABORATORIES TO MAINTAIN,
DOWNGRADE, OR REVOKE CERTIFICATION
(Sections 200 - 299)**

200. MAINTENANCE OF CERTIFICATION.

In order to maintain certification, drinking water laboratories must be able to demonstrate they continue to meet all of the following requirements.

(4-7-11)

01. Successful Completion of PT Samples. Each year, each laboratory must successfully complete a PT per analyte per method for which the laboratory is seeking to maintain certification.

(4-7-11)

02. Use of Specified Methods. Each laboratory must be able to demonstrate it is using the methods specified in the drinking water regulations.

(4-7-11)

03. Maintain Required Standard of Quality. The CO must be satisfied the laboratory is maintaining the required standard of quality for certification. This is based on the results of the PT testing, on-site evaluations, and any feedback from regulatory agencies.

(4-7-11)

04. Notification of Major Changes. The laboratory must notify the CA in writing within thirty (30) days of major changes that could affect the accuracy and precision of testing. A major change includes the loss of a laboratory supervisor, equipment failure or breakdown, or change in location or ownership.

()

201. -- 209. (RESERVED)

210. CRITERIA AND PROCEDURES FOR DOWNGRADING OR REVOKING CERTIFICATION STATUS.

01. Reasons a Laboratory May be Downgraded to Provisionally Certified Status. A laboratory may be downgraded to provisionally certified status for an analyte or method for any of the following reasons:

(4-7-11)

- a. Failure to analyze a PT annually within acceptance limits specified in the regulations as demonstrated by a failure of a second PT; (4-7-11)
- b. Failure to submit an incident report after failing a PT or to analyze a second PT; (4-7-11)
- c. Failure to notify the CA within thirty (30) days of major changes; (4-7-11)
- d. Failure to maintain the required standard of quality based upon observations made by the CO during an on-site evaluation; or (4-7-11)
- e. Failure to report compliance data to the regulatory agency in a timely manner. (4-7-11)

02. Procedure for Downgrading to Provisionally Certified Status. (4-7-11)

a. The CA will notify the laboratory director or owner by certified mail of the intent to downgrade the laboratory to provisional certification per analyte per method within thirty (30) days of learning of any of the items listed under Subsection 210.01 of this rule. The laboratory will be given thirty (30) days from the date of receipt to develop a written corrective action plan and submit it with all supporting documentation to the CA. This information will be reviewed and evaluated for adequacy. The laboratory will be notified by certified mail if the response is acceptable or if additional corrective action must be taken. The CO will document that the corrective action plan has been implemented during the next on-site evaluation. (4-7-11)

b. If a laboratory fails a second PT, the CA will downgrade the laboratory to provisionally certified status for that analyte or method and notify the laboratory by certified mail. (4-7-11)

c. A provisionally certified laboratory has three (3) months to correct the problem in a manner that is acceptable to the CA. If the downgrading of certification is based on the results of PT testing, the reason for the error must be identified and corrected. A third PT must be successfully analyzed. A provisionally certified laboratory may continue to analyze samples for compliance purposes, but must notify its clients of the downgraded status of certification and provide that information in writing on all reports. (4-7-11)

d. An out-of-state laboratory that has reciprocity with Idaho and is downgraded to provisional status by either the accreditation agency or certification authority of the home state must notify the CA of the change within thirty (30) days of the downgrade. (4-7-11)

03. Criteria for Revoking Certification Status. (4-7-11)

a. A laboratory must be downgraded from certified, provisionally certified, or interim certified status to “not certified” for a particular analyte or method for the following reasons: (4-7-11)

- i. Reporting PT data from another laboratory as its own; (4-7-11)
- ii. Falsification of data or other deceptive practices; (4-7-11)
- iii. Failure to use the analytical methodology specified in the regulations; and (4-7-11)
- iv. For provisionally certified laboratories, failure to correct the identified deficiencies that lead to the downgrading of certification status. (4-7-11)

b. Reciprocity of out-of-state laboratories who do not notify the CA of any changes in the status of certification or accreditation will automatically be revoked. (4-7-11)

04. Procedure for Revocation. (4-7-11)

a. The CA will notify the laboratory in writing of the intent to revoke certification. The laboratory will have thirty (30) days from the time of the notification to provide a written response. (4-7-11)

b. If the laboratory responds with an acceptable written corrective action plan, including documentation of implementation, the revocation will be suspended. (4-7-11)

c. If the response is unacceptable, incomplete, or both, certification will be revoked. If the laboratory does not respond, certification will be revoked. The laboratory will be notified in writing of the revocation. (4-7-11)

05. Upgrading or Reinstatement of Certification. A laboratory seeking an upgrade of certification must request this change in writing and provide documentation that the deficiencies that led to the provisional certification have been corrected. In addition, an on-site evaluation and successful completion of an additional PT may be required. A laboratory seeking certification after a revocation must follow the same procedure as a new laboratory seeking initial certification. (4-7-11)

211. -- 999. (RESERVED)

**16.02.14 – RULES GOVERNING CONSTRUCTION AND OPERATION
OF PUBLIC SWIMMING POOLS IN IDAHO**

000. LEGAL AUTHORITY.

Sections 56-1003 and 56-1007, Idaho Code, grant authority to the Director of the Department of Health and Welfare, to enforce minimum standards of health, safety and sanitation and to establish reasonable fees for services for all public swimming pools within the state of Idaho. ()

001. TITLE, SCOPE, AND INTENT.

01. Title. These rules are titled IDAPA 16.02.14, “Construction and Operation of Public Swimming Pools.” ()

02. Scope. The provisions of these rules apply to all public swimming pools and related facilities. The purpose of these rules is to control and regulate the design, construction, operation, and maintenance of public pools to protect public health and safety. ()

03. Intent. To prevent the spread of communicable disease and to assure a clean and safe environment in public swimming pools. ()

002. APPLICABILITY.

All public swimming pools, as defined, must be constructed and operated in conformance with these rules. Public swimming pools constructed prior to 1982 that can meet the requirement of Sections 190 through 198 and Sections 230 and 231 of these rules are not be required to meet the structural aspects of these rules. These rules apply to all public swimming pools. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

For the purpose of these rules, the following words and phrases are used, as defined below: (4-5-00)

01. Bather. A person who becomes partially or totally immersed in water in a pool. (4-5-00)

02. Board. Idaho Board of Health and Welfare. ()

03. Break in Grade. Where the slope of the bottom of pool exceeds a uniform slope greater than one (1) foot in twelve (12) feet horizontally. (4-5-00)

04. Department. Idaho Department of Health and Welfare. (4-5-00)

05. Director. Director of the Idaho Department of Health and Welfare. ()

06. Director’s Designee. The seven Public Health Districts. (4-5-00)

07. Geothermal Water. Water derived from and heated exclusively from the natural heat energy from the earth. (4-5-00)

08. Geothermal Pool. A flow-through public pool, which uses water solely derived from and heated exclusively by the natural heat energy from the earth. (4-5-00)

09. Flow-Through Pool. A pool fed by a continuous supply of acceptable water that causes an equal volume of water to overflow to waste. (4-5-00)

10. Lifeguard. A person who holds a current lifeguard training certificate and basic life support cardiopulmonary resuscitation (CPR) certificate from the American Red Cross, YMCA, Ellis & Associates, or any other equivalent certifying agency approved by the Director’s Designee. (4-5-00)

11. Lifeguard Chair. An elevated stand erected for use by a lifeguard while superintending the safety of bathers in a pool. The height and location must afford the user an unobstructed view of all bathers within the pool enclosure. (4-5-00)

12. Operator. An individual eighteen (18) years of age or older, who is familiar with the operation of the pool and is responsible for the health and safety of the public using the pool and for operating the pool in compliance with these rules. The operator must have an approved certification of competency from a Certified Pool

Operator (CPO), National Swimming Pool Foundation Certification; an Aquatic Facility Operator (AFO), National Recreation and Parks Association Certification; a National Swimming Pool Institute (NSPI Tech 1), National Spa and Pool Institute Certification Program, District Health Department Certification, or other certification programs approved by the Director designee. The operator must also have a basic life support cardiopulmonary resuscitation (CPR) certificate and current first aid certification as stated in Subsection 010.10 of these rules. (4-5-00)

13. Person. A person, firm, partnership, association, corporation, company, governmental agency, club or organization of any kind. (4-5-00)

14. Pool. An artificial structure containing water and its related elements used or intended to be used for swimming, diving, or recreation. ()

15. Private Pool. Any pool constructed in connection with or appurtenant to single-family dwellings or condominiums used solely by the persons maintaining their residence within such dwellings and the guests of such persons. (4-5-00)

16. Public Swimming Pool. Herein referred to as public pool. A pool, and its related elements, that contains water more than two (2) feet deep, is used or intended to be used for swimming, diving, or recreational bathing, and is for the use of any segment of the public under a general invitation but not an invitation to a specific occasion or occasions. ()

17. Remodel. To replace all or part of any structure, circulation system, or related element of a pool facility, or to modify to the extent its design, configuration, or operating characteristics differ from those of the original. The term does not include normal maintenance, repair, or replacement of equipment or similar equipment that has previously been approved. Only that which is being remodeled needs to meet current specifications. ()

18. Spa. An artificial structure containing water no more than four (4) feet deep and a recirculation system primarily designed for relaxation or therapeutic use where the user is sitting, reclining, or at rest. (4-5-00)

19. Special-Use Pool. A pool used exclusively for rehabilitating, curing, or treating a disease or disorder. This term also includes geothermal flow-through pools used exclusively for relaxation or therapeutic use where the user is sitting, reclining, or at rest. (4-5-00)

20. Wading Pool. A public pool with water less than two (2) feet deep used mainly by non-swimming children and those supervising the children. (4-5-00)

011. -- 019. (RESERVED)

020. SUBMISSION OF PLANS AND SPECIFICATIONS.

01. Plans. No person may construct or remodel any public pool until plans, specifications, and a plan review fee have been submitted, and the Director's designee has issued a letter of acceptance. Plans and specifications must be prepared by an architect or engineer licensed to practice in the state of Idaho. The architect or engineering plans, specifications and reports, must contain information sufficient to demonstrate the proposed pool is in compliance with these rules and certify the same. (4-5-00)

02. Construction Compliance Certificate. The operator must submit, prior to public use of new facilities, a construction compliance certificate to the Director's designee. This certificate must: ()

a. Be prepared and signed by a professional engineer or architect licensed to practice in the state of Idaho; and ()

b. Include a statement that the pool and the related elements have been constructed in accordance with approved plans and specifications. ()

03. Stability. Pools must be designed and constructed to withstand all anticipated loadings for both full and empty conditions. A hydrostatic relief valve or other suitable means must be provided in areas having a high

water table. The designing architect or engineer is responsible for certifying the structural stability and safety of the pool. (4-5-00)

021. -- 029. (RESERVED)

030. PERMITS.

No public pool may be open to the public unless the operator has applied for and received a permit. Permits expire on December 31 of each year, unless earlier revoked or suspended for violation of these rules. Exempt pools may voluntarily request to obtain a permit and be inspected. Only persons who comply with these rules are entitled to receive and retain a permit. Permits are not transferable. (4-5-00)

031. APPLICATION.

An application for permit must be made on forms obtained from the Director's designee. (4-5-00)

032. PERMIT FEE AND PLAN REVIEW FEE.

All applications must be accompanied by payment of the permit fee of fifty dollars (\$50) annually for each swimming pool. A plan review fee per unit for each swimming pool is one hundred dollars (\$100). ()

033. WAIVER OF FEES.

Upon written application to the Director, a waiver of a specific fee may be granted to an applicant who is required by these rules to pay the fee. ()

01. Determination of Good Cause. Good cause for a waiver must be shown before it is granted by the Director. Good cause may include hardship or extenuating circumstances, as determined by the Director. (3-16-04)

02. Duration of Waiver. If the fee sought to be waived becomes due periodically, the fee may be waived for a designated period of time. (3-16-04)

03. Limitations. Granting of a waiver will not be considered as precedent or be given any force or effect in any other proceeding. (3-16-04)

034. -- 039. (RESERVED)

040. INSPECTIONS.

The Director's designee is authorized to conduct inspections as deemed necessary to insure compliance with all provisions of these rules and will have right of entry at any time the pool is in operation. (4-5-00)

041. NOTICE OF VIOLATION.

If a violation of any provision of these rules is found during an inspection, the inspector will provide a written notice of such violation to the operator, which will establish a time frame for correction. (4-5-00)

042. REINSPECTION.

A reinspection will be made to determine if the violation has been corrected. If upon reinspection the violation has been corrected, the pool will be allowed to remain open. If upon reinspection the violation still remains, the permit may be temporarily suspended and the pool closed until such time the violation has been corrected and approved by the Director, or the Director's designee. (4-5-00)

043. -- 049. (RESERVED)

050. TEMPORARY SUSPENSION AND REVOCATION OF PERMITS.

01. Cause. The Director or the Director's designee may temporarily suspend, or revoke a permit for failure to comply with these rules or in cases where the permit has been obtained through nondisclosure, misrepresentation, or misstatement of a material fact. ()

02. Suspension. If the Director or the Director's designee determines that conditions at a public pool constitutes a serious danger to the health or safety of the public, a written order stating the particular reason for

suspension will be given to the operator; the permit will be immediately suspended and the pool closed until such time the condition is corrected. If the violation to these rules has not been corrected and a reinspection shows the violation still remains, a written order stating the particular reason for suspension will be given to the operator and the permit will be temporarily suspended and the pool closed until such time the condition is corrected. In the event a permit is suspended, the person to whom the permit was issued has the right to appeal under Section 003 of these rules. (4-5-00)

03. Revocation. If an operator fails to comply with the orders of a temporary suspension, the permit will be revoked unless the operator immediately closes the pool. Before a permit is revoked, the person to whom the permit was issued will receive notice in writing indicating items that fail to comply with this chapter. The permit holder will be advised of his right to appeal. ()

04. Reissue. The permit may be reissued upon proper application and upon presentation of evidence that the deficiencies or abuses causing revocation have been corrected. ()

051. -- 059. (RESERVED)

060. PENALTY.

Any person who willfully violates, disobeys, or disregards the provisions of these rules is guilty of a misdemeanor under the provisions of Section 56-1008, Idaho Code. (4-5-00)

061. -- 069. (RESERVED)

070. CONSTRUCTION REQUIREMENTS: PLUMBING CODES.

All plumbing must conform with and meet the provisions of IDAPA 07.02.06, "Rules Concerning the Idaho State Plumbing Code." ()

071. CONSTRUCTION REQUIREMENTS: ELECTRICAL CODE.

All electrical appliances and wiring must conform with and meet the provisions of IDAPA 07.01.06, "Rules Governing the Use of National Electrical Code." ()

072. CONSTRUCTION REQUIREMENTS: UNIFORM BUILDING CODE.

All buildings must conform with and meet the provisions of IDAPA 07.03.01, "Rules of Building Safety." ()

073. CONSTRUCTION REQUIREMENTS: MATERIALS.

Pools and all related elements must be constructed of materials that are inert, nontoxic to humans, impervious, permanent, and enduring; can withstand the design stresses; and will provide a tight tank with a smooth and easily cleanable surface, or to which an easily cleaned surface finish can be applied. ()

074. CONSTRUCTION REQUIREMENTS: CORNERS.

Corners formed by intersection of walls and floors must be rounded. (4-5-00)

075. CONSTRUCTION REQUIREMENTS: FINISH.

Pool finish, including bottom and sides, must be of light colored material, nontoxic to humans, with a smooth and easily cleanable surface. (4-5-00)

076. -- 079. (RESERVED)

080. DESIGN DETAIL: DIMENSIONS.

No limits are specified for length and width of pools except any pool in which diving is allowed must be at least sixteen (16) feet wide. (4-5-00)

081. DESIGN DETAIL: CIRCULATION.

Provisions must be made for complete, continuous circulation of water throughout all parts of the pool. Pools with a recirculation system must have the necessary treatment and filtration equipment as required. Flow-through pools that can meet the bacterial and clarity requirements of Sections 230 and 231 will not be required to meet Sections 250 through 256 and Sections 260 and 261 of these rules. (4-5-00)

082. DESIGN DETAIL: SHAPE.

The shape of any pool must be such that the circulation of water and the safety of bathers are not impaired. (4-5-00)

083. DESIGN DETAIL: WADING POOLS.

All wading pools must have a maximum depth of two (2) feet, be physically separated from any pool, have a turnover rate of at least once every two (2) hours, have separate equipment for water recirculation and disinfection with no cross connections between a wading pool and any other pool, and be equipped with anti-vortex drains to avoid any possibility of entrapment. ()

084. DESIGN DETAIL: NO DIVING SIGN.

If a pool is not designed for diving, a conspicuous sign must be posted and state “NO DIVING,” and contain lettering no less than six (6) inches high. Pools allowing diving must be at least eight (8) feet six (6) inches deep and meet manufacturer’s installation criteria. ()

085. DESIGN DETAIL: SAFETY LINE.

A safety line must provide a visual and physical indicator of the separation between the shallow and deep portions of a pool and be in place when the pool is open to the general public, except during periods of lap swimming, competitive swimming or supervised training. It must be located in the shallow area no closer than one (1) foot nor any further than two (2) feet away from the break in grade line or five (5) foot depth, be securely fastened to wall anchors of corrosion-resistant material and of the type that is recessed or has no projections that would constitute a hazard when the line is removed, and be marked with visible floats. ()

086. -- 089. (RESERVED)

090. SLOPE OF FLOOR: SHALLOW AREA.

Any portion of the pool floor with a depth less than five (5) feet must be uniform, slope to drain, and must not exceed a slope of more than one (1) foot in twelve (12) feet horizontally. (4-5-00)

091. SLOPE OF FLOOR: DEEP AREA.

The slope of the pool floor at a water depth of five (5) feet or more must be uniform, sloped to drain, and must not exceed a slope of one (1) foot in three (3) feet horizontally. (4-5-00)

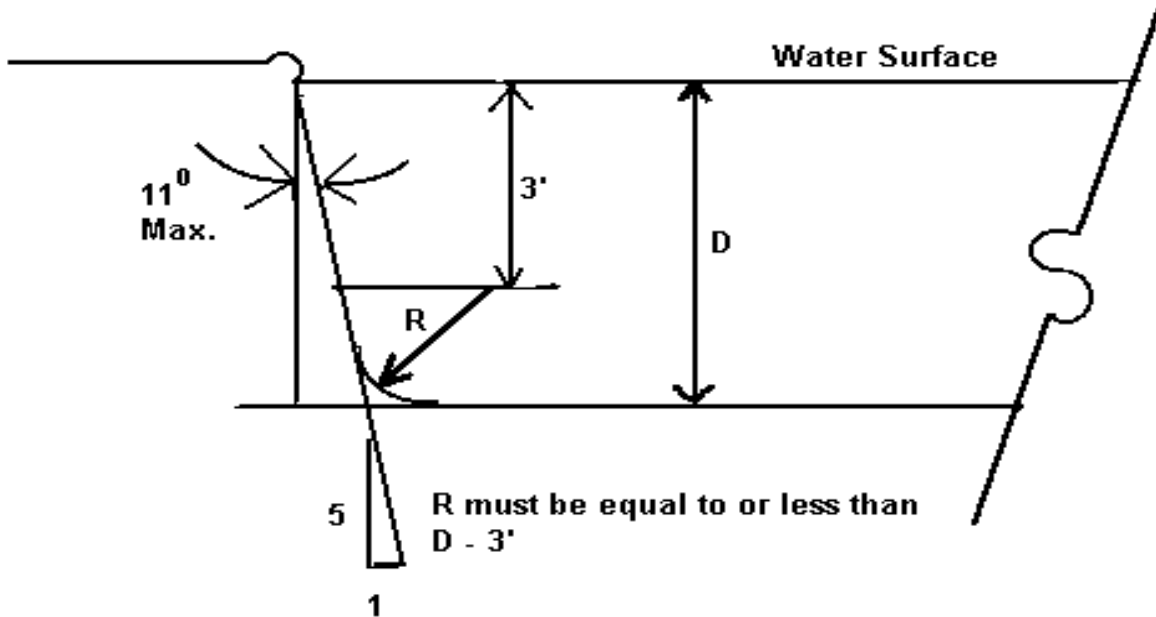
092. -- 099. (RESERVED)

100. SIDE WALLS.

Walls of a swimming pool must be either: vertical for water depth of at least six (6) feet; or vertical to a depth of three (3) feet below the water surface and then curved to join the bottom with a radius not greater than the difference between the depth at that point and three (3) feet, provided vertical is interpreted to permit slopes not greater than one (1) foot horizontally for each five (5) feet of sidewall depth (eleven (11) degrees from vertical). (4-5-00)

101. ILLUSTRATION OF POOL SIDE WALL.

Illustration of Pool Side Wall



(4-5-00)

102. -- 109. (RESERVED)

110. WIDTH OF DECKS AND WALKWAYS.

01. **Pool Deck.** A pool must have: ()
- a. A continuous deck, a minimum of eight (8) feet wide, that extends completely around the pool if it has one thousand eight hundred (1,800) square feet of surface area, or more; ()
 - b. A continuous deck a minimum of four (4) feet wide if it has less than one thousand eight hundred (1,800) square feet of surface area; and ()
 - c. A minimum of three (3) feet at the rear of any diving equipment or slide. ()
02. **Spa.** A spa may be constructed adjacent to a pool provided: ()
- a. The spa has one hundred twenty (120) square feet of water surface area or less; ()
 - b. The spa is separated from the pool by a common wall no more than twelve (12) inches wide; ()
 - c. The common wall is constructed to prevent its use as a walkway; and ()
 - d. A continuous deck a minimum of four (4) feet wide extends completely around the pool and the spa. ()

111. SLOPE OF DECKS AND WALKWAYS.

Decks must have a nonslip surface and be sloped to remove any surface drainage from entering the pool water. Drainage must be conducted from the deck in a manner that will not create hazardous or objectionable conditions and not be returned to the recirculation system. ()

112. -- 119. (RESERVED)

120. LADDERS, RECESSED STEPS, AND STAIRS REQUIREMENTS.

Recessed steps, stairs, or ladders must be provided at the shallow and deepest end of a pool. If the pool is over thirty (30) feet wide, such steps, ladders, or stairs must be installed on each side. (4-5-00)

121. RECESSED STEPS.

Recessed steps must be readily cleanable and must be arranged to drain into the pool. The steps must have a minimum tread of five (5) inches and a minimum width of fourteen (14) inches. (4-5-00)

122. STAIRS.

Where stairs are provided, they must be equipped with a handrail, have walking surfaces and treads that are of nonslip design with the leading edge in contrasting color, have steps with a minimum tread of twelve (12) inches and a maximum rise of ten (10) inches, and have no abrupt drop-off or submerged projections into the pool, unless guarded by handrails. ()

123. LADDERS.

All ladders must be corrosion-resistant, equipped with nonslip treads, designed to provide a handhold, be rigidly installed, and have a clearance of not more than five (5) inches or less than three (3) inches between any ladder and the pool wall. ()

124. HANDRAILS.

Where recessed steps or ladders are provided within the pool, handrails must be positioned at the top of both sides that extend over the coping or edge of the deck and be tight and secure. ()

125. ACCESS TO DIVING BOARDS.

Platforms and steps for diving boards must be of sufficient structural strength to safely carry the maximum anticipated loads. Steps must be of corrosion-resistant material, easily cleanable, and of nonslip design. Handrails must be provided at all steps and ladders leading to diving boards more than one (1) meter above the water. Platforms and diving boards over one (1) meter high must be protected with guard railings. (4-5-00)

126. -- 129. (RESERVED)

130. DIVING AREA: HEADROOM.

All pools must have at least thirteen (13) feet of unobstructed area above each diving board as measured from the front end of the board, and this unobstructed area must extend horizontally at least sixteen (16) feet forward of the plummet, at least eight (8) feet behind the plummet, and at least eight (8) feet to both sides of the plummet. (4-5-00)

131. DIVING AREA: WATER DEPTH.

The dimensions of the diving area on public pools must conform to the following:

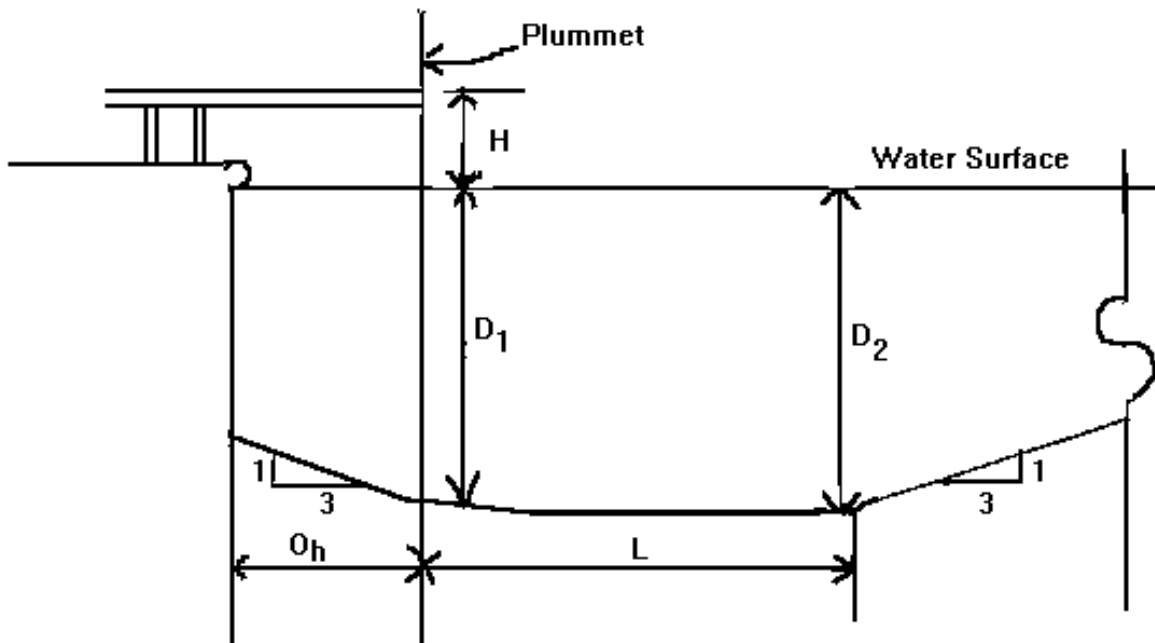
Minimum Dimensions					
Height of the diving board above the water level		Depth of water at the plummet	Distance ahead of plummet	Depth of water at the distance L From plummet	Overhang of diving board beyond edge of pool
H		D-1	L	D-2	O-H
Meters	Feet	Feet	Feet	Feet	Feet
0.00 to 0.50	0'0" to 1.7"	8'6"	11'6"	8'6"	3'0"
0.51 to 0.75	1'8" to 2'6"	9'3"	11'6"	9'3"	4'0"
0.76 to 1.00	2'7" to 3'3"	10'0"	14'0"	10'0"	5'0"

Minimum Dimensions					
Height of the diving board above the water level		Depth of water at the plummet	Distance ahead of plummet	Depth of water at the distance L From plummet	Overhang of diving board beyond edge of pool
1.01 to 3.00	3'4" to 10'0"	13'0"	20'0"	13'0"	6'0"
*Diving boards and platforms in excess of three (3) meters or ten (10) feet in height are not allowed in a pool without special provisions, controls, and definite limitation on their use, which has been approved by the Director's designee.					

(4-5-00)

132. ILLUSTRATION OF DIMENSIONS OF DIVING AREA.

Illustration of Dimensions of Diving Area



(4-5-00)

133. SEPARATION OF LOW DIVING BOARDS.

All diving boards installed on pools at heights not greater than three (3) feet three (3) inches or one (1) meter above the water level must be separated from adjacent diving boards of the same or less height by a distance of not less than eight (8) feet, and must be located not less than ten (10) feet from the side wall of the pool. (4-5-00)

134. SEPARATION OF HIGH DIVING BOARDS.

All diving boards installed on pools at heights greater than three (3) feet three (3) inches or one (1) meter above the water level must be separated from adjacent diving boards of the same or less height by a distance of not less than ten (10) feet, and must be located not less than twelve (12) feet from the side wall of the pool. (4-5-00)

135. ANCHORING OF DIVING BOARDS.

All installed equipment must be firmly anchored. (4-5-00)

136. -- 139. (RESERVED)

140. LIGHTING AND ELECTRICAL REQUIREMENTS.

All electrical appliances and wiring must conform with and meet the provisions of IDAPA 07.01.06, "Rules Governing the Use of National Electrical Code." Defects in the electrical system, including underwater lights, overhead lights, and their respective lenses, must be immediately repaired. ()

141. PORTABLE ELECTRICAL DEVICES.

Portable electrical devices such as announcing systems and radios, unless battery operated, are prohibited within the pool enclosure. (4-5-00)

142. OVERHEAD WIRING.

There may not be any overhead electrical wiring within twenty (20) feet horizontal distance of the pool enclosure. ()

143. UNDERWATER LIGHTING.

Where underwater lighting is used, the lights must be spaced to provide illumination so all portions of the pool, including the bottom, may be readily seen without glare. (4-5-00)

144. -- 149. (RESERVED)

150. VENTILATION.

All indoor pools, bathhouses, dressing rooms, shower rooms, and toilet spaces must be ventilated either by natural or mechanical means to prevent corrosion or the build-up of mold or mildew. (4-5-00)

151. -- 159. (RESERVED)

160. DRESSING ROOMS, TOILETS, AND SHOWERS.

Dressing rooms, toilets, and showers must be made available to all users of a pool. Dressing rooms must be finished in light colors and planned so good sanitation can be maintained throughout the buildings at all times. No glass containers are permitted. (4-5-00)

161. LOCATION OF DRESSING ROOMS.

Dressing rooms must be located near toilets and showers, and should be adjacent to the locker or checkroom, and have a layout such that bathers, on leaving the dressing room, should pass the toilet and shower en route to the pool. ()

162. FLOORS IN DRESSING ROOMS, TOILETS, AND SHOWERS.

Floors must be constructed of non-absorbent materials with non-slip finishes, slope to properly located drains, and have a sufficient number of drains installed to prevent water from collecting on the floor. ()

163. CONSTRUCTION OF DRESSING ROOMS.

The material used for walls, partitions, and furniture must be such that it can be easily cleaned and will not be damaged by frequent hosing, wetting, or disinfection. (4-5-00)

164. TOILETS.

Toilet facilities must be provided for both men and women, be accessible to disabled persons, and be kept clean and properly maintained. (4-5-00)

165. SHOWERS.

The following must be provided: ()

01. Showers. Showers for both men and women that are accessible to disabled persons. ()

02. Fixtures. Fixtures that are kept clean and properly maintained. ()

03. Water Temperature. Hot water for showers that is no less than ninety (90) degrees and no more

than one hundred twenty (120) degrees. ()

04. Scald Prevention. Thermostatic tempering, or mixing valves, to prevent scalding of bathers. ()

05. Soap. ()

166. HAND SINKS.

A minimum of one (1) hand wash sink with hot and cold running water and soap must be provided in each toilet room. ()

167. EXCEPTION.

The requirements of Sections 160 through 166 of these rules do not apply to any pool operated solely for and in conjunction with a hotel, motel, or other place of lodging or other facility containing multiple dwellings. However, dressing rooms, toilets, and showers must be in compliance with Sections 160 through 166 of these rules, if provided in the pool area of hotels, motels, or other facilities containing multiple dwellings. ()

168. -- 169. (RESERVED)

170. WATER SUPPLY.

The water supply serving a pool must meet the water quality requirements of the Director’s designee for potable water except the Director’s designee may approve the use of geothermal waters. Drinking water must be approved and, if applicable, meet the provisions of IDAPA 58.01.08, “Idaho Rules For Public Drinking Water Systems.” All portions of the water distribution system must be protected against backflow and cross connections. (4-5-00)

171. -- 179. (RESERVED)

180. SEWER SYSTEM.

A sewer system must be provided and be adequate to serve the facility, including bathhouse, locker room, and related accommodations. The sanitary sewer serving the pool and auxiliary facilities must discharge to a public sewer system wherever possible. Where no such sewer is available, the connection must be made to a suitable disposal system designed, constructed, and operated in accordance with IDAPA 58.01.03, “Individual/Subsurface Sewage Disposal Rules.” (4-5-00)

181. -- 189. (RESERVED)

190. HEALTH AND SAFETY: POOL CLOSURE.

The operator must immediately close the pool when a pool is in violation of Sections 191, 192, 198, and 230 of these rules, or when ordered by the Director or the Director’s designee, and keep the pool closed until such time as conditions are brought into compliance or the order has been rescinded. ()

191. HEALTH AND SAFETY: OPERATOR.

All pools must have an operator. (4-5-00)

192. HEALTH AND SAFETY: LIFEGUARD REQUIREMENT.

01. When Lifeguards Are Required. Lifeguard(s) are required at any public swimming pool when: ()

a. The numbers of bathers within the pool enclosure exceed thirty-five (35); and ()

b. Children under the age of thirteen (13) are allowed to swim without adult supervision. ()

02. When Lifeguards Are Not Required. When lifeguard services are not required, a warning sign must: ()

a. Be placed in plain view for all swimmers; ()

b. State, “WARNING NO LIFEGUARD ON DUTY” with clearly legible letters at least four (4) inches in height; and ()

c. Also state, “CHILDREN UNDER 13 YEARS OLD SHALL NOT USE THE FACILITY WITHOUT AN ADULT IN ATTENDANCE,” and “DO NOT SWIM ALONE.” ()

193. HEALTH AND SAFETY: LIFEGUARD CHAIRS.

If lifeguard chairs are provided, they must be located and constructed to provide a clear, unobstructed view of the pool bottom in the area under surveillance. ()

194. HEALTH AND SAFETY: LIFESAVING EQUIPMENT.

01. Rescue Tube. Each lifeguard on duty must have a rescue tube. ()

02. Shepherd’s Crook, Backboard, and First Aid Kit. Every pool must have: ()

a. At least one (1) shepherd’s crook or life-saving pole, having blunted ends, at least twelve (12) feet in length; ()

b. A readily accessible full-length backboard that complies with American Red Cross specifications or equivalent; and ()

c. A readily accessible first aid kit and a pocket face mask to assist with CPR. ()

03. Equipment Accessibility and Condition. Equipment must be readily accessible, be mounted in a conspicuous place, and be kept in good repair and ready condition. ()

195. HEALTH AND SAFETY: SAFETY AND SANITATION.

A lifeguard or operator must be in full charge of bathers and have authority and responsibility to enforce all rules of safety and sanitation. Suitable placards embodying sanitation requirements are to be conspicuously posted in the pool enclosure. Safety and sanitation requirements are as follows: (4-5-00)

01. Shower. A cleansing shower should be taken before swimming. (4-5-00)

02. Disease. Persons having an infectious or communicable disease that may be transmitted through water are excluded from swimming. ()

03. Running and Roughhousing. No running or rough play are permitted. (4-5-00)

04. Contamination. Contamination of water, walkways, or dressing room floors in any way is prohibited. (4-5-00)

05. Glass. Glass containers are prohibited in the pool area. (4-5-00)

196. HEALTH AND SAFETY: ACCESS.

When the pool is not open for use, access must be restricted. (4-5-00)

197. HEALTH AND SAFETY: EMERGENCY COMMUNICATION.

A means of contacting emergency medical services must be readily accessible and be provided on the premises. (4-5-00)

198. CLARITY.

Water must have sufficient clarity at all times so the main drain can be clearly visible from the deck. Failure to meet this requirement is grounds for immediate closure of the pool. It is the responsibility of the operator to close the pool when conditions exist that the main drain is not visible from the deck. ()

199. (RESERVED)

200. SUPERVISION.

Every pool must be operated under the supervision of an operator who assumes responsibility for compliance with all parts of these rules. The operator is responsible for operating the pool in a safe and healthful manner. (4-5-00)

201. OPERATIONS MANUAL.

Each pool must have a readily accessible pool operations manual to ensure proper operation and maintenance. The operations manual should include instructions for such items as maintenance schedules, records and reports, water chemistry, accidents, emergency procedures, care of filters, operation of pumps and other equipment, and proper handling and storage of all chemicals used. ()

202. RECORD KEEPING.

The following information must be recorded each day the pool is open, and be kept on the premises and available for review: (4-5-00)

- 01. Disinfectant Levels;** (4-5-00)
- 02. pH Readings;** (4-5-00)
- 03. Clarity Readings;** (4-5-00)
- 04. Amount and Type of Chemicals Used;** and (4-5-00)
- 05. Accidents Requiring Professional Medical Treatment.** Accidents requiring professional medical treatment, including drownings or near drownings. (4-5-00)

203. REPORTABLE ACCIDENTS.

Accidents requiring professional medical treatment, including drownings or near drownings, must be reported within twenty-four (24) hours of occurrence to the Director's designee. (4-5-00)

204. -- 209. (RESERVED)

210. DEPTH MARKING LOCATIONS.

- 01. Water Depth.** Water depth must be plainly marked at or above the water surface on the vertical wall of the pool and on the horizontal edge of the deck or walk next to the pool. ()
- 02. Depth Markers.** Depth markers must be placed at: ()
 - a.** Maximum and minimum depths; ()
 - b.** The five (5) foot break between the deep and shallow portions; ()
 - c.** Intermediate one (1) foot increments of depth, where the water depth is five (5) feet or less; and ()
 - d.** Regular intervals around the pool, not more than twenty-five (25) feet apart. ()

211. DEPTH MARKERS.

Depth markers must be numerals a minimum of four (4) inches high of a color contrasting with the background, and plainly visible to persons both in and out of the pool. Where depth markers cannot be placed on the vertical walls above the water level, other means must be used. ()

212. -- 219. (RESERVED)

220. WATER QUALITY STANDARDS.

Pools must be designed to provide for continuous disinfection of the pool water with a chemical that has an effective disinfectant and imparts an easily measured, active residual. A test kit for measuring the accurate concentration of the disinfectant must be provided at each pool. (4-5-00)

221. CHLORINE DISINFECTION.

When chlorine is used, a minimum free available chlorine residual of not less than one (1) part per million (ppm) with a maximum of five (5) parts per million (ppm) must be maintained whenever a pool is in use. (4-5-00)

222. BROMINE DISINFECTION.

When bromine is used, a minimum residual of not less than one (1) part per million (ppm) with a maximum of five (5) parts per million (ppm) must be maintained whenever a pool is in use. (4-5-00)

223. CHLORINATED ISOCYANURATES DISINFECTION.

If chlorinated isocyanurates are used, the maximum allowable concentration must be one hundred (100) parts per million (ppm). When isocyanurates are used, a test kit for measuring the concentration of the stabilizer must be provided. (4-5-00)

224. ORP OR HRR DISINFECTION.

If a pool uses an oxidation reduction potential (ORP) controller or a high resolution redox (HRR) controller as a method of measuring an effective index of disinfection, the chemical used should be introduced in quantities needed to maintain levels at a minimum of six hundred and fifty (650) millivolts (mV). (4-5-00)

225. OTHER DISINFECTION METHODS.

Other disinfecting methods may be used when it can be demonstrated to the Director's designee that a pool provides a satisfactory residual effect that is easily measured. Other disinfection methods may also be allowed if demonstration and analysis provide assurance that results are effective and not dangerous to public health, create objectionable physiological effects, or impart toxic properties to the water. (4-5-00)

226. ACID BASED CHEMISTRY.

Pool water must be maintained in an alkaline condition as indicated by a pH of not less than seven and two-tenths (7.2) and not over seven and eight-tenths (7.8). The total alkalinity of the water should be within the acceptable range of eighty (80) parts per million (ppm) to two hundred (200) parts per million (ppm). An accurate pH testing kit must be provided at each pool. (4-5-00)

227. OTHER CHEMICALS.

Any chemical must be used in accordance with the manufacturer's recommendations and not cause irritation to the eyes or skin of the bathers, or have other objectionable physiological effects on bathers. (4-5-00)

228. CHEMICAL STORAGE.

All chemicals must be kept from the reach of the general public, be stored in original containers, and be stored in accordance with the instructions of the manufacturer or, in the absence of such instructions, as directed by the Director's designee. ()

229. CLEANING.

01. Pools. Pools must be maintained and operated in a clean, safe, and sanitary manner at all times. Pool walls and bottom should be vacuumed or brushed as needed to remove visible material. ()

02. Decks. Decks must be kept clean, safe, and maintained in good condition. ()

03. Bathrooms, Showers, and Dressing Rooms. Bathrooms, showers, and dressing rooms must be kept clean, safe, and sanitary at all times. ()

230. BACTERIOLOGICAL QUALITY OF POOL WATERS.

The water in public pools must not contain the presence of fecal coliform bacteria. If fecal coliform bacteria are present in any sample, a confirmation sample must be taken within twenty-four (24) hours. Should any two (2) consecutive water samples taken show the presence of fecal coliform bacteria, the pool must be closed immediately until the bacterial quality of the water is found absent for the presence of fecal coliform bacteria. ()

231. MONTHLY SAMPLING.

Pools not required to have a disinfection system, or those pools having a disinfection system but do not meet the requirements of Sections 220 through 225 of these rules, are required to sample the water for the presence of fecal coliform bacteria on a monthly basis. Sampling must be done during hours of peak bather loads. ()

232. -- 239. (RESERVED)

240. DISINFECTANT AND CHEMICAL FEEDERS.

01. Feeder. Pools must be equipped with a disinfectant feeder or feeders that meet the following requirements. Equipment must be: ()

a. Capable of being easily disassembled for cleaning or repair and be constructed of corrosion-resistant materials; ()

b. Constructed to permit repeated adjustments without loss of output rate accuracy and be constructed to minimize stoppage from debris that may be contained in aid chemicals used; ()

c. Designed specifically for the type of disinfectant used; and ()

d. Provided with controls for adjusting the flow rate of disinfectant. ()

02. Backflow Prevention. When the disinfectant is introduced at the suction side of the pump, a device or method must be provided to prevent air lock of the pump or recirculation system. (4-5-00)

03. Chlorine Gas Equipment. When compressed chlorine gas is used, the following additional features must be provided: (4-5-00)

a. Chlorine rooms must have a ventilating fan with an airtight duct beginning near the floor and terminating at a safe point of discharge to the outdoors, away from any occupied area or any fresh air intake. A louvered air intake must be provided near the ceiling. The ventilating fan must provide one (1) air change per minute and operate from a switch located outside the door. (4-5-00)

b. Chlorinator equipment must be designed to withstand wear without developing leaks. (4-5-00)

c. Chlorine cylinders must be anchored in an upright position to prevent falling over. A valve stem wrench must be maintained on the chlorine cylinder so the supply can be shut off quickly in the case of an emergency. Empty chlorine gas cylinders must be tagged as such. Full and empty gas cylinders must be stored only in the chlorine room and have protective hoods in place when not in use. (4-5-00)

d. A new washer or gasket approved for use on chlorine gas must be used each time a chlorine cylinder is connected to the chlorinator. Spare washers/gaskets must be kept on site. (4-5-00)

e. A self-contained breathing apparatus designed for use in a chlorine atmosphere must be provided, and be located in an area outside the chlorination room easily accessible to pool employees. (4-5-00)

f. An automatic chlorine leak detector or commercial twenty-six (26) degrees Baume Aqua Ammonia must be provided for chlorine gas leak detection. (4-5-00)

g. Installation of chlorinator equipment, and operation thereof, must be carried out by or under the supervision of personnel trained in the installation and operation of such equipment. (4-5-00)

04. Hypochlorite Equipment. When a hypochlorite solution is fed through hypochlorinator equipment, such equipment must also provide the following additional features: (4-5-00)

a. Positive feed under all conditions of pressure in the circulating system, without artificial constriction of the pump suction line whether this line is under vacuum or pressure head; ()

b. Constant feed with varying supply or back pressure; ()

c. Prevent backflow from the circulation system to the solution container; and ()

d. Prevent siphoning of hypochlorite solution when recirculation pump and hypochlorinator are both turned off. (4-5-00)

241. -- 249. (RESERVED)

250. RECIRCULATION SYSTEM: FLOW RATE.

A recirculation system, consisting of pumps, piping, skimmers, filters, water disinfection equipment, and other accessory equipment must be so designed and sized as to completely recirculate the pool volume of water at least once every eight (8) hours. (4-5-00)

251. RECIRCULATION SYSTEM: SIZING.

All equipment and connecting piping must be designed to reduce friction losses, and for the piping to carry the required quantity of water at a velocity not to exceed six (6) feet per second for suction side pipe, and not more than ten (10) feet per second for filter discharge pipe. Piping must be of non-toxic material, resistant to corrosion, and able to withstand normal operating pressures. It is recommended all plastic pipes conform with NSF Standard 14 for potable water applications of the National Sanitation Foundation (NSF) and bear the NSF seal. (4-5-00)

252. RECIRCULATION SYSTEM: CLEANING.

- 01. Cleaning System.** A cleaning system must be provided to remove dirt from the bottom of the pool. ()
- 02. Integral Vacuum.** When a vacuum is used as an integral part of the recirculation system: ()
 - a.** Connections must be located in the walls of the pool, at least eight (8) inches below waterline, and at such point the floor of pool can be cleaned; and ()
 - b.** The vacuum system must also be designed to preclude any possible entrapment. ()

253. RECIRCULATION SYSTEM: FLOW INDICATOR.

A functioning rate-of-flow indicator must be installed and located so the recirculation rate will be accurately measured, be accurate within five percent (5%) of true flow, and be located in a position that is easy to read. (4-5-00)

254. RECIRCULATION SYSTEM: CLEANING.

A pump and motor unit must be provided for the recirculation of water that has been selected to meet the quantity of water required for filtering, and cleaning the filter, with the total dynamic head developed by the complete system. It is recommended the pump comply with requirements of NSF Standard 50, "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs," of the National Sanitation Foundation (NSF) and bear the NSF seal. (4-5-00)

255. RECIRCULATION SYSTEM: THERMOMETERS.

Pools equipped with heaters must have a minimum of one (1) fixed thermometer located between the heating outlet and the pool. (4-5-00)

256. RECIRCULATION SYSTEM: STRAINER.

The recirculation system must include a corrosion-resistant strainer, readily accessible for frequent cleaning. (4-5-00)

257. -- 259. (RESERVED)

260. FILTRATION SYSTEM AND FILTERS.

- 01. Filtration System.** All pools must be equipped with a filtration system for the purpose of clarifying the water so it meets or exceeds the minimum clarity requirement. ()
- 02. Filters.** All filters must: ()
 - a.** Be designed and sized to achieve the proper turnover rate without exceeding the maximum flow rate; ()
 - b.** Be equipped with pressure or vacuum gauges; and ()

c. Comply with all applicable requirements of NSF Standard 50, "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs," or in the absence of applicable requirements, be approved by the Director's designee. ()

261. DISPOSAL OF WASTE.

Provisions must be made to dispose of material cleaned from filters and backwash water in a manner that will not create a nuisance. If drainage to a sanitary sewer or storm drain is permitted, an air gap must be provided that will positively preclude against surge or backflow introducing contaminated water into the pool or recirculation system. (4-5-00)

262. -- 269. (RESERVED)

270. WALL INLETS.

01. General Inlet Requirements. Except as otherwise provided in this rule, inlets must: ()

a. Be rounded and smooth and installed not less than eighteen (18) inches below the normal operating level and located to produce a uniform circulation, without the existence of dead spots; and ()

b. Not extend from the pool wall or floor so as to create a hazard. ()

02. Wall Inlet Requirements. If wall inlets are used, there must: ()

a. Be at a minimum of one (1) per each six hundred (600) square feet of pool surface area. ()

b. Be a minimum of two (2) inlets. In case of a shallow pool, the Director's designee may grant an exception to this requirement if inlets cannot be installed at the depth otherwise required. ()

271. FLOOR INLETS.

Any pool having a width greater than forty (40) feet must have floor inlets or a combination of wall and floor inlets that meet the requirements of Section 260 of these rules and are located so they provide general circulation and do not direct flow to floor drains. ()

272. -- 279. (RESERVED)

280. OVERFLOW SYSTEMS.

All pools must be designed to provide continuous skimming, have overflow gutters or surface skimmers, and have an overflow system designed and installed so the water level of the pool is maintained at the operating level of the rim or weir device. ()

281. OVERFLOW GUTTERS.

The gutter, drains, and return piping to the surge system must be designed to rapidly remove overflow water caused by recirculation displacement, wave action, or other causes produced from the maximum pool bathing load. ()

01. General Requirements. Overflow gutters must: ()

a. Extend around the entire perimeter of the pool except at steps or recessed ladders; ()

b. Have the gutter lip be level within three-tenths (.3) inch; ()

c. Be capable of continuously removing fifty percent (50%) of the recirculated water and returning it to the recirculation system; and ()

d. Be designed to prevent entrance or entrapment of bathers. ()

02. Overflow Gutters Connected to the Recirculation System. All overflow gutters connected to the recirculation system must be connected in an approved manner, such as a surge tank. ()

282. SKIMMERS: REQUIREMENT.

- 01. Minimum Requirements.** There must be provided: ()
- a.** A minimum of one (1) skimmer for each four hundred (400) square feet of water surface area or fraction thereof; and ()
- b.** No fewer than two (2) skimmers in every pool. ()
- 02. Standard Requirements.** Any skimmer used in a pool must comply with all applicable requirements of NSF Standard 50 “Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs,” of the NSF International or in the absence of applicable requirements, be approved by the Director’s designee. ()

283. SKIMMERS: CAPACITY.

- 01. Total Capacity.** The total capacity of all skimmers used must be a minimum of two-thirds (2/3) of the required filter flow. ()
- 02. Piping.** Piping for skimmers used must be designed for a capacity of not less than eighty (80) percent of the required filter flow of the recirculation system, and in no case less than thirty (30) gallons per minute per eight (8) inches of weir. ()

284. SKIMMERS: EQUALIZERS.

- 01. Equalizer Valve and Line.** All skimmers used must be equipped with an approved equalizer valve and an equalizer line with an inside diameter of not less than two (2) inches, installed not less than twelve (12) inches below the normal operating level of the water. ()
- 02. Inlet to the Equalizer Line.** The inlet to the equalizer line or lines must: ()
- a.** Be designed to prevent the creation of a holding force whenever the body or limb of a bather comes into contact with the inlet; and ()
- b.** Be protected by a grill or shroud that will prevent a bather or any limb of a bather from entering the inlet. ()

285. SKIMMERS: LOCATION.

All inlets must be spaced at least five (5) feet away from any skimmer. One (1) skimmer must be placed at a point in the pool opposite the direction of the prevailing winds. (4-5-00)

286. -- 289. (RESERVED)

290. LOCATION OF DRAINS.

Every pool must have a tandem main drain located in the deepest section of the pool and have the ability to empty the pool through this drain. (4-5-00)

291. MULTIPLE DRAINS.

Multiple drains must be provided. Outlet drains must not be further apart than twenty (20) feet on center. (4-5-00)

292. DRAIN GRATING.

The main drain outlet grating must: ()

- 01. Area of Openings.** Have an area of openings four (4) times the area of the discharge pipe or provide sufficient area so the maximum velocity of water passing through the grate will not exceed six (6) feet per second; ()
- 02. Maximum Width of Openings.** Have grate openings with a maximum width of not more than one-half (1/2) inch; and ()

03. Securely Fastened. Be securely fastened in such a way that they cannot be removed without the use of tools. ()

293. -- 299. (RESERVED)

300. FENCE AND BARRIERS.

01. For Pools Under 1,800 Square Feet. A fence or barrier a minimum of four (4) feet high to exclude unauthorized persons from the pool area must enclose each public pool with less than one thousand eight hundred (1,800) square feet of surface area. ()

02. For Pools 1,800 Square Feet or Greater. A fence or barrier a minimum of eight (8) feet high to exclude unauthorized persons from the pool area must enclose each public pool with one thousand eight hundred (1,800) square feet of surface area, or greater. ()

301. -- 309. (RESERVED)

310. GEOTHERMAL POOL EXEMPTIONS.

01. Exemptions. Geothermal pools are hereby exempt from the following rules: ()

a. If a geothermal pool can meet the bacterial requirements of Section 230 of these rules and the clarity requirements of Section 198 of these rules, it will not be required to meet any requirements of Sections 220 through 225, and Sections 240, 250, and 260 of these rules. ()

b. Section 226 of these rules, "Acid Base Chemistry." ()

c. If an existing geothermal pool has a gravel bottom, Sections 075, 271, and Sections 290 through 292 of these rules. ()

02. Remodeling. Remodeling of an existing geothermal pool will not change exemptions. (4-5-00)

311. -- 319. (RESERVED)

320. TECHNICAL WAIVERS OR MODIFICATIONS.

01. Director Waiver. The Director or the Director's designee may waive or modify the requirements of these rules as a condition of the permit to operate a pool, except no technical waiver or modification will be granted from the health and safety portion of these rules. ()

02. Waiver Requirements. The person requesting a technical waiver or modification must submit a written request to the Director's designee specifying: ()

a. The section number of these rules and the rationale for considering a modification or waiver of the requirements; ()

b. An analysis of the potential public health, safety hazards, and issues associated with the proposed action; and ()

c. Scientific data or other information, as appropriate, showing safety or public health will not be compromised by the proposed action. ()

321. -- 999. (RESERVED)

16.02.25 – FEES CHARGED BY THE STATE LABORATORY

000. LEGAL AUTHORITY.

Under Section 56-1003, Idaho Code, the Department of Health and Welfare is responsible for the supervision and administration of laboratories and administration of standards of tests for environmental pollution, chemical analyses, and communicable diseases. Authority to set fees and establish charges for laboratory services is vested in the Director, under Section 56-1007, Idaho Code. (3-29-10)

001. TITLE, SCOPE, AND POLICY.

01. Title. These rules are titled IDAPA 16.02.25, “Fees Charged by the State Laboratory.” (3-29-10)

02. Scope. The intent of these rules is to standardize all fees levied by the Bureau of Laboratories for the services it provides. The Bureau of Laboratories is also known as the “State Laboratory.” (3-29-10)

03. Policy. The primary purpose of the Bureau of Laboratories of the Idaho Department of Health and Welfare is to provide laboratory services to support the various programs carried out by the Department, district health departments, and other agencies. Since it is not economically feasible for all departments of state governments to develop their own laboratories, the Department laboratories provide services, as appropriate, to other state agencies. (3-29-10)

002. -- 009. (RESERVED)

010. DEFINITIONS.

For the purposes of these rules, the following terms are used as defined below: (3-29-10)

01. Clinical Laboratory Tests. Microbiological analysis for diagnosis of infectious diseases affecting human health. (3-29-10)

02. Department. Idaho Department of Health and Welfare. (3-29-10)

03. Director. The Director of the Idaho Department of Health and Welfare or designee. (3-29-10)

04. Environmental Laboratory Tests. Analysis of various samples from air, microbiological, organic, or inorganic sources. (3-29-10)

05. State Health Official. Administrator of the Department’s Division of Public Health. (3-29-10)

011. -- 099. (RESERVED)

100. FEES FOR CLINICAL LABORATORY TESTS.

Fees for Clinical Laboratory Tests	
Clinical Test Name	Fee
Agglutination - Not Otherwise Specified	\$9.00
Bacterial Primary Culture - Not Otherwise Specified	\$51.00
Bordetella pertussis, Culture	\$27.00
<i>Bordetella pertussis</i> , PCR	\$42.00
<i>Chlamydia trachomatis</i> and <i>Neisseria gonorrhoeae</i> by Nucleic Acid Amplification	\$16.00
<i>Cryptosporidium/Giardia</i> , IFA	\$69.00
Disk Diffusion Test	\$17.00
Enteric Pathogens, Primary Culture	\$68.00
Enterovirus Isolation	\$95.00
Enzyme-Linked Immunoassay (EIA) - Not Otherwise Specified	15.00

Fees for Clinical Laboratory Tests	
Clinical Test Name	Fee
Fluorescent Antibody (FA) - Not Otherwise Specified	\$53.00
Hantavirus, IGG & IGM Antibody, EIA	\$167.00
Hepatitis B, Core Total Antibody, EIA	\$15.00
Hepatitis B, Surface Antibody, EIA	\$15.00
Hepatitis B, Surface Antigen Confirmation, EIA	\$127.00
Hepatitis B, Surface Antigen, EIA	\$15.00
Hepatitis C, Antibody, EIA	\$20.00
Herpes Simplex Type 1 & Type 2, IGG Antibody, EIA	\$35.00
Herpes Simplex Virus Isolation	\$53.00
HIV-1/2 Plus O, Antibody, EIA	\$15.00
HIV-1, Western Blot	\$311.00
Influenza Virus, RT-PCR	\$69.00
<i>Legionella</i> , Culture, Clinical	\$120.00
Microsphere Immunoassay (MIA) - Not Otherwise Specified	\$64.00
Mumps, IGG Antibody, EIA	\$15.00
Mumps, IGM Antibody, IFA	\$56.00
Mumps, Virus Isolation	\$88.00
Mycobacteria, AFS-Fluorochrome	\$98.00
Mycobacteria, Drug Susceptibility	\$373.00
Mycobacteria, Primary Culture	\$57.00
Mycobacteria, Reference Culture	\$130.00
Mycobacteria, Tuberculosis Quantiferon -TB Gold In Tube	\$85.00
<i>Neisseria gonorrhoeae</i> , Primary Culture	\$37.00
Norovirus, RT-PCR	\$66.00
Parasite Exam, Concentrate & Trichrome Stain	\$94.00
Plaque Reduction Neutralization Test (PRNT) - Not Otherwise Specified	\$260.00
Polymerase Chain Reaction (PCR) - Not Otherwise Specified	\$62.00
Pulsed Field Gel Electrophoresis	\$90.00
Rabies, FA	\$50.00
rDNA Sequence Analysis	\$113.00
Reference Culture, Aerobe	\$49.00
Reference Culture, Anaerobe	\$81.00
Respiratory Virus Isolation	\$94.00

Fees for Clinical Laboratory Tests	
Clinical Test Name	Fee
Rubella, IGG Antibody, EIA	\$15.00
Rubella, IGM Antibody, EIA	\$47.00
Rubeola (Measles), IGG Antibody, EIA	\$15.00
Rubeola (Measles), IGM Antibody, EIA	\$37.00
Serotyping	\$73.00
Shiga Toxin, Immunoassay	\$21.00
<i>Staphylococcus aureus</i> , Methicillin Resistant (MRSA), Identification/Confirmation	\$96.00
<i>Staphylococcus aureus</i> , Methicillin Resistant (MRSA), PCR	\$78.00
Syphilis, Treponema Pallidum Passive Agglutination	\$43.00
Syphilis, Venereal Disease Research Laboratory (VDRL)	\$9.00
Syphilis, Venereal Disease Research Laboratory (VDRL), Quantitative	\$6.00
Vancomycin Resistant <i>Enterococcus</i> (VRE)	\$119.00
Vancomycin-Intermediate/Resistant <i>Staphylococcus aureus</i> (VISA)	\$119.00
Varicella Zoster, IGG Antibody, EIA	\$15.00
Varicella Zoster, IGM Antibody, IFA	\$56.00
Varicella Zoster, Virus Isolation	\$91.00
Viral Culture - Not Otherwise Specified	\$67.00
West Nile Virus, IGG Antibody Screen, EIA	\$73.00
West Nile Virus, IGM Antibody Screen, EIA	\$78.00
West Nile Virus/St. Louis Encephalitis Virus IGM Antibody, Microsphere Immunoassay	\$65.00
West Nile Virus/St. Louis Encephalitis Virus Plaque Reduction Neutralization Test (PRNT)	\$278.00
West Nile Virus/St. Louis Encephalitis Virus/Western Equine Encephalitis, RT-PCR	\$156.00

(3-21-12)

101. -- 199. (RESERVED)

200. FEES FOR ENVIRONMENTAL LABORATORY TESTS.

01. Environmental Laboratory Tests, Air -- Table.

Fees for Environmental Laboratory Tests -- Air	
Air Test Name	Fee
PM 10 Filter, Air	\$13.00
PM 25 Filter, Air	\$20.00

(3-21-12)

02. Environmental Laboratory Tests, Microbiology -- Table.

Fees for Environmental Laboratory Tests -- Microbiology	
Microbiology Test Name	Fee
<i>Escherichia coli</i> O157:H7	\$100.00
Heterotrophic Plate Count	\$25.00
Identification System, Water, Food or Vegetation	\$50.00
<i>Legionella</i> , Water	\$100.00
Pathogen Screen, Water, Food, or Vegetation	\$23.00
<i>Pseudomonas aeruginosa</i> , Water	\$25.00
Salmonella Confirmation, Water	\$75.00
Total Coliform/E. coli, Presence/Absence	\$18.00
Total Coliform/E. coli, Quantitative	\$20.00
Total Coliform/Fecal Coliform/E. coli (MPN)	\$28.00

(3-21-12)

03. Environmental Laboratory Tests, Inorganic -- Table.

Fees for Environmental Laboratory Tests -- Inorganic	
Inorganic Test Name	Fee
5-Day BOD, Water	\$45.00
Alkalinity (CaCO ₃), Water	\$14.00
Ammonia as N, Water	\$18.00
Arsenic, Water	\$21.00
Bromate, Water	\$100.00
Bromide, Water	\$32.00
Chemical Oxygen Demand, Water	\$29.00
Chlorate, Water	\$100.00
Chloride, Water	\$19.00
Chlorite, Water	\$150.00

Fees for Environmental Laboratory Tests -- Inorganic	
Inorganic Test Name	Fee
Chlorophyll A and Pheophytin A, Water	\$75.00
Conductivity, Water	\$11.00
Corrosivity, Calculation, Water	\$59.00
Cyanide, Total, Water or Soil	\$33.00
Cyanide, WAD, Water or Soil	\$33.00
Direct Mercury Analysis	\$44.00
Fluoride, Water	\$19.00
Hardness, Water	\$22.00
Lead, Water	\$21.00
Mercury, Water	\$34.00
Metals Digestion, Water, Soil, or Solids	\$19.00
Metals each (Aluminum, Antimony, Barium, Beryllium, Boron, Cadmium, Calcium, Chromium, Cobalt, Copper, Iron, Magnesium, Manganese, Molybdenum, Nickel, Potassium, Selenium, Silicon, Silver, Sodium, Strontium, Thallium, Tin, Vanadium, Zinc)	\$13.00
Metals Speciation	\$150.00
Nitrate + Nitrite as N, Water	\$19.00
Nitrate as N, Water	\$19.00
Nitrite as N, Water	\$19.00
Orthophosphate as P, Water	\$17.00
pH, Water	\$10.00
Settleable Solids, Water	\$16.00
Sulfate, Water	\$19.00
Sulfide as H ₂ S, Water	\$19.00
TCLP Extraction	\$165.00
Total Dissolved Solids, Water	\$15.00
Total Kjeldahl Nitrogen, Soil	\$53.00
Total Kjeldahl Nitrogen, Water	\$34.00
Total Phosphorus, Water	\$24.00
Total Solids, Water	\$13.00
Total Suspended Sediment, Water	\$14.00
Total Suspended Solids, Water	\$14.00
Turbidity, Water	\$13.00
Uranium, Water	\$44.00

Fees for Environmental Laboratory Tests -- Inorganic	
Inorganic Test Name	Fee
Volatile Solids, Water	\$24.00

(3-21-12)

04. Environmental Laboratory Tests, Organic -- Table.

Fees for Environmental Laboratory Tests -- Organic	
Organic Test Name	Fee
1,2-dibromo-3-chloropropane/ethylene dibromide (DBCP/EDB/TCP), Water	\$100.00
Benzene, Toluene, Ethylbenzene and Xylenes (BTEX)	\$97.00
Carbamates, Water	\$169.00
Chlorinated Herbicides, Water	\$162.00
Diquat, Water	\$117.00
ELISA, Water (Submitter provides test kit; cost is for the analysis of each sample)	\$12.00
Endothall, Water	\$144.00
Glyphosate, Water	\$142.00
Haloacetic Acids, Water	\$150.00
Oil and Grease, Water	\$44.00
Organochlorine Pesticides, Water	\$135.00
Polychlorinated Biphenyls (PCBs)	\$117.00
Polycyclic aromatic hydrocarbons (PAHs), Soil	\$200.00
Semi-volatile Compounds, Water	\$182.00
Semi-volatile, GC-MS Screen (Qualitative Results)	\$125.00
Total Trihalomethanes (TTHMs)	\$100.00
Trichloroethylene (TCE) Tetrachloroethylene (PCE), Air	\$50.00
Unknown Identification	\$100.00
Volatile Organic Compounds (VOC), Water and Soil	\$187.00

(3-21-12)

201. -- 899. (RESERVED)

900. WAIVER OF FEES.

Upon demonstration of good cause, any fee levied under this chapter may be suspended or waived, in full or in part, by the State Health Official. (3-29-10)

901. -- 999. (RESERVED)

16.02.26 – THE IDAHO CHILDREN’S SPECIAL HEALTH PROGRAM

000. LEGAL AUTHORITY.

Section 56-1003, Idaho Code, directs the Department of Health and Welfare to establish rules as may be necessary to deal with problems related to personal health. The Children’s Special Health Program (CSHP) provides medical and rehabilitative services to persons age birth to eighteen (18) years who meet the diagnostic eligibility criteria defined in Sections 101 through 108 of these rules. The Omnibus Budget Reconciliation Act (OBRA) of 1989 requires that thirty percent (30%) of the Maternal and Child Health Block Grant to each state be committed to programs for children with special health care needs. ()

001. TITLE AND SCOPE.

01. Title. These rules apply to the administration of the Idaho Children’s Special Health Program and are titled IDAPA 16.02.26, “The Idaho Children’s Special Health Program.” (4-9-09)

02. Scope of Services. The scope of activities provided by CSHP contractors and private providers such as diagnosis, case management, and treatment. The types of services for which reimbursement is made are related directly to program fiscal resources. Funds available for CSHP are limited in amount. Changes in the scope of services and in rates of reimbursement may be made by administrative decision should budgetary reductions or cost overruns occur. (4-9-09)

002. WRITTEN INTERPRETATION.

This agency has 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. These documents are available for public inspection and copying at cost in the main office and each regional or district office of this agency. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

For the purposes of these rules, the following terms are used: (7-1-97)

01. Applicant. A person under age eighteen (18) seeking services provided by CSHP. ()

02. Care Coordinator. A Department employee or contractor responsible for receiving and processing CSHP applications and supporting documentation from current and potential CSHP clients. A care coordinator issues authorization memos for services authorized by CSHP. (4-9-09)

03. Children's Special Health Program (CSHP). The program section within the Idaho Department of Health and Welfare, Division of Health, which is responsible for the administration of services leading to the identification, diagnosis, and aftercare of children with special health care needs. (7-1-97)

04. Client. A person under age eighteen (18) with a chronic physically disabling condition which meets one (1) of the diagnostic categories of CSHP. ()

05. Department. The Idaho Department of Health and Welfare. (7-1-97)

06. Diagnosis. The act of identifying a disease from its signs or symptoms. (7-1-97)

07. Division. The Division of Health, a division of the Idaho Department of Health and Welfare, and where CSHP is housed administratively. (7-1-97)

08. Medical Food. A food which is formulated to be consumed or administered enterally (i.e., passing through the stomach and digested in the intestine), under the supervision of a physician and metabolic nutritionist, and which is intended for the specific dietary management of PKU. (4-9-09)

09. Patient. The term “patient” is synonymous with the term “client” as defined in Subsection 101.04 of this rule. (4-9-09)

011. -- 050. (RESERVED)

051. DIAGNOSTIC/CONSULTATIVE SERVICES.

Clinical examination of a CSHP client to confirm or determine the extent of their condition and recommend treatment options. Physician specialists under contract to CSHP may continue to serve in consultative roles to clients’ primary

care physicians following clinical examination. (7-1-97)

052. TREATMENT SERVICES.

Following the diagnostic process, individuals may be closed to further service as having "no eligible condition found." Program-eligible clients are accepted for continuing service coordination under CSHP. Care is provided through clinics where treatment schedules are planned and periodic review of cases are conducted, and through private medical providers. An individual client's treatment plan may cover a variety of related services. (4-9-09)

053. FOLLOW UP AND CASE MANAGEMENT.

CSHP will contract with care coordinators to follow-up on CSHP clients receiving treatment through the program to assure that a treatment plan is outlined. These staff will also implement timely scheduling of medical habilitative and rehabilitative services. (4-9-09)

054. HOSPITAL IN-PATIENT SERVICES.

If diagnostic evaluation requires hospitalization, a maximum of three (3) days inpatient care may be authorized. No inpatient hospital services are paid for emergency, acute or chronic medical care. (7-1-97)

055. -- 099. (RESERVED)

100. DIAGNOSTIC CATEGORIES.

CSHP will serve clients in eight (8) general diagnostic categories: Cardiac, Cleft Lip and Palate, Craniofacial, Cystic Fibrosis, Neurological, Orthopedic, Phenylketonuria (PKU) and Plastic/Burn. These categories are explained further in Sections 101 through 108 of these rules. (7-1-97)

101. CARDIAC.

01. Eligible Conditions. Eligible conditions include congenital heart disease or defects, acquired heart disease and dysrhythmia. (7-1-97)

02. Excluded Conditions. The following conditions are excluded from care under CSHP: patent ductus arteriosus (PDA) in premature neonates, inpatient care for non-diagnostic and non-surgical admissions. Acute care, despite its potential relationship to an underlying covered condition. (7-1-97)

03. Spending Limit. Services provided to eligible patients under the Cardiac Program are subject to a per patient, annual spending limit of twenty five thousand dollars (\$25,000) for each fiscal year, July 1 through June 30. (7-1-97)

102. CLEFT LIP AND PALATE.

01. Eligible Conditions. Eligible conditions include cleft lip, cleft palate, cleft palate with cleft lip, cleft nose, Pierre Robin syndrome, choanal atresia, palatal incompetence, severe malocclusions resulting from disease or trauma, severe structural deformities involving the growth and development of the mandible or maxilla. (7-1-97)

02. Excluded Conditions. The following conditions are specifically excluded from care under the CSHP Cleft Lip/Palate Program: isolated hyper/hyponasality, non-cleft-related malocclusions, mild familial malocclusions. (7-1-97)

03. Spending Limits. Services provided to eligible patients under the CSHP Cleft Lip and Palate program are subject to a per patient, annual spending limit of fifteen thousand dollars (\$15,000) for each fiscal year, July 1 through June 30. (7-1-97)

103. CRANIOFACIAL.

01. Eligible Conditions. Eligible conditions include congenital anomalies of the skull and face, acrocephalosyndactyly, craniosynostosis, Crouzon's Disease, hypertelorism (severe), platybasia, hemifacial microsomia, including associated microtia. (7-1-97)

02. Excluded Conditions. The following conditions are excluded from care under the Idaho CSHP

Craniofacial Program: isolated microtia, temporal mandibular joint disease (TMJ), simple hemangioma not affecting other organ systems. (7-1-97)

03. Spending Limits. Services provided to eligible patients under the CSHP Craniofacial Program are subject to a per patient, annual spending limit of eighteen thousand dollars (\$18,000) for each fiscal year, July 1 through June 30. (7-1-97)

104. CYSTIC FIBROSIS.

01. Eligible Conditions. In addition to cystic fibrosis, services are also provided under this program to clients eighteen (18) years of age and under who have Kartagener's Syndrome or immotile cilia. (4-9-09)

02. Services Provided. Services available include Physician's office visits or clinic visits, laboratory, x-ray and other tests ordered by physician, medications and drugs prescribed in connection with treatment of cystic fibrosis, transportation to out-of-state medical centers based on physician referral, and home therapy equipment prescribed by the physician. Genetic counseling clinics are available through the state or contractors, and cystic fibrosis patients and their families are encouraged to make use of this service. (4-9-09)

03. Excluded Services. Inpatient hospital care is not paid for under the CSHP Cystic Fibrosis Program, consistent with CSHP policy of not paying acute care. (7-1-97)

04. Spending Limit. Services provided to eligible patients under the CSHP Cystic Fibrosis Program are subject to a per patient, annual spending limit of eighteen thousand dollars (\$18,000) for each fiscal year, July 1 through June 30. (7-1-97)

105. NEUROLOGIC.

01. Eligible Conditions. Eligible conditions include cerebral palsy, seizures/epilepsy, metabolic and storage diseases, central nervous system (CNS) degenerative disorders, congenital CNS anomalies, chronic encephalopathy and CNS injury (near drowning, birth asphyxia), neurocutaneous and neuromuscular syndromes, chronic residua of CNS infections, neuromuscular disorders, attention deficit hyperactive disorder (ADHD) (limited to two (2) visits per year after diagnosis), Tourette's Syndrome, rehabilitation services associated with tumors, infections, trauma and cerebral vascular disease (CVD). (7-1-97)

02. Excluded Conditions. The following conditions are excluded from care under the CSHP Neurologic Program: speech problems without associated CSHP eligibility, primary intellectual disabilities, autism, acute head and spinal cord injuries, primary psychiatric and emotional disorders, headache, and night terrors. (7-1-97)

03. Spending Limit. Services for eligible patients under the CSHP Neurologic Program are subject to a per patient, annual spending limit of twelve thousand dollars (\$12,000) for each fiscal year, July 1 through June 30. (7-1-97)

106. ORTHOPEDIC.

01. Eligible Conditions. Eligible conditions include juvenile rheumatoid arthritis (JRA), developmental dysplasia of the hip, cerebral palsy, neuromuscular dystrophies and atrophies, spinal column defects and deformities causing functional impairment, congenital anomalies of the extremities causing functional impairment, chronic conditions resulting from trauma, limb deficiencies and length discrepancies, chronic infections and inflammations of bones and joints, congenital developmental hip conditions, skeletal dysplasia and other forms of dwarfism, fractures associated with bracing or other long-term care, rehabilitation services associated with tumors and malignancies, metatarsus varus and adductus, polydactyly. (7-1-97)

02. Excluded Conditions. The following conditions are excluded from care: simple fractures and other trauma without handicapping residual, acute infections of bone or joint, simple flat feet (painless), acute care for amputations, acute care for fractures or other injuries, benign genu valgum (knock knee), benign genu varum (bow legs), tibial torsion/femoral version, growth hormone therapy for short stature. (7-1-97)

03. Spending Limits. Services provided to eligible patients under the CSHP Orthopedic Program are

subject to a per patient, annual spending limit of fifteen thousand dollars (\$15,000) for each fiscal year, July 1 through June 30. (7-1-97)

107. PHENYLKETONURIA (PKU).

Under this program eligible patients are provided treatment services which include nutritional assessment, dietary counseling, and provision of medical foods, including formula, in compliance with the patient's treatment plan. PKU patients under eighteen (18) years of age may purchase medical foods from CSHP or CSHP's contractor(s) by pre-paying the appropriate percentage, if any, of CSHP's cost. The percentage of cost is based on the sliding fee scale in Section 157 of these rules. ()

01. PKU Patients Under Eighteen Years of Age. PKU patients under eighteen (18) years of age may purchase medical foods from CSHP or CSHP's contractor(s) by pre-paying the appropriate percentage, if any, of CSHP's cost. The percentage of cost is based on the sliding fee scale in Section 157 of these rules. (4-9-09)

108. PLASTIC/BURN.

01. Eligible Conditions. Eligible conditions include hemangioma and lymphangioma depending on severity, location and effect on function; cystic hygroma; and hemifacial microsomia, including associated microtia. (7-1-97)

02. Excluded Conditions. The following conditions are excluded from care under the Idaho CSHP Plastic/Burn program: acute burn care, cosmetic surgery, hemangioma, including port wine stain, not affecting physical function. (7-1-97)

03. Spending Limit. Services provided to eligible patients under the CSHP Plastic/Burn Program are subject to a per patient, annual spending limit of fifteen thousand dollars (\$15,000) for each fiscal year, July 1 through June 30. (7-1-97)

109. -- 148. (RESERVED)

149. PROGRAM ELIGIBILITY.

Eligibility for participation in CSHP is based on age, diagnosis, legal residence, insurance status, and financial criteria. Eligibility criteria is explained further in Sections 150 through 158 of these rules. (4-9-09)

150. INSURANCE STATUS.

Any person with creditable medical insurance as determined by the Department is not eligible for this program, with the exception of CF and PKU participants. Creditable insurance is determined by using IDAPA 16.03.01, "Eligibility For Health Care Assistance For Families and Children." (4-6-05)

151. AGE.

Applications may be accepted on persons up to age eighteen (18). CSHP will pay for no services after the patient's 18th birthday unless the person is receiving active inpatient treatment at the time of the birthday. In that case CSHP will pay for services until discharge if they fall within the guidelines described in Section 054 of these rules. ()

152. DIAGNOSIS.

Eligible persons are those born with or who acquire physical disabilities or special health care needs as defined under the various programs in Sections 101 through 108 and who require long-term multi-disciplinary care to improve their ability to function. (7-1-97)

153. RESIDENCE.

Applicants must be legal residents of the state of Idaho to receive services from CSHP. Legal residents of neighboring states are not eligible for services. Non-citizens who are legal residents of Idaho are eligible to receive services but undocumented aliens are not. (7-1-97)

154. (RESERVED)

155. INCOME.

Income for a family is defined as "adjusted taxable income" from the family's most recent tax return. Financial eligibility is redetermined annually and may be redetermined more often if family circumstances change during the

year. (7-1-97)

156. FAMILY SIZE.

Family is defined as a "group of related or non-related individuals who are not residents of an institution, but who are living together as one (1) economic unit." Family size is the number of individuals included in that unit. (7-1-97)

157. SLIDING FEE SCALE.

The sliding fee scale in Table 157 of this rule is used to determine the family's percentage of financial participation for a CSHP client's treatment. Each percentage category includes an annual per-client maximum for which a family would be responsible in any given year. The percentage amount applies to all costs incurred for services provided to the client up to the annual maximum indicated.

TABLE 157 - SLIDING FEE SCALE FOR CSHP SERVICES		
Percent of Federal Poverty Level	Percentage of Cost Sharing Responsibility for Responsible Party	Annual Maximum Responsibility Per Client
0% - 185%	0%	\$0
186% -199%	10%	\$1,800
200% - 224%	20%	\$3,600
225% -249%	30%	\$5,400
250% -274%	50%	\$9,000
275% -299%	75%	\$13,500
300% and above	100%	\$18,000

()

158. APPLICATION FOR OTHER RESOURCES.

CSHP applicants are required to apply for benefits from other programs for which they may be eligible and which would reduce the costs to CSHP. The use of all available other resources is required in order to supplement program dollars to the greatest degree possible. For new applicants and during redetermination there will be a review for possible eligibility for other programs and appropriate referrals will be made. Families who refuse to obtain benefits for which they are eligible or do not complete the application process will be closed to the program. (7-1-97)

159. -- 199. (RESERVED)

200. APPLICATIONS.

An application for services from CSHP must, at a minimum, consist of a completed Application Form. A copy of the family's most recent tax return will also be required in order to determine financial eligibility. CSHP may require additional forms such as a Request for Services, Consent for the Release of Information and an Authorization to Release Information. Applications are processed by CSHP staff and contractors. Applicants are notified as to their acceptance or denial by a CSHP Care Coordinator. (4-9-09)

201. -- 249. (RESERVED)

250. PAYMENTS TO PROVIDERS.

CSHP payments are made on the basis of fee schedules or set allowances; where applicable, Idaho Medicaid rates are used. (7-1-97)

251. PRIOR AUTHORIZATION.

To qualify for payment by CSHP, services other than diagnostic/consultative and follow-up/case management must be preauthorized by the CSHP Care Coordinator or designee. A CSHP Authorization Memo, obtained from the

District CSHP Care Coordinator, must be issued for any service authorized under CSHP. (4-9-09)

252. MAXIMUM ON HOSPITAL IN-PATIENT PAYMENTS.

There is a twelve thousand dollar (\$12,000) maximum payment, per hospitalization, for inpatient hospital expenses, exclusive of surgeon, anesthesiologist or other physician costs related to the hospitalization. These costs are applied toward the annual program cap. (7-1-97)

253. BILLING THIRD PARTIES FIRST.

Providers must bill all other sources of direct third party payment before submitting their claims to CSHP for payment. Private insurance must be billed and benefits, or the denial of benefits, ascertained before the CSHP will consider payment. Typically either an Explanation of Benefits (EOB) from the third party payor or a letter stating that the service is not covered will be required before CSHP payment will be made. (7-1-97)

254. THIRD PARTY PAYMENTS IN EXCESS OF CSHP LIMITS.

CSHP will not reimburse providers for services rendered when the amount received by the provider from the third party payor is equal to or exceeds the level of reimbursement allowed by CSHP for those particular services. (7-1-97)

255. MEDICAID ELIGIBILITY.

Any person who may be eligible for Medicaid is required to apply before CSHP services are authorized. CSHP is always last payor to Medicaid. (7-1-97)

256. OUT-OF-STATE-CARE.

CSHP will not pay for care out-of-state that is available in-state. Any exceptions to this rule will be determined by the state office of the CSHP. All out-of-state care must be preauthorized through a CSHP clinic or other regular program mechanism. (7-1-97)

257. DURABLE MEDICAL EQUIPMENT.

The CSHP will always be payor of last resort for all durable medical equipment provided to clients. (7-1-97)

258. -- 349. (RESERVED)

350. PROGRAM EXCLUSIONS.

The following is a list of additional conditions, services and items not covered or paid for by CSHP: (7-1-97)

- 01. Excluded Conditions, Services and Items.** (7-1-97)
 - a.** Acute care, such as hospitalization for congestive heart failure or complications of cystic fibrosis. (7-1-97)
 - b.** Ambulance/air ambulance charges. (7-1-97)
 - c.** Behavior problems. (7-1-97)
 - d.** Brain tumors. (7-1-97)
 - e.** Biofeedback equipment. (7-1-97)
 - f.** Routine dental care. (7-1-97)
 - g.** Congenital defects of the gastrointestinal or genitourinary tracts. (7-1-97)
 - h.** Cancer care. (7-1-97)
 - i.** Cosmetic surgery. (7-1-97)
 - j.** Diabetes care. (7-1-97)

- k.** Prescription medicine -- except those prescribed for eligible cystic fibrosis patients. (7-1-97)
 - l.** Educational services. (7-1-97)
 - m.** Eye care except as related to an eligible condition such as cerebral palsy or juvenile rheumatoid arthritis. (7-1-97)
 - n.** Eyeglasses. (7-1-97)
 - o.** Fractures. (7-1-97)
 - p.** Growth Hormone. (7-1-97)
 - q.** Hearing problems, except as related to cleft lip and palate. (7-1-97)
 - r.** Hernias. (7-1-97)
 - s.** Home health/home nursing services. (7-1-97)
 - t.** Infectious diseases. (7-1-97)
 - u.** Legal services. (7-1-97)
 - v.** Minor foot and leg deformities: flat feet, bow legs, knock knees, pigeon toes, tibial torsion and mild femoral anteversion. (7-1-97)
 - w.** Neonatal intensive care in the newborn period. (7-1-97)
 - x.** Orthoptics - visual training therapy. (7-1-97)
 - y.** Routine pediatric care. (7-1-97)
 - z.** Prematurity. (7-1-97)
 - aa.** Pseudohermaphroditism. (7-1-97)
 - bb.** Psychological or psychiatric care or counseling. (7-1-97)
 - cc.** Respiratory or pulmonary problems except as related to cystic fibrosis. (7-1-97)
 - dd.** Respite care. (7-1-97)
 - ee.** Shoes (corrective or orthopedic). (7-1-97)
 - ff.** Sleep Apnea Monitors. (7-1-97)
 - gg.** Spinal disc lesions. (7-1-97)
 - hh.** Transplants. (7-1-97)
 - ii.** Transportation to in-town clinics or other regular services. (7-1-97)
- 02. Individual Consideration.** Conditions not specifically identified within these rules as included or excluded by CSHP will be considered on a case by case basis that may include review by a medical advisor. (4-9-09)
- 351. -- 999. (RESERVED)**

16.02.27 – IDAHO RADIATION CONTROL RULES

000. LEGAL AUTHORITY.

The Idaho Legislature, under the following Sections of statute has granted authority to the Board of Health and Welfare and the Director of the Department to adopt rules related to x-ray producing machines in order to protect the health of the people of Idaho. Sections 56-1041 and 56-1043, Idaho Code, grant authority to the Board of Health and Welfare to adopt radiation control rules. Section 56-1041, Idaho Code, establishes the Department as the designated agency to regulate, license, and control radiation associated with x-ray machines. Section 56-1044, Idaho Code, requires that radiation machines for mammography be registered with the Department, as provided in rule. Section 56-1046, Idaho Code, grants authority to the Department to establish record-keeping and reporting requirements for those who possess or use an x-ray machine. Section 56-1003, Idaho Code, grants authority to the Director to supervise and administer laboratories. Section 56-1007, grants authority to the Department to charge and collect fees established by rule. (4-6-15)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 16.02.27, “Idaho Radiation Control Rules.” ()

02. Scope. Except as otherwise specifically provided, these rules apply to all persons who possess, use, transfer, own, or acquire any radiation machine. ()

002. INCORPORATION BY REFERENCE.

The documents referenced in Subsections 004.01 through 004.03 of this rule are used as a means of further clarifying these rules. These documents are incorporated by reference and are available online as provided, or may be reviewed at the Department of Health and Welfare, Idaho Bureau of Laboratories at 2220 Old Penitentiary Road, Boise, Idaho 83712-8299. (4-6-15)

01. National Council of Radiation Protection (NCRP) Report No. 147. National Council of Radiation Protection (NCRP) Report No. 147, entitled: “Structural Shielding Design and Evaluation for Medical Use of X-rays and Gamma Rays of Energies up to Ten (10) MeV,” issued November 19, 2004, by the National Council on Radiation Protection and Measurement. This document may be obtained from: NCRP Publications, 7910 Woodmont, Bethesda, MD 20814, e-mail: NCRPpubs@NCRPonline.org, phone: 1-301-657-2652, Ext. 14. (4-6-15)

02. Mammography Quality Standards Act Regulations, Part 900. The Mammography Quality Standards Act Regulations, Part 900, located at 21 CFR 900.12 as authorized by 21 U.S.C. 360i, 360nn, 374(e); and 42 U.S.C. 263b. A copy of these regulation may be ordered from the U.S. Food and Drug Administration, 10903 New Hampshire Avenue, Silver Spring, MD 20993, phone: 1-888-INFO-FDA (1-888-463-6332). These regulations are available online at <http://www.fda.gov/Radiation-EmittingProducts/MammographyQualityStandardsActandProgram/Regulations/ucm110906.htm#s9001>. (4-6-15)

03. Suggested State Regulations for Control of Radiation, Volume 1. This publication is being adopted with the exclusions, modifications, and additions listed below in Subsections 004.03.a through 004.03.k of this rule. Suggested State Regulations for Control of Radiation, Volume 1, is published by the Conference of Radiation Control Program Directors, Inc., 1030 Burlington Lane, Suite 4B, Frankfort, Kentucky 40601. It is also available online at <https://www.crcpd.org/page/SSRCRs>. (4-6-15)

a. Part A -- General Provisions (March 2003). Modifications have been made to this Part. See Sections 100 - 199 of these rules. (4-6-15)

b. Part B -- Registration [Licensure] of Radiation Machine Facilities, [Services] - And Associated Healthcare Professionals (February 2009). Exclusions and modifications have been made to this Part. See Sections 200 - 299 of these rules. (4-6-15)

c. Part C -- Licensing of Radioactive Material (March 2010). This Part is excluded from incorporation. (4-6-15)

d. Part D -- Standards for Protection Against Radiation (March 2003). The following Sections of this Part are incorporated: 1101a, 1101b, 1101c, 1201a, 1201b, 1201c, 1201f, 1206, 1207, 1208, 1301, 1501, 1502, 1503, 1601, 1602, 1901, 1902, 1903, 1904c, 2102, 2103a, 2104, 2105, 2106, 2107a, 2110, 2201, 2202, 2203, 2204, 2205, and 2207b. (4-6-15)

e. Part E -- Radiation Safety Requirements for Industrial Radiographic Operations (February 1999). Exclusions have been made to this Part. See Sections 400 - 499 of these rules. (4-6-15)

f. Part F -- Diagnostic X-rays and Imaging Systems in the Healing Arts (May 2009). This Part is incorporated with no exclusions, modifications, or additions. (4-6-15)

g. Part G -- Use of Radionuclides in the Healing Arts (March 2003). This Part is excluded from incorporation. (4-6-15)

h. Part H -- Radiation Safety Requirements for Analytical X-ray Equipment (January 1991). This Part is incorporated with no exclusions, modifications, or additions. (4-6-15)

i. Part I -- Radiation Safety Requirements For Particle Accelerators (January 1991). This Part is excluded from incorporation. (4-6-15)

j. Part J -- Notices, Instructions and Reports to Workers; Inspections (March 2003). This Part is incorporated with no exclusions, modifications, or additions. (4-6-15)

k. Parts M through Z. These Parts are excluded from incorporation. (4-6-15)

003. -- 049. (RESERVED)

050. LICENSING.

Sections 050 through 099 of these rules provide for the licensing of radiation machines. ()

051. MACHINES REQUIRED TO BE LICENSED.

Radiation producing machines, unless exempt under Section B.4 of the Suggested State Regulations for Control of Radiation incorporated under Section 004 of these rules, must be licensed with the Radiation Control Agency in accordance with the requirements of Sections B.6 through B.9, of the Suggested State Regulations for Control of Radiation, as applicable. ()

052. FEES.

01. Radiation Licensing Fees. Radiation facility fees apply to each person or facility owning, leasing, storing, or using radiation-producing machines. This fee is assessed on the same cycle as inspections and consists of a base licensing fee and a per tube charge. Fees are due within thirty (30) calendar days of the renewal date. A late charge of fifty (\$50) dollars will be assessed at thirty-one (31) days past the renewal date. If the fees are not paid by day ninety-one (91) past the renewal date, licensure will be terminated.

X-Ray Renewal Cycle and Facility Fees			
Facility Type	Renewal Cycle	Facility Fee	Per Tube Fee
Hospital, Clinic, Medical Practice	2 Years	\$50	\$25
Dental, Chiropractic, Podiatric, Veterinary Practice	4 Years	\$50	\$25
Industrial, research, academic/ educational, or security	10 Years	\$50	\$25

(4-6-15)

02. X-Ray Shielding Plan Review and Fee. Facilities housing X-ray producing devices and regulated under these rules must obtain a review of their shielding plan by a qualified expert. A copy of this review, to include a floor plan and site specific shielding calculations, must be submitted to the Radiation Control Agency within thirty (30) days of receipt. Facilities may request a departmental review of the X-ray shielding calculations and floor plan by the Radiation Control Agency. A three hundred fifty dollar (\$350) fee will be charged for this service. (4-6-15)

03. Radiation Safety Program Fee. If a facility or group of facilities under one administrative control employs one (1) or more full-time individuals whose positions are entirely devoted to in-house radiation safety, the facility may pay a flat annual facility fee of one thousand dollars (\$1,000) instead of the licensing fees required in Subsection 052.01 of this rule. In addition, annual submittal of documentation of evidence of an ongoing and functioning quality control program must be submitted for review and approval. (4-6-15)

053. APPLICATION FOR LICENSE.

In addition to the requirements detailed in the incorporated reference, Section B, the following is required with application for use of x-ray producing devices. (4-6-15)

01. Responsible Authority. All applications must be signed by the responsible authority (RA) over the x-ray producing device. Required qualifications of the RA can be found in Section B.6c of the SSRCC. (4-6-15)

02. Application For License. Application for license must be on forms furnished by the Radiation Control Agency and must contain: (4-6-15)

a. Name of the owner, organization or person having administrative control and responsibility for use (responsible authority); and (4-6-15)

b. Address and telephone number where the machine is located; and if the radiation producing machine is used as a mobile device, a central headquarters must be used. (4-6-15)

c. A designation of the general category of use, such as dental, medical, industrial, veterinary, and research; and (4-6-15)

d. The manufacturer, model number, and type of machine; and (4-6-15)

e. Name of the radiation machine supplier, installer, and service agent. (4-6-15)

f. Name of an individual to be responsible for radiation protection, when applicable. (4-6-15)

03. Qualifications for Authorized Operation, Service, and Repair of X-ray Machines. The responsible authority must prohibit any person from operating, performing maintenance, or furnishing servicing or services to an x-ray producing machine under their authority that is not properly trained, certified, or licensed to do so. The responsible authority must obtain and retain documentation for a minimum of two (2) years that all operation, service, repair, and maintenance of x-ray producing machine(s) under their authority are done so by a qualified individual or entity. (4-6-15)

04. Operator Qualifications. No individual will be permitted to act as an operator of a particular machine until such individual has received an acceptable amount of training in radiation safety as it applies to that machine and is approved by the Radiation Protection Supervisor or Radiation Safety Officer. Operators will be responsible for: (4-6-15)

a. Keeping radiation exposure to himself and to others as low as is practical; (4-6-15)

b. Being familiar with safety procedures as they apply to each machine; (4-6-15)

c. Wearing of personnel monitoring devices, if applicable; and (4-6-15)

d. Notifying the Radiation Protection Supervisor or Radiation Safety Officer of known or suspected excessive radiation exposures to himself or others. (4-6-15)

05. Minimum Safety Requirements. Unless otherwise specified within these or the incorporated rules, the following are the minimum safety requirements for personnel acting as radiographers or radiographers assistants. (4-6-15)

a. Licensees must not permit any individuals to act as radiographers as defined in these rules until such individuals: (4-6-15)

- i. Have received copies of and instructions in the licensee's operating and emergency procedures; and have demonstrated understanding thereof; and (4-6-15)
- ii. Have been instructed in the subjects outlined in Subsection 053.06 of this rule, and have demonstrated understanding thereof; and (4-6-15)
- iii. Have received copies of and instruction in the correct execution of these rules and have demonstrated understanding thereof; and (4-6-15)
- iv. Have demonstrated competence to use the specific radiation machine(s), related handling tools, and survey instruments that will be employed in their assignment. (4-6-15)
- v. Have demonstrated an understanding of the instructions in this section by successful completion of a written test and a field examination on the subjects covered. (4-6-15)
- b.** Licensees must not permit any individuals to act as a radiographer's assistant as defined in these rules until such individuals: (4-6-15)
 - vi. Have received copies of and instructions in the licensee's operating and emergency procedures; and have demonstrated understanding thereof; and (4-6-15)
 - vii. Have demonstrated competence to use under the personal supervision of the radiographer the radiation machine(s) and radiation survey instrument(s) that will be employed in their assignment. (4-6-15)
 - viii. Have demonstrated an understanding of the instructions in this section by successfully completing a written or oral test and a field examination on the subjects covered. (4-6-15)
- c.** Records of the above training, including copies of written tests and dates of oral tests and field examinations, must be maintained for inspection by the Radiation Control Agency for three (3) years following termination of employment. (4-6-15)
- d.** Each licensee must conduct an internal audit program to ensure that the Radiation Control Agency's conditions and the licensee's operating and emergency procedures are followed by each radiographer and radiographer's assistant. These internal audits must be performed at least quarterly, and each radiographer must be audited at least annually. Records of internal audits must be maintained for inspection by the Agency for two (2) years from the date of the audit. (4-6-15)

06. Subjects to Be Covered During the Instruction of Radiographers. (4-6-15)

- a.** Fundamentals of Radiation Safety, to include at least: (4-6-15)
 - i. Characteristics of gamma and x-radiation; (4-6-15)
 - ii. Units of radiation dose (millirem); (4-6-15)
 - iii. Bioeffects of excessive exposure of radiation; (4-6-15)
 - iv. Levels of radiation from radiation machines; (4-6-15)
 - v. Methods of controlling radiation dose, including: (4-6-15)
 - (1) Working time; (4-6-15)
 - (2) Working distances; and (4-6-15)
 - (3) Shielding; (4-6-15)

- vi. Radiation Protection Standards; (4-6-15)
- b.** Radiation Detection Instrumentation, to include at least: (4-6-15)
 - i. Use of radiation surveys instruments, including: (4-6-15)
 - (1) Operation; (4-6-15)
 - (2) Calibration; and (4-6-15)
 - (3) Limitations; (4-6-15)
 - ii. Survey techniques; (4-6-15)
 - iii. Use of Personnel Monitoring Equipment, including: (4-6-15)
 - (1) Film badges, TLDs; (4-6-15)
 - (2) Pocket dosimeters; and (4-6-15)
 - (3) Pocket chambers; (4-6-15)
- c.** Radiographic Equipment, to include operation and control of x-ray equipment; ()
- d.** The Requirements of Pertinent Federal regulations and State rules; (4-6-15)
- e.** The Licensee's Written Operating and Emergency Procedures; and (4-6-15)
- f.** Case histories of radiography accidents. (4-6-15)

07. Modification, Revocation, and Termination of Licensees. In accordance with amendments to the Act, departmental rules or regulations, or orders issued by the Radiation Control Agency, the terms and conditions of all licenses are subject to amendment, revision, or modification, and are subject to suspension or revocation. ()

- a.** Any license can be revoked, suspended, modified, or denied, in whole or in part. (4-6-15)
 - i. For any materially false statement: (4-6-15)
 - (1) In the application; or (4-6-15)
 - (2) In any statement of fact required under provisions of the Act or under these rules; or (4-6-15)
 - ii. Because of conditions revealed: (4-6-15)
 - (1) Within the application; any report, record, or inspection; or (4-6-15)
 - (2) By any other means that would warrant the Radiation Control Agency to refuse to grant a license on an original application; or (4-6-15)
 - iii. For violations of or failure to observe any of the terms and conditions: (4-6-15)
 - (1) Of the Act; or (4-6-15)
 - (2) Of the license; or (4-6-15)
 - (3) Of any rule; or (4-6-15)

(4) Of any regulation; or (4-6-15)

(5) Of an order of the Radiation Control Agency. (4-6-15)

b. Except in cases of willful violation or in which the public health, interest or safety requires otherwise, no license can be modified, suspended, or revoked unless such issues have been called to the attention of the licensee in writing and the licensee afforded the opportunity to demonstrate or achieve compliance with all lawful requirements. (4-6-15)

08. Emergency Action. If the Radiation Control Program Director finds the public health, safety or welfare requires emergency action, the Director will incorporate findings in support of such action in a written notice of emergency revocation issued to the licensee. Emergency revocation is effective upon receipt by the licensee. Thereafter, if requested by the licensee in writing, the Director will provide the licensee a revocation hearing and prior notice thereof. Such hearings are conducted in accordance with IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." (4-6-15)

054. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

Sections 100 through 199 of these rules will be used for exclusions, modifications, and additions to Part A of the Suggested State Regulations for Control of Radiation, Volume 1, as incorporated in Section 004 of these rules. (4-6-15)

101. SCOPE.

Modification to Part A, Section A.1. Except as otherwise specifically provided, these regulations apply to all persons who receive, possess, use, transfer, own, or acquire any source of radiation; provided that nothing in these regulations applies to any person to the extent such person is subject to regulation by the Nuclear Regulatory Commission. (4-6-15)

102. DEFINITIONS.

Additions to Part A, Section A.2. (4-6-15)

01. Act. "Act" means Section 56-1053, Idaho Code. (4-6-15)

02. Agency. "Agency" means the Idaho Department of Health and Welfare. (4-6-15)

103. VIOLATIONS.

Modification to Part A, Section A.8. Any person who willfully violates any provision of the Act is subject to penalties under Section 56-1053, Idaho Code. (4-6-15)

104. IMPOUNDING.

Modification to Part A, Section A.9. Sources of radiation are subject to impounding under Section 56-1052, Idaho Code. (4-6-15)

105. COMMUNICATIONS.

Modification to Part A, Section A.12. All communications and reports concerning these rules, and applications filed under these rules, must be addressed to the Agency at Radiation Control Section, Idaho Department of Health and Welfare, Bureau of Laboratories, 2220 Old Penitentiary Road, Boise, Idaho 83712-8299. (4-6-15)

106. -- 199. (RESERVED)

200. LICENSURE OF RADIATION MACHINE FACILITIES, (SERVICES) - AND ASSOCIATED HEALTHCARE PROFESSIONALS.

Sections 200 through 299 of these rules will be used for exclusions, modifications, and additions to Part B of the Suggested State Regulations for Control of Radiation, Volume 1, as incorporated in Section 004 of these rules. (4-6-15)

- 201. LICENSURE OF RADIATION MACHINE FACILITIES.**
Exclusion to Part B, Section B.6. Subsection B.6.b is excluded from incorporation. (4-6-15)
- 202. RECIPROCAL RECOGNITION OF OUT-OF-STATE RADIATION MACHINES.**
Modifications and additions to Part B, Section B.16. (4-6-15)
- 01. Modification to Part B, Section B.16.a.iv.** States in which this machine is registered or licensed. (4-6-15)
- 02. Addition to Part B, Section B.16 -- New Subsection d.** The owner or person having possession of any radiation producing machine registered or licensed by a federal entity or state other than Idaho, or both, planning to establish regular operations in Idaho, must complete registration of the machine with the Agency within thirty (30) days after taking residence and prior to operation of the machine. Thirty (30) days prior to the expiration date of any out-of-state license for any radiation producing machine, the owner must apply to the Agency for a machine license. (4-6-15)
- 203. -- 400. (RESERVED)**
- 400. RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS.**
Sections 400 through 499 of these rules will be used for exclusions, modifications, and additions to Part E of the Suggested State Regulations for Control of Radiation, Volume 1, as incorporated in Section 004 of these rules. (4-6-15)
- 401. LICENSING AND REGISTRATION REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHY OPERATIONS.**
Exclusions to Part E, Section E.5. Subsections E.5.b.i and E.5.b.ii, are excluded from incorporation. (4-6-15)
- 402. LEAK TESTING AND REPLACEMENT OF SEALED SOURCES.**
Part E, Section E.10 is excluded from incorporation. (4-6-15)
- 403. QUARTERLY INVENTORY.**
Part E, Section E.11 is excluded from incorporation. (4-6-15)
- 404. LABELING, STORAGE, AND TRANSPORTATION.**
Exclusions to Part E, Section E.14. Subsections E.14.a, E.14.b, and E.14.d, are excluded from incorporation. (4-6-15)
- 405. CONDUCTING INDUSTRIAL RADIOGRAPHIC OPERATIONS.**
Exclusion to Part E, Section E.15. Subsection E.15.d is excluded from incorporation. (4-6-15)
- 406. RECORDS OF LEAK TESTING OF SEALED SOURCES AND DEVICES CONTAINING DU.**
Part E, Section E.27 is excluded from incorporation. (4-6-15)
- 407. RECORDS OF QUARTERLY INVENTORY.**
Part E, Section E.28 is excluded from incorporation. (4-6-15)
- 408. UTILIZATION LOGS.**
Part E, Section E.29 is excluded from incorporation. (4-6-15)
- 409. LOCATION OF DOCUMENTS AND RECORDS.**
Exclusions to Part E, Section E.37. Subsections E.37.b.iii, E.37.b.xi, and E.37.b.xii are excluded from incorporation. (4-6-15)
- 410. NOTIFICATIONS.**
Exclusions to Part E, Section E.38. Subsections E.38.a.i, and E.38.a.ii are excluded from incorporation. (4-6-15)
- 411. APPLICATION AND EXAMINATIONS.**
Part E, Section E.39 is excluded from incorporation. (4-6-15)

412. CERTIFICATION IDENTIFICATION (ID) CARD.

Part E, Section E.40 is excluded from incorporation.

(4-6-15)

413. RECIPROCITY.

Part E, Section E.41 is excluded from incorporation.

(4-6-15)

414. SPECIFIC REQUIREMENTS FOR RADIOGRAPHIC PERSONNEL PERFORMING INDUSTRIAL RADIOGRAPHY.

Part E, Section E.42 is excluded from incorporation.

(4-6-15)

415. -- 599. (RESERVED)

600. NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS; INSPECTIONS.

Sections 600 through 699 of these rules will be used for exclusions, modifications, and additions to Part J of the Suggested State Regulations for Control of Radiation, Volume 1, as incorporated in Section 004 of these rules.

(4-6-15)

601. -- 999. (RESERVED)

16.03.03 – RULES GOVERNING CHILD SUPPORT SERVICES

000. LEGAL AUTHORITY.

The Department of Health and Welfare is authorized to promulgate these rules under Sections 7-1206, 32-1207, 32-1209, 32-1214G, 32-1217, 56-203A, and 56-1004, Idaho Code. (4-11-15)

001. TITLE, SCOPE, AND GOAL.

01. **Title.** These rules are titled IDAPA 16.03.03, “Child Support Services.” ()

02. **Scope.** These rules provide the requirements for the administration of the Department’s child support program. (5-8-09)

03. **Goal.** The goal of child support services is to ensure that both parents provide the financial support necessary to provide for their children. This program requires cooperation between families, employers, and the community. (5-8-09)

002. -- 049. (RESERVED)

050. DISTRIBUTION OF SUPPORT COLLECTED IN TITLE IV-E FOSTER CARE MAINTENANCE CASES.

01. **Payment of Support Obligation.** The amount collected as current support shall first be retained by the State to reimburse itself for the foster care assistance payment for that month. Any amount collected in excess of the current month’s foster care assistance payment, but less than the monthly support obligation, shall be paid to the state agency responsible for the child’s placement and care. Any amount collected in excess of the monthly support obligation shall be retained by the State to reimburse any previous foster care assistance payments. The State is limited to reimbursement for past foster care assistance by the amount of the total support obligation owed. Any excess collected after the State has been reimbursed for past foster care assistance payments shall be paid to the state agency responsible for the child’s placement and care. Collections shall be applied to future payments only after all current support and arrears have been satisfied. (7-1-98)

02. **Termination of Foster Care Payments.** When a state stops providing foster care assistance under Title IV-E, the assignment of support rights ends except as to unpaid support which accrued prior to or during the assignment. (7-1-98)

051. – 074. (RESERVED)

075. FEES.

01. **Application Fee.** At the time of application for child support services, a written application must be completed and a fee of twenty-five dollars (\$25) must be paid. The fee must be paid in advance of any services to be provided and is not refundable. (7-1-98)

02. **Income Tax Offset Fees.** A fee of twenty-five dollars (\$25) will be deducted each time child support is collected as a result of an income tax offset. (7-1-98)

03. **Internal Revenue Service (IRS) Referral Fees.** A fee of one hundred twenty-two dollars and fifty cents (\$122.50) shall be charged for a referral to the IRS for full collection of the child support obligation. (7-1-98)

04. **Locate Fees.** Child Support Services may charge an applicant/recipient a fee of ten dollars (\$10) for referral to FPLS for location of a non-custodial parent when no other child support services are being provided. Child Support Services may also charge a fee of four dollars (\$4) for referral to the FPLS for a social security number search. Child Support Services may charge a fee of seventy cents (\$.70) for referral to FPLS for location of a non-custodial parent. (7-1-98)

05. **Federally Mandated Annual Service Fees.** Child Support Services must charge an annual fee of thirty-five dollars (\$35) for each support enforcement case in which it has collected and disbursed at least five hundred fifty dollars (\$550) of support in the federal fiscal year. The fee will be billed to the parent ordered to pay support, but will not be assessed on any case in which an individual has ever received benefits under the Temporary Assistance for Needy Families program. (4-1-19)

076. – 099. (RESERVED)

100. LEGAL COSTS.

An applicant/recipient will be notified at the time of the application that legal costs incurred by Child Support Services will be deducted from any child support collected to reimburse the State. The applicant/recipient will be notified as to the legal costs being incurred. No more than twenty percent (20%) of any collection will be deducted for reimbursement of these costs. Child Support Services will attempt to obtain an order against the non-custodial parent in favor of the applicant/recipient for reimbursement of the legal costs incurred by Child Support Services.

(7-1-98)

101. -- 199. (RESERVED)

200. SECURING AND ENFORCING MEDICAL SUPPORT.

Medical support enforcement services must be provided in any case for which an assignment of medical support is in effect, including:

(3-20-04)

01. Petition. Petitioning the court to include health insurance that is available to either parent at reasonable cost in new or modified court orders for support. Health insurance is considered reasonable in cost if it is available through employment or other group health benefit plan.

(3-20-04)

02. Enforcement. Taking any necessary action to ensure that one (1) parent secures and maintains medical insurance required by the support order.

(3-20-04)

201. ADMINISTRATIVE REVIEW FOR ENFORCEMENT OF MEDICAL SUPPORT.

01. Request. An obligor may request an administrative review within twenty (20) days after a notice of intent to enroll one (1) or more children in a health benefit plan is mailed by the Department.

(3-20-04)

02. Scope of Administrative Review. The Department will cancel a notice of intent to enroll or a National Medical Support Notice (NMSN) if:

(3-20-04)

a. The parent does not owe medical support. (3-20-04)

b. The parent is no longer obligated to provide medical support. (3-20-04)

c. Medical support, excluding Medicaid, is already being provided by either parent. (3-20-04)

202. -- 299. (RESERVED)

300. REVIEW AND MODIFICATION OF SUPPORT ORDERS.

01. Notice. Each parent subject to a child support order in effect in the State that is being enforced by Child Support Services must be notified of the right of the parent to request a review of the order by Child Support Services every thirty-six (36) months. Reviews are not to be done more frequently unless there has been a substantial and material change in circumstances.

(5-8-09)

02. Review. A support order will be reviewed for possible modification:

(5-8-09)

a. If requested by either parent; (5-8-09)

b. If requested by any state, tribal, or foreign child support services agency; or (5-8-09)

c. Automatically, at least every thirty-six (36) months, in any case where the custodial parent or other custodian of the child or children is receiving benefits under Title IV-A of the Social Security Act, either in Idaho or elsewhere.

(5-8-09)

03. After the Review. Each parent will be notified of the proposed adjustment or of the determination that there should be no change in the amount of child support.

(7-1-98)

04. Adjustment. A modification of a support order will only be sought if the review conducted under Subsection 300.02 of this rule results in an obligation under the Child Support Guidelines which differs from the existing order by at least fifteen percent (15%), but not less than fifty dollars (\$50) per month. The following criteria will be applied by Child Support Services to determine whether there has been a substantial and material change of circumstances: ()

a. Whether there has been an increase or decrease in the income, as the term is defined in the Child Support Guidelines, of either parent or other person legally obligated for the support of a child; (7-1-98)

b. Whether there has been a substantial increase or decrease in the assets of either parent or other person legally obligated for the support of a child; (7-1-98)

c. Whether there has been a substantial change in the needs of the child; (7-1-98)

d. Whether there has been a change in the custody or visitation rights of the non-custodial parent; and (7-1-98)

e. Whether other factors exist indicating a substantial and material change in circumstances since the entry or modification of the support order. (7-1-98)

301. CONSUMER REPORTING AGENCIES.

01. Consumer Reporting Agency. Any person who for monetary fees, dues or on a cooperative basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. (7-1-98)

02. Reports. Reports are made to consumer reporting agencies of any non-custodial parent who owes overdue support exceeding two thousand dollars (\$2,000) and is at least three (3) months in arrears after the court order is finalized. Notice will be provided to the non-custodial parent prior to the report being made available to the agencies and will inform the non-custodial parent of the methods available for contesting the accuracy of the information. (3-29-17)

302. GOOD CAUSE DETERMINATION IN LICENSE SUSPENSION PROCEEDINGS.

01. Definitions. The following definitions apply for this section of rules: (4-11-15)

a. “Obligor” means an individual who is ordered to pay child support under an order issued by a court or authorized administrative authority. (4-11-15)

b. “Obligee” means an individual who is ordered to receive child support under an order issued by a court or authorized administrative authority. (4-11-15)

c. “Motor Vehicle License” means a license required to operate any type of motor vehicle. (4-11-15)

d. “Occupational or Professional License” means a license issued to allow a person to practice or engage in any business, occupation, or profession. (4-11-15)

e. “Recreational License” means a license, certificate, or permit authorizing an individual to engage in any recreational activity including, but not limited to, hunting, fishing, and trapping. (4-11-15)

02. Res Judicata. No issues that have been previously litigated may be considered at the license suspension hearing. (7-1-98)

03. Good Cause in Motor Vehicle and Occupational License Suspension Proceedings. The license suspension will be denied or stayed if the obligor proves one (1) of the following conditions exist: (4-11-15)

- a.** The obligor has been declared physically disabled by Social Security, workman’s compensation, or another competent authority that works with disabled individuals, and that the disability has directly resulted in the current inability to pay the child support obligation; (4-11-15)
- b.** The obligor is experiencing the effects of an extended illness or accident that has directly resulted in the current inability to pay the child support obligation; (4-11-15)
- c.** The obligor is a student whose enrollment is a result of a referral from Vocational Rehabilitation, workman’s compensation, or other competent authority working with disabled individuals; (4-11-15)
- d.** The obligor is incarcerated in any county, state, or federal correctional facility, and proves that they have no assets. (4-11-15)
- e.** The obligor is receiving Temporary Assistance for Families in Idaho (TAFI) or Supplemental Security Income benefits; ()
- f.** The obligor has court-ordered physical custody of all of the children listed in the order or orders for support; (4-11-15)
- g.** Child support is being collected directly from the obligor’s income through an income withholding order issued by the Department to the obligor’s employer or other income source. (7-1-99)

04. Not Good Cause in Motor Vehicle and Occupational License Suspension Proceedings. Any factor not defined as good cause in Subsection 302.03 of this rule is not good cause for a denial or stay of a license suspension, including but not limited to the following: ()

- a.** The obligor is unemployed, underemployed, or has difficulty maintaining consistent employment; (7-1-98)
- b.** The obligor claims to be disabled but has not applied for disability or other benefits, or has been refused benefits; (4-11-15)
- c.** The obligor asserts that the child support obligation is too high; (7-1-98)
- d.** The obligor has been denied full visitation with the child or children; or (7-1-98)
- e.** The obligor alleges the obligee misuses the child support. (7-1-98)

05. Good Cause in Recreational License Suspension Proceedings. The license suspension will only be stayed if the obligor proves one (1) of the following conditions exist: (4-11-15)

- a.** The obligor is receiving TAFI or Supplemental Security Income benefits; or (4-11-15)
- b.** The obligor has court-ordered physical custody of all of the children listed in the order or orders for support. (4-11-15)

303. -- 999. (RESERVED)

APPENDIX A - ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT

ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT

State _____	Original Order/Notice
Co./City/Dist. of _____	Amended Order/Notice
Date of Order/Notice _____	Terminate Order/Notice
Court/Case Number _____	
Employer/Withholder's Federal EIN Number _____)	RE: *
_____)	Employee/Obligor's Name (Last, First, MI)
_____)	Employee/Obligor's Social Security Number
Employer/Withholder's Name _____)	*
Employer/Withholder's Name _____)	Employee/Obligor's Case Identifier
_____)	Custodial Parent's Name (Last, First, MI)
_____)	

Child(ren)'s Name(s): **DOB** **Child(ren)'s Name(s):** **DOB**

ORDER INFORMATION: This is an Order/Notice to Withhold Income for Child Support based upon an order for support from _____. By law, you are required to deduct these amounts from the above-named employee's/obligor's income until _____ even if the Order/Notice is not issued by your State.

If checked, you are required to enroll the child(ren) identified above in any health insurance coverage available through the employee's/obligor's employment. _____

\$ _____ per _____ in current support
\$ _____ per _____ in past-due support Arrears 12 weeks or greater? yes no
\$ _____ per _____ in medical support
\$ _____ per _____ in other (specify)
\$ _____ per _____ in other (specify)

for a total of \$ _____ per _____ to be forwarded to the payee below.

You do not have to vary your pay cycle to be in compliance with the support order. If your pay cycle does not match the ordered support payment cycle, use the following to determine how much to withhold:

\$ _____ per weekly pay period. \$ _____ per semimonthly pay period (twice a month).
\$ _____ per biweekly pay period (every two weeks). \$ _____ per monthly pay period.

REMITTANCE INFORMATION: Follow the laws and procedures of the employee's/obligor's principal place of employment even if such laws and procedures are different from this paragraph:

You must begin withholding no later than the first pay period occurring _____ working days after the date of this Order/Notice. Send payment within _____ working days of the payday date of withholding. You are entitled to deduct a fee of _____ to defray the cost of withholding. The total withheld amount, including your fee, cannot exceed _____% the employee/obligor's aggregate disposable weekly earnings. For the purpose of the limitation on withholding, the following information is needed (see #9 below):

When remitting payment provide the paydate/date of withholding and the case identifier _____.
If remitting by EFT/EDI, use this FIPS code: *; _____; Bank routing code: * _____;
Bank account number: * _____.

Make it payable to: **Payee and case identifier**

Send check to: **Payee's Address**

Authorized by _____

Print Name _____

ADDITIONAL INFORMATION TO EMPLOYERS AND OTHER WITHHOLDERS

___ **If checked you are required to provide a copy of this form to your employee.**

1. **Priority:** Withholding under this Order/Notice has priority over any other legal process under State law against the same income. Federal tax levies in effect before receipt of this order have priority. If there are Federal tax levies in effect please contact the requesting agency listed below.

2. **Combining Payments:** You can combine withheld amounts from more than one employee/obligor's income in a single payment to each agency requesting withholding. You must, however, separately identify the portion of the single payment that is attributable to each employee/obligor.

3. **Reporting the Paydate/Date of Withholding:** You must report the paydate/date of withholding when sending the payment. The paydate/date of withholding is the date on which the employee is paid and controls the income, i.e. the date the income check or cash is given to the employee, or the date in which the income is deposited directly in his/her account.

4. **Employee/Obligor with Multiple Support Withholdings:** If you receive more than one Order/Notice against this employee/obligor and you are unable to honor them all in full because together they exceed the withholding limit of the State of the employee's principal place of employment (see #9 below), you must allocate the withholding based on the law of the State of the employee's principal place of employment. If you are unsure of that State's allocation law, you must honor all Orders/Notices' current support withholdings before you withhold for any arrearages, to the greatest extent possible under the withholding limit. You should immediately contact the last agency that sent you an Order/Notice to find the allocation law of the state of the employee's principal place of employment.

5. **Termination Notification:** You must promptly notify the payee when the employee/obligor is no longer working for you. Please provide the information requested and return a copy of this order/notice to the agency identified below.

EMPLOYEE'S/OBLIGOR'S NAME: _____
EMPLOYEE'S CASE IDENTIFIER: _____ **DATE OF SEPARATION:** _____.
LAST KNOWN HOME ADDRESS _____.
NEW EMPLOYER'S ADDRESS _____.

6. **Lump Sum Payments:** You may be required to report and withhold from lump sum payments such as bonuses, commissions, or severance pay. If you have any questions about lump sum payments, contact the person or authority below.

7. **Liability:** If you fail to withhold income as the Order/Notice directs, you are liable for both the accumulated amount you should have withheld from the employee/obligor's income and any other penalties set by State law.

8. **Anti-discrimination:** You are subject to a fine determined under State law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against any employee/obligor because of a child support withholding.

9. **Withholding Limits:** You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. Section 1673(b)); or 2) the amounts allowed by the State of the employee's/obligor's principal place of employment. The Federal limit applies to the aggregate disposable weekly earnings (ADWE). ADWE is the net income left after making mandatory deductions such as: State, Federal, local taxes; Social Security taxes; and Medicare taxes. The Federal CCPA limit is 50% of the ADWE for child support and alimony, which is increased by: 1) 10% if the employee does not support a second family; and/or 2) 5% if arrears are more than 12 weeks old. (see boxes on front)

10. _____

Requesting Agency _____

If you or your employee/obligor have any questions, contact:

by telephone at _____ or
by FAX at _____ or
by Internet _____.

(7-1-98)

16.03.18 – MEDICAID COST-SHARING

000. LEGAL AUTHORITY.

Under Section 56-202(b), Idaho Code, the Legislature has delegated to the Department of Health and Welfare the responsibility to establish and enforce such rules as may be necessary or proper to administer public assistance programs within the state of Idaho. Under Sections 56-253 and 56-257, Idaho Code, the Department of Health and Welfare is to establish enforceable cost-sharing requirements within the limits of federal Medicaid law and regulations. Furthermore, the Idaho Department of Health and Welfare is the designated agency to administer programs under Title XIX and Title XXI of the Social Security Act. (3-21-12)

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 16.03.18, “Medicaid Cost-Sharing.” (3-19-07)

02. **Scope.** These rules describe the general requirements regarding the administration of the cost-sharing provisions for participation in a medical assistance program providing direct benefits in Idaho. (3-21-12)

002. WRITTEN INTERPRETATIONS.

This agency may have written statements which pertain to the interpretation of the rules of this chapter. These documents are available for public inspection. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Copayment (Copay).** The amount a participant is required to pay to the provider for specified services. (3-19-07)

02. **Cost-Sharing.** A payment the participant or the financially responsible adult is required to make toward the cost of the participant’s health care. Cost-sharing includes both copays and premiums. (3-29-10)

03. **Creditable Health Insurance.** Creditable health insurance is coverage that provides benefits for inpatient and outpatient hospital services and physicians' medical and surgical services. Creditable coverage excludes liability, limited scope dental, vision, specified disease or other supplemental-type benefits. (3-29-10)

04. **Department.** The Idaho Department of Health and Welfare, or a person authorized to act on behalf of the Department. (3-19-07)

05. **Family Income.** The gross income of all financially responsible adults who reside with the participant, as calculated under IDAPA 16.03.01, “Eligibility for Health Care Assistance for Families and Children.” (3-29-10)

06. **Family Size.** Family size is the number of people living in the same home as the child. This includes relatives and other optional household members. (3-29-10)

07. **Federal Poverty Guidelines (FPG).** The federal poverty guidelines issued annually by the U. S. Department of Health and Human Services (HHS). The federal poverty guidelines are available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>. (3-29-10)

08. **Financially Responsible Adult.** An individual who is the biological or adoptive parent of a child and is financially responsible for the participant. (3-29-10)

09. **Medical Assistance.** Payments for part or all of the cost of services funded by Titles XIX or XXI of the federal Social Security Act, as amended. (3-19-07)

10. **Participant.** A person eligible for and enrolled in the Idaho Medical Assistance Program. (3-19-07)

11. **Physician Office Visit.** Services performed by a physician, nurse practitioner or physician's assistant at the practitioner's place of business, including Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs). Indian Health Clinic/638 Clinics providing services to individuals eligible for Indian Health Services are not included. (3-21-12)

12. **Premium.** A regular and periodic charge or payment for health coverage. (4-6-05)
13. **Social Security Act.** 42 U.S.C. 101 et seq., authorizing, in part, federal grants to the states for medical assistance to eligible low-income individuals. (3-19-07)
14. **State.** The state of Idaho. (4-6-05)
15. **Title XIX.** Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources. (3-29-10)

16. **Title XXI.** Title XXI of the Social Security Act, known as the State Children's Health Insurance Program (SCHIP). This is a program that primarily pays for medical assistance for low-income children. (3-29-10)

011. -- 024. (RESERVED)

025. PARTICIPANTS EXEMPT FROM COST-SHARING.

Native American and Alaskan Native participants are exempt from the cost-sharing provisions of Sections 200, 205, 215, and 320 of these rules. The participant must declare his race to the Department to receive this exemption. (3-21-12)

026. -- 049. (RESERVED)

050. GENERAL COST-SHARING.

01. **Cost-Sharing Maximum Amount.** A family will be required to pay out of pocket costs not to exceed five percent (5%) of the family's anticipated gross monthly income unless an exception is made as provided in Subsection 050.02 of this rule. (3-21-12)

02. **Exception to Cost-Sharing Maximum.** A family will be required to pay cost-sharing amounts as provided in Sections 215 and 400 of these rules. These cost-sharing amounts may exceed the family's five percent (5%) of anticipated gross monthly income. (3-21-12)

03. **Proof of Cost-Sharing Payment.** If a participant believes that their cost-sharing exceeded the five percent (5%) cost-sharing of the family's anticipated gross monthly income, they must provide proof to the Department of the copy amounts that were paid. (3-21-12)

04. **Excess Cost-Sharing.** A family that establishes proof of payment for cost-sharing that exceeds the five percent (5%) of the family's anticipated gross monthly income will be reimbursed by the Department for the amount paid that exceeds the five percent (5%), except as provided in Subsection 050.02 of this rule. (3-21-12)

05. **Cost-Sharing Suspended.** A family that exceeds the five percent (5%) maximum amount for cost-sharing will not be required to pay a cost-sharing portion for any family participant for the remainder of the calendar month in which proof of payment is established. (3-21-12)

051. - 199. (RESERVED)

200. PREMIUMS FOR PARTICIPATION UNDER THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP).

01. **Family Income Above 133% of FPG.** Each SCHIP participant with family income above one hundred thirty-three percent (133%) and equal to or less than one hundred fifty percent (150%) of the current FPG must pay a monthly premium of ten dollars (\$10) to the Department. (3-29-10)

02. **Family Income Above 150% of FPG.** Each SCHIP participant with family income above one hundred fifty percent (150%) and equal to or less than one hundred eighty-five percent (185%) of the current FPG must pay a monthly premium of fifteen dollars (\$15) to the Department. (3-29-10)

201. -- 204. (RESERVED)

205. PREMIUMS FOR PARTICIPATION UNDER HOME CARE FOR CERTAIN DISABLED CHILDREN (HCCDC).

01. Family Income Above 150% and Equal to or Less Than 185% of FPG. Each HCCDC participant with a family income above one hundred fifty percent (150%) and equal to or less than one hundred eighty-five percent (185%) of the current FPG must pay a monthly premium of fifteen dollars (\$15) to the Department. The maximum monthly premium a family must pay is limited to thirty dollars (\$30). (3-29-10)

02. Family Income Above 185% of FPG. Each HCCDC family with income above one hundred eighty-five percent (185%) of the current FPG must pay a monthly premium to the Department. The monthly premium is a fixed percent of the family's income as provided in the table below. (3-29-10)

TABLE 205.02		
SLIDING FEE SCHEDULE FOR MONTHLY PREMIUMS FOR HCCDC PARTICIPATION		
Family Income Above 185% of Current FPG		Premium Based on % of Family Income
ABOVE	LESS THAN OR EQUAL TO	
185%	250%	1.0%
250%	300%	1.5%
300%	400%	2.0%
400%	500%	2.5%
500%	600%	3.0%
600%	700%	3.5%
700%	800%	4.0%
800%	900%	4.5%
900%	No Upper Limit	5.0%

(3-29-10)

03. Reduction of Premium for Creditable Health Insurance. A family who purchases creditable health insurance for the participant may receive a twenty-five percent (25%) reduction of the required monthly premium. (3-29-10)

04. Failure to Provide Information. Failure to provide the Department with information needed to determine family income and household size may subject the participant to a monthly premium equal to the average monthly cost of coverage for participants receiving Medicaid Enhanced Plan Benefits through HCCDC. (3-29-10)

05. Failure to Pay Premium. Failure to pay the premium for an HCCDC participant will not cause the participant to lose coverage or eligibility for services. A participant eligible through HCCDC is exempt from the provisions of Section 250 of these rules. (3-29-10)

06. Waiver of Premium. The premium may be waived if the Department determines that payment of the premium would cause undue hardship on the family. Undue hardship exists when an unexpected expense would cause the family to forgo basic food or shelter in order to make a premium payment. Detailed documentation of the family's living and insurance expenses demonstrating such hardship must be provided to the Department. (3-29-10)

07. Premium Recalculation. The premium amount is recalculated at each annual eligibility renewal. If a financially responsible adult reports a reduction in family income prior to renewal, the premium will be reduced to the appropriate level upon verification of the reduction to the family's income. When the family income is at a level that does not require premium payments, the premium will no longer be assessed. (3-29-10)

206. (RESERVED)

207. PREMIUMS FOR PARTICIPATION UNDER THE YOUTH EMPOWERMENT SERVICES (YES) PROGRAM.

01. Premium Fee Schedule. Each YES program participant, as that individual is defined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 636, is subject to assessment of a premium based on family income. The Department will establish a premium fee schedule at rates not to exceed maximums set forth in federal law and regulations governing state Medicaid programs. The fee schedule will be published on the Department's website and provided to families participating in the YES program who are subject to premiums. (3-22-18)

02. Enforcement of Premiums. Payment of premiums will be enforced within the limitations of federal laws and regulations governing state Medicaid programs. (3-22-18)

03. Waiver of Premium. The monthly premium described in Subsection 207.01 of this rule may be waived if the Department determines that the family is unable to participate in the cost of care. (3-22-18)

04. Premium Recalculation. The premium amount is recalculated at each annual eligibility redetermination. If a financially responsible adult reports a reduction in family income prior to eligibility redetermination, the premium will be reduced to the appropriate level upon verification of the reduction in the family's income. When the family income is reduced to a level that does not require premium payments, the premium will no longer be assessed. (3-22-18)

208. -- 209. (RESERVED)

210. DEPARTMENT RESPONSIBILITIES.

01. Assessed Premiums. A participant will not be assessed premiums during the time initial eligibility is determined. Obligation for premium payments does not begin for at least sixty (60) days after receipt of application, except for workers with disabilities under Section 215 of these rules. (3-29-10)

02. Premiums Not Assessed Due to Late Review. A participant can not be assessed premiums for extra months of eligibility received due solely to the Department's late review of continuing eligibility, except for workers with disabilities under Section 215 of these rules. (3-29-10)

03. No Retroactive Premiums Assessed. A participant can not be assessed premiums for months of retroactive eligibility. (3-29-10)

04. Notification of Premiums. The Department is required to routinely notify a participant of their premium payment obligations including any delinquencies, if applicable. (3-29-10)

211. -- 214. (RESERVED)

215. PREMIUMS FOR PARTICIPATION IN MEDICAID ENHANCED PLAN.

01. Workers with Disabilities. A participant in the Medicaid for Workers with Disabilities coverage group must share in the cost of Medicaid coverage, if required. Countable income is determined under IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)." A participant's premium for his share of Medicaid costs under this coverage group is determined in Subsections 215.02 through 215.04 of this rule. (3-19-07)

02. Countable Income at or Below 133%. A participant who has countable income at or below one hundred thirty-three percent (133%) of the current federal poverty guideline is not required to pay a premium for Medicaid. (3-19-07)

03. Countable Income Above 133% to 250%. A participant who has countable income above one hundred thirty-three percent (133%) to two hundred fifty percent (250%) of the current federal poverty guideline is required to pay a monthly premium of ten dollars (\$10) to the Department. (3-19-07)

04. Countable Income in Excess of 250%. A participant who has countable income in excess of two hundred fifty percent (250%) of the current federal poverty guideline is required to pay a monthly premium to the Department. The amount due is the greater of ten dollars (\$10); or seven and one-half percent (7.5%) of the participant's income above two hundred fifty percent (250%) of the current federal poverty guideline. (3-19-07)

05. Recomputed Premium Amount. Premium amounts are recomputed when changes to a participant's countable income result in a different percentage premium calculation as determined in Subsections 215.02 through 215.04 of this rule, and at the annual re-determination. (3-19-07)

216. -- 249. (RESERVED)

250. DELINQUENT PREMIUM PAYMENTS.

If the participant is sixty (60) days or more past due on its premium payments, the participant is contacted to determine the reason for the delinquency. If the participant's countable income is less than the amount used for the most recent eligibility determination, the participant is offered a new eligibility determination. If a participant's family income is at a level that does not require premium payments, the premium will no longer be assessed. The change is effective the month after the participant becomes eligible for such benefits. The following Subsections 250.01 through 250.03 of this rule apply to delinquent premium payments. (3-19-07)

01. Delinquent Payments. A participant must not be approved for or renewed for coverage that requires premium payments, if their premium payments are sixty (60) days or more delinquent as of the last working day of their twelve (12) month eligibility period. (3-19-07)

02. Reestablishing Eligibility. A participant can reestablish eligibility by paying the premium debt in full, unless one (1) of the conditions listed in Subsection 250.03 applies. (3-19-07)

03. Premium Debt. Any premium debt assessed, but not paid, will be forgiven if one (1) of the following applies: (3-19-07)

a. The participant reports and the Department determines that the participant's family income is below one hundred and thirty-three percent (133%) FPG. This may occur at any time during the eligibility period; or (3-19-07)

b. A participant in the Medicaid Basic Plan has a medical condition that requires the participant to receive the benefits provided in IDAPA 16.03.10 "Medicaid Enhanced Plan Benefits." (3-19-07)

251. -- 299. (RESERVED)

300. PARTICIPANTS EXEMPT FROM COPAYMENT.

01. Exempt Participants. Certain participants are exempt from copayments for services described in Section 320.03 through 320.10 of these rules. Exempt participants include: (3-21-12)

a. A child under the age of nineteen (19) with family income less than or equal to one hundred and thirty-three percent (133%) of the current federal poverty guidelines (FPG); (3-26-08)

b. An individual age of nineteen (19) or older with family income less than or equal to one hundred percent (100%) of the current federal poverty guidelines (FPG); (3-21-12)

- c. A pregnant or post-partum woman when the services provided are related to the pregnancy; (3-21-12)
 - d. An inpatient in a hospital, nursing facility, intermediate care facility for persons with intellectual disabilities (ICF/ID), or other medical institution, who is required to pay all but a nominal amount of their income to the institution for their care; (3-26-08)
 - e. An adult participant who receives services provided under a waiver of Section 1915c of the Social Security Act (SSA); (3-21-12)
 - f. A participant who has other health care coverage that is the primary payor for the services provided; (3-21-12)
 - g. A participant receiving hospice care; (3-26-08)
 - h. A child in foster care receiving aid or assistance under the Social Security Act (SSA), Title IV, Part B; (3-26-08)
 - i. A participant receiving adoption or foster care assistance under the Social Security Act (SSA), Title IV, Part E, regardless of age; and (3-26-08)
 - j. A woman eligible under the breast and cervical cancer eligibility group. (3-26-08)
- 02. Notification of Copayment.** The Department will provide notification to each participant who is not exempt from the copayment requirements in Subsections 320.03 through 320.10 of these rules. (3-21-12)

301. -- 309. (RESERVED)

310. COPAYMENT FEE AMOUNTS.

- 01. Nominal Amount.** The amount of the copayment must be a nominal amount as provided in 42 CFR 447.54. This nominal amount is set by the U.S. Department of Health and Human Services. (3-26-08)
- 02. Fee Amount.** Beginning on November 1, 2011, the nominal fee amount required to be paid by the participant as a copayment is three dollars and sixty-five cents (\$3.65). This copayment amount will be adjusted annually as determined by the Secretary of Human Services. (3-21-12)
- 03. Annual Increase.** The nominal fee amount will be increased annually by an adjusted percentage rate determined by the Secretary of Health and Human Services as set in the Social Security Act Section 1916. (3-26-08)

311. -- 319. (RESERVED)

320. MEDICAID OUTPATIENT SERVICES SUBJECT TO COPAYMENTS.

Medicaid participants are responsible for making copayments for the outpatient services described in Subsections 320.01 through 320.10 of this rule, unless exempted. The amount of the copayment is provided in Section 310 of these rules. (3-21-12)

01. Accessing Hospital Emergency Department for Non-Emergency Medical Conditions. A participant who seeks care at a hospital emergency department for services that do not meet the definition of an emergency medical condition as defined in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," may be required to pay a copayment to the provider. A participant who must access a hospital emergency department in order to receive routine services for their medical condition is exempt from this provision. (3-21-12)

02. Accessing Emergency Transportation Services for Non-Emergency Medical Conditions. A participant who accesses emergency transportation services for a condition that is determined by the Department to be a non-emergency medical condition may be required to pay a copayment to the provider of the service. (3-21-12)

- 03. Chiropractic Services.** Those services for spinal manipulation performed by a chiropractor. (3-21-12)
- 04. Occupational Therapy.** (3-21-12)
- 05. Optometric Services.** Those services performed by a optometrist that fall into the “General Ophthalmological Services” category of Current Procedural Terminology (CPT). (3-21-12)
- 06. Outpatient Hospital Services.** Any of the services included in Subsections 320.03 through 320.05 and Subsections 320.07 through 320.10 of this rule performed in an outpatient hospital setting. Services performed in a Hospital Emergency Department are excluded, except as provided for in Subsection 320.01 of this rule. (3-21-12)
- 07. Physical Therapy.** (3-21-12)
- 08. Podiatry Services.** Services provided by a podiatrist during an office visit. (3-21-12)
- 09. Physician Office Visit.** Each physician office visit, unless: (3-21-12)
- a.** The visit is for a preventive wellness exam, immunizations, or family planning: (3-21-12)
- b.** The visit is for urgent care provided at a clinic billing as an urgent care facility. (3-21-12)
- 10. Speech Therapy.** (3-21-12)

321. -- 324. (RESERVED)

325. EXCEPTION TO CHARGING A COPAYMENT.

In order for a copay to be charged by the provider, the Medicaid payment amount for the services rendered during a visit must be equal to or greater than ten (10) times the amount of the copay described in Section 310 of these rules. The Medicaid payment amount is determined by the Department and published in the Medicaid Fee Schedule. (3-21-12)

326. -- 329. (RESERVED)

330. COLLECTION OF COPAYMENTS.

- 01. Responsibility for Collection.** The provider of services is responsible for collection of the copayment from the participant. (3-21-12)
- 02. Denial of Services.** The provider may require payment of an applicable copay prior to rendering services. (3-21-12)
- 03. Waiver of Copayment.** The provider may choose to waive payment of any copay. The provider must have a written policy describing the criteria for enforcing collection of copayments and when the copay may be waived. (3-21-12)
- 04. Reduction in Reimbursement.** When a copay is applicable, the provider's reimbursement will be reduced by the amount of the copay regardless of whether or not a copay was charged or collected by the provider. (3-21-12)

331. -- 399. (RESERVED)

400. PARTICIPATION IN THE COST OF HOME AND COMMUNITY-BASED WAIVER SERVICES.

Medicaid participants required to participate in the cost of Home and Community-Based Waiver (HCBS) services as described in IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” must have their share of cost determined as described in Subsections 400.01 through 400.10 of this rule. (3-19-07)

01. Excluded Income. Income excluded under the provisions of IDAPA 16.03.05, “Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD),” Sections 723 and 725, is excluded in determining participation. (3-19-07)

02. Base Participation. Base participation is income available for participation after subtracting all allowable deductions, except for the incurred medical expense deduction in Subsection 400.07 of this rule. Base participation is calculated by the participant's Self Reliance Specialist. The incurred medical expense deduction is calculated by Medicaid. ()

03. Community Spouse. Except for the elderly or physically disabled participant’s personal needs allowance, base participation for a participant with a community spouse is calculated under IDAPA 16.03.05, “Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD),” Section 725. A community spouse is the spouse of an HCBS participant who is not an HCBS participant and is not institutionalized. The HCBS personal needs allowance for a participant living in adult residential care equals the federal Supplemental Security Income (SSI) benefit rate for an individual living independently. (3-19-07)

04. Home and Community Based Services (HCBS) Spouse. Except for the elderly or physically disabled participant's personal needs allowance (PNA), base participation for a participant with an HCBS spouse is calculated and specified under IDAPA 16.03.05, “Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD),” Section 723. An HCBS spouse is the spouse of a participant who also receives HCBS. (3-19-07)

05. Personal Needs Allowance. The participant's personal needs allowance depends on his marital status and legal obligation to pay rent or mortgage. The participant's personal needs allowance is deducted from his income after income exclusions and before other allowable deductions. To determine the amount of the personal needs allowance, use Table 400.05 of this rule:

TABLE 400.05 - PERSONAL NEEDS ALLOWANCE			
Amount of Personal Needs Allowance (PNA) for Participation			
Not Responsible for Rent or Mortgage		Responsible for Rent or Mortgage	
Marital Status	PNA	Marital Status	PNA
No Spouse	One hundred percent (100%) of the federal SSI benefit for a person with no spouse	No Spouse	One hundred and eighty percent (180%) of the Federal SSI benefit for a person with no spouse
Married with Community Spouse	One hundred and fifty percent (150%) of the Federal SSI benefit for a person with no spouse	Married with Community Spouse	One hundred and eighty percent (180%) of the Federal SSI benefit for a person with no spouse
Married with HCBS Spouse	One hundred percent (100%) of the Federal SSI benefit for a person with no spouse. Each spouse receives this amount as his PNA.	Married with HCBS Spouse	One hundred and eighty percent (180%) of the Federal SSI benefit for a single person. Each spouse receives this amount as his PNA.

(3-29-17)

06. Developmentally Disabled Participants. These allowances are specified in IDAPA 16.03.05, “Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD).” The HCBS personal needs allowance for adult participants receiving waiver services under the Developmentally Disabled Waiver is three (3) times the federal SSI benefit amount to an individual in his own home. (3-19-07)

07. Incurred Medical Expenses. Amounts for certain limited medical or remedial services not covered by the Idaho Medicaid Plan and not paid by a third party may be deducted from the base participation amount. The Department must determine whether a participant’s incurred expenses for such limited services meet the

criteria for deduction. The participant must report such expenses and provide verification in order for an expense to be considered for deduction. Costs for over-the-counter medications are included in the personal needs allowance and will not be considered a medical expense. Deductions for necessary medical or remedial expenses approved by the Department will be deducted at application, and changed, as necessary, based on changes reported to the Department by the participant. (3-19-07)

08. Remainder After Calculation. Any remainder after the calculation in Subsection 400.05 of this rule is the maximum participation to be deducted from the participant's provider payments to offset the cost of services. The participation amount will be collected from the participant by the provider. The provider and the participant will be notified by the Department of the amount to be collected. (3-19-07)

09. Recalculation of Participation. The participant's participation amount must be recalculated annually at redetermination or whenever a change in income or deductions becomes known to the Department. (3-19-07)

10. Adjustment of Participation Overpayment or Underpayment Amounts. The participant's participation amount is reduced or increased the month following the month the participant overpaid or underpaid the provider. (3-19-07)

401. -- 999. (RESERVED)

16.03.19 – CERTIFIED FAMILY HOMES

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. (7-1-18)

001. TITLE, SCOPE, AND EXCEPTIONS.

- 01. Title.** These rules are titled IDAPA 16.03.19, “Certified Family Homes.” ()
- 02. Scope.** These rules set the minimum standards and administrative requirements for any 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. (7-1-18)
- 03. Exceptions to These Rules.** These rules do not apply to the following: (4-11-06)
- a.** Any individual who provides only housing, meals, transportation, housekeeping or recreational and social activities. (7-1-18)
 - 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 publicly-funded program. (7-1-18)
 - 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. Care providers who provide care to both veterans and non-veterans living in a “medical foster home” are not exempt from these rules. (7-1-18)
- 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. INCORPORATION BY REFERENCE.

The Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36 - 2010 ADA Standards for Accessible Design, is incorporated by reference. The internet website is http://www.ada.gov/2010ADASTandards_index.htm. (7-1-18)

003. -- 008. (RESERVED)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

- 01. Department Criminal History and Background Check Clearance.** The provider, substitute caregivers, and all adults living in the home are required to 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. (7-1-18)
- 02. When Certification Can Be Granted.** Prior to certification being granted: (7-1-18)
- a.** The provider must have a completed criminal history check, including clearance; and (7-1-18)
 - 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.” (7-1-18)
- 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. (7-1-18)

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 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. (7-1-18)

010. DEFINITIONS AND ABBREVIATIONS -- A THROUGH K.

For the purposes of these rules, the following definitions apply: (7-1-18)

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 them in a daily living environment, including bathing, washing, dressing, toileting, grooming, eating, communication, mobility, and associated tasks. (7-1-18)

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 that identifies the resident's strengths, weaknesses, risks and needs, and includes functional needs, medical needs and behavioral needs. (7-1-18)

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 not able to reside in their own home and who require care, help with activities of daily living, help with instrumental activities of daily living, protection and security, supervision, personal assistance or encouragement toward independence. The certified family home is referred to as "the home" in these rules. (7-1-18)

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 these rules. (7-1-18)

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. (7-1-18)

10. 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. (7-1-18)

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. (7-1-18)

12. 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. (7-1-18)

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 their designee. (4-11-06)

16. 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 their respective discipline and scope of practice. (7-1-18)

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

19. Inadequate Care. The provider fails to provide services required to meet the terms of the negotiated plan of service or provide for room, board, activities of daily living, supervision, first aid, assistance and monitoring of medications, emergency intervention, coordination of outside services or a safe living environment, or engages in violations of residents' rights or takes residents who have been admitted in violation of the provisions of Section 39-3507, Idaho Code. (7-1-18)

20. Incident. An actual or alleged minor event or situation that has impacted or has the potential to impact the resident's health or safety, but does not rise to the level of a critical incident. (7-1-18)

21. 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)

22. 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. (7-1-18)

011. DEFINITIONS AND ABBREVIATIONS -- L THROUGH Z.
For the purposes of these rules, the following definitions apply: (7-1-18)

01. 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 that area to sustain the resident in a daily living environment. (7-1-18)

02. Neglect. The failure to provide food, clothing, shelter or medical care to sustain the life and health of a resident. (7-1-18)

03. Negotiated Service Agreement. The agreement between the resident or their representative, and the provider based on the resident's assessment, health care professional's orders, admission records, and desires of the resident, that outlines services to be provided and the obligations of the provider and the resident. This agreement is also known as a plan of service. (7-1-18)

04. Personal Assistance. The provision of care to the resident by the provider of one (1) or more of the

following services: (7-1-18)

- a. Assisting the resident with activities of daily living; (7-1-18)
- b. Assisting the resident with instrumental activities of daily living; (7-1-18)
- c. Arranging for supportive services; (7-1-18)
- d. Being aware of the resident's general whereabouts; and (7-1-18)
- e. Monitoring the activities of the resident while on the premises of the home to ensure the resident's health, safety and well-being. (7-1-18)

05. 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. (7-1-18)

06. PRN (Pro Re Nata). PRN is an abbreviation meaning “when necessary” used for medication or treatment ordered by a health care professional to an individual allowing the medication or treatment to be given as needed. (7-1-18)

07. Relative. A person related by birth, adoption, or marriage to the third degree, including spouses, parents, children, siblings, grandparents, grandchildren, aunts, uncles, nephews, nieces, great-grandparents, great-grandchildren, great-aunts, great-uncles, and first cousins. (7-1-18)

08. Resident. An adult who lives in a certified family home and who requires personal assistance or supervision. (7-1-18)

09. Substitute Caregiver. An 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. (7-1-18)

10. Supervision. An administrative activity which provides the following: protection, guidance, knowledge of the resident's whereabouts and monitoring activities. (7-1-18)

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. (7-1-18)

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. (7-1-18)

13. Vulnerable Adult. A person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect, or exploitation due to physical or mental impairment that affects the person's judgment or behavior to the extent that they lack sufficient understanding or capacity to make or communicate or implement decisions regarding their person as defined in Section 39-5302(10), Idaho Code. (7-1-18)

14. 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. (7-1-18)

012. -- 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 provider when all certification requirements are met. (7-1-18)

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. (7-1-18)

03. Number of Residents in the Home. The home cannot be certified for more than two (2) residents. A variance may be granted by the Department as described in Section 140 of these rules. (7-1-18)

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. A 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. (7-1-18)

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. (7-1-18)

c. The provider, provider's relatives, and other adults living in the home must not be the legal guardian of the resident unless the provider, provider's relative, or other adult living in the home is a relative of the resident. A variance may be granted by the Department when determined the guardianship is in the best interest of the resident. (7-1-18)

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. (7-1-18)

e. The provider's primary residence must be the certified family home. (7-1-18)

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 home inspection; (7-1-18)

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

d. An interview with the provider's relatives or other members of the household, when deemed necessary; (7-1-18)

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 other members of the household, when the Department determines it is necessary, 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; (7-1-18)

g. Proof that the provider or provider's spouse is listed on the deed, mortgage, or lease of the home; and (7-1-18)

h. 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, the provider must receive training in the following areas: (7-1-18)

- 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; (7-1-18)
- c.** Emergency procedures; (4-11-06)
- d.** Fire safety, including use and maintenance of fire extinguishers, smoke alarms, and carbon monoxide alarms; (7-1-18)
- 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 (7-1-18)
- f.** Complaint investigation and inspection procedures. (7-1-18)

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 Checks.** Satisfactory evidence that the applicant and all adults living in the home are of reputable and responsible character, including criminal history and background checks as provided in Section 009 of these rules. (7-1-18)
- 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 they have 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 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. (7-1-18)
- 07. Proof of Insurance.** Proof of homeowner's or renter's insurance on the applicant's home. For continued certification, the provider must ensure that insurance is kept current. (7-1-18)
- 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 these rules. (7-1-18)

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 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. (7-1-18)

02. Payment of Application Fees. The application fee is required for the following: (7-1-18)

a. Upon application to become a certified family home care provider; (7-1-18)

b. When an application is terminated or the home closes, the applicant must pay the application fee again to reapply for certification; or (7-1-18)

c. When the home will be operated by a new care provider. (7-1-18)

03. Certification Fees. The provider is required to pay to the Department a certification fee of twenty-five (\$25) dollars per month. This amount is billed to the provider quarterly, and is due and payable within thirty (30) days of date of the invoice. (7-1-18)

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. (7-1-18)

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. (7-1-18)

110. ISSUANCE OF CERTIFICATE.

01. Certificate. A certificate is valid for no more than twelve (12) months from the date of approval. The certificate expires at the end of the stated period unless it is continued in effect by the Department as provided in Section 111. of these rules. (7-1-18)

a. The initial certificate requires a scheduled home inspection by a certifying agent. (7-1-18)

b. The certificate is valid only for the location and person named in the application and is not transferable or assignable. (7-1-18)

c. The certificate must be available at the home upon request. (7-1-18)

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. (7-1-18)

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. Prior to moving into the new residence, the provider must submit to the certifying agent the following: (7-1-18)

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; (7-1-18)

ii. An electrical inspection for the new residence as required in Section 101 of these rules; (7-1-18)

iii. Inspection and approval of any fuel-fired heating system in the new residence as required in Section 600 of these rules; and (7-1-18)

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. (7-1-18)

b. The Department will issue a temporary certificate upon review and approval of the information required under Subsection 110.02 of this rule. (7-1-18)

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. (7-1-18)

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. (7-1-18)

03. Provisional Certificate. A provisional certificate may be issued to the home as provided in Section 909 of these rules when it is not in substantial compliance with these rules and the deficiencies do not adversely affect the health or safety of the resident and are not likely to continue beyond six (6) months. (7-1-18)

a. A provisional certificate may be issued for up to six (6) months and 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. (7-1-18)

b. A provisional certificate may be replaced with a certificate when the Department has determined the home is in substantial compliance with these rules prior to the expiration of the provisional certificate. (7-1-18)

c. A certified family home will not be issued more than one (1) provisional certificate in any twelve (12) month period. (7-1-18)

111. RENEWAL OF 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 regional certifying agent where the home is located. ()

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. (7-1-18)

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: (7-1-18)

a. Current first aid and adult CPR cards; (7-1-18)

- 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; (7-1-18)
- d.** Annual fire extinguisher inspection reports, or sales receipts for fire extinguishers that comply with Section 600 of these rules that are less than twelve (12) months old; (7-1-18)
- e.** Log of smoke and carbon monoxide alarm tests, fire extinguisher examinations, emergency plan reviews, and fire drill and evacuation summaries; (7-1-18)
- 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; (7-1-18)
- i.** Proof of homeowner's or renter's insurance; (4-11-06)
- j.** Request for a waiver, variance, or renewal of a variance that meets the requirements in Sections 120 through 140 of these rules as applicable; and (7-1-18)
- k.** Other information as requested by the Department. (4-11-06)

03. Validity of Existing Certificate. The existing certificate, unless suspended or revoked, remains valid until the Department has acted on the renewal application when the application and supporting documentation is filed in a timely manner with the certifying agent. (7-1-18)

112. CHANGE OF PROVIDER OR LOCATION.

01. Change of Provider. Certificates are not transferable or assignable from one (1) individual to another. The home must be certified using the same procedure as a new home that has never been certified when a change of care provider occurs. (7-1-18)

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: (7-1-18)

a. Certified using the same procedure as required in Section 100 of these rules for a new home that has never been certified; or (7-1-18)

b. Temporarily certified by the procedure described in Section 110 of these rules. (7-1-18)

113. 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: (7-1-18)

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; (7-1-18)

02. Convictions. The applicant or provider has been convicted of fraud, gross negligence, abuse, assault, battery or exploitation; (7-1-18)

03. 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; (7-1-18)

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; (7-1-18)

05. Operation Without a License. The applicant or provider has been found to have operated a health facility, residential care or assisted living facility, or certified family home without a license or certificate; (7-1-18)

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; (7-1-18)

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 (7-1-18)

08. Control or Influence. The applicant or provider is directly under the control or influence of any person who is described in Subsections 113.01 through 113.07 of this rule. (7-1-18)

09. Procedure for Appeal of Denial of a Certificate. (7-1-18)

a. Immediately upon denial of any application for 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. (7-1-18)

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)

114. 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. (7-1-18)

02. Placement or Transfer of Resident. Upon discovery of a family home operating without a certificate, the Department may transfer residents to the appropriate placements or refer to the local adult protective services agency when: (7-1-18)

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. (7-1-18)

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. The notification must include the following: ()

01. Date of Notification. (7-1-18)

02. Provider's Certificate. A copy of the certificate, or information from the certificate that includes: (7-1-18)

a. Provider's name; (7-1-18)

b. Address of the home; and (7-1-18)

c. Certificate number. (7-1-18)

03. Closure Date. The written notice must include the planned closure date. The Department will not refund or prorate prepaid certification fees on retroactive closures. (7-1-18)

04. Discharge Plans. If applicable, discharge plans for current residents must accompany the written notice. (7-1-18)

116. REQUIRED ONGOING TRAINING.

The provider must document a minimum of eight (8) hours per year of ongoing, relevant training in the provision of supervision, services, and care. (7-1-18)

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. (7-1-18)

02. Type of Training. (7-1-18)

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 their subject matter. At least half of the required ongoing training hours each year must consist of interactive training. (7-1-18)

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. (7-1-18)

03. Content of Training. (7-1-18)

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. (7-1-18)

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. (7-1-18)

04. Documentation of Training. The provider must document ongoing training. The documentation must include: (7-1-18)

a. Topic of the training with a brief description; (7-1-18)

b. Source of training, including the name of the instructor or author; (7-1-18)

c. Number of hours; (7-1-18)

d. Type and content of training: (7-1-18)

i. Interactive or independent; and (7-1-18)

ii. Resident specific or general. (7-1-18)

117. -- 119. (RESERVED)

120. WAIVERS.

The Department may grant permanent waivers. The decision to grant a waiver 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. (7-1-18)

01. Written Request. The provider must submit a written request for a waiver to the regional certifying agent where the home is located 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: ()

a. Reference to the section of the rules for which the waiver is requested; (4-11-06)

b. Reasons that show good cause for granting the waiver, 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 (7-1-18)

c. 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. (7-1-18)

02. Special Conditions. When granting a waiver, the Department may require the provider to meet special conditions while the waiver is in effect to ensure the health and safety of residents. (7-1-18)

03. Waiver Not Transferable. A waiver granted under Section 120 of this rule is not transferable to any other provider, home, or resident. (7-1-18)

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. (7-1-18)

01. Written Request. The provider must submit a written request for a variance to the regional certifying agent where the home is located 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; (7-1-18)

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 (7-1-18)

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. (7-1-18)

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. (7-1-18)

03. Variance Renewal. To renew a variance, the provider must submit a written request to the regional certifying agent where the home is located at least thirty (30) days prior to expiration of the variance. The request for renewal must include the information 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. (7-1-18)

122. REVOKING A WAIVER OR VARIANCE.

The Department may revoke a waiver or variance. (7-1-18)

01. Causes for Revocation. Revocation of a waiver or variance may occur when: (7-1-18)

a. The provider has not met the special conditions associated with granting the exception; (7-1-18)

b. Conditions within the home have changed such that an exception is no longer prudent; or (7-1-18)

c. The health and safety of residents have otherwise been compromised. (7-1-18)

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. (7-1-18)

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: (7-1-18)

- a. Immediately upon notification, when there is a threat to the life or safety of residents; or (7-1-18)
- b. Within thirty (30) days of notification, when there is no threat to the life or safety of residents. (7-1-18)

123. -- 129. (RESERVED)

130. NURSING FACILITY LEVEL OF CARE 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 variance. A home seeking to provide care to two (2) residents who require nursing facility level of care must request a variance in writing from the Department as required in Section 121 of these rules. (7-1-18)

01. Conditions for a Variance. The Department may issue a written variance permitting the arrangement when: (7-1-18)

- 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 Variance. The Department will revoke the variance when: (7-1-18)

- 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 they do 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. Variance Not Transferable. A variance granted under Subsection 130.01 of this rule is not transferable to any other provider, home, or resident. (7-1-18)

131. -- 139. (RESERVED)

140. VARIANCE TO THE TWO RESIDENT LIMIT.

01. Application for Variance. The provider may apply on forms provided by the Department for a 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. The application must be submitted to the certifying agent where the home is located. The appropriateness of granting the variance is determined by the Department. ()

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: (7-1-18)

- 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 egress from and ingress to the home; (7-1-18)
- 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 a 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. (7-1-18)

03. Other Employment. A provider who is granted a variance to admit three (3) or four (4) residents must not have other gainful employment outside the home unless: (7-1-18)

- 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; (7-1-18)
- 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 who is granted a variance to admit three (3) or four (4) residents must obtain additional training to meet the needs of the residents as follows: (7-1-18)

- 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. (7-1-18)
- 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. (7-1-18)

05. Variance Nontransferable. A variance to care for more than two (2) residents is not transferable to another provider, home, or resident. (7-1-18)

06. Reassessment of Variance. A variance to care for more than two (2) residents must be reassessed at least annually and when either of the following occurs: (7-1-18)

- 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 this rule. (7-1-18)

07. Annual Home Inspection. A certified family home with a variance to care for more than two (2) residents must have a home inspection by a certifying agent at least annually. (7-1-18)

08. Shared Sleeping Rooms. In addition to the requirements in Section 700 of these rules, the provider must not allow more than two (2) residents to share any one (1) sleeping room. (7-1-18)

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. (7-1-18)

141. -- 149. (RESERVED)

150. INSPECTIONS OF HOMES.

The Department will inspect each certified family home at least every twenty-four (24) months, 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. (7-1-18)

01. Notice of Inspection. All inspections, except for the initial certification study, may be made unannounced and without prior notice. (7-1-18)

02. Inspection by Department or Certifying Agent. The Department may use the services of any 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: (7-1-18)

- a.** Examine quality of care and service delivery; (7-1-18)
- b.** Examine home records, resident records, and any records or documents pertaining to any financial transactions between residents and the home, including resident accounts; (7-1-18)
- c.** Examine the physical premises, including the condition of the home, grounds and equipment, food service, water supply, sanitation, maintenance, and housekeeping practices; (7-1-18)
- d.** Examine any other areas necessary to determine compliance with these rules and standards; (7-1-18)
- e.** Interview the provider, any adults living in the home, the resident and the resident's relatives, substitute caregivers, persons who provide incidental supervision, and any other person who is familiar with the home or its operation. Interviews with residents are confidential and conducted privately unless otherwise specified by the resident; and (7-1-18)
- f.** Inspect the entire home, including the personal living quarters of members 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 home. The provider, substitute caregiver, or any other adult living in the home may accompany the inspector. (7-1-18)

03. Statement of Deficiencies. When violations of these rules are identified through the course of an investigation or inspection, depending on the severity, the Department may send a statement of deficiencies to the provider within thirty (30) days of the completed inspection or investigation. The statement of deficiencies will include the findings of the investigation or inspection and any rules the home was found to have violated. (7-1-18)

04. Plan of Correction. When a statement of deficiencies is issued, the provider must develop a plan of correction and submit it to the Department for review and approval. (7-1-18)

- a.** Depending on the severity of the deficiency, the 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 regional certifying agent where the home is located. ()
- b.** An acceptable plan of correction must include: (7-1-18)
 - i.** How each deficiency identified in the statement of deficiencies was corrected or how it will be corrected; (7-1-18)

- ii. What steps have been taken to assure that the deficiency does not recur; (7-1-18)
 - iii. Acceptable time frames for correction of the deficiency; and (7-1-18)
 - iv. Signature of the provider. (7-1-18)
- c.** Follow-up inspections may be conducted to determine whether corrections to deficiencies are being made according to the Department approved plan of correction. (7-1-18)
- d.** The Department may provide consulting services to the provider, upon request, to assist in identifying and correcting deficiencies and upgrading the quality of care in the home. (7-1-18)

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. (7-1-18)

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. ()

01. Investigation. (7-1-18)

a. The Department will investigate any complaint alleging a violation of these rules. Any complaint involving abuse, neglect, or exploitation of a vulnerable adult will also be referred to adult protective services according to Section 39-5303, Idaho Code. (7-1-18)

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, that indicates there was a violation of these rules. (7-1-18)

02. Investigation Method. The nature of the complaint will determine the method used to investigate the complaint. On-site investigations at the home can be unannounced and without prior notice. (7-1-18)

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. (7-1-18)

04. Statement of Deficiencies. 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 as described in Section 150 of these rules. When the Department issues a statement of deficiencies, the provider must prepare and submit a plan of correction as described in Section 150 of these rules. (7-1-18)

05. 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. (7-1-18)

161. -- 169. (RESERVED)

170. MINIMUM STANDARDS OF CARE.

The provider must adequately care for each resident as follows: (7-1-18)

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. (7-1-18)

02. Supervision. Provide appropriate and adequate supervision for twenty-four (24) hours each day

according to the resident's plan of service. (7-1-18)

03. Daily Living Activities. 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 instrumental activities of daily living. (7-1-18)

04. Medication Management. Provide assistance and monitoring of medications as described in Sections 400 through 402 of these rules, as applicable. (7-1-18)

05. Emergency Services. Provide immediate and appropriate interventions on behalf of the resident in response to an emergency, including the following: (7-1-18)

a. Developing plans in advance of an emergency as described in Section 600 of these rules and executing those plans when necessary; (7-1-18)

b. Evacuating the resident from the home; (7-1-18)

c. Providing first aid to the resident when seriously injured; (7-1-18)

d. Administering CPR to the resident unless the resident has an order not to resuscitate; (7-1-18)

e. Arranging for emergency transportation; and (7-1-18)

f. Contacting 9-1-1 for involvement of law enforcement officers or the fire department when necessary for the protection of the resident. (7-1-18)

06. Supportive Services. Coordinate paid services for the resident outside the home, including: (7-1-18)

a. Medical appointments; (7-1-18)

b. Dental appointments; (7-1-18)

c. Other services in the community as identified in the plan of service or reasonably requested by the resident; and (7-1-18)

d. Arrange transportation to the service location and return to the home. (7-1-18)

07. Resident Rights. Protect the resident's rights as listed in Section 200 of these rules. (7-1-18)

08. Safe Living Environment. Provide a physical living environment that complies with Sections 500 through 710 of these rules. (7-1-18)

171. -- 173. (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: (7-1-18)

01. Activities. Recreational activities, provisions for trips to social functions, and daily activities. (7-1-18)

02. Activity Supplies. Activity supplies in reasonable amounts, that reflect the interests of the resident. (7-1-18)

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. (7-1-18)

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: (7-1-18)

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. (7-1-18)

02. Bed. The resident must be provided with their 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. (7-1-18)

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. (7-1-18)

04. Secure Storage. On request, each sleeping room must be equipped with a lockable storage cabinet or drawer for personal items for each resident, in addition to the required storage in resident sleeping rooms. (7-1-18)

05. Bathroom. Access to bathing and toilet facilities that meet the requirements of Section 700 of these rules. (7-1-18)

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 they so choose. (7-1-18)

07. Supplies. Bath and hand towels; wash cloths; a reasonable supply of soap, shampoo, toilet paper, and facial tissue; and first aid supplies. (7-1-18)

08. Housekeeping Service. Housekeeping and maintenance as required in Section 500 of these rules, including laundering of linens and clothing. (7-1-18)

09. Water. Potable water that meets the requirements of Section 500 of these rules. (7-1-18)

10. Sewer. A sewage disposal system that meets the requirements of Section 500 of these rules. (7-1-18)

11. Trash. Disposal of garbage that meets the requirement of Section 500 of these rules. (7-1-18)

12. Heating and Cooling. Sufficient heating and cooling to meet the requirements of Section 700 of these rules. (7-1-18)

13. Electricity. Sufficient electricity to power common household and personal devices. (7-1-18)

14. Telephone. Access to a telephone that meets the requirements of Section 700 of these rules. (7-1-18)

15. Meals. The provider must offer breakfast, lunch, and dinner to the resident. (7-1-18)

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. (7-1-18)

b. Meals offered by the home must meet the dietary requirements or restrictions of the resident when so ordered by a health care professional. (7-1-18)

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: (7-1-18)

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. (7-1-18)

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. (7-1-18)

03. Enrollment Contract. The provider maintains an enrollment contract with each hourly adult care participant that contains the following: (7-1-18)

- a.** Full name of the participant; (7-1-18)
- b.** The participant's date of birth; (7-1-18)
- c.** Primary address of the participant; (7-1-18)
- d.** Names and telephone numbers of the participant's responsible party and other emergency contacts; (7-1-18)
- e.** Name and telephone number of the participant's primary physician; (7-1-18)
- f.** List of medications, diets, allergies, services, and treatments prescribed for the participant and other pertinent health information regarding the participant's needs; (7-1-18)
- 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; (7-1-18)
- h.** The rate charged by the provider for hourly adult care services if the participant is private pay; (7-1-18)
- i.** The number of days the provider will give written notice to the participant's primary contact in advance of terminating the enrollment contract; (7-1-18)
- j.** The date on which hourly adult day services will commence; and (7-1-18)
- 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. (7-1-18)

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. (7-1-18)

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: (7-1-18)

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; (7-1-18)

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; (7-1-18)

c. Access to a bathroom that meets the requirements of Section 700 of these rules; and (7-1-18)

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. (7-1-18)

06. Resident's Personal Space. The personal living space of the resident, including their sleeping room and on-suite bathroom, if equipped, must not be used by hourly adult care participants at any time. (7-1-18)

07. Staffing. The provider must only accept hourly adult care participants for whom they 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: (7-1-18)

a. Each caregiver providing hourly adult care services must meet the qualifications of a substitute caregiver as described under Section 300 of these rules. (7-1-18)

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: (7-1-18)

i. The functional and cognitive status of each hourly adult care participant and resident; (7-1-18)

ii. The size and layout of the home; and (7-1-18)

iii. Staffing ratios must not fall below one (1) caregiver to four (4) residents and hourly adult care participants, combined. (7-1-18)

08. Medications. Assistance with medications to hourly adult care participants must meet the requirements in Sections 400 through 402 of these rules. (7-1-18)

a. The provider is responsible for safeguarding the participant's medications while the participant is receiving services at the home. (7-1-18)

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. (7-1-18)

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 considered a "resident" when that term is used in Section 600 of these rules. When offering hourly adult care, the provider must: (7-1-18)

a. Prohibit smoking or unsupervised smoking in accordance with Section 600 of these rules. (7-1-18)

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. (7-1-18)

c. Conduct fire drills as required in Section 600 of these rules, except that the frequency of the drills must be at least monthly. (7-1-18)

181. -- 199. (RESERVED)

200. RESIDENT RIGHTS POLICY.

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 resident rights policy must include a statement that the resident or any other individual may file a complaint with the Department as described in Section 160 of these rules, when they believe that any resident's right has been violated. Resident rights policies must include the following:

(7-1-18)

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;

(7-1-18)

b. If the resident is married, privacy for visits by their spouse. If both are residents in the home, they are permitted to share a room unless medically inadvisable, as documented by the resident's health care professional;

(7-1-18)

c. The right to control the use of pictures and videos containing the resident's image.

(7-1-18)

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;

(7-1-18)

c. The right to a safe and sanitary living environment; and

(7-1-18)

d. The right to an environment free of illicit drug use or possession and other criminal activities.

(7-1-18)

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;

(7-1-18)

b. The right to receive a response from the provider to any request of the resident within a reasonable time;

(7-1-18)

c. Freedom from discrimination on the basis of race, color, national origin, sex, religion, age, disability, or veteran status;

(7-1-18)

d. Freedom from intimidation, manipulation, and coercion;

(7-1-18)

e. The right to wear their own clothing; and

(7-1-18)

f. The right to determine their own dress and hair style.

(7-1-18)

04. Basic Needs Allowance. Each resident whose care is paid for by publicly-funded assistance must retain, for their personal use, the difference between their total monthly income and the Certified Family Home basic allowance established by IDAPA 16.03.05. "Eligibility for Aid to the Aged, Blind, and Disabled," Section 513.

()

05. Resident Funds and Property. Each resident has the right to manage their personal funds and use their personal property. (7-1-18)

a. The provider must not require the resident to deposit their personal funds into an account controlled by any other person. (7-1-18)

b. Upon accepting written authorization from the resident, or the resident's representative, allowing the provider, provider's relative, or other member of the provider's household 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. (7-1-18)

c. The resident has the right to retain and use their own personal property in their own living area in order to maintain their individuality and personal dignity. The storage and use of these items by the resident must not present a fire or life safety hazard. (7-1-18)

06. Access to Resident. Each 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 their designee, by an adult protection investigator or by the resident's personal health care professional. Each home must also permit the following: (7-1-18)

a. Immediate access to a resident by their relatives, subject to the resident's right to deny or withdraw consent at any time; (7-1-18)

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 (7-1-18)

d. Reasonable access to the resident's records, medications and treatments by the resident's health care professional subject to the resident's permission. (7-1-18)

07. Freedom From Harm. The resident has the right to be free from: (7-1-18)

a. Physical, mental, or sexual abuse; (7-1-18)

b. Neglect; (7-1-18)

c. Exploitation; (7-1-18)

d. Corporal punishment; (7-1-18)

e. Involuntary seclusion; and (7-1-18)

f. Any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat a medical condition. (7-1-18)

08. Health Services. The resident has the right to control their health-related services, including: (4-11-06)

a. The right to retain the services of their own personal physician and dentist; (4-11-06)

b. The right to select the pharmacy or pharmacist of their choice; (4-11-06)

c. The right to confidentiality and privacy concerning their medical or dental condition and treatment; (4-11-06)

- d.** The right to participate in the formulation of their plan of service; (7-1-18)
- e.** The right to decline treatment for any medical condition; and (7-1-18)
- 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. (7-1-18)
- 09. Grievance.** (7-1-18)

 - a.** The resident has the right to voice or file a grievance with respect to care or service that is or fails to be furnished, without discrimination or reprisal for voicing the grievance and the right to prompt efforts by the provider to resolve grievances the resident may have, including those with respect to the behavior of other residents. (7-1-18)
 - b.** The provider must provide a written response to the resident or resident's representative describing how they resolved or attempted to resolve the grievance, and maintain a copy of this written response in the resident record. (7-1-18)
- 10. Advance Notice.** The resident must receive written advance notice at least thirty (30) calendar days prior to their non-emergency transfer or discharge unless the transfer or discharge is for a reason described in Section 260, including the following: (7-1-18)

 - a.** The resident is transferred or discharged only for medical reasons; (7-1-18)
 - b.** To protect their welfare or the welfare of other members of the household; (7-1-18)
 - c.** Nonpayment for their stay; (7-1-18)
 - d.** The resident violates any condition mutually established between the resident and the provider at the time of admission; or (7-1-18)
 - e.** The resident engages in unlawful delivery, production, or use of a controlled substance on the premises of the home. (7-1-18)
- 11. Other Rights.** In addition to the rights outlined in Subsections 200.01 through 200.10 of this rule, 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; (7-1-18)
 - b.** The resident must have access to their personal records, including those described in Section 270 of these rules, and must have the right to confidentiality of personal, medical, and clinical records; (7-1-18)
 - c.** The resident has the right to practice the religion of their 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 the right to review a list of other certified family homes that may be available to meet their needs in case of transfer; (7-1-18)

g. The resident has the right to refuse routine care of a personal nature from any person whom the resident is uncomfortable receiving such care; (7-1-18)

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 RESIDENT RIGHTS.

01. Resident Rights Notice. The provider must inform the resident or their representative, verbally and in writing, at the time of admission to the home, of their legal rights during the stay at the home acknowledged by date and signatures. These rights are found in Section 200 of these rules. The provider must supply a copy of the resident rights policy to the resident or the resident's representative. (7-1-18)

02. Annual Review of Resident Rights. The provider must review the resident rights policy with the resident or their representative at least annually including date and signature. (7-1-18)

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. (7-1-18)

202. ACCESS BY ADVOCATES AND REPRESENTATIVES.

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: (7-1-18)

01. Inform Residents of Services. Visit, talk with and make personal, social and legal services available to all residents. (7-1-18)

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. -- 209. (RESERVED)

210. REPORTING REQUIREMENTS.

The provider must report to the regional certifying agent where the home is located 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 resident according to Sections 39-5303 and 39-5310, Idaho Code. (7-1-18)

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, they must immediately report this information to the Idaho Commission on Aging or its Area Agencies on Aging, according to Section 39-5303, Idaho Code.

(7-1-18)

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:

(7-1-18)

a. Within twenty-four (24) hours of the resident's death or disappearance; and (7-1-18)

b. Within three (3) business days following: (7-1-18)

i. Contact from adult protective services or law enforcement in conjunction with an investigation; (7-1-18)

ii. A visit to an urgent care clinic or emergency room; or (7-1-18)

iii. Admission to a hospital. (7-1-18)

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:

(7-1-18)

a. Date of the incident; (7-1-18)

b. Origin of the fire; (7-1-18)

c. Extent of damage; (7-1-18)

d. How and by whom the fire was extinguished; and (7-1-18)

e. Injuries or deaths, if any. (7-1-18)

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.

(7-1-18)

06. Notice of Investigations. The provider must immediately report to the certifying agent when they, any other adult living in the home, or a substitute caregiver is charged with or under investigation by law enforcement, adult protection services, or child protection services for:

(7-1-18)

a. Abuse, neglect, or exploitation of any vulnerable adult or child; (7-1-18)

b. Other criminal conduct; or (7-1-18)

c. When an adult protection or child protection complaint is substantiated. (7-1-18)

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:

(7-1-18)

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.

(7-1-18)

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.

(7-1-18)

08. Discharge of a Resident. The provider must immediately notify the certifying agent upon the discharge of any resident from the home. (7-1-18)

211. -- 224. (RESERVED)

225. UNIFORM ASSESSMENT REQUIREMENTS.

01. State Responsibility for Publicly Funded Residents. The Department will assess residents accessing services through a publicly funded program according to 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. (7-1-18)

02. Provider Responsibility for Private-Pay Residents. The provider will develop, identify, assess, or direct a uniform needs assessment of each private-pay resident. The uniform needs assessment: (7-1-18)

- a.** Must be completed no later than fourteen (14) calendar days after admission; (7-1-18)
- b.** Must be reviewed when there is a change in condition, or every twelve (12) months, whichever occurs first; (7-1-18)
- c.** Must include: (7-1-18)
 - i.** Identification and background information; (7-1-18)
 - ii.** Medical diagnosis; (7-1-18)
 - iii.** Medical and health needs; (7-1-18)
 - iv.** Prescriptions, including route of administration, and all over-the-counter medications, supplements, treatments, and special diets, if applicable; (7-1-18)
 - v.** Historical and current behavior patterns; (7-1-18)
 - vi.** Cognitive function; (7-1-18)
 - vii.** Psychosocial and physical needs of the resident; (7-1-18)
 - viii.** Functional status; (7-1-18)
 - ix.** Assessed level of care; and (7-1-18)
 - x.** A statement from the resident's health care professional indicating the resident is appropriate for certified family home care. (7-1-18)

d. May be the Department's Uniform Assessment Instrument (UAI) as described in IDAPA 16.03.23, "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 for both publicly funded and private-pay residents are used to evaluate the ability of 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. (7-1-18)

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 must be based on the orders of the resident's health care professionals, and: (7-1-18)

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 care; (7-1-18)

g. Habilitation and training needs; (4-11-06)

h. Behavioral management needs, including identification of situations that trigger inappropriate behavior; (4-11-06)

i. Dated history and physical from the resident's health care professional reflecting the resident's current health status and conducted no earlier than twelve (12) months prior to admission; (7-1-18)

j. Admission records; (4-11-06)

k. Community supportive services; (7-1-18)

l. Resident's desires; (4-11-06)

m. Resident's need for supervision, including the degree; (7-1-18)

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 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. (7-1-18)

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 their representative, if applicable, no later than fourteen (14) days after admission. For a resident receiving services through a publicly-funded program, the copy of the plan must indicate that it has been approved by the Department. (7-1-18)

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. When changes to the plan are made, the resident or resident's representative and the provider must sign and date the changes. (7-1-18)

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 they have the training, appropriate skills, and time to provide adequate care. The provider must be able to provide the levels of service or types of service required for each resident admitted to the home. (7-1-18)

01. Prior Approval Required. The provider must obtain approval from the Department for each admission prior to the prospective resident moving into the home. The following must be provided to the regional certifying agent where the home is located to aid the Department in making its determination: ()

- a.** Name, gender and date of birth of the prospective resident; (7-1-18)
- b.** The contemplated date of admittance of the prospective resident into the home; (7-1-18)
- c.** The prospective resident's history and physical from their health care professional, conducted within the previous twelve (12) month period reflecting their current health status; (7-1-18)
- d.** A list of the resident's current medications and treatments from their health care professional; (7-1-18)
- e.** Contact information for the resident's health care professionals; (7-1-18)
- f.** Contact information for the prospective resident's representative, if applicable; (7-1-18)
- 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 (7-1-18)
- h.** Other information requested by the Department relevant to the appropriateness of the admission and the provider's ability to provide adequate care. (7-1-18)

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. (7-1-18)

03. Emergency Admission. The provider may not accept an emergency admission without prior approval from the Department except under the following conditions: (7-1-18)

- a.** The provider may make a conditional admission when they reasonably believe they have 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 their representative that the admission is conditional upon Department approval. (7-1-18)
- b.** The provider must notify the regional certifying agent where the home is located 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. (7-1-18)

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 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 service, include at least the following: (7-1-18)

- a.** Whether or not the resident will assume responsibility for their own medication; (7-1-18)
 - b.** The provider must have a plan in place for steps the provider will take if the resident is not able to carry out their own self-preservation. (7-1-18)
 - 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; (7-1-18)
 - 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, 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; (7-1-18)
 - h.** Conditions under which an emergency temporary placement will be made as described under Subsection 260.06 of this rule; (7-1-18)
 - i.** Signed permission to provide pertinent information from the resident's record to a hospital, nursing home, residential and assisted living facility, or other certified family home; (7-1-18)
 - j.** Responsibility to obtain consent for medical procedures including the name, address, and telephone number of the guardian or power of attorney for health care for any resident who is unable to make their own medical decisions; (7-1-18)
 - k.** Resident responsibilities as appropriate; (4-11-06)
 - l.** Amount the 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; (7-1-18)
 - 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; (7-1-18)
 - n.** Protections that address eviction processes and appeals comparable to those provided under Idaho landlord tenant law. The admission agreement must either: (7-1-18)

 - i.** Adopt the eviction and appeal processes as described in Title 6, Chapter 3, Idaho Code; or (7-1-18)
 - ii.** Adopt the eviction and appeal processes as described in the version of the admission agreement provided by the Department; and (7-1-18)
 - o.** Additional conditions as agreed upon by both parties but consistent with the requirements of these rules. (7-1-18)
- 05. Termination of Admission Agreement.** The admission agreement must only be terminated under the following conditions: (7-1-18)

a. 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; or (7-1-18)

b. 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: (7-1-18)

i. Nonpayment of the resident's bill identified in Subsection 260.04.l. of this rule; (7-1-18)

ii. The resident violates written conditions as mutually established between the resident and the provider at the time of admission; or (7-1-18)

iii. The resident engages in the unlawful delivery, production, or use of a controlled substance on the premises of the home. (7-1-18)

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 Subsection 260.05 of this rule. An emergency temporary placement must only occur when: (7-1-18)

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 (7-1-18)

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. (7-1-18)

07. Discharge Procedure. The provider must immediately notify the Department upon the transfer or discharge of the resident according to Section 210 these rules. (7-1-18)

08. Return of Resident's Possessions. The provider must document the return of the resident's personal possessions to the resident or resident's representative as agreed in the admission agreement according to Subsection 260.04.e. of this rule: (7-1-18)

a. Return immediately upon discharge: (7-1-18)

i. All personal funds belonging to the resident; and (7-1-18)

ii. Any medication, supplement, or treatment belonging to the resident; (7-1-18)

b. Return within three (3) business days: (7-1-18)

i. If the provider, their relative, or any other member of the household was managing the resident's funds, a copy of the final accounting of the resident's funds; (7-1-18)

ii. All resident belongings as indicated on their belongings inventory; and (7-1-18)

iii. Any other items belonging solely to the resident, including personal documents. (7-1-18)

261. -- 269. (RESERVED)

270. RESIDENT RECORDS. The provider must maintain records for each resident admitted to the home as provided in this rule. (7-1-18)

01. Admission Records. Records required for admission to the home must be maintained, updated, and kept confidential. The 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 resident and resident’s representative, the provider, substitute caregivers, the resident’s health care professionals, and representatives of the Department including certifying agents. All entries must be accurate and reflect updated information as changes occur, recorded legibly in ink, signed and dated, and must include: (7-1-18)

- a. The resident's full legal name; (7-1-18)
- b. The resident's permanent address if other than the home; (7-1-18)
- c. The resident's marital status and sex; (7-1-18)
- d. The resident's place and date of birth; (7-1-18)
- 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; (7-1-18)
- f. The resident's personal health care professionals; (7-1-18)
- g. Admission date and name of the person who completed the admission form; (7-1-18)
- h. Results of a history and physical examination performed by a health care professional reflecting the resident’s current health status and conducted no earlier than twelve (12) months prior to admission; (7-1-18)
- i. A list of medications, treatments, and special diets, if any, prescribed for the resident and signed and dated by their health care professional; (7-1-18)
- j. Religious affiliation if the resident so chooses to disclose; (7-1-18)
- k. Social information, obtained by the provider from the resident or resident’s relatives, service coordinator, legal guardian or conservator, or other knowledgeable individuals to include the resident's social history, hobbies, and interests; (7-1-18)
- l. The written admission agreement as described in Section 260 of these rules; (7-1-18)
- m. A signed copy of the resident rights policy as described in Section 200 of these rules; (7-1-18)
- n. A copy of the resident's assessment as described in Section 225 of these rules; (7-1-18)
- o. A copy of the resident’s signed and dated plan of service as described in Section 250 of these rules; (7-1-18)
- p. An inventory of the resident's belongings that may consist of photographs or a written descriptive list. The resident or the resident’s representative may inventory any personal possession they so choose and expect 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; (7-1-18)
- q. Information about any specific health problems of the resident that may be useful in a medical emergency; (7-1-18)
- r. Any other health-related, emergency, or pertinent information that the resident requests the provider to keep on record; (7-1-18)
- 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; (7-1-18)
- t. Contact name, address, and telephone number of any individual or agency providing supportive services to the resident; and (7-1-18)

- u.** Signed copy of any care plan that is prepared for the resident by an outside service provider. (7-1-18)

02. Ongoing Resident Records. Records must be kept by the provider for services to the resident showing accurate and updated information as services are rendered, including: (7-1-18)

- 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; (7-1-18)

- b.** The provider's written response to any grievance as described in Section 200 of these rules; (7-1-18)

- c.** Notes from the licensed nurse, home health agency, physical therapist, or any other service providers, documenting the services provided to the resident at each visit to the home; (7-1-18)

- d.** Documentation of significant changes in the resident's physical or mental status, and the provider's response; (7-1-18)

- e.** 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; and (7-1-18)

- f.** Medication records as required in Sections 400 through 402 of these rules, as applicable. (7-1-18)

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. Each provider must possess and implement a policy and procedure outlining how the resident's funds will be managed. This policy and procedure must include the following: (7-1-18)

- a.** Statement of whether the provider will or will not manage resident funds. (7-1-18)

- b.** When the resident leaves the home under any circumstances, the provider must: (7-1-18)

- i.** Only retain room and board funds prorated to the last day of the notice period as specified in the admission agreement, or upon the resident moving from the home, whichever is later; (7-1-18)

- ii.** Immediately return all remaining resident funds to the resident or to the resident's representative as specified in the admission agreement according to Section 260 of these rules; and (7-1-18)

- iii.** Only use the resident's funds for that resident's expenses until a new payee is appointed. (7-1-18)

- c.** Prohibit personal loans to the resident from the provider, provider's relatives, and other members of the household unless the loan is from a relative of the resident. When such a loan is made, the provider must: (7-1-18)

- i.** Ensure the terms of the loan are described in a written contract signed by the resident or resident's representative; (7-1-18)

- ii.** Maintain a copy of the loan contract in the resident's record; and (7-1-18)

- iii.** Immediately update documentation of repayments towards the loan. (7-1-18)

02. Managing Resident Funds. 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, their relative, or an individual living in the home acts as the resident's payee, the provider is deemed to be managing the resident's funds. The provider who manages a resident's funds must: (7-1-18)

a. Establish a separate account at a financial institution for each resident to which use of the resident's funds may be reconciled by means of a financial statement; (7-1-18)

b. Prohibit commingling of the resident's funds with the funds of any other person, including borrowing funds from the resident; (7-1-18)

c. Upon request, notify the resident or the resident's representative the amount of the resident's funds in their account that are available for their use; (7-1-18)

d. Charge the resident the amount agreed upon in the admission agreement as described in Section 260 of these rules for their certified family home services on a monthly basis from their funds; (7-1-18)

e. Maintain accounting documentation, including financial statements, receipts and ledgers, for all financial transactions in excess of five dollars (\$5) in which the resident's funds were used. A separate transaction record must be maintained for each resident; (7-1-18)

f. Restore funds to the resident if the 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; (7-1-18)

g. Not require the resident to purchase goods or services from or for the home other than those designated in Section 260 of these rules; (7-1-18)

h. Provide the resident, their legal guardian, their representative with financial power of attorney, and conservator access to the resident's funds; (7-1-18)

i. 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; (7-1-18)

j. On the death of a 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. (7-1-18)

276. -- 299. (RESERVED)

300. SHORT-TERM CARE AND SUPERVISION.

When the provider is temporarily unavailable to provide care or supervision to the resident, they may designate another adult to provide care and supervision, or only supervision to the resident. The provider must assure that this short-term arrangement meets the needs of the resident and protects the resident from harm. (7-1-18)

01. Alternate Caregiver. An alternate caregiver must be a certified family home provider. An alternate caregiver provides care and supervision in their home to a resident from another certified family home according to the resident's original plan of service and admission agreement. The following applies to an alternate care placement: ()

a. The Department must approve an alternate care placement using the process described in Section 260 of these rules. The alternate caregiver must: (7-1-18)

i. Not exceed the number of residents for which their home is certified to provide care; (7-1-18)

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; (7-1-18)

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 facility level of care. (7-1-18)

b. Upon approval from the Department, alternate care may be provided for up to thirty (30) consecutive days; and (7-1-18)

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. (7-1-18)

02. Substitute Caregiver. A substitute caregiver must be an adult designated by the provider to provide care and supervision to the resident in the provider's certified family home. The following apply to the designation of a substitute caregiver: (7-1-18)

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; (7-1-18)

b. Staffing levels in the home must be maintained at the same level as when the provider is available to provide care and supervision; (7-1-18)

c. Substitute care can be provided for up to thirty (30) consecutive days; and (7-1-18)

d. The substitute caregiver must have the following qualifications: (7-1-18)

i. Current certification in first aid and adult Cardio-Pulmonary Resuscitation (CPR) that meets the standards under Section 100 of these rules; (7-1-18)

ii. A criminal history check as provided in Section 009 of these rules; and (4-11-06)

iii. Completion of the "Assistance with Medications" course or other Department-approved training as provided in Section 100 of these rules. (7-1-18)

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 POLICY.

The provider must 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. These policies and procedures must be maintained in the home, and include the following: (7-1-18)

01. Following Orders. Assistance given by the provider must only be as directed by the resident's health care professionals. (7-1-18)

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: (7-1-18)

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; (7-1-18)

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; (7-1-18)

c. An original prescription bottle labeled by a pharmacist describing the order and instructions for

use; and (7-1-18)

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. (7-1-18)

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 400.02 of this rule. (7-1-18)

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. (7-1-18)

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: (7-1-18)

a. Each resident's orders must be reviewed by each staff person assisting residents with medications prior to offering assistance; and (7-1-18)

b. Written instructions must be in place that outline who to notify if any of the following occur: (7-1-18)

i. Doses are not taken; (7-1-18)

ii. Overdoses occur; or (7-1-18)

iii. Side effects are observed. (7-1-18)

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. (7-1-18)

06. Self-administration. When the provider cares for a resident who self-administers their own medications, the provider must follow the standards described under Section 401 of these rules. (7-1-18)

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. (7-1-18)

401. SELF-ADMINISTRATION OF MEDICATION.

If the resident is responsible for administering their own medication without assistance, the provider must ensure the following: (7-1-18)

01. Approval. The provider must obtain written approval stating that the resident is capable of self-administration from the resident's health care professional; otherwise, the provider must comply with the standards in Section 402 of these rules. (7-1-18)

02. Evaluation. The resident's record must include documentation that the resident's health care professional has evaluated the resident's ability to safely self-administer medication. The evaluation must include verification of the following: (7-1-18)

a. The resident understands the purpose of each medication; (7-1-18)

b. The resident is oriented to time and place and knows the appropriate dosage and times to take the medication; (7-1-18)

c. The resident understands the expected effects, adverse reactions, or side effects, and knows what

actions to take in case of an emergency; and (7-1-18)

d. The resident is able to take the medication without assistance or reminders. (7-1-18)

03. Change in Condition. Should the condition of the resident change such that it brings into question their 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. (7-1-18)

04. Safeguarding Medication. The provider must ensure that the medications of a resident who self-administers are safeguarded, including providing a lockable storage cabinet or drawer to the resident as described in Section 175 of these rules. Notwithstanding, the resident must be allowed to maintain their medications under their own control and possession. (7-1-18)

402. ASSISTANCE WITH MEDICATION.

The provider must offer assistance with medications to residents who need assistance; however, only a health care professional may administer medications. Prior to assisting residents with medication, the provider must ensure the following conditions are in place: (7-1-18)

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. (7-1-18)

02. Condition of the Resident. The resident’s health condition is stable. (7-1-18)

03. 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. (7-1-18)

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. (7-1-18)

a. Each medication must be packaged separately unless in a Mediset, blister pack, or similar system. (7-1-18)

b. Medication 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. (7-1-18)

c. Proper measuring devices must be available for liquid medication that is poured from a pharmacy-dispensed container. (7-1-18)

05. Safeguarding Medications. The provider must take adequate precautions to safeguard the medications of each resident for whom they provide assistance. Safeguarding consists of the following: (7-1-18)

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 or over-the-counter medications; (7-1-18)

b. Keeping the designated area or container for the resident’s medications under lock and key when either of the following apply: (7-1-18)

i. The resident’s medications include a controlled substance; or (7-1-18)

ii. Any resident in the home or other member of the household has drug-seeking behaviors. (7-1-18)

c. Ensuring each resident’s designated medication area or container is clean and kept free of contamination, including disposal of loose pills in accordance with Subsection 402.08 of this rule; (7-1-18)

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; and (7-1-18)

e. On at least a monthly basis, document an inventory of narcotic medications. (7-1-18)

06. Administration of Medications. Only a health care professional working within the scope of their 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 procedures are of such a technical nature that they must always be performed by, or under the direct supervision of, a health care professional. These procedures are outlined in IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Section 490. (7-1-18)

07. Documentation of Assistance. Documentation of assistance with medications must be maintained by the provider. The documentation must: (7-1-18)

a. Be logged concurrent with the time of assistance; (7-1-18)

b. Contain at least the following information: (7-1-18)

i. The name of the resident receiving the medication; (7-1-18)

ii. The name of the medication given; (7-1-18)

iii. The dosage of the medication given; and (7-1-18)

iv. The time and date the medication was given. (7-1-18)

c. Indicate the reason for assisting with any PRN medication, including both over-the-counter and prescription medication. (7-1-18)

08. 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 must include: (7-1-18)

a. The name of the medication; (7-1-18)

b. The amount of the medication, including the number of pills at each dosage, if applicable; (7-1-18)

c. The name of the resident for whom the medication was prescribed; (7-1-18)

d. The reason for disposal; (4-11-06)

e. The date on which the medication was disposed; (7-1-18)

f. The method of disposal; and (4-11-06)

g. A signed statement from the provider and a credible witness confirming the disposal of the medication. (7-1-18)

403. -- 499. (RESERVED)

500. ENVIRONMENTAL SANITATION STANDARDS.

The provider is responsible for disease prevention and maintenance of sanitary conditions in the home. (7-1-18)

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 accredited laboratory and show an absence of bacterial 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 (7-1-18)

c. There must be adequate water pressure to meet sanitary requirements at all times. (7-1-18)

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. (7-1-18)

03. Nonmunicipal Sewage Disposal. (7-1-18)

a. For homes with nonmunicipal sewage disposal, at the time of the initial certification and at least every five (5) years thereafter, the provider must 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. (7-1-18)

b. 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. (7-1-18)

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 be provided with tight-fitting lids. (7-1-18)

b. Garbage containers must be maintained in good repair and must not leak or absorb liquids. (7-1-18)

c. Sufficient containers must be available to hold all garbage and refuse that accumulates between periods of removal from the premises. (7-1-18)

d. Storage areas must be kept free of excess refuse and debris. (7-1-18)

05. Insect and Rodent Control. The home must be maintained free from infestations of insects, rodents and other pests. Pesticides used in the control program must be selected, stored, and used safely. (7-1-18)

a. The pesticide must be selected on the basis of the pest involved and used only in the manner prescribed by the manufacturer; (7-1-18)

b. The provider must take necessary precautions to protect the resident from obtaining toxic chemicals, as appropriate for their functional and cognitive ability. (7-1-18)

06. Yard. The yard surrounding the home must be safe and maintained. (4-11-06)

07. Laundry Facilities and Services. A washing machine and dryer must be 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. (7-1-18)

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. Resident sleeping rooms must be thoroughly cleaned including the bed, bedding, furnishings, walls, and floors. Cleaning must occur on at least a weekly basis and immediately before being occupied by a new resident. (7-1-18)

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 their functional and cognitive ability. (7-1-18)

501. -- 599. (RESERVED)

600. FIRE AND LIFE SAFETY STANDARDS.

Each home must meet all applicable requirements of local and state codes concerning fire and life safety. (7-1-18)

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 exterior and interior of the home must be kept free from the accumulation of weeds, trash, debris, rubbish, and clutter. (7-1-18)

02. Fire and Life Safety Requirements. (4-11-06)

a. Smoke alarms must be installed in sleeping rooms, hallways, on each level of the home, and as recommended by the local fire district. (7-1-18)

b. Carbon monoxide (CO) alarms must be installed as recommended when: (7-1-18)

i. The home is equipped with gas or other fuel-burning appliances or devices; or (7-1-18)

ii. An enclosed garage is attached to the home. (7-1-18)

c. Unvented combustion devices of any kind are prohibited from use inside the home. (7-1-18)

d. Any locks installed on exit doors must be easily opened from the inside without the use of keys or any special knowledge. (7-1-18)

e. An electric portable heating device must only be used under the following conditions: (7-1-18)

i. The unit is maintained in good working order and without obvious damage or fraying of the cord; (7-1-18)

ii. The heating element does not exceed two hundred twelve degrees Fahrenheit (212°F); (7-1-18)

iii. The user complies with safety labels, which are to remain on the unit; (7-1-18)

iv. The unit is equipped with automatic shut-off protection when tipped over; and (7-1-18)

v. The unit is operated under direct supervision and at least thirty-six (36) inches away from combustibles including furnishings, bedding, and blankets. (7-1-18)

f. Homes that use fuel-fired stoves must provide adequate railings or other approved protection designed to prevent the resident from coming into contact with the stove surfaces, as appropriate for their functional and cognitive ability. (7-1-18)

g. Each resident's sleeping room 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: (7-1-18)
- i. The window sill height must not be more than forty-four (44) inches above the finished floor; (7-1-18)
 - ii. The window opening must be at least twenty (20) inches in width and twenty-four (24) inches in height; and (7-1-18)
 - 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. (7-1-18)
 - h. Flammable or highly combustible materials must be stored safely. The provider must take necessary precautions to protect the resident from obtaining flammable materials as appropriate for their functional and cognitive ability. (7-1-18)
 - i. Boilers, hot water heaters, and unfired pressure vessels must be equipped with automatic pressure relief valves. (7-1-18)
 - j. A portable fire extinguisher must be mounted on each level of the home. The 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. (7-1-18)
 - k. Electrical installations and equipment must comply with the applicable local and state electrical codes. (7-1-18)
 - l. Fuel-fired heating devices must be approved by the local heating/venting/air conditioning (HVAC) board. (7-1-18)
 - m. Exits must be free from obstruction. (7-1-18)
 - n. Paths of travel to exits and all exit doorways must be at least twenty-eight (28) inches wide. (7-1-18)
 - o. The door into each bathroom and sleeping room must unlock from both sides, if equipped with a lock, in case of an emergency. (7-1-18)
- 03. Smoking.** Smoking is a fire hazard. The provider may choose to allow or not allow smoking. If the provider chooses to allow smoking, they must reduce the risk of fire by: (7-1-18)
- 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 resident unless unsupervised smoking is specifically allowed in their plan of service. (7-1-18)
- 04. Emergency Preparedness.** Each provider must develop and implement a written emergency preparedness plan. The provider must review the emergency plan with the resident(s), or their representative, at admission and at least every six (6) months thereafter. The plan must address the following: (7-1-18)
- a. Evacuation of the home, including: (7-1-18)
 - i. A floor plan of the home depicting at least two (2) routes of escape from each room; (7-1-18)
 - ii. A designated meeting area indicated on the floor plan where all members of the household will congregate upon evacuation of the home; and (7-1-18)

- 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. (7-1-18)
- 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; (7-1-18)
- 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 (7-1-18)
- d. Procedures for any situation in which the provider is incapacitated and unable to provide services. (7-1-18)
- 05. Fire Drills.** The provider must conduct and document fire drills at least quarterly. (7-1-18)
 - 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. (7-1-18)
 - b. Residents who are 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. (7-1-18)
 - c. Documentation, which may consist of video recordings or written logs, must include the following: (7-1-18)
 - i. The date and time of the drill; (7-1-18)
 - ii. The length of time for all persons able to participate in the drill to evacuate from the home; (7-1-18)
 - iii. The name or likeness of each caregiver who participated in the drill; and (7-1-18)
 - iv. The name or likeness of each resident and whether the resident participated in the drill. (7-1-18)
- 06. Report of Fire.** A report on each fire incident occurring within the home must be submitted to the Department as described in Section 210 of these rules. (7-1-18)
- 07. Maintenance of Equipment.** The provider must assure that all equipment is properly maintained. (7-1-18)
 - a. Smoke and carbon monoxide alarms must be tested at least monthly and a written record of the test results maintained on file. (7-1-18)
 - 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. (7-1-18)
 - c. A smoke or carbon monoxide alarm must be replaced at the end of its useful life as indicated by the manufacturer. (7-1-18)
 - d. Portable fire extinguishers must be serviced every twelve (12) months 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, whichever occurs first. Fire extinguishers purchased in the last twelve (12) months must be serviced within twelve (12) months from the dated receipt on file. (7-1-18)
 - e. All portable fire extinguishers must be examined at least quarterly by the provider or a knowledgeable member of the household, as indicated by their initials and date on a log, to determine that: (7-1-18)

- 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; (7-1-18)
- iii. The extinguisher has not been physically damaged; (4-11-06)
- iv. The extinguisher does not have any obvious defects, such as leaks; (7-1-18)
- v. The nozzle is unobstructed; and (7-1-18)
- vi. Chemicals are prevented from settling and clumping by repeatedly tipping the extinguisher upside down and right-side up. (7-1-18)
- f. 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. (7-1-18)

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. (7-1-18)

a. Remodeling or additions to the home 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. (7-1-18)

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 telephone or an enhanced 911-compliant cell phone available to the resident. (7-1-18)

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. (7-1-18)

b. The telephone or cell phone must: (7-1-18)

i. Be immediately available in case of an emergency; (7-1-18)

ii. Be functional and operational at all times, including having dependable service; (7-1-18)

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 (7-1-18)

iv. Be accessible to the resident throughout the day, including night hours, with unlimited usage and adequate privacy. (7-1-18)

04. Toilet Facilities and Bathrooms. The home must contain: (7-1-18)

a. At least one (1) flush toilet, one (1) tub or shower, and one (1) sink with a mirror; (7-1-18)

b. Toilet and shower or bathing facilities must be separated from all rooms by solid walls or partitions;

(7-1-18)

c. Each room containing a toilet, shower, or bath must have either a window that is easily opened to the outside, or forced ventilation to the outside; (7-1-18)

d. Tubs, showers, and sinks must be connected to hot and cold running water; and (7-1-18)

e. Access to toilet facilities and bathrooms designated for the resident's use must not require them to pass through another person's sleeping room. (7-1-18)

05. Accessibility for Residents with Physical and Sensory Impairments. A provider choosing to provide services to a resident who has difficulty with mobility or who 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: (7-1-18)

a. A ramp that complies with Section 405 of the SFAD. Elevators or lifts that comply with Sections 409 and 410, respectively, may be utilized in place of a ramp; (7-1-18)

b. Doorways large enough to allow easy passage of a wheelchair and that comply with Subsection 404.2.3 of the SFAD; (7-1-18)

c. Toilet and bathing facilities that comply with Sections 603 and 604 of the SFAD; (7-1-18)

d. Sinks that comply with Section 606 of the SFAD; (7-1-18)

e. Grab bars in resident toilet facilities and bathrooms that comply with Section 609 of the SFAD; (7-1-18)

f. Bathtubs or shower stalls that comply with Sections 607 and 608 of the SFAD, respectively; (7-1-18)

g. Non-retractable faucet handles that comply with Subsection 309.4 of the SFAD. Self-closing valves are not allowed; (7-1-18)

h. Suitable handrails on both sides of all stairways leading into and out of the home that comply with Section 505 of the SFAD; and (7-1-18)

i. Smoke and carbon monoxide alarms that comply with Section 702 of the SFAD. (7-1-18)

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 home must be maintained between sixty-five degrees Fahrenheit (65°F) and eighty degrees Fahrenheit (80°F) when residents or adult hourly care participants are at home. The thermostat for the primary source of heat must be located away from the wood stove, if applicable. (7-1-18)

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. (7-1-18)

- 11. Resident Sleeping Rooms.** (7-1-18)
- a.** The sleeping room must not be in an attic, stairway, hall, or any room commonly used for other than bedroom purposes. (7-1-18)
 - b.** The sleeping room may be in a below-ground basement or a room located on the second story or higher only if the following conditions are met: (7-1-18)
 - i.** The resident is able to independently recognize an emergency and self-evacuate from their sleeping room without physical assistance or verbal cueing as assessed and indicated in their plan of service; or (7-1-18)
 - 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 (7-1-18)
 - iii.** The level of the home on which the resident's sleeping room is located has floors, ceilings, and walls that are finished to the same degree as the rest of the home. (7-1-18)
 - c.** Walls must run from floor to ceiling and doors must be solid. (7-1-18)
 - d.** The resident must not occupy the same bedroom as the provider. The resident must not occupy the same bedroom as a relative of the provider unless the relative is a sibling of the resident. (7-1-18)
 - e.** The ceiling height in the sleeping room must be at least seven feet, six inches (7'6"). (7-1-18)
 - f.** The sleeping room must have a closet that must be equipped with a door if the resident so chooses. (7-1-18)
 - i.** Closet space shared by two (2) residents must have a substantial divider separating each resident's space. (7-1-18)
 - ii.** Free-standing closet space must be deducted from the square footage in the sleeping room. (7-1-18)
 - g.** The sleeping room 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. (7-1-18)

701. MANUFACTURED HOMES AND MODULAR BUILDINGS.

- 01. Use of Manufactured Homes and Modular Buildings.** Idaho Division of Building Safety (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: (7-1-18)
- a.** The manufactured or modular home meets the requirements of HUD or DBS requirements in accordance with state and federal regulations as of the date of manufacture. (7-1-18)
 - b.** The manufactured or modular home meets the adopted standards and requirements of the local jurisdiction in which the home is located. (7-1-18)
 - c.** Recreational vehicles, commercial coaches, unregulated or unapproved modifications or additions to approved manufactured housing or modular buildings will not be approved by the Department. (7-1-18)
 - d.** Manufactured housing constructed prior to June 15, 1976, is prohibited for use as a certified family home without assessment and approval by the Department. (7-1-18)
- 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, the home must comply with the following site requirements: (7-1-18)

- 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. (7-1-18)
- 04. Accessible to Services.** The home must be accessible to necessary social, medical, and rehabilitation services. (7-1-18)
- 05. House Number.** The house number must be prominently displayed and plainly visible from the street. (7-1-18)

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, "Contested Case Proceedings and Declaratory Rulings." ()

901. ENFORCEMENT PROCESS.

If the Department finds that 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. (7-1-18)

01. Recommendation of Remedy. In determining which remedy to recommend, the Department will consider the provider's compliance history, complaints, and the number, scope, and severity of the deficiencies. Subject to these considerations, the Department may impose any of the following remedies: (7-1-18)

- a.** Ban on all admissions in accordance with Section 910 of these rules; (7-1-18)
- b.** Ban on admissions of residents with certain diagnosis in accordance with Section 911 of these rules; (7-1-18)
- c.** Summarily suspend the certificate and transfer residents in accordance with Section 912 of these rules; (7-1-18)
- d.** Issue a provisional certificate in accordance with Section 909 of these rules; and (7-1-18)
- e.** Revoke the home's certificate in accordance with Section 913 of these rules. (7-1-18)

02. Notice of Enforcement Remedy. The Department will give the 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, "Contested Case Proceedings and Declaratory Rulings." ()

902. FAILURE TO COMPLY.

The Department may revoke the provider's certificate when it determines any of the following conditions exist: (7-1-18)

- 01. Out of Compliance.** The provider has not complied with any part of these rules within thirty (30)

days of the date the home is found out of compliance with that requirement. (7-1-18)

02. Lack of Progress. The provider has made little or no progress in correcting deficiencies within thirty (30) days from the date the Department accepted the provider's plan of correction. (7-1-18)

903. REPEATED NONCOMPLIANCE.

When the Department determines that a provider has repeated noncompliance with any of these rules, it may impose any of the enforcement remedies listed in Sections 909 through 913 of these rules. (7-1-18)

904. -- 908. (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. (7-1-18)

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. (7-1-18)

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. (7-1-18)

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. (7-1-18)

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 provider has achieved full compliance with all requirements of these rules, or until a substitute remedy is imposed. (7-1-18)

911. ENFORCEMENT REMEDY OF BAN ON ADMISSIONS OF RESIDENT WITH SPECIFIC DIAGNOSIS.

The Department may ban admission into the home any resident with a specific diagnosis 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 publicly and privately funded, and will prevent the home from admitting 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. (7-1-18)

912. ENFORCEMENT REMEDY OF SUMMARY SUSPENSION AND TRANSFER OF RESIDENT.

The Department may summarily suspend 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. (7-1-18)

913. ENFORCEMENT REMEDY OF REVOCATION OF CERTIFICATE.

01. Revocation of the Certificate. The Department may institute a revocation action when persuaded by a preponderance of the evidence that the provider is not in substantial compliance with these rules. (7-1-18)

02. Causes for Revocation of the Certificate. The Department may revoke any certificate for any of the following causes: (7-1-18)

a. The provider has willfully misrepresented or omitted any of the following: (7-1-18)

i. Information pertaining to their certification; or (7-1-18)

- ii. Information obstructing an investigation. (7-1-18)
- 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; (7-1-18)
- f. The provider has violated any of the conditions of a provisional certificate; (4-11-06)
- g. The provider has one (1) or more core issues; (7-1-18)
- h. An accumulation of minor violations that, when taken as a whole, constitute inadequate care; (7-1-18)
- i. Repeat violations of any requirement of these rules or of the Idaho Code; (4-11-06)
- j. The provider lacks the ability to properly care for the resident, as required by these rules, or as directed by the Department; (7-1-18)
- k. The provider is not in substantial compliance with the provisions for services, resident rights, or admissions; (7-1-18)
- l. The provider refuses to allow the certifying agent or other representative of the Department or protection and advocacy agencies full access to the home, records, or the residents; (7-1-18)
- m. The provider fails to pay the certification fee as specified in Section 109 of these rules. The certification fee is considered delinquent if not paid within thirty (30) days of due date on the invoice. (7-1-18)

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: (7-1-18)

01. Violation of Rules. As a result of a violation of a provision of these rules or standards, the provider is unable or unwilling to provide an adequate level of meals, lodging, personal assistance, or supervision of a resident. (7-1-18)

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 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. (7-1-18)

951. -- 999. (RESERVED)

16.03.22 – RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES IN IDAHO

000. LEGAL AUTHORITY.

The Idaho Board of Health and Welfare is authorized under Section 39-3305, Idaho Code, to adopt and enforce rules to protect the health, safety, and the individual's rights for residents in residential care or assisted living facilities. (3-30-06)

001. TITLE, SCOPE, AND RESPONSIBILITIES.

01. Title. These rules are titled IDAPA 16.03.22, “Residential Care or Assisted Living Facilities in Idaho.” (3-30-06)

02. Scope. The purpose of a residential care or assisted living facility in Idaho is to provide choice, dignity and independence to residents while maintaining a safe, humane, and home-like living arrangement for individuals needing assistance with daily activities and personal care. These rules set standards for providing services that maintain a safe and healthy environment. (3-30-06)

03. General Provider Responsibilities. The facility must assure quality services by providing choices, dignity and independence to residents. The facility must have an administrator and staff who have the knowledge and experience required to provide safe and appropriate services to all residents of the facility. The facility must be operated consistent with the rules and statutes as it conducts its work. (3-30-06)

04. General Department Responsibilities. The Department is responsible for monitoring and enforcing the provisions of the statute and this chapter to protect residents in these facilities by providing information, education and evaluating providers to assure compliance with statute and these rules. This responsibility includes: licensing facilities and monitoring the condition of the facility. (3-30-06)

05. Exemptions. The provisions of these rules do not apply to any of the following: (3-30-06)

a. Health Facility. The provisions of these rules do not apply to hospitals, nursing facilities, intermediate care facilities for persons with intellectual disabilities, or any other health facility as defined by Title 39, Chapter 13, Idaho Code. (3-30-06)

b. Alternate Living Arrangements. The provisions of these rules do not apply to any house, institution, hotel, congregate housing project, retirement home, or other similar place that is limited to providing one (1) or more of the following: housing, meals, transportation, housekeeping, or recreational and social activities, or that have residents independently accessing supportive services from an entity approved to provide such services in Idaho and holding no legal ownership interest in the entity operating the facility. (3-30-06)

c. Relatives. The provisions of these rules do not apply to any arrangement for the receiving and care of persons by a relative, except when the caretaker is paid for the care through a state or federal program, in which case the caretaker relative and the care setting must meet all applicable requirements. (3-30-06)

002. INCORPORATION BY REFERENCE.

The documents, referenced in Subsection 004.01 through 004.08 of these rules, are incorporated by reference as provided by Section 67-5229 (a), Idaho Code. These incorporated documents are available for public review upon request at the Department of Health and Welfare, 450 West State Street, Boise, Idaho 83702, or when available on line at the websites provided in these rules. (3-30-06)

01. National Fire Protection Association (NFPA) Documents. The NFPA documents referenced in these regulations are available from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322-9908; 1-800-344-3555; and online at <http://www.nfpa.org>. (3-30-06)

02. Idaho Diet Manual. This manual is available from the Idaho Dietetic Association, Ninth Edition, 2005, online at <http://eatrightidaho.org>. (3-30-06)

03. Idaho Food Code. IDAPA 16.02.19, “Food Safety and Sanitation Standards for Food Establishments.” These rules are available online at <http://adminrules.idaho.gov/rules/current/16/160219.pdf>. (3-30-06)

04. Americans with Disabilities Act Accessibility Guidelines. 28 CFR Part 36, Appendix A. This code is available online at <http://www.ada.gov/publicat.htm>. Contact phone number is 1-800-514-0301. (3-30-06)

05. Idaho Board of Nursing Rules. IDAPA 23.01.01, “Rules of the Idaho Board of Nursing.” These rules are available online at <http://adminrules.idaho.gov/rules/current/23/>. (3-30-06)

06. Idaho Board of Pharmacy Rules. IDAPA 27.01.01, “Rules of the Idaho Board of Pharmacy.” These rules are available online at <http://adminrules.idaho.gov/rules/current/27/>. (3-30-06)

07. International Building Code. Edition 2003. This code is available from the International Code Council, 4051 West Flossmoor Rd., Country Club Hills, IL 60478-5795, phone: 888-422-7233 and online at <http://www.iccsafe.org>. (3-30-06)

08. Idaho Medical Assistance Program Rules. IDAPA 16.03.09, “Medicaid Basic Plan Benefits.” Section 665. These rules may be found online at <http://adminrules.idaho.gov/rules/current/16/160309.pdf>. (3-30-06)

003. -- 008. (RESERVED)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Criminal History and Background Check. A residential care or assisted living facility must complete a criminal history and background check on employees and contractors hired or contracted with after October 1, 2007, who have direct patient access to residents in the residential care or assisted living facility. The Department check conducted under IDAPA 16.05.06, “Criminal History and Background Checks,” satisfies this requirement. Other criminal history and background checks may be acceptable provided they meet the criteria in Subsection 009.02 of this rule and the entity conducting the check issues written findings. The entity must provide a copy of these written findings to both the facility and the employee. (3-26-08)

02. Scope of a Criminal History and Background Check. The criminal history and background check must, at a minimum, be fingerprint-based and include a search of the following record sources: (3-26-08)

- a. Federal Bureau of Investigation (FBI); (3-26-08)
- b. Idaho State Police Bureau of Criminal Identification; (3-26-08)
- c. Sexual Offender Registry; (3-26-08)
- d. Office of Inspector General List of Excluded Individuals and Entities; and (3-26-08)
- e. Nurse Aide Registry. (3-26-08)

03. Availability to Work. Any direct patient access individual hired or contracted with on or after October 1, 2007, must self-disclose all arrests and convictions before having access to residents. (7-1-15)

a. The individual is allowed to only work under supervision until the criminal history and background check is completed, unless: (7-1-15)

i. The individual has completed an alternative criminal history and background check that includes a search of the record sources listed in Subsections 009.02.b. through 009.02.e. of this rule; and (7-1-15)

ii. The facility determines there is no potential danger to residents. (7-1-15)

b. This alternative criminal history and background check is only in effect until the Department has issued a clearance or denial based on the Department’s completed fingerprint based background check. (7-1-15)

c. 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 resident. (7-1-15)

04. Submission of Fingerprints. The individual’s fingerprints must be submitted to the entity conducting the criminal history and background check within twenty-one (21) days of his date of hire. (3-26-08)

05. New Criminal History and Background Check. An individual must have a criminal history and background check when: (3-26-08)

- a.** Accepting employment with a new employer; and (3-26-08)
- b.** His last criminal history and background check was completed more than three (3) years prior to his date of hire. (3-26-08)
- 06. Use of Previous Criminal History and Background Check.** Any employer may use a previous criminal history and background check obtained under these rules if: (3-26-08)

 - a.** The individual has received a criminal history and background check within three (3) years of his date of hire; (3-26-08)
 - b.** The employer has documentation of the criminal history and background check findings; (3-26-08)
 - c.** The employer completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal Identification; and (3-26-08)
 - d.** No disqualifying crimes are found. (3-26-08)
- 07. Employer Discretion.** The new employer, at its discretion, may require an individual to complete a criminal history and background check at any time, even if the individual has received a criminal history and background check within three (3) years of his date of hire. (3-26-08)

010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.

- 01. Abuse.** The non-accidental act of sexual, physical or mental mistreatment, or injury of a resident through the action or inaction of another individual. (3-30-06)
- 02. Accident.** An unexpected, unintended event that can cause a resident injury. (3-30-06)
- 03. Activities.** All organized and directed social and rehabilitative services a facility provides, arranges, or cooperates with. (3-30-06)
- 04. Activities of Daily Living.** The performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment, including bathing, washing, dressing, toileting, grooming, eating, communicating, continence, and mobility. (3-30-06)
- 05. Administrator.** An individual, properly licensed by the Bureau of Occupational Licensing, who is responsible for day to day operation of a residential care or assisted living facility. (3-30-06)
- 06. Administrator's Designee.** An administrator's designee is a person authorized to act in the absence of the administrator and who is knowledgeable of facility operations, the residents and their needs, emergency procedures, the location and operation of emergency equipment and how the administrator can be reached in the event of an emergency. (7-1-15)
- 07. Adult.** A person who has attained the age of eighteen (18) years. (3-30-06)
- 08. Advance Directive.** A written instruction, such as a living will or durable power of attorney for health care, recognized under State Law, whether statutory or as recognized by the courts of the State, and relates to the provision of medical care when the individual is unable to communicate. (3-30-06)
- 09. Advocate.** An authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a population group served by a facility. (3-30-06)
- 10. Ambulatory Person.** A person who, unaided by any other person, is physically and mentally capable of walking a normal path to safety, including the ascent and descent of stairs. (3-30-06)

- 11. Assessment.** The conclusion reached using uniform criteria which identifies resident strengths, weaknesses, risks and needs, to include functional, medical and behavioral needs. (3-30-06)
- 12. Authentication.** Proof of authorship. (3-30-06)
- 13. Authorized Provider.** An individual who is a nurse practitioner or clinical nurse specialist or physician assistant. (3-30-06)
- 14. Basement.** That portion of a building that is partly or completely below grade plane. A basement will be considered as a story above grade plane where the finished surface of the floor above the basement is: (1) More than six (6) feet (1829 mm) above grade plane; (2) More than six (6) feet (1829 mm) above the finished ground level for more than fifty percent (50%) of the total building perimeter; or (3) More than twelve (12) feet (3658 mm) above the finished ground level at any point. International Building Code-2003. (3-30-06)
- 15. Behavioral Plan.** A written plan which decreases the frequency or intensity of maladaptive behaviors and increases the frequency of adaptive behaviors and introduces new skills. (3-30-06)
- 16. Call System.** A signaling system whereby a resident can contact staff directly from their sleeping room, toilet room, and bathing area. The system may be voice communication; an audible or visual signal; and, may include wireless technology. The call system cannot be configured in such a way as to breach a resident's right to privacy at the facility, including but not limited to, the resident's living quarters, common areas, medical treatment and other services, written and telephonic communications, or in visits with family, friends, advocates, and resident groups. (3-29-10)
- 17. Chemical Restraint.** A medication used to control behavior or to restrict freedom of movement and is not a standard treatment for the resident's condition. (3-30-06)
- 18. Client of the Department.** Any person who receives financial aid, or services, or both from an organized program of the Department. (3-30-06)
- 19. Complaint.** A formal expression of dissatisfaction, discontent, or unhappiness by or on behalf of a resident concerning the care or conditions at the facility. This expression could be oral, in writing, or by alternative means of communication. (3-30-06)
- 20. Complaint Investigation.** A survey to investigate the validity of allegations of noncompliance with applicable state requirements. (3-30-06)
- 21. Core Issue.** A core issue is any one (1) of the following: abuse; neglect; exploitation; inadequate care; a situation in which the facility has operated for more than thirty (30) days without a licensed administrator designated the responsibility for the day to day operations of the facility; inoperable fire detection or extinguishing systems with no fire watch in place pending the correction of the system; or surveyors denied access to records, residents or facilities. (3-30-06)
- 22. 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. (3-30-06)
- 23. Deficiency.** A determination of non-compliance with a specific rule or part of a rule. (3-30-06)
- 24. Dementia.** A chronic deterioration of intellectual function and other cognitive skills severe enough to interfere with the ability to perform activities of daily living and instrumental activities of daily living. (3-30-06)
- 25. Department.** The Idaho Department of Health and Welfare. (3-30-06)
- 26. Developmental Disability.** A developmental disability, as defined in Section 66-402, Idaho Code, means chronic disability of a person which appears before the age of twenty-two (22) years of age and: (3-30-06)
- a.** Is attributable to an impairment, such as an intellectual disability, cerebral palsy, epilepsy, autism,

or other conditions found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and (3-30-06)

b. Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity of independent living, or economic self-sufficiency; and (3-30-06)

c. Reflects the need for a combination and sequence of special, interdisciplinary or direct care, treatment or other services which are of life-long or extended duration and individually planned and coordinated. (3-30-06)

27. Director. The Director of the Idaho Department of Health and Welfare or his designee. (3-30-06)

28. Electronic Signature, E-Signature. The system for signing electronic documents by entering a unique code or password that verifies the identity of the person signing and creates an individual “signature” on the record. (3-30-06)

29. Exit Conference. A meeting with the facility administrator or designee to: (1) provide review, discussion and written documentation of non-core issues (Punch List), and (2) to provide preliminary findings of core issues. (3-30-06)

30. Exploitation. The misuse of a resident's funds, property, resources, identity or person for profit or advantage, for example: (3-29-10)

a. Charging a resident for services or supplies not provided; or (3-29-10)

b. Charging a resident for services or supplies not disclosed in the written admission agreement between the resident and the facility. (3-29-10)

011. DEFINITIONS AND ABBREVIATIONS F THROUGH M.

01. Follow-Up Survey. A survey conducted to confirm that the facility is in compliance and has the ability to remain in compliance. (3-30-06)

02. Functional Abilities Assessment. An assessment of the resident's degree of independence with which the resident performs activities of daily living and instrumental activities of daily living. (3-30-06)

03. Governmental Unit. The state, any county, municipality, or other political subdivision or any Department, division, board, or other agency thereof. (3-30-06)

04. Grade Plane. A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane will be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six (6) feet (1829 mm) from the building, between the building and a point six (6) feet (1829 mm) from the building. International Building Code - 2003. (3-30-06)

05. Hands On. Physical assistance to the resident beyond verbal prompting. (3-30-06)

06. Hourly Adult Care. Nonresident daily services and supervision provided by a facility to individuals who are in need of supervision outside of their personal residence for a portion of the day. (3-30-06)

07. Immediate Danger. Any resident is subject to an imminent or substantial danger. (3-30-06)

08. Inadequate Care. When a facility fails to provide the services required to meet the terms of the Negotiated Service Agreement, or provide for room, board, activities of daily living, supervision, first aid, assistance and monitoring of medications, emergency intervention, coordination of outside services, a safe living environment, or engages in violations of resident rights or takes residents who have been admitted in violation of the provisions of Section 39-3307, Idaho Code. (3-30-06)

- 09. Incident.** An event that can cause a resident injury. (3-30-06)
- 10. Incident, Reportable.** A situation when a facility is required to report information to the Licensing and Certification Unit. (3-29-10)
- a.** Resident injuries of unknown origin. This includes any injury, the source of which was not observed by any person or the source of the injury could not be explained by the resident; or the injury includes severe bruising on the head, neck, or trunk, fingerprint bruises anywhere on the body, laceration, sprains, or fractured bones. Minor bruising and skin tears on the extremities need not be reported. (3-30-06)
- b.** Resident injury resulting from accidents involving facility-sponsored transportation. Examples: falling from the facility's van lift, wheel chair belt coming loose during transport, or an accident with another vehicle. (3-30-06)
- c.** Resident elopement of any duration. Elopement is when a resident who is unable to make sound decisions physically leaves the facility premises without the facility's knowledge. (3-30-06)
- d.** An injury due to resident-to-resident incident. (3-30-06)
- e.** An incident that results in the resident's need for hospitalization, treatment in a hospital emergency room, fractured bones, IV treatment, dialysis, or death. (3-30-06)
- 11. Independent Mobility.** A resident's ability to move about freely of their own choice with or without the assistance of a mobility device such as a wheelchair, cane, crutches, or walker. (3-30-06)
- 12. Instrumental Activities of Daily Living.** The performance of secondary level of activities that enables a person to live independently in the community, including preparing meals, access to transportation, shopping, laundry, money management, housework, and medication management. (3-30-06)
- 13. Legal Guardian or Conservator.** A court-appointed individual who manages the affairs or finances or both of another who has been found to be incapable of handling his own affairs. (3-30-06)
- 14. License.** A permit to operate a facility. (3-30-06)
- 15. Licensing and Certification Unit.** The Department's Division of Licensing and Certification is responsible for licensing and surveying residential care or assisted living facilities. In this chapter of rules, "Licensing and Certification Unit" and "Licensing and Survey Agency" are synonymous. (7-1-15)
- 16. Medication.** Any substance or drug used to treat a disease, condition, or symptom, which may be taken orally, injected, or used externally and is available through prescription or over-the-counter. (3-30-06)
- 17. Medication Administration.** It is a process where a prescribed medication is given to a resident by one (1) of several routes by licensed nurses. (3-30-06)
- 18. Medication Assistance.** The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a person who cannot independently self-administer medications. IDAPA 23.01.01. "Rules of the Idaho State Board of Nursing," Section 010. (3-30-06)
- 19. Medication Dispensing.** The act of filling, labeling and providing a prescribed medication to a resident. (3-30-06)
- 20. Medication, Self-Administration.** The act of a resident taking a single dose of his own medication from a properly labeled container and placing it internally in, or externally on, his own body as a result of an order by a authorized provider. (3-30-06)
- 21. Mental Disorders.** Health conditions that are characterized by alterations in thinking, mood or

behavior (or some combination thereof), that are all mediated by the brain and associated with distress and or impaired functioning. (3-30-06)

22. Mental Illness. Refers collectively to all diagnosable mental disorders. (3-30-06)

23. Monitoring Visit. A visit by a representative of the Licensing and Certification Unit for the purpose of assuring residents are not in immediate danger. (3-29-10)

24. Neglect. Failure to provide food, clothing, shelter, or medical care necessary to sustain the life and health of a resident. (3-30-06)

25. Negotiated Service Agreement. The plan reached by the resident and/or their representative and the facility based on the assessment, physician or authorized provider's orders, admission records, and desires of the resident, and which outlines services to be provided and the obligations of the facility and the resident. (3-30-06)

26. Non-Core Issue. Any finding of deficiency that is not a core issue. (3-30-06)

012. DEFINITIONS AND ABBREVIATIONS O THROUGH Z.

01. Owner. Any person or entity, having legal ownership of the facility as an operating business, regardless of who owns the real property. (3-30-06)

02. Personal Assistance. The provision by the staff of the facility of one (1) or more of the following services as outlined in the Negotiated Service Agreement: (3-30-06)

a. Assisting the resident with activities of daily living and instrumental activities of daily living. (3-30-06)

b. Arranging for supportive services. (3-30-06)

c. Being aware of the resident's general whereabouts and supervision. (3-30-06)

d. Monitoring the activities of the resident while on the premises of the facility to assure the resident's health, safety, and well-being. (3-30-06)

e. Assisting residents with self-administration of medication. (3-30-06)

03. Personnel. Paid individuals assigned the responsibility of providing care and supervision and services to the facility and its residents. (3-30-06)

04. Physical Restraint. Any device or physical force that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body except for treatment of a medical condition. (3-30-06)

05. Portable Heating Device. Any device designed to provide heat on a temporary basis; is not designed as part of a building's heating system; is not permanently affixed to the building; and, if electrical, is not hardwired to the building's electrical service. This does not include the therapeutic devices of heating pads, heated mattress pads and electric blankets which require a physician or authorized provider's order. (3-30-06)

06. PRN. Indicates that a medication or treatment prescribed by a medical professional to an individual may be given as needed. (3-30-06)

07. Pressure Ulcer. Any lesion caused by unrelieved pressure that results in damage to the underlying tissue(s). Although friction and shear are not primary causes of pressure ulcers, friction and shear are important contributing factors to the development of pressure ulcers. (3-30-06)

08. Provisional License. A license which may be issued to a facility not in compliance with the rules

pending the satisfactory correction of all deficiencies. (3-30-06)

09. Psychosocial History. A combined summary of psychological and social histories of an individual designed to inform a care giver of a person's abilities and limitations which will assist in identifying appropriate resources. (3-30-06)

10. Publicly Funded Programs. Any program funded in whole or in part by an appropriation of the U.S. Congress, the Idaho Legislature, or other governmental body. (3-30-06)

11. Punishment. Any action in which an adverse consequence is presented to a resident that is designed to produce a decrease in the rate, intensity, duration or probability of the occurrence of a behavior; or the administration of any noxious or unpleasant stimulus or deprivation of a resident's rights or freedom for the purpose of reducing the rate, intensity, duration, or probability of a particular behavior. (3-30-06)

12. Relative. A person related by birth, adoption, or marriage to the first degree and grandparent and grandchild. (3-30-06)

13. Repeat Deficiency. A deficiency found on a resurvey, complaint investigation, or follow-up survey that was also found on the previous survey or visit. (3-30-06)

14. Resident. An adult, other than the owner, administrator, their immediate families, or employees, who lives in a residential care or assisted living facility. (3-30-06)

15. Residential Care or Assisted Living Facility. A facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals, and lodging to three (3) or more adults not related to the owner. In this chapter, Residential Care or Assisted Living Facilities are referred to as "facility." Distinct segments of a facility may be licensed separately, provided each segment functions independently and meets all applicable rules. (3-30-06)

16. Room and Board. Lodging, meals, and utilities. (3-30-06)

17. Scope. The frequency or extent of the occurrence of a deficiency in a facility. (3-30-06)

18. Self-Evacuating Resident. A resident who is able to leave the building without one-on-one (1 on 1) or hands-on assistance and can remain at a designated location. (3-30-06)

19. Self Preservation. The ability of a person to independently avoid situations and circumstances in which he might be easily taken advantage of, and to protect themselves and property. (3-30-06)

20. Short Term. A treatment window designed to allow a resident to receive treatment for a short term acute episode, usually fourteen (14) days or less, as determined by a licensed registered nurse. (3-30-06)

21. Story. That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two (2) successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters. (3-30-06)

22. Story Above Grade Plane. Any story having its finished floor surface entirely above grade plane, except that a basement will be considered as a story above grade plane where the finished surface of the floor above the basement is: (1) more than six (6) feet (1829 mm) above grade plane, (2) more than six (6) feet (1829 mm) above the finished ground level for more than fifty percent (50%) of the total building perimeter; or (3) more than twelve (12) feet (3658 mm) above the finished ground level at any point. (3-30-06)

23. Substantial Compliance. A facility is in substantial compliance with these rules when no core issues have been cited as a deficiency during any survey. (3-30-06)

24. Substantial Evening Meal. An offering of three (3) or more menu items at one-time, one (1) of

which includes a high-quality protein such as meat, fish, eggs, or cheeses. The meal should represent no less than twenty percent (20%) of the day's total nutritional requirements. (3-30-06)

25. Supervision. A critical watching and directing activity which provides protection, guidance, knowledge of the resident's general whereabouts, and assistance with activities of daily living. The administrator is responsible for providing appropriate supervision based on each resident's Negotiated Service Agreement or other legal requirements. (3-30-06)

26. Supportive Services. Services provided to the resident in the community. (3-30-06)

27. Survey. A review conducted by a surveyor to determine compliance with statutes and rules. There are two (2) components to a survey, health care and fire life safety and sanitation. (3-30-06)

28. Surveyor. A person authorized by the Department to conduct surveys or complaint investigations to determine compliance with statutes and rules. (3-30-06)

29. Syringe -- Oral Feeding. Use of a syringe to deliver liquid or pureed nourishment directly into the mouth. (3-30-06)

30. Therapeutic Diet. A diet ordered by a physician or authorized provider as part of treatment for a clinical condition or disease, or to eliminate or decrease specific nutrients in the diet, (e.g. sodium) or to increase specific nutrients in the diet (e.g. potassium) or to provide food the resident is able to eat (e.g. mechanically altered diet). (3-30-06)

31. Traumatic Brain Injury (TBI). An acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both. The term applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psycho-social behavior; physical functions; information processing; and speech. (3-30-06)

32. Trust Account. An account maintained by the facility separate from its own accounts, to deposit, hold, or disburse monies belonging to a resident. The facility is the trustee of such accounts and the residents are the beneficiaries. (3-30-06)

33. Uniform Assessment Instrument (UAI). A set of standardized criteria to assess functional and cognitive abilities of the resident. (3-30-06)

34. Unlicensed Assistive Personnel (UAP). Unlicensed assistive personnel (UAP) employed to perform nursing care services under the direction and supervision of licensed nurses. UAP also includes licensed or credentialed health care workers whose job responsibilities extend to health care services beyond their usual and customary roles and which activities are provided under the direction and supervision of licensed nurses. (3-30-06)

35. Variance. Permission by the Department to do something contrary to rule. (3-30-06)

36. Waiver Services. Home and Community Based (HCBS) Services. (3-30-06)

37. Waivered Level Three Small Facility. An existing facility, licensed prior to July 1, 1992, that: (3-30-07)

a. Serves residents who require extensive assistance with mobility; (3-30-07)

b. Houses nine (9) or fewer residents on the first story only; and (3-30-07)

c. Complies with the requirements of Chapter 21, Residential Board and Care Section for Prompt Evacuation Capability, of the National Fire Protection Association (NFPA), Life Safety Code, 1988 Edition. (3-30-07)

013. -- 049. (RESERVED)

050. VARIANCES.

The Licensing and Survey Agency may grant a variance provided the following criteria in Subsection 050.01 of these rules are met. (3-30-06)

01. Written Request. A written request for a variance must be sent to the Licensing and Survey Agency. The request must include the following: (3-30-06)

- a.** Reference to the section of the rules for which the variance is requested; (3-30-06)
- b.** Reasons that show good cause why the variance should be granted, the extenuating circumstances which caused the need for the variance, any compensating factors or conditions that may have bearing on the variance such as additional floor space or additional staffing; and (3-30-06)
- c.** Written documentation that assures residents' health and safety will not be jeopardized if a variance is granted. (3-30-06)

02. Temporary Variance. A temporary variance may be granted for a specific resident or situation. The variance expires when the resident no longer lives at the facility or when the situation no longer exists. (3-30-06)

03. Continuing Temporary Variance. The Licensing and Survey Agency reviews the appropriateness of continuing a variance during the survey process. If the facility administrator wishes to continue the variance, an annual request must be submitted to the Licensing and Survey Agency in writing. (3-30-06)

04. Permanent Variance. A permanent variance may be granted provided the provisions of Subsections 050.01.a. through 050.01.c. of these rules are met. (3-30-06)

05. Decision to Grant a Variance. The decision to grant a variance will not be considered as a precedent or be given any force or effect in any other proceeding. (3-30-06)

06. Revocation of Variance. The Licensing and Survey Agency may revoke a variance if circumstances identify a risk to resident health and safety. (3-30-06)

051. -- 099. (RESERVED)

100. REQUIREMENTS FOR A LICENSE.

01. Current License. No person, firm, partnership, association, corporation, or governmental unit can operate, establish, manage, conduct, or maintain a residential care or assisted living facility in Idaho without a license issued by the Department. (3-30-06)

02. Issuance of License. Upon completion of the application process requirements the Department will issue: (3-30-06)

- a.** A residential care or assisted living license, in the name of the licensee applying for the license and to the address of the facility stated in the application; (3-30-06)
- b.** The residential care or assisted living license will specify the maximum allowable number of beds. All occupants other than the owner, administrator, immediate family, or employees will be included in the licensed bed capacity of the facility. (3-30-06)

03. Distinctive Business Name. Every facility must use a distinctive name, which is registered with the Secretary of State of Idaho. If a facility decides to change its name, it will only be changed upon written notification to the Licensing and Survey Agency confirming the registration of the name change with the Secretary of State of Idaho. This notification needs to be received by the Licensing and Survey Agency at least thirty (30) calendar days prior to the date the proposed name change is to be effective. (3-30-06)

04. Licensed Administrator. Each facility must have an administrator, licensed by the Bureau of Occupational Licensing, who is responsible for the day-to-day operation of the facility. (3-30-06)

05. Display of Facility License. The current facility license must be posted in the facility and clearly visible to the general public. (3-30-06)

06. Change in Corporate Shares. When there is a significant change in shares held by a corporate licensee of a residential care or assisted living facility, which does not alter the overall ownership or operation of the business, that change must be communicated to the Licensing and Survey Agency within (60) days of the effective date of change. (3-30-06)

07. Licensee Responsibility. The licensee of the facility is responsible for the operation of the residential care or assisted living facility, even when a separate administrator is employed. (3-30-06)

101. -- 104. (RESERVED)

105. CHANGE OF OWNERSHIP.

01. Non-Transfer of Facility License. A facility license is not transferable from one (1) individual to another, from one (1) business entity to another, or from one (1) location to another. When a change of licensee, ownership, lease or location occurs, the facility must be re-licensed. The new licensee must follow the application procedures, and obtain a license, before commencing operation as a facility. (3-30-06)

02. Application for Change of Ownership. The application for a change of ownership must be submitted to the Licensing and Survey Agency at least ninety (90) days prior to the proposed date of change. (3-30-06)

03. Change of Ownership for a Facility In Litigation. An application for change of ownership of a facility from a person who is in litigation for failure to meet licensure standards, or who has had a license revoked, must include evidence that there is a bona fide, arms-length agreement and relationship between the two (2) parties. An entity purchasing a facility with an enforcement action acquires the enforcement action. (3-30-06)

106. -- 109. (RESERVED)

110. FACILITY LICENSE APPLICATION.

01. Facility License. License application forms are available upon written request or online at the Licensing and Survey Agency's website at <http://www.assistedliving.dhw.idaho.gov/>. The applicant must provide the following information: (3-30-06)

a. A written statement that the applicant has thoroughly read and reviewed the statute, Title 39, Chapter 33, Idaho Code, and IDAPA 16.03.22, "Rules for Residential Care or Assisted Living Facilities in Idaho," and is prepared to comply with both; (3-30-06)

b. The applicant must provide a written statement and documentation that demonstrate no license revocation or other enforcement action has been taken or is in the process of being taken, against a license held or previously held by the applicant in Idaho or any other state or jurisdiction; (7-1-15)

c. When the applicant is a firm, association, organization, partnership, business trust, corporation, government entity, or company, the administrator and other members of the organization who directly influence the facility's operation must provide the information contained in Subsections 110.01.a. and 110.01.b. of these rules. (7-1-15)

d. Each shareholder or investor holding ten percent (10%) or more interest in the business must be listed on the application; (3-30-06)

- e. A copy of the Certificate of Assumed Business Name from Secretary of State of Idaho; (3-30-06)
- f. A statement from the local fire authority that the facility is located in a lawfully constituted fire district or affirmation that a lawfully constituted fire authority will respond to a fire at the facility; (3-30-06)
- g. A statement from a licensed electrician or the local or state electrical inspector that all wiring in the facility complies with current electrical codes; (3-30-06)
- h. When the facility does not use an approved municipal water or sewage treatment system, a statement from a local environmental health specialist with the public health district indicating that the water supply and sewage disposal system meet the Department's requirements and standards; (3-30-06)
- i. A complete set of printed operational policies and procedures as described in Sections 150 through 162 of these rules. (3-30-06)
- j. A detailed floor plan of the facility, including measurements of all rooms, or a copy of architectural drawings must be submitted for evaluation by the Licensing and Survey Agency. See Sections 250-260, 400-410, and 430 of these rules. (3-30-06)

- k. A copy of the Purchase Agreement, Lease Agreement, or Deed. (3-30-06)
- l. For facilities with nine (9) beds or more, signatures must be obtained from the following: (3-30-06)
 - i. The local zoning official documenting that the facility meets local zoning codes for occupancy; (3-30-06)
 - ii. The local building official documenting that the facility meets local building codes for occupancy; (3-30-06)
 - iii. The local fire official documenting that the facility meets local fire codes for occupancy. (3-30-06)

02. Written Request for Building Evaluation. The applicant must request in writing to the Licensing and Survey Agency for a building evaluation of existing buildings. The request must include the physical address of the building that is to be evaluated; the name, address, and telephone number of the person who is to receive the building evaluation report. (3-30-06)

03. Building Evaluation Fee. This application and request must be accompanied by a five hundred dollar (\$500) initial building evaluation fee. (3-30-06)

04. Identification of the Licensed Administrator. The applicant must provide the following information for the licensed administrator: (3-30-06)

- a. A copy of the administrator license; (3-30-06)
- b. A current primary residence of the administrator. (3-30-06)

05. Failure to Complete Application Process. Failure of the applicant to complete the Licensing and Survey Agency's application process within six (6) months, of the original date of application, may result in a denial of the application. If the application is denied the applicant is required to initiate a second licensing process. (3-30-06)

111. -- 114. (RESERVED)

115. EXPIRATION AND RENEWAL OF LICENSE.

01. Application for License Renewal. The facility must submit a Licensing and Survey Agency application for renewal of a license at least thirty (30) days prior to the expiration of the existing license. (3-30-06)

02. Existing License. The existing license, unless suspended, surrendered, or revoked, remains in force and effect until the Licensing and Survey Agency has acted upon the application renewal, when such application for renewal has been filed. (7-1-15)

116. -- 119. (RESERVED)

120. FACILITY OPERATING WITHOUT A LICENSE.

01. Facility Without a License. An operation is considered an unlicensed facility if it meets the definition of a facility stated in these rules, or is represented to provide care and serve the population of a residential or assisted living facility, is not licensed and is not exempt from licensure. (3-30-06)

02. Residents in Facility Without a License. Upon discovery of a facility operating without a license, the Department will refer residents to an appropriate placement or adult protective services agency if either of the following conditions exist: (3-30-06)

- a.** There is an immediate threat to the resident's health and safety; or (3-30-06)
- b.** The unlicensed facility does not cooperate with the Department to apply for a license and meet licensing standards requirements. (3-30-06)

03. Operator of a Facility Operating Without a License. A person found to be operating a facility without a license is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed five thousand dollars (\$5000), according to Section 39-3352(4), Idaho Code. (3-30-06)

04. Prosecution of Violators. In the event the county attorney in the county where the alleged violation occurred fails or refuses to act within thirty (30) days of notification of the violation, the Attorney General is authorized to prosecute violations under the provisions of Section 39-3352(5), Idaho Code. (3-30-06)

121. -- 125. (RESERVED)

126. EFFECT OF ENFORCEMENT ACTION AGAINST A LICENSE.

The Department will not review an application of an applicant who has an action, either current or in process, against a license held by the applicant either in Idaho or any other state or jurisdiction. (7-1-15)

127. -- 129. (RESERVED)

130. LICENSURE SURVEYS.

01. Surveys of Facilities. The Licensing and Survey Agency will assure that surveys are conducted at specified intervals in order to determine compliance with this chapter and applicable rules and statutes. The intervals of surveys will be: (3-30-06)

a. Within ninety (90) days from initial licensure followed by a survey within fifteen (15) months. Facilities receiving no core issue deficiencies during both the initial and the subsequent survey will then enter the three (3) year survey cycle. (3-30-06)

b. Once every twelve (12) months, or more frequently at the discretion of the Licensing and Survey Agency for those facilities receiving core issue deficiencies during any survey. Surveys will be conducted until the facility attains two (2) consecutive surveys, excluding follow-up surveys, without a core issue deficiency. (3-30-06)

c. At least every thirty-six (36) months, for those facilities having attained no core issue deficiencies for two (2) or more consecutive surveys, regardless of survey type. (3-30-06)

d. Complaint investigation survey based on the potential severity of the complaint. (3-30-06)

02. Unannounced Surveys. Surveys are made unannounced and without prior notice at the discretion of the Department. (3-30-06)

03. Inspection or Survey Services. The Department may use the services of any qualified person or organization, either public or private, to examine, survey or inspect any entity requesting or holding a facility license. (3-30-06)

04. Access and Authority to Entire Facility. A surveyor must have full access and has the authority to examine: quality of care, services delivery, resident records, facility's records including any records or documents pertaining to any financial transactions between residents and the facility or any of its employees, resident accounts, physical premises, including the condition of buildings, grounds and equipment, food service, water supply, sanitation, maintenance, housekeeping practices, and any other areas necessary to determine compliance with applicable statute, rules, and standards. (3-30-06)

05. Interview Authority. A surveyor has the authority to interview any individual associated with the facility or the provision of care, including the license holder, administrator, staff, residents, residents' families, service providers, authorized provider or physician or other legally responsible person. Interviews are confidential and conducted privately unless otherwise specified by the interviewee. (3-30-06)

06. Access to Staff Living Quarters. The surveyor has full authority to inspect the facility, including personal living quarters of operators, administrator, or staff living in the facility, to check for inappropriate storage of combustibles, faulty wiring, or other conditions that may have a direct impact on compliance with these rules. (3-30-06)

07. Written Report of Deficiencies. The Licensing and Survey Agency will provide a written report to support any deficiencies found. (3-30-06)

a. Core Issue Deficiency. The Licensing and Survey Agency will provide, within ten (10) business days from the exit conference or from the last day of receipt of additional material, a written Statement of Deficiencies and Plan of Correction form to the facility when core deficiencies are identified during the survey. (3-30-06)

b. Non-Core Issue Deficiency. The Licensing and Survey Agency will provide the facility a written report specifying the non-core issue deficiencies at the time of the exit conference. (3-30-06)

08. Plan of Correction for Core Issue Deficiencies. The facility must develop a plan of correction and return an acceptable plan of correction to the Licensing and Survey Agency, for all core-issue deficiencies, within ten (10) calendar days of receipt of the Statement of Deficiencies and Plan of Correction form. An acceptable plan of correction must include: (3-30-06)

a. A plan to assure correction of each deficient practice and to assure ongoing compliance; (3-30-06)

b. Describe how and the frequency that the corrective actions will be monitored to assure that each deficient practice is corrected and will not recur, such as what program will be put into place to monitor the continued effectiveness of the systemic change; (3-30-06)

c. State the completion date for correcting each deficiency, except in unusual circumstances, and only with the written approval of the Licensing and Survey Agency. No correction date may be more than sixty (60) days from the inspection exit date as printed on the "Statement of Deficiencies and Plan of Correction" form; and (3-30-06)

d. The administrator's signature and the date submitted. (3-30-06)

09. Evidence of Resolution for Non-Core Deficiencies. The facility must provide evidence of resolution of non-core issues to the Licensing and Survey Agency, within thirty (30) calendar days of the exit conference. The facility may show evidence of resolution by providing receipts, pictures, and completed policies,

training, schedules, and other records. If there are non-core issues that the facility is unable to resolve due to extenuating circumstances, a written request for the delay must be submitted for Licensing and Survey Agency approval within thirty (30) days of the exit conference. The request must contain the following information:

(3-30-06)

- a. The reason for the delay; (3-30-06)
- b. A plan for resolution; (3-30-06)
- c. The date of the expected resolution, which may not exceed six (6) months; and (3-30-06)
- d. A plan for assuring the safety of the residents until resolution. (3-30-06)

10. Follow-Up Survey. The Licensing and Survey Agency will conduct follow-up surveys to ascertain corrections to core issue and non-core issue deficiencies are made according to time frames established in the plan of correction and evidence of resolution. (3-30-06)

131. -- 139. (RESERVED)

140. COMPLAINTS AND INVESTIGATIONS.

01. Filing a Complaint. Any person who believes that the facility has failed to meet any provision of the rules or statute may file a complaint with the Department. All complaints must have a basis in rule or statutory requirements. In the event that it does not, the complainant will be referred to the appropriate entity or agency. (3-30-06)

02. Investigation Survey. The Licensing and Survey Agency will investigate, or cause to be investigated the following: (3-30-06)

- a. Any complaint alleging a violation of the rules or statute; and (3-30-06)
- b. Any reportable incident which indicates there was a violation of the rules or statute. (3-30-06)

03. Disclosure of Complaint Information. The Department will not disclose the name or identifying characteristics of a complainant unless: (3-30-06)

- a. The complainant consents in writing to the disclosure; (3-30-06)
- b. The investigation results in a judicial proceeding and disclosure is ordered by the court; or (3-30-06)
- c. The disclosure is essential to prosecution of a violation. The complainant is given the opportunity to withdraw the complaint before disclosure. (3-30-06)

04. Method of Investigation. The nature of the complaint will determine the method used to investigate the complaint. (3-30-06)

05. Notification to Complainant. The Licensing and Survey Agency will inform the complainant of the results of the investigation survey when the complainant has provided a name and address. (3-30-06)

141. -- 149. (RESERVED)

150. POLICIES AND PROCEDURES.

Each facility must develop a written set of policies and procedures which are available to all staff at all times and include the facility policies described in Sections 151 through 162 of these rules. (3-30-06)

151. ACTIVITY POLICIES.

01. Policy and Plan. Each facility must develop a written activity policy that assists, encourages and promotes residents to maintain and develop their highest potential for independent living through their participation in planned recreational and other activities. (3-30-06)

02. Activity Opportunities. The policy must include opportunities from the following activities: (3-30-06)

- a.** Socialization through group discussion, conversation, recreation, visiting, arts and crafts, music; (3-30-06)
- b.** Daily living activities to foster and maintain independent functioning; (3-30-06)
- c.** Physical activities such as games, sports, and exercises which develop and maintain strength, coordination, and range of motion; (3-30-06)
- d.** Education through special classes or activities; and (3-30-06)
- e.** Leisure time so residents may engage in activities of their own choosing. (3-30-06)

03. Community Resources for Activities. The facility will utilize community resources to promote resident participation in integrated activities of their choice both in and away from the facility. (3-30-06)

152. ADMISSION POLICIES.

01. Admissions. Each facility must develop written admission policies and procedures. The written admission policy must include; (3-30-06)

- a.** The purpose, quantity and characteristics of available services; (3-30-06)
- b.** Any restrictions or conditions imposed because of religious or philosophical reasons. (3-30-06)
- c.** Limitations concerning delivery of routine personal care by persons of the opposite gender. (3-30-06)
- d.** Notification of any residents who are on the sexual offender registry and who live in the facility. The registry may be accessed online at http://isp.idaho.gov/sor_id/search.html. (3-30-06)
- e.** Appropriateness of placement to meet the needs of the resident, when there are non resident adults or children residing in the facility. (3-30-06)

02. Fee Description. A written description of how fees will be handled by the facility. (3-30-06)

03. Resident Funds Policies. When a resident's funds are deposited with the facility or administrator, the facility must manage the residents' funds as provided in Sections 39-3316 (1), (5) & (6), Idaho Code, and Section 505 and Subsections 550.05 and 550.06 of these rules. Each facility must develop written policies and procedures outlining how residents' funds will be handled. (3-30-06)

- a.** A statement if the facility does not manage resident funds. (3-30-06)
- b.** If the facility manages resident funds, how funds are handled and safeguarded. (3-30-06)

04. Resident Admission, Discharge, and Transfer. The facility must have policies addressing admission, discharge, and transfer of residents to, from, or within the facility. (3-30-06)

05. Policies of Acceptable Admissions. Written descriptions of the conditions for admitting residents to the facility must include: (3-30-06)

- a.** A resident will be admitted or retained only when the facility has the capability, capacity, and services to provide appropriate care, or the resident does not require a type of service for which the facility is not licensed to provide or which the facility does not provide or arrange for, or if the facility does not have the personnel, appropriate in numbers and with appropriate knowledge and skills to provide such services; (3-30-06)
- b.** No resident will be admitted or retained who requires ongoing skilled nursing or care not within the legally licensed authority of the facility. Such residents include: (3-30-06)
- i.** A resident who has a gastrostomy tube, arterial-venous (AV) shunts, or supra-pubic catheter inserted within the previous twenty-one (21) days; (3-30-06)
- ii.** A resident who is receiving continuous total parenteral nutrition (TPN) or intravenous (IV) therapy; (3-30-06)
- iii.** A resident who requires physical restraints, including bed rails, an exception is a chair with locking wheels or chair in which the resident cannot get out of; (3-30-06)
- iv.** A resident who is comatose, except for a resident who has been assessed by a physician or authorized provider who has determined that death is likely to occur within fourteen (14) to thirty (30) days; (3-30-06)
- v.** A resident who is on a mechanically supported breathing system, except for residents who use positive airway pressure devices only for sleep apnea, such as CPAP or BiPAP; (7-1-15)
- vi.** A resident who has a tracheotomy who is unable to care for the tracheotomy independently; (3-30-06)
- vii.** A resident who is fed by a syringe; (3-30-06)
- viii.** A resident with open, draining wounds for which the drainage cannot be contained; (3-30-06)
- ix.** A resident with a Stage III or IV pressure ulcer; (3-30-06)
- x.** A resident with any type of pressure ulcer or open wound that is not improving bi-weekly; (3-30-06)
- c.** For any resident who has needs requiring a nurse, the facility must assure a licensed nurse is available to meet the needs of the resident. (3-30-06)
- d.** A resident will not be admitted or retained who has physical, emotional, or social needs that are not compatible with the other residents in the facility; (3-30-06)
- e.** A resident that is violent or a danger to himself or others; (3-30-06)
- f.** Any resident requiring assistance in ambulation must reside on the first story unless the facility complies with Sections 401 through 404 of these rules; (3-30-06)
- g.** Residents who are not capable of self evacuation must not be admitted or retained by a facility which does not comply with the NFPA Standard #101, "Life Safety Code, 2000 Edition, Chapter 33, Existing Residential Board and Care Impracticable Evacuation Capability;" and (3-30-06)

153. ADDITIONAL POLICIES REQUIRED.

- 01. Response of Staff to Abuse, Neglect or Exploitation of Residents.** The facility must develop policies and procedures to assure that allegations of abuse, neglect and exploitation are identified, reported, investigated, followed up with interventions to prevent reoccurrence and assure protection, and documented. (3-30-06)

- 02. Response of Staff to Emergencies.** How staff are to respond to emergency situations: (3-30-06)
- a. Medical and psychiatric emergencies; (3-30-06)
 - b. Resident absence; (3-30-06)
 - c. Criminal situations; and (3-30-06)
 - d. Presence of law enforcement officials at the facility. (3-30-06)
- 03. Notification of Changes to Resident Health or Mental Status.** Who and how staff are to notify of any changes in residents' health or mental status. (3-30-06)
- 04. Provided Care and Services by Staff.** How staff are to provide care and services to residents in the following areas: (3-30-06)
- a. Activities of daily living; (3-30-06)
 - b. Dietary and eating, including when a resident refuses to eat or follow a prescribed diet; (3-30-06)
 - c. Dignity; (3-30-06)
 - d. Assuring each individual's rights; (3-30-06)
 - e. Medication assistance; (3-30-06)
 - f. Provision of privacy; (3-30-06)
 - g. Social activities; (3-30-06)
 - h. Supervision; (3-30-06)
 - i. Supporting resident independence; and (3-30-06)
 - j. Telephone access. (3-30-06)
- 05. Resident Property Identified and Safe.** Identification of resident property and assuring that personal items are kept safe and used only by the resident. (3-30-06)
- 06. Intervention Procedures to Assure Safety of Residents and Staff.** How to intervene to assure resident and staff safety in unsafe situations-physical or behaviorally caused. (3-30-06)
- 07. Behavior Management for Residents.** The facility must have policies and procedures to assure timely assessment, plan development which implements the least restrictive intervention to address the behavior and document the effect of interventions. (3-30-06)
- 08. Staff Procedures for Accidents, Incidents, and Complaints.** The facility must develop policies and procedures to assure that accidents and incidents are identified, reported, investigated, and followed up with interventions to prevent reoccurrence and assure protection, and documented. (3-30-06)
- 09. Facility Operations, Inspections, Maintenance, and Testing.** Plans and procedures for the operation, periodic inspection, and testing of the physical plant, which includes utilities, fire safety and plant maintenance for all areas of the facility's campus. (3-30-06)
- 10. Hazardous Materials.** Policies and procedures for handling of hazardous materials. (3-30-06)

11. Mechanical Equipment. Policies and procedures for handling potentially dangerous mechanical equipment. (3-30-06)

154. EMERGENCY PREPAREDNESS POLICIES.

01. Emergency Preparedness Plan. Each facility must develop and implement an emergency preparedness plan to follow in the event of fire, explosion, flood, earthquake, high wind, or other emergency. (3-30-06)

02. Written Procedures. The facility must have written procedures outlining steps to be taken in the event of an emergency including: (3-30-06)

- a.** Who is to respond; (3-30-06)
- b.** Each person's responsibilities; (3-30-06)
- c.** Where and how residents are to be evacuated; and (3-30-06)
- d.** Notification of emergency agencies. (3-30-06)

155. HOURLY ADULT CARE POLICIES.

Facilities offering hourly adult care must develop written policies and procedures which include the following: (3-30-06)

01. Services Offered for Hourly Adult Care. A description of services offered, including: transportation services if offered, meals, activities, and supervision. (3-30-06)

02. Acceptable Hourly Care Individuals. Types of individuals who may or may not be accepted for hourly care. (3-30-06)

03. Cost of Program. Cost of program to individual. (3-30-06)

04. Health and Other Individual Needs. Health and other pertinent information regarding the individual's needs. (3-30-06)

05. Emergency Information. Emergency telephone numbers of family members and physician or authorized provider, and other identification information. (3-30-06)

06. Hours for Care. Time periods of program not to exceed fourteen (14) consecutive hours in a twenty-four (24) hour period. (3-30-06)

156. INFECTION CONTROL POLICIES.

Each facility must develop policies and procedures consistent with recognized standards which control and prevent infections for both staff and residents. (3-30-06)

157. MEDICATION POLICIES.

01. Medication. Each facility must develop written medication policies and procedures that detail the following: (3-30-06)

- a.** Receiving of medications; (3-30-06)
- b.** Storage of medications; (3-30-06)
- c.** Medication distribution system to be used; (3-30-06)
- d.** How staff are to respond if: (3-30-06)

- i. A resident refuses a medication; (3-30-06)
- ii. A resident misses a medication and the reason; (3-30-06)
- iii. A resident medication is not available; (3-30-06)
- iv. Medications are missing; (3-30-06)
- v. A resident receives an incorrect medication; (3-30-06)
- e. The process for determining who can self-administer medication; (3-30-06)
- f. Unused medications: (3-30-06)
 - i. Destruction; (3-30-06)
 - ii. Return of medications to the pharmacy; (3-30-06)
- g. Documentation requirements: (3-30-06)
 - i. Taken; (3-30-06)
 - ii. Refused; (3-30-06)
 - iii. Missed; (3-30-06)
 - iv. Not available; and (3-30-06)
 - v. For residents self-medicating. (3-30-06)

02. Nurse Delegation. The process the nurse will use to delegate assistance with medication and how it will be documented. (3-30-06)

158. FOOD AND NUTRITIONAL CARE POLICIES.

Each facility must develop written policies and procedures for providing proper nutritional care for each resident which includes procedures to follow if the resident refuses food or to follow the prescribed diet. (3-30-06)

159. RECORDS POLICIES.

01. Complete and Accurate Records. Each facility must develop written policies and procedures to assure complete, accurate, and authenticated records. (3-30-06)

02. Electronic Records. Facilities that implement an electronic record or signature must have written policies in place to assure the following: (3-30-06)

- a. Proper security measures to protect the use of an electronic signature by anyone other than the person to which the electronic signature belongs; (3-30-06)
- b. The privacy and integrity of the record; (3-30-06)
- c. Includes which records will be maintained and signed electronically; (3-30-06)
- d. How an e-signature code is assigned and the code and associated staff identities are protected; (3-30-06)
- e. How passwords are assigned and the frequency for which they are changed; (3-30-06)

- f. Allows resident access to his records within one (1) business day of the request; and (3-30-06)
- g. Allows immediate access to records by surveyors, and others who are authorized by law; (3-30-06)

160. RESIDENT RIGHTS POLICIES.

Each facility must develop written policies and procedures which assure that resident rights will be promoted and protected in the facility. (3-30-06)

161. SMOKING POLICIES.

01. Policy on Smoking. The facility must develop written rules governing smoking. These rules must be made known to all facility personnel, residents, and the visiting public. (3-30-06)

02. Smoking Prohibited. Nothing in this section requires that smoking be permitted in a facility whose admission policies prohibit smoking. (3-30-06)

03. Policy Content. The policy must include: (3-30-06)

- a. Prohibiting smoking in any area where flammable liquids, gases, or oxidizers are in use or stored; (3-30-06)
- b. Prohibiting smoking in bed by anyone; (3-30-06)
- c. Prohibiting unsupervised smoking by residents classified as not mentally or physically responsible, and residents affected by medication; (3-30-06)
- d. Prohibiting smoking in areas where combustible supplies or materials are stored; and (3-30-06)
- e. Designating areas where smoking is permitted. (3-30-06)

162. STAFFING POLICIES.

The facility must develop written staffing policies and procedures based on the numbers of residents, resident needs, and configuration of the facility. (3-30-06)

163. -- 209. (RESERVED)

210. REQUIREMENTS FOR ACTIVITIES.

The facility must provide an ongoing program of activities that is consistent with the facility's policies and procedures as described in Section 151 of these rules. (3-30-06)

211. -- 214. (RESERVED)

215. REQUIREMENTS FOR A FACILITY ADMINISTRATOR.

Each facility must be organized and administered under one (1) licensed administrator assigned as the person responsible for the operation of the facility. Multiple facilities under one (1) administrator may be allowed by the Department based on an approved plan of operation described in Section 216 of these rules. (7-1-15)

01. Administrator Responsibility. The administrator is responsible for assuring that policies and procedures required in Title 39, Chapter 33, Idaho Code and IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho" are implemented. (3-30-06)

02. Availability of Administrator. The facility's administrator must be on site sufficiently to provide for safe and adequate care of the residents to meet the terms in the Negotiated Service Agreement. The facility's administrator or his designee must be available to be on-site at the facility within two (2) hours. (3-30-06)

03. Thirty Day Operation Limit. The facility may not operate for more than thirty (30) days without a licensed administrator. (3-30-06)

04. Representation of Residents. The owner or administrator, their relatives, or employees cannot act as or seek to become the legal guardian of, or have power of attorney for any resident. Specific limited powers of attorney to address emergency procedures where competent consent cannot otherwise be obtained are permitted. (7-1-15)

05. Responsibility for Acceptable Admissions. The administrator must assure that no resident is knowingly admitted or retained who requires care as defined in Section 39-3307, Idaho Code, and Subsection 152.05 of these rules. (3-30-06)

06. Sexual Offender. The administrator must assure that a non-resident on the sexual offender registry is not allowed to live or work in the facility. The registry may be accessed online at http://isp.idaho.gov/sor_id/search.html. (3-30-06)

07. Notification of Adult Protection and Law Enforcement. The administrator must assure that adult protection and law enforcement are notified in accordance with Section 39-5310, Idaho Code. (3-30-06)

08. Procedures for Investigations. The administrator must assure the facility procedures for investigation of incidents, accidents, and allegations of abuse, neglect, or exploitation are implemented to assure resident safety. (3-30-06)

09. Identify and Monitor Patterns of Incidents and Accidents. The administrator must identify and monitor patterns related to incidents and accidents and develop interventions to prevent recurrences. (7-1-15)

10. Notification of Reportable Incidents. The administrator must assure notification to the Licensing and Certification Unit of reportable incidents. (3-29-10)

11. Administrator's Designee. A person authorized in writing to act in the absence of the administrator. An administrator's designee may act in the absence of the administrator for no longer than thirty (30) consecutive days when the administrator: (7-1-15)

- a. Is on vacation; (7-1-15)
- b. Has days off; (7-1-15)
- c. Is ill; or (7-1-15)
- d. Is away for training or meetings. (7-1-15)

12. Ability to Reach Administrator or Designee. The administrator or his designee must be reachable and available at all times. (3-30-06)

13. Minimum Age of Personnel. The administrator will assure that no personnel providing hands-on care or supervision services will be under eighteen (18) years of age unless they have completed a certified nursing assistant (CNA) certification course. (3-30-06)

14. Notification to Licensing and Certification Unit. The facility must notify the Licensing and Certification Unit, in writing, within three (3) business days of a change of administrator. (3-29-10)

216. REQUIREMENTS FOR A MULTIPLE FACILITY ADMINISTRATOR. Each facility must have a Department approved plan of operation to have one (1) administrator assigned as the person responsible for the operation of multiple facilities. (7-1-15)

01. Approved Plan of Operation. Under Section 39-3321, Idaho Code, multiple facilities under one (1) administrator may be approved when the following is provided in the plan of operation: (7-1-15)

- a. The multiple facility administrator must provide proof of a current license in Idaho with no actions

or pending actions taken against licensee; (7-1-15)

- b.** The plan must provide for full-time on-site supervision by trained and experienced staff, including: (7-1-15)
 - i.** Who is responsible for on-site management of each facility when administrator is not on-site; and (7-1-15)
 - ii.** How each individual responsible for on-site management of each facility is qualified to perform those duties. (7-1-15)

02. Facility Change To An Approved Plan of Operation. A new plan of operation must be submitted to the Department and approved before any facility in the plan is changed. (7-1-15)

03. Number of Facilities or Beds Allowed Under One Administrator. Based on an approved plan of operation, the Department will allow one (1) licensed administrator to oversee: (7-1-15)

- a.** Up to three (3) facilities when each of the facilities has sixteen (16) beds or fewer; (7-1-15)
- b.** Two (2) facilities when either of the facilities has more than sixteen (16) beds but less than fifty (50) beds, and the combined number of beds for both facilities cannot exceed eighty (80) beds; or (7-1-15)
- c.** One (1) facility with fifty (50) beds or more. A plan of operation for a multiple facility administrator will not be approved for a facility with fifty (50) beds or more. (7-1-15)

04. No Unresolved Core Issues. None of the multiple facilities operated under one (1) administrator can have any unresolved core issue deficiencies described in Section 010 of these rules. The administrator approved to oversee more than one (1) facility must have an established record of compliance, which includes: (7-1-15)

- a.** No repeat deficiencies; (7-1-15)
- b.** No enforcement actions; (7-1-15)
- c.** A history of submitting acceptable plans of corrections within the time frame established in Subsection 130.08 of these rules; (7-1-15)
- d.** A history of submitting acceptable evidence of resolution of deficiencies within the time frame established in Subsection 130.09 of these rules; and (7-1-15)
- e.** The administrator’s record must show that he has two (2) years or more of experience working as a licensed residential care administrator in Idaho. (7-1-15)

05. Administrator Hours On-site in Each Facility. The administrator must be on-site at each facility for at least: (7-1-15)

- a.** Ten (10) hours per week in facilities with fewer than sixteen (16) beds; (7-1-15)
- b.** Fifteen (15) hours per week in facilities with more than (16) beds; and (7-1-15)
- c.** Each facility’s record must include documentation of the number of hours per week the administrator is on-site. For each week the Administrator is not on-site, the documentation must include the reasons for his absence such as illness, vacation, or training. (7-1-15)

06. Administrator Response Time for Each Facility. A multiple facility administrator must not have a primary residence more than seventy-five (75) miles from any of the facilities. Each facility with a multiple facility administrator must be within two (2) hours driving distance from each other. (7-1-15)

07. On-Site Supervision in Each Facility. The plan of operation must include full-time on-site supervision by trained and experienced staff. (7-1-15)

08. Dually Licensed Administrator. A skilled nursing facility and an assisted living facility with less than fifty (50) beds may have a multiple facility administrator with an approved plan of operation. A dually licensed administrator, who is licensed in Idaho as both a Nursing Home Administrator and a Residential Care Facility Administrator, may be approved as a multiple facility administrator only when the two (2) facilities are on the same property or campus. (7-1-15)

217. RESCIND APPROVAL FOR MULTIPLE FACILITY ADMINISTRATOR.

01. Rescind Plan of Operation Approval. When the conditions in the approved plan of operation are not met, the ability to have one (1) administrator for multiple facilities will be rescinded by the Department. (7-1-15)

02. Reasons for Rescission or Denial of a Multiple Facility Administrator. Any and all facilities with a multiple facility administrator included in its approved plan of operation that receives repeat deficiencies, enforcement actions, or fails to submit acceptable plans of correction and evidence of resolution within the time frames established in Subsections 130.08 and 130.09 of these rules, may have its multiple facility administrator approval rescinded. (7-1-15)

03. Rescission Review of Department Action. When the facility disagrees with the reasons for the rescission of the ability to have a multiple facility administrator, the administrator can request a rescission review. This request does not stay the rescission. The request must: (7-1-15)

- a. Be in writing; (7-1-15)
- b. Be received within fourteen (14) days of the date the Department's rescission letter was issued; and (7-1-15)
- c. State the specific reasons for disagreement with the Department's rescission action. (7-1-15)

04. Review Decision. Within thirty (30) days from the date the review request is received, the Department will review and issue a decision. This decision is not appealable. (7-1-15)

218. (RESERVED)

219. REQUIREMENTS FOR ADMISSION AGREEMENTS FOR DEPARTMENT CLIENTS.

01. Initial Resident Assessment. Prior to or on the day of admission each resident must be assessed by the facility to ensure the resident is appropriate for placement in a residential care or assisted living facility. (3-29-10)

02. Interim Care Plan. The facility must develop an interim care plan to guide services until the Department's assessment outlined in Section 660 of these rules is complete. The Department will complete a resident assessment within twelve (12) business days of receiving notification that the participant is financially eligible for waiver services. The result of the assessment will determine the need for specific services and supports and establish the reimbursement rate for those services. (3-29-10)

03. Written Agreement. The admission agreement may be integrated within the Negotiated Service Agreement, provided that all requirements for the Negotiated Service Agreement in Section 320 of these rules are met. (3-29-10)

220. REQUIREMENTS FOR ADMISSION AGREEMENTS FOR PRIVATE-PAY RESIDENTS.

01. Initial Resident Assessment and Care Plan. Prior to or on the day of admission, each private-pay resident must be assessed by the facility to ensure the resident is appropriate for placement in their residential care or assisted living facility. The facility must develop an interim care plan to guide services until the facility can complete the resident assessment process outlined in Section 650 of these rules. The result of the assessment will determine the

need for specific services and supports. (3-29-10)

02. Written Agreement. Prior to or on the day of admission, the facility and each resident or the resident's legal guardian or conservator must enter into a written admission agreement that is transparent, understandable, and is translated into a language the resident or his representative understands. The admission agreement will provide a complete reflection of the facility's charges, commitments agreed to by each party, and the actual practices that will occur in the facility. The agreement must be signed by all involved parties, and a complete copy provided to the resident and the resident's legal guardian or conservator prior to or on the day of admission. The admission agreement may be integrated within the Negotiated Service Agreement, provided that all requirements for the Negotiated Service Agreement in Section 320 of these rules and the admission agreement are met. Admission agreements must include all items described under Subsections 220.03 through 220.18 of this rule. (3-29-10)

03. Services, Supports, and Rates. The facility must identify the following services, supports, and applicable rates: (3-29-10)

a. Unless otherwise negotiated with the resident, the resident's legal guardian or conservator, basic services must, at a minimum, include: (3-29-10)

- i. Rent; (3-29-10)
- ii. Utilities; (3-29-10)
- iii. Food; (3-29-10)
- iv. Activities of daily living services; (3-29-10)
- v. Supervision; (3-29-10)
- vi. First aid; (3-29-10)
- vii. Assistance with and monitoring of medications; (3-29-10)
- viii. Laundering of linens owned by the facility; (3-29-10)
- ix. Emergency interventions and coordination of outside services; (3-29-10)
- x. Routine housekeeping and maintenance of common areas; and (3-29-10)
- xi. Access to basic television in common areas. (3-29-10)

b. The resident's monthly charges must be specific and describe the services that are included in the basic services rate and the charged rate. (3-29-10)

c. The facility must disclose all prices, formulas, and calculations used to determine the resident's basic services rate including: (3-29-10)

- i. Service packages; (3-29-10)
- ii. Fee-for-service rates; (3-29-10)
- iii. Assessment forms; (3-29-10)
- iv. Price per assessment point; (3-29-10)
- v. Charges for levels of care determined with an assessment; and (3-29-10)
- vi. Move-in fees or other similar charges. (3-29-10)

d. Services or amenities that are not contained in the description of basic services are considered additional services. The facility must describe the services and rates charged for additional or optional services, supplies, or amenities that are available through the facility or arranged for by the facility for which the resident will be charged additional fees. (3-29-10)

e. Services or rates that are impacted by an updated assessment of the resident must be identified, as well as the assessment tool, the assessor, and the frequency of the assessment, when the facility uses this assessment to determine rate changes. (3-29-10)

f. The facility may charge residents for the use of personal furnishings, equipment, and supplies provided by the facility for private-pay residents. The facility must provide a detailed itemization of furnishings, equipment, supplies, and the rate for those items the resident will be charged. (3-29-10)

04. Staffing. The facility must identify staffing patterns and qualification of staff on duty during a normal day. (3-29-10)

05. Notification of Liability Insurance Coverage. The administrator of a residential care or assisted living facility must disclose in writing at the time of admission or before a resident's admission if the facility does not carry professional liability insurance. If the facility cancels the professional liability insurance all residents must be notified of the change in writing. (3-30-06)

06. Medication Responsibilities. The facility's and resident's roles and responsibilities relating to assistance with medications including the reporting of missed doses or those taken on a PRN basis. (3-30-06)

07. Resident Personal Fund Responsibilities. Who is responsible for the resident's personal funds. (3-30-06)

08. Resident Belongings Responsibility. The agreement must identify responsibility for protection and disposition of all valuables belonging to the resident and provision for the return of resident's valuables if the resident leaves the facility. (3-29-10)

09. Emergency Transfers. The agreement must identify conditions under which emergency transfers will be made as provided in Section 152 of these rules. (3-29-10)

10. Billing Practices, Notices, and Procedures for Payments and Refunds. The facility must provide a description of the facility's billing practices, notices, and procedures for payments and refunds. The following procedures must be included: (3-29-10)

a. Arrangement for payments; (3-30-06)

b. Under what circumstances and time frame a partial month's resident fees are to be refunded when a resident no longer resides in the facility; (3-29-10)

c. Written notice to vacate the facility must be given thirty (30) calendar days prior to transfer or discharge on the part of either party except in the case of the resident's emergency discharge or death the facility may charge up to fifteen (15) days prorated rent from the date of the resident's emergency discharge or death. (3-29-10)

11. Resident Permission to Transfer Information. The agreement must clarify permission to transfer information from the resident's records to any facility to which the resident transfers. (3-29-10)

12. Resident Responsibilities. Resident responsibilities, as appropriate. (3-30-06)

13. Restrictions on Choice of Care or Service Providers. Any restriction on choice of care or service providers, such as pharmacy, home health agency, hospice agency, physician or authorized provider. (3-30-06)

14. Advance Directive. The agreement must identify written documentation of the resident's

preference regarding the formulation of an Advance Directive in accordance with Idaho state law. When a resident has an Advanced Directive, a copy must be immediately available for staff and emergency personnel. (3-29-10)

15. Notification of Payee Requirements. Notification if the facility requires as a condition of admission that the administrator or an employee of the facility be named as payee. (3-29-10)

16. Contested Charges. The facility must provide the methods by which a resident may contest charges or rate increases that include contacting the Ombudsman for the Elderly. The facility must respond as provided under Section 711.02 of these rules. (3-29-10)

17. Transition to Publicly-Funded Program. The facility must disclose the conditions under which the resident can remain in the facility, if payment for the resident shifts to a publicly-funded program. (3-29-10)

18. Other Information. The agreement must identify other information that the facility may deem appropriate. (3-29-10)

221. REQUIREMENTS FOR TERMINATION OF ADMISSION AGREEMENT.

01. Conditions for Termination of the Admission Agreement. The admission agreement cannot be terminated, except under the following conditions: (3-30-06)

a. Giving the other party thirty (30) calendar days written notice for any reason; (3-30-06)

b. The resident's death; (3-30-06)

c. Emergency conditions that requires the resident to be transferred to protect the resident or other residents in the facility from harm; (3-30-06)

d. The resident's mental or medical condition deteriorates to a level requiring care as described in Section 33-3307, Idaho Code, and Subsection 152.05 of these rules; (3-30-06)

e. Nonpayment of the resident's fees; (3-30-06)

f. When the facility cannot meet resident needs due to changes in services, in house or contracted, or inability to provide the services; or (3-30-07)

g. Other written conditions as may be mutually established between the resident, the resident's legal guardian or conservator and the administrator of the facility at the time of admission. (3-30-06)

02. Facility Responsibility During Resident Discharge. The facility is responsible to assist the resident with transfer by providing a list of skilled nursing facilities, other residential care or assisted living facilities, and certified family homes that may meet the needs of the resident. (3-30-06)

03. Resident's Appeal of Involuntary Discharge. A resident may appeal all discharges with the exception of an involuntary discharge in the case of non-payment, emergency conditions that require the resident to be transferred to protect the resident or other residents in the facility from harm. (3-30-06)

a. Before a facility discharges a resident, the facility must notify the resident, and if known, a family member, or his legal representative of the discharge and the reasons for the discharge. (3-30-06)

b. This notice must be in writing and in a language and manner the resident or his representative can understand. (3-30-06)

04. Written Notice of Discharge. The written notice of discharge must include the following: (3-30-06)

a. The reason for the discharge; (3-30-06)

- b.** Effective date of the discharge; (3-30-06)
 - c.** A statement that the resident has the right to appeal the discharge to the Department within thirty (30) calendar days of receipt of written notice of discharge; (3-30-06)
 - d.** The name and address of where the appeal must be submitted; (3-30-06)
 - e.** The name, address, and telephone number of the local ombudsman, for residents sixty (60) years of age or older; and (3-30-06)
 - f.** The name, address and telephone number of Disability Rights Idaho, for residents with developmental disabilities or mental illness. (7-1-15)
 - g.** If the resident fails to pay fees to the facility, as agreed to in the admission agreement, during the discharge appeal process, the resident's appeal of the involuntary discharge becomes null and void and the discharge notice applies. (3-30-06)
 - h.** When the notice does not contain all the above required information, the notice is void and must be reissued. (3-30-06)
- 05. Receipt of Appeal.** Request for an appeal must be received by the Department within thirty (30) calendar days of the resident's or resident's representative's receipt of written notice of discharge to stop the discharge before it occurs. (3-30-06)

222. -- 224. (RESERVED)

225. REQUIREMENTS FOR BEHAVIOR MANAGEMENT.

The facility must identify and evaluate behavioral symptoms that are distressing to the resident or infringe on other residents' rights. (3-30-06)

- 01. Evaluation for Behavior Management.** The facility evaluation must include the following; (3-30-06)

 - a.** Identification if the resident behavior is transitory or permanent; (3-30-06)
 - b.** Review of the resident's previous behaviors and activities; (3-30-06)
 - c.** Review of baseline data including intensity, duration and frequency of the resident behavior; (3-30-06)
 - d.** Identification of recent changes in the resident's life, such as death in the family, change in resident's daily routine, or changes in the Resident's Negotiated Service Agreement; (3-30-06)
 - e.** Identification of environmental causes that could contribute to the resident's behavior such as excessive heat, noise, overcrowding, hunger, staffing; (3-30-06)
 - f.** Rule out possible medical causes such as pain, constipation, fever, infection, or medication side effects; and (3-30-06)
 - g.** Identification of events that trigger behavioral symptoms. (3-30-06)
- 02. Intervention.** The facility must develop an intervention for each behavioral symptom. (3-30-06)

 - a.** All staff must be aware of and consistently implement each behavioral symptom intervention; (3-30-06)

- b.** The intervention needs to be the least restrictive; and (3-30-06)
- c.** Each intervention needs to be reviewed within seventy-two (72) hours of implementation, and from then on as appropriate, to evaluate the continued need for the intervention. (3-30-06)

03. Prescribing Provider. The resident’s medication regime must be evaluated every six (6) months to assure that medications used to treat behavioral symptoms are necessary and at the lowest possible dose. (3-30-06)

226. -- 249. (RESERVED)

250. REQUIREMENTS FOR BUILDING CONSTRUCTION AND PHYSICAL STANDARDS.

01. Building Character. All buildings utilized as residential care or assisted living facilities must be of such character as to be suitable for such use. Facilities must be of such character as to enhance normalization and integration of residents into the community. (3-30-06)

02. Plans and Specifications. Plans and specifications for any proposed new facility construction, any addition or remodeling are governed by the following: (3-30-06)

a. Plans must be prepared by an architect or engineer licensed in the state of Idaho. A variance of this requirement may be granted by the Licensing and Survey Agency when the size of the project does not necessitate involvement of an architect or engineer; (3-30-06)

b. Plans and specifications must be submitted to the Licensing and Survey Agency to assure compliance with applicable construction standards, codes, and regulations; (3-30-06)

c. Newly constructed or converted buildings housing seventeen (17) or more residents must submit professionally prepared drawings or plans of the kitchen and a listing of all kitchen equipment for review and approval prior to construction. (3-29-10)

03. Remodeling or Additions. Remodeling of or additions to a facility will be consistent with all applicable fire and life safety requirements. (3-30-06)

04. Approval. All buildings, additions and remodeling are subject to approval by the Licensing and Survey Agency and must meet applicable requirements. (3-30-06)

05. Walls and Floor Surfaces. Walls and floors must be of such character to permit cleaning. Walls and ceilings in kitchens, bathrooms, and utility rooms must have washable surfaces. (3-30-06)

06. Toilet and Bathrooms. Each facility must provide: (3-30-06)

a. A toilet and bathroom for resident use so arranged that it is not necessary for an individual to pass through another resident's room to reach the toilet or bath; (3-30-06)

b. Solid walls or partitions to separate each toilet and bathroom from all adjoining rooms; (3-30-06)

c. Mechanical ventilation to the outside from all inside toilets and bathrooms not provided with an operable exterior window; (3-30-06)

d. Each tub, shower, and lavatory with hot and cold running water; (3-30-06)

e. At least one (1) flush toilet for every six (6) residents; (3-30-06)

f. At least one (1) tub or shower for every eight (8) residents; (3-30-06)

g. At least one (1) lavatory with a mirror for each toilet; and (3-30-06)

h. At least one (1) toilet, tub or shower, and lavatory in each building in which residents sleep, with additional units if required by the number of persons. (3-30-06)

07. Accessibility for Persons With Mobility and Sensory Impairments. For residents with mobility or sensory impairments, the facility must provide a physical environment which meets the needs of the person for independent mobility and use of appliances, bathroom facilities, and living areas. New construction must meet the requirements of the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Existing facilities must comply, to the maximum extent feasible, with 28 CFR Sections 36.304 and 36.305 regarding removal of barriers under the Americans with Disabilities Act, without creating an undue hardship or burden on the facility, and must provide as required, the necessary accommodations: (3-30-06)

a. Ramps for residents who require assistance with ambulation shall comply with the requirements of the ADAAG 4.8; (3-30-06)

b. Bathrooms and doors large enough to allow the easy passage of a wheelchair as provided for in the ADAAG 4.13; (3-30-06)

c. Grab bars in resident toilet and bathrooms in compliance with ADAAG 4.26; (3-30-06)

d. Toilet facilities in compliance with ADAAG 4.16 and 4.23; (3-30-06)

e. Non-retractable faucet handles in compliance with ADAAG 4.19, with the exception of self-closing valves under 4.19.5, and 4.27; and (3-30-06)

f. Suitable hand railing must be provided on both sides of all stairs leading into and out of a building for residents who require the use of crutches, walkers, or braces. (3-30-06)

08. Lighting. The facility must provide adequate lighting in all resident sleeping rooms, dining rooms, living rooms, recreation rooms, and hallways. (3-30-06)

09. Ventilation. The facility must be ventilated, and precautions shall be taken to prevent offensive odors. (3-30-06)

10. Plumbing. All plumbing in the facility must comply with local and state codes. All plumbing fixtures must be easily cleanable and maintained in good repair. The temperature of hot water at plumbing fixtures used by residents must be between one hundred five degrees (105°F) Fahrenheit and one hundred twenty degrees (120°F) Fahrenheit. (3-30-06)

11. Heating. A heating system must be provided for the facility that is capable of maintaining a minimum temperature of seventy degrees (70°F) Fahrenheit during the day and a minimum of sixty-two degrees (62°F) Fahrenheit during the night. Wood stoves are not be permitted as the sole source of heat and the thermostat for the primary source of heat must be remotely located away from any wood stove. (3-30-06)

12. Dining, Recreation, Shower, Bathing and Living Space. The total area set aside for these purposes must be no less than thirty (30) square feet per licensed bed. A hall or entry cannot be included as living or recreation space. (3-30-06)

13. Resident Sleeping Rooms. The facility must assure that: (3-30-06)

a. Resident sleeping rooms are not in attics, stairs, halls, or any other room commonly used for other than bedroom purposes; (3-30-06)

b. A room with a window that opens into an exterior window well cannot be used for a resident sleeping room; (3-30-06)

c. Not more than four (4) residents can be housed in any multi-bed sleeping room in facilities licensed prior to July 1, 1991. New facilities or building converted to a licensed facility after July 1, 1992, cannot have more

than two (2) residents in any multi-bed sleeping room. When there is any change in ownership of the facility, the maximum number of residents allowed in any room is two (2); (3-30-06)

d. Square footage requirements for resident sleeping rooms must provide for not less than one hundred (100) square feet of floor space per resident in a single-bed sleeping room and not less than eighty (80) square feet of floor space per resident in a multi-bed sleeping room; (3-30-06)

e. Each resident's sleeping room must be provided with an operable exterior window. An operable window is not required where there is a door directly to the outside from the sleeping room; (3-30-06)

f. The operable window sill height must not exceed thirty-six (36) inches above the floor in new construction, additions, or remodeling; (3-30-06)

g. The operable window sill height must not exceed forty-four (44) inches above the floor in existing buildings being converted to a facility; (3-30-06)

h. Each resident sleeping room must provide a total window space that equals at least eight percent (8%) of the room's total square footage; (3-30-06)

i. Window screens must be provided on operable windows; (3-30-06)

j. Resident sleeping rooms must have walls that run from floor to ceiling; have doors that will limit the passage of smoke; and provide the resident(s) with privacy; (3-30-06)

k. Ceiling heights in sleeping rooms must be at least seven (7) feet, six (6) inches; and (3-30-06)

l. Closet space in each resident sleeping room must provide at least four (4) usable square feet per resident. Common closets used by two (2) or more residents must have substantial dividers for separation of each resident's clothing. All closets must be equipped with doors. Free-standing closets are deducted from the square footage of the sleeping room. (3-30-06)

14. Secure Environment. If the facility accepts and retains residents who have cognitive impairment, the facility must provide an interior environment and exterior yard which is secure and safe. (3-30-06)

15. Call System. The facility must have a call system available for each resident to call for assistance and still be assured a resident's right to privacy at the facility, including but not limited to, the resident's living quarters, common areas, medical treatment and other services, written and telephonic communications, or in visits with family, friends, advocates, and resident groups. The call system cannot be a substitute for supervision. For facilities licensed prior to January 1, 2006, when the current system is no longer operational or repairable the facility must install a call system as defined in Section 010 of these rules. (3-29-10)

16. Dietary Standards. Each facility must have a full service kitchen to meet the needs of the residents. Any satellite kitchen must meet all applicable requirements. (3-30-06)

251. -- 254. (RESERVED)

255. REQUIREMENTS FOR ADDITIONAL PHYSICAL STANDARDS.

01. Fire District. The facility site must be in a lawfully constituted fire district. (3-30-06)

02. Roads. The facility must be served by an all-weather road and kept open to motor vehicles at all times of the year. (3-30-06)

03. Medical Accessibility. The facility site must be accessible to authorized providers, or emergency medical services within thirty (30) minutes driving time. (3-30-06)

04. Service Accessibility. The facility site must be accessible within thirty (30) minutes driving time to

necessary social, medical, and rehabilitation services. (3-30-06)

256. -- 259. (RESERVED)

260. REQUIREMENTS FOR ENVIRONMENTAL SANITATION.

01. Water Supply. The facility must have an adequate water supply that is safe and of a sanitary quality. It must be from: (3-30-06)

a. An approved private, public, or municipal water supply; (3-30-06)

b. Water from a private supply, must have water samples submitted annually to either a private accredited laboratory or to the Public Health District Laboratory for bacteriological examination. The Department may require more frequent examinations if warranted; and (3-30-06)

c. There must be a sufficient amount of water under adequate pressure to meet sanitary and fire sprinkler system requirements of the facility at all times. (3-30-06)

02. Sewage Disposal. All sewage and liquid waste must be discharged, into a municipal sewage system where such a system is available. If a municipal sewage system is not available sewage and liquid waste must be collected, treated, and disposed of in a manner approved by the Department. (3-30-06)

03. Garbage and Refuse Disposal. All garbage and refuse disposal must be provided by the facility. (3-30-06)

a. The premises and all buildings must be kept free from accumulation of weeds, trash and rubbish. (3-30-06)

b. Material not directly related to the maintenance and operation of the facility must not be stored on the premises. (3-30-06)

c. All containers used for storage of garbage and refuse must be constructed of durable, nonabsorbent material and must not leak or absorb liquids. Containers must be provided with tight fitting lids unless stored in a vermin-proof room(s) or enclosures. (3-30-06)

d. Garbage containers must be maintained in a sanitary manner. Sufficient containers must be afforded to hold all garbage and refuse which accumulates between periods of removal from the facility. Storage areas must be clean and sanitary. (3-30-06)

04. Insect and Rodent Control. A pest control program must be in effect at all times. This program must effectively prevent insects, rodents and other pests from entrance to, or infestation of the facility. (3-30-06)

a. All toxic chemicals must be properly labeled and stored under lock and key; and (3-30-06)

b. No toxic chemicals must be stored in resident areas, where drugs are stored, or in any area where food is stored, prepared or served. (3-30-06)

05. Linen and Laundry Facilities and Services. (3-30-06)

a. The facility must have available at all times a quantity of linen essential to the proper care and comfort of residents; (3-30-06)

b. Linen must be of good quality, not thread-bare, torn or badly stained; (3-30-06)

c. Linens must be handled, processed and stored in a appropriate manner that prevents contamination; (3-30-06)

d. Adequate facilities must be provided for the proper and sanitary washing and drying of linen and other washable goods laundered in the facility; (3-30-06)

e. The laundry must be situated in an area separate and apart from where food is stored, prepared or served; (3-30-06)

f. The laundry must be well lighted and ventilated, adequate in size for the needs of the facility, maintained in a sanitary manner and kept in good repair; (3-30-06)

g. When the facility sends linen and personal laundry out for laundry services, care must be taken that soiled linen and clothing are properly handled before sending out. Clean linen and clothing received from a laundry service must be stored in a proper manner; and (3-30-06)

h. Residents' and personnel's personal laundry must be collected, transported, sorted, washed, and dried in a sanitary manner and cannot be washed with general linens (towels, sheets). (3-30-06)

06. Housekeeping Services and Equipment. Housekeeping, maintenance personnel, and equipment must be provided to maintain the interior and exterior of the facility in a clean, safe, and orderly manner. Prior to occupancy of any sleeping room by a new resident, the room must be thoroughly cleaned including the bed, bedding, and furnishings. (3-30-06)

261. -- 299. (RESERVED)

300. REQUIREMENTS FOR NURSING SERVICES.

Nursing services must be performed in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." The facility must have on staff or under contract the nursing personnel listed in Subsections 300.01 and 300.02 of these rules to provide nursing service requirements. (3-30-06)

01. Licensed Registered Nurse (RN). A licensed registered nurse (RN) must visit the facility at least once every ninety (90) days or when there is a change in the resident's condition. The licensed registered nurse is responsible for delegation of all nursing functions, according to IDAPA 23.01.01, "Idaho Board of Nursing Rules." (3-30-06)

02. Licensed Registered Nurse. The facility must assure that a licensed registered nurse is available to address changes in the resident's health or mental status and to review and implement new orders prescribed by the resident's health care provider. (3-30-06)

301. -- 304. (RESERVED)

305. LICENSED REGISTERED NURSE RESPONSIBILITY REQUIREMENTS.

The licensed registered professional nurse must assess and document, including date and signature, for each resident as described in Subsections 305.01 through 305.08 of these rules. (3-30-06)

01. Resident Response to Medications and Therapies. Conduct a nursing assessment of each resident's response to medications and prescribed therapies. (3-30-06)

02. Current Medication Orders and Treatment Orders. Assure the residents' medication and treatment orders are current by verifying: (7-1-15)

a. That the medication listed on the medication distribution container, including over-the-counter medications as appropriate, are consistent with physician or authorized provider orders: (7-1-15)

b. That the physician or authorized provider orders related to therapeutic diets, treatments, and medications for each resident are followed; and (7-1-15)

c. A copy of the actual written, signed and dated orders are present in each resident's care record. (7-1-15)

03. Resident Health Status. Conduct a nursing assessment of the health status of each resident by identifying symptoms of illness, or any changes in mental or physical health status. (3-30-06)

04. Recommendations. Make recommendations to the administrator regarding any medication needs, other health needs requiring follow up, or changes needed to the Negotiated Service Agreement. (3-30-06)

05. Progress of Previous Recommendations. Conduct a review and follow-up of the progress on previous recommendations made to the administrator regarding any medication needs or other health needs that require follow up. Report to the attending physician or authorized provider and state agency if recommendations for care and services are not implemented that have affected or have the potential to affect the health and safety of residents. (3-30-06)

06. Self-Administered Medication. Conduct an initial nursing assessment on each resident participating in a self-administered medication program as follows: (3-30-06)

- a.** Before the resident can self-administer medication to assure resident safety; and (3-30-06)
- b.** Evaluate the continued validity of the assessment to assure the resident is still capable to safely continue the self-administered medication for the next ninety (90) days. (3-30-06)

07. Medication Interactions and Usage. Conduct a review of the resident's use of all prescribed and over-the-counter medications for side effects, interactions, abuse or a combination of these adverse effects. The nurse must notify the resident's physician or authorized provider of any identified concerns. (3-30-06)

08. Resident and Facility Staff Education. Assess, document and recommend any health care related educational needs, for both the resident and facility staff, as the result of the assessment or at the direction of the resident's health care provider. (3-30-06)

306. -- 309. (RESERVED)

310. REQUIREMENTS FOR MEDICATION.

01. Medication Distribution System. Each facility must use medi-sets or blister packs for prescription medications. The facility may use multi-dose medication distribution systems that are provided for resident's receiving medications from the Veterans Administration or Railroad benefits. The medication system must be filled by a pharmacist and appropriately labeled in accordance with pharmacy standards and physician or authorized provider instructions. A licensed nurse may fill medi-sets, blister packs, or other Licensing and Survey Agency approved system as provided in Section 39-3326, Idaho Code and Section 157 of these rules. (7-1-15)

- a.** All medications will be kept in a locked area such as a locked box or room; (3-30-06)
- b.** Poisons, toxic chemicals, and cleaning agents will be stored in separate locked areas apart from medications, such as a locked medication cart, locked box or room; (3-30-06)
- c.** Biologicals and other medications requiring cold storage will be refrigerated. A covered container in a home refrigerator will be considered to be satisfactory storage if the temperature is maintained at thirty-eight to forty-five degrees (38-45°F) Fahrenheit. The temperature will be monitored and documented on a daily basis; (3-30-06)
- d.** Assistance with medication must comply with the Board of Nursing requirements; (3-30-06)
- e.** Each prescription medication must be given to the resident directly from the medi-set, blister pack or medication container; and (7-1-15)
- f.** Each resident must be observed taking the medication. (3-30-06)

02. Unused Medication. Unused, discontinued, or outdated medications cannot accumulate at the facility for longer than thirty (30) days. The unused medication must be disposed of in a manner that assures it cannot be retrieved. The facility may enter into agreement with a pharmacy to return unused, unopened medications to the pharmacy for proper disposition and credit. See IDAPA 16.03.09, “Medicaid Basic Plan Benefits,” Sections 664 and 665, and IDAPA 27.01.01, “Rules of the Idaho Board of Pharmacy.” A written record of all drug disposals must be maintained in the facility and include: (3-30-06)

- a. A description of the drug, including the amount; (3-30-06)
- b. Name of resident for prescription medication; (3-30-06)
- c. The reason for disposal; (3-30-06)
- d. The method of disposal; (3-30-06)
- e. The date of disposal; and (3-30-06)
- f. Signatures of responsible facility personnel and witness. (3-30-06)

03. Controlled Substances. The facility must track all controlled substances entering the facility in accordance with Title 37, Chapter 27, Idaho Code, and IDAPA 27.01.01, “Rules of the Idaho Board of Pharmacy,” Section 495, and IDAPA 23.01.01, “Rules of the Idaho Board of Nursing Rules,” Section 490. (3-30-06)

04. Psychotropic or Behavior Modifying Medication. (3-30-06)

a. Psychotropic or behavior modifying medication intervention must not be the first resort to address behaviors. The facility must attempt non-drug interventions to assist and redirect the resident’s behavior. (3-30-06)

b. Psychotropic or behavior modifying medications must be prescribed by a physician or authorized provider. (3-30-06)

c. The facility will monitor the resident to determine continued need for the medication based on the resident’s demonstrated behaviors. (3-30-06)

d. The facility will monitor the resident for any side effects that could impact the resident’s health and safety. (3-30-06)

e. The use of psychotropic or behavior modifying medications must be reviewed by the physician or authorized provider at least every six (6) months. The facility must provide behavior updates to the physician or authorized provider to help facilitate an informed decision on the continuing use of the psychotropic or behavior modifying medication. (3-30-06)

311. -- 319. (RESERVED)

320. REQUIREMENTS FOR THE NEGOTIATED SERVICE AGREEMENT.

The Negotiated Service Agreement must be completed and signed no later than fourteen (14) calendar days from the date of admission. A written interim plan must be developed and used while the Negotiated Service Agreement is being completed. (3-30-06)

01. Use of Negotiated Service Agreement. Each resident, regardless of the source of funding, must enter into a Negotiated Service Agreement. The Negotiated Service Agreement provides for coordination of services and instruction to the facility staff. Upon completion, the agreement must clearly identify the resident; describe services to be provided, the frequency of such services, and how such services are to be delivered. The Negotiated Service Agreement must be implemented. (3-30-06)

02. Key Elements of the Negotiated Service Agreement. A resident's agreement must be based on the following: (3-30-06)

- a. Resident's uniform assessment or assessment based on the uniform assessment criteria; (3-30-06)
 - b. Level of support in activities of daily living; (3-30-06)
 - c. Health services; (3-30-06)
 - d. Level of assistance for medications; (3-30-06)
 - e. Frequency of needed services; (3-30-06)
 - f. Scope of needed assistance; (3-30-06)
 - g. Habilitation needs, to specify the program being used if applicable; (3-30-06)
 - h. Training needs, to specify the program being used if applicable; (3-30-06)
 - i. Identification of specific behavioral symptoms, situations that trigger the behavior symptoms and the specific interventions for each behavioral symptom; (3-30-06)
 - j. Physician or authorized provider's signed and dated orders; (3-30-06)
 - k. Admission records; (3-30-06)
 - l. Community support systems; (3-30-06)
 - m. Resident's desires; (3-30-06)
 - n. Transfer plans; (3-30-06)
 - o. Discharge plans; (3-30-06)
 - p. Identification of individual services being provided by other providers and who is providing the service; and (3-30-06)
 - q. Other identified needs. (3-30-06)
- 03. Signature, Date and Approval of Agreement.** The administrator and resident, legal guardian, or conservator, must sign and date the service agreement upon its completion. (3-30-06)
- 04. Review Date.** The Negotiated Service Agreement must include the next scheduled date of review. (3-30-06)
- 05. Development of the Service Agreement.** The resident, and other relevant persons as identified by the resident, must be included in the development of the service agreement. Licensed and professional staff will be involved in the development of the service agreement as applicable. (3-30-06)
- 06. Provision of Copy of Agreement.** Signed copies of the agreement must be given to the resident, legal guardian, or conservator, and a copy placed in the resident's record file, no later than fourteen (14) calendar days from admission. (3-30-06)
- 07. Resident Choice.** A resident must be given the choice and control of how and what services the facility or external vendors will provide, to the extent the resident can make choices. The resident's choice must not violate the provisions of Section 39-3307(1), Idaho Code. (3-30-06)
- 08. Periodic Review.** The Negotiated Service Agreement must be reviewed when there is a change in a diagnosis for the resident or other change in condition requiring different, additional, or replacement services or at least every twelve (12) months. (3-30-06)

321. -- 329. (RESERVED)

330. REQUIREMENTS FOR RECORDS.

The facility administrator is responsible for assuring that record policies and procedures are implemented in the facility. (3-30-06)

01. Individual Resident Care Record. An individual resident care record must be maintained for each admission with all entries kept current, dated and signed. All paper records must be recorded legibly in ink. (3-30-06)

02. Resident Record Retention. Records must be preserved in a safe location protected from fire, theft, and water damage for a period of not less than three (3) years. (3-30-06)

03. Resident Record Confidentiality. The facility must safeguard resident information against loss, destruction, and unauthorized use. (3-30-06)

04. Staff Access. Resident care records of current residents must be available to direct care staff at all times. (3-30-06)

05. Electronic Records. The facility must be able to print records maintained electronically in the facility. (3-30-06)

06. Accessibility of Records to Survey Staff. Survey staff must have complete and immediate access to resident and facility records. (3-30-06)

331. -- 334. (RESERVED)

335. REQUIREMENTS FOR INFECTION CONTROL.

The administrator is responsible for assuring that infection control policy and procedure are implemented. (3-30-06)

01. Implementation of Policies. Staff must implement facility policy and procedure. (3-30-06)

02. Staff With Infectious Disease. Staff with an infectious disease must not work until the infectious stage is corrected or must be reassigned to a work area where contact with others is not expected and likelihood of transmission of infection is absent. (3-30-06)

03. Standard Precautions. Standard precautions must be used in the care of residents to prevent transmission of infectious disease according to the Centers for Disease Control and Prevention (CDC) guidelines. These guidelines may be accessed on the CDC website at <http://www.cdc.gov/hai/>. (7-1-15)

04. Reporting of Individual With Infectious Disease. The name of any resident or facility personnel with a reportable disease listed in IDAPA 16.02.10, "Idaho Reportable Diseases," will be reported immediately to the local Health District authority and appropriate infection control procedures must be immediately implemented as directed by that local health authority. (3-30-06)

336. -- 339. (RESERVED)

340. REQUIREMENTS FOR MENTAL HEALTH CONTRACT BEDS.

A facility may enter into an agreement with the Department to provide short-term care to certain residents designated by the mental health program of the Department. These residents are temporarily distressed and unable to fully meet their basic needs. They require strong support, supervision, and while nonviolent nor a danger to self or others, could regress without these supports. (3-30-06)

01. License and Personnel. The facility must be on a full license and must be staffed with at least one (1) staff member up and awake at night to assure the safety of all residents. (3-30-06)

02. Written Contract. The facility must have a written contract with the Department outlining the

responsibilities of both parties and lists the names and telephone numbers of individuals who may be contacted if questions arise regarding the residents' care. (3-30-06)

03. Resident Assessment. The facility must have on file the results of a Department assessment which clearly assures that the resident is not a danger to them self or others. (3-30-06)

04. Personnel Orientation and Training. Personnel providing direct resident care, including contract staff must have documented evidence on file at the facility of appropriate orientation and training in providing care for residents with mental illness. (3-30-06)

341. -- 344. (RESERVED)

345. REQUIREMENTS FOR HOURLY ADULT CARE.

If the facility provides hourly adult care, the administrator must assure that the facility's policies and procedures are implemented. (3-30-06)

01. Medication and Treatment Orders. All medications and treatments must be ordered by a physician or authorized provider. (3-30-06)

02. Assistance With Medication. Assistance with medication by unlicensed assistive personnel in the facility must follow IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (3-30-06)

a. Each hourly adult care individual is responsible for bringing appropriately labeled medications for the stay; and (3-30-06)

b. The facility is responsible for the safeguarding hourly adult care individual's medications while at the facility. (3-30-06)

03. Restrictions for Hourly Adult Care. The facility must assure that the restrictions for hourly adult care in Subsections 345.03.a. through 345.03.f. of these rules are followed. (3-30-06)

a. Hourly adult care services may be provided to such number of individuals that the facility can handle without interference with the normal activities of the facility; staffing must be based upon the needs of all residents in the facility to include full-time residents and hourly adult care individuals; (3-30-06)

b. Provision of time appropriate accommodations will be made available for the individual, to include, napping furniture for day time hours, 6 a.m. through 10 p.m., such as lounge chairs, recliners, and couches; (3-30-06)

c. The facility will have the ability to space napping furniture at least three (3) feet apart; (3-30-06)

d. Beds and bedrooms will be available for the sleeping hours when needed by the hourly adult care individual. This bed will not be counted as a licensed bed if the individual sleeps over; (3-30-06)

e. Beds, and bedrooms of non-hourly residents will not be utilized by hourly adult care individuals; and (3-30-06)

f. No individual will be admitted to the hourly adult care program that requires skilled nursing or for whom the facility cannot adequately provide services and supervision. (3-30-06)

346. -- 349. (RESERVED)

350. REQUIREMENTS FOR HANDLING ACCIDENTS, INCIDENTS, OR COMPLAINTS.

The administrator must assure that the facilities policies and procedures are implemented. (3-30-06)

01. Notification of Accidents, Incidents, and Complaints. The administrator or person designated by the administrator must be notified of all accidents, incidents, reportable, or complaints according to the facility's policies and procedures. (3-30-06)

02. Administrator or Designee Investigation Within Thirty Days. The administrator or designee must complete an investigation and written report of the finding within thirty (30) calendar days for each accident, incident, complaint, or allegation of abuse, neglect or exploitation. (3-30-06)

03. Resident Protection. Any resident involved must be protected during the course of the investigation. (3-30-06)

04. Written Response to Complaint Within Thirty Days. The person making the complaint must receive a written response from the facility of the action taken to resolve the matter or reason why no action was taken within thirty (30) days of the complaint. (3-30-06)

05. Facility Notification to Appropriate Agencies. The facility must notify the Idaho Commission on Aging or its Area Agencies on Aging, and law enforcement in accordance with Section 39-5303, Idaho Code. (3-30-06)

06. Corrective Action for Known Allegations. When an allegation of abuse, neglect or exploitation is known by the facility, corrective action must be immediately taken and monitored to assure the problem does not recur. (3-30-06)

07. Notification of Licensing and Survey Agency Within Twenty-Four Hours. When a reportable incident occurs, the administrator or designee must notify the Licensing and Survey Agency within twenty-four (24) hours of the incident. (3-30-06)

08. Identify and Monitor Patterns. The administrator or person designated by the administrator must identify and monitor patterns of accidents, incidents, or complaints to assure the facility's policies and procedures protect the safety of the residents. (7-1-15)

351. -- 399. (RESERVED)

400. REQUIREMENTS FOR FIRE AND LIFE SAFETY STANDARDS.

A facility's buildings must meet all requirements of the local and state codes that are applicable to residential care or assisted living facilities for fire and life safety standards. (3-30-06)

401. FIRE AND LIFE SAFETY STANDARDS FOR BUILDINGS HOUSING THREE THROUGH SIXTEEN RESIDENTS.

A newly constructed facility or a building converted to a residential care or assisted living facility after January 1, 2006, housing three (3) through sixteen (16) residents on the first story only must comply with one (1) of the following: (3-30-06)

01. NFPA, Standard #101. NFPA, Standard #101, Life Safety Code, 2000 Edition, Chapter 32, New Residential Board and Care Occupancies, Small Facilities, Impractical Evacuation Capability. Exceptions: (3-30-06)

a. The minimum water supply for a residential sprinkler system can be equal to the water demand rate times ten (10) minutes, and (3-30-06)

b. Section 32.7, Operational Features do not apply. (3-30-06)

02. NFPA, Standard 101A. NFPA Standard 101A, 2001 Edition, Fire Safety Evaluation System for Board and Care Occupancies, Chapter 7, Impractical Evacuation Capability. (3-30-06)

402. FIRE AND LIFE SAFETY STANDARDS FOR BUILDINGS HOUSING SEVENTEEN OR MORE RESIDENTS AND MULTI-STORY BUILDINGS.

A newly constructed facility or a building converted to a residential care or assisted living facility after January 1, 2006, housing seventeen (17) residents or more, or any building housing residents on stories other than the first story must comply with requirements of NFPA, Standard #101, Life Safety Code, 2000 Edition, Chapter 18, New Health Care/Limited Care Occupancies. (3-30-06)

403. FIRE AND LIFE SAFETY STANDARDS FOR EXISTING BUILDINGS LICENSED FOR THREE THROUGH SIXTEEN RESIDENTS PRIOR TO JANUARY 1, 2006.

01. Existing Buildings Housing Three Through Nine Residents. Existing facilities licensed prior to January 1, 2006, and housing three (3) through nine (9) residents on the first story only, can continue to comply with the requirements of the NFPA, Standard #101, Life Safety Code, 1988 Edition, Chapter 21, Residential Board and Care Occupancies, Small Facilities, Prompt Evacuation Capability. With the exception, of the requirement for a door closure on the sleeping room door, which will not apply. (3-30-06)

02. Existing Buildings Housing Ten Through Sixteen Residents for Facilities. Existing facilities licensed prior to January 1, 2006, and housing ten (10) through sixteen (16) residents on the first story only, can continue to comply with the requirements of the NFPA, Standard #101, Life Safety Code, 1988 Edition, Chapter 21, Residential Board and Care Occupancies, Small Facilities, Impractical Evacuation Capability. With the exception, of the requirement for a door closure on the sleeping room door, which will not apply. (3-30-06)

03. Any Change in Ownership of Facility. When there is any change in ownership, existing buildings housing three (3) through sixteen (16) beds will be required to comply with NFPA Standard #101, Life Safety Code, 2000 Edition, Chapter 33, Existing Residential Board and Care Occupancies, Impractical Evacuation Capability. (3-30-06)

404. FIRE AND LIFE SAFETY STANDARDS FOR EXISTING BUILDINGS LICENSED FOR SEVENTEEN OR MORE RESIDENTS AND MULTI-STORY BUILDINGS PRIOR TO JANUARY 1, 2006.

01. Existing Buildings Housing Seventeen or More Residents and Multi-Story Buildings. Existing facilities with buildings housing seventeen (17) or more residents or any building housing residents on stories other than the first story licensed prior to January 1, 2006, can continue to comply with NFPA, Standard #101, Life Safety Code, 1988 Edition, Chapter 13, Existing Health Care/Limited Care Occupancies. (3-30-06)

02. Any Change in Ownership of Facility. When there is any change in ownership, existing buildings housing seventeen (17) residents or more or any building housing residents on stories other than the first story will be required to comply with NFPA, Standard #101, Life Safety Code, 2000 Edition, Chapter 19, Existing Health Care/Limited Care Occupancies. (3-30-06)

405. ADDITIONAL FIRE AND LIFE SAFETY STANDARDS FOR BUILDINGS AND FACILITIES.

01. Electrical Installations and Equipment. Electrical installations and equipment must comply with applicable local or state electrical requirements to include the following: (3-30-06)

- a.** Equipment designed to be grounded must be maintained in a grounded condition; and (3-30-06)
- b.** Extension cords and multiple electrical adapters are prohibited, with the exception of approved grounded multiple electrical adapters with a built-in breaker. (3-30-06)

02. Fire Alarm Smoke Detection System. An electrically-supervised, manually-operated fire alarm smoke detection system must be installed throughout each building housing residents. The system must have a control panel, manual pull stations, smoke detectors, sounding devices, power backup and any sprinkler flow or alarm devices. The system, including devices, their location, and installation must be approved by the Licensing and Survey Agency prior to installation. (3-30-06)

03. Medical Gases. Handling, use and storage of medical gas must be according to NFPA Standard 99, Standard for Health Care Facilities, 2003 Edition. (3-30-06)

04. Solid Fuel Heating Devices. Solid fuel heating devices must be installed according to standards in NFPA Standard #211, Standard for Chimneys, Fireplaces, Vents, and Solid Burning Appliances, 2000 Edition. (3-30-06)

05. Structure, Maintenance, Equipment to Assure Safety. The facility must be structurally sound, maintained, and equipped to assure the safety of residents, personnel, and the public including: (3-30-06)

- a.** Furnishings, decorations, or other objects cannot be placed so as to obstruct exit access or exits; (3-30-06)
- b.** All ramps, open porches, sidewalks, and open stairs must be maintained free of snow and ice buildup; (3-30-06)
- c.** Wood stoves must have railings or other protection designed to prevent residents from coming into contact with the stove surfaces; (3-30-06)
- d.** All fireplaces must have heat tempered glass fireplace enclosures or its equivalent; (3-30-06)
- e.** Boilers, hot water heaters, and unfired pressure vessels must be equipped with automatic pressure relief valves; (3-30-06)
- f.** Portable heating devices of any kind are prohibited; Portable electric space heaters and moveable fuel-fired heaters are considered portable comfort heating devices. Exceptions: Heated mattress pads, electric blankets and heating pads when ordered by an authorized provider, physician; (3-30-06)
- g.** Flammable and highly combustible materials deemed hazardous by the Licensing and Survey Agency cannot be stored in the facility unless the building is protected throughout by an approved automatic fire extinguishing system. (3-30-06)

06. Natural or Man-Made Hazards. When natural or man-made hazards are present on the facility property or border the facility property, suitable fences, guards, railing, or a combination must be installed to provide protection for the residents. (3-30-06)

07. Exit Door Locks. Any locks on exit doors must be single action and easily operable from the inside without the use of keys or any special knowledge. Special locking arrangements as permitted in Chapter 7 of the NFPA, Standard 101, Life Safety Code, 2000 Edition, can be used. (3-30-06)

08. Portable Fire Extinguishers. Portable fire extinguishers must be installed throughout each building used as a facility. Each extinguisher must be installed according to the standards in NFPA Standard #10, Standard for Portable Fire Extinguishers, 2002 Edition. (3-30-06)

09. Resident Placement. Any resident requiring assistance in ambulation must reside on the first story, unless the facility complies with Sections 401 through 404 of these rules. (3-30-06)

10. Telephone. The facility must have a telephone on the premises available for staff use in the event of an emergency. Emergency telephone numbers must be posted near the telephone. (3-30-06)

11. Weeds and Trash. The premises and all buildings used as a facility must be maintained free from the accumulation of weeds and trash. (3-30-06)

406. -- 409. (RESERVED)

410. REQUIREMENTS FOR EMERGENCY PREPAREDNESS. Each facility must implement its emergency preparedness plan in the event of fire, explosion, flood, earthquake, high wind, or other emergency. (3-30-06)

01. Written Agreement for Relocation. The facility must have a written agreement developed between the facility and the location to which residents would be relocated in the event the building cannot be reoccupied. (3-30-06)

02. Fire Drills. All personnel and residents must participate in a minimum of one (1) fire drill per shift per quarter. Fire drills must be unannounced. (3-30-06)

03. Report of Fire. A separate report on each fire incident occurring within the facility must be submitted to the Licensing and Survey Agency within thirty (30) days of the occurrence. The reporting form, "Facility Fire Incident Report," issued by the Licensing and Survey Agency is used to secure specific data concerning date, origin, extent of damage, method of extinguishment, and injuries, if any. A fire incident is considered any activation of the building's fire alarm system other than a false alarm, during testing of the fire alarm system, or during a fire drill. (3-30-06)

411. -- 414. (RESERVED)

415. MAINTENANCE OF EQUIPMENT AND SYSTEMS FOR FIRE AND LIFE SAFETY.

01. Maintenance of Equipment and Systems. The facility must assure that all equipment and systems are properly maintained to assure the safety of the residents. (3-30-06)

02. Fuel-Fired Heating. Fuel-fired heating devices and systems, including wood stoves, must be inspected/serviced/cleaned at least annually by a person professionally engaged in the business of servicing these devices or systems. (3-30-06)

03. Portable Fire Extinguisher Service and Testing. Portable fire extinguishers must be serviced in accordance with NFPA Standard #10, Standard for Portable Fire Extinguishers, 2002 Edition. In addition, portable fire extinguishers must be examined at least monthly by a designated person in the facility to determine that: (3-30-06)

- a.** Each extinguisher is in its designated location; (3-30-06)
- b.** Each extinguisher seal or tamper indicator is not broken; (3-30-06)
- c.** Each extinguisher has not been physically damaged; (3-30-06)
- d.** Each extinguisher gauge, if provided, shows a charged condition; and (3-30-06)
- e.** The inspection tag attached to the extinguisher shall show at least the initials of the person making the monthly examination and the date of the examination. (3-30-06)

04. Fire Alarm Smoke Detection System Service and Testing. (3-30-06)

a. The facility's fire alarm smoke detection system must be inspected, tested, and serviced at least annually by a person or business professionally engaged in the servicing of such systems; and (3-30-06)

b. The fire alarm smoke detection system must be inspected and tested at least monthly by a designated facility employee. (3-30-06)

05. Automatic Fire Extinguishing System Service and Testing. All automatic fire extinguishing systems must be inspected, tested, and serviced at least annually by a sprinkler system contractor licensed by the Idaho State Fire Marshal's office. (3-30-06)

06. Fire Watch. The facility must institute a fire watch during any time the fire alarm, smoke detection, or sprinkler system is inoperable for greater than four (4) hours. (3-30-06)

416. -- 419. (RESERVED)

420. USE OF MODULAR (I.E., FACTORY BUILT) BUILDINGS AND MANUFACTURED HOMES. Modular Buildings as defined in Section 39-4105, Idaho Code, must conform to the requirements of the International Building Code unless approved for use as a facility prior to July 1, 1999, and may continue to be licensed when evaluated on a case-by-case basis for fire and life safety issues. Manufactured Homes as defined in Section 39-4105, Idaho Code, that meet International Building Code requirements can be considered for use as residential care or assisted living facilities. (3-30-06)

421. -- 429. (RESERVED)

430. REQUIREMENTS FOR FURNISHINGS, EQUIPMENT, SUPPLIES, AND BASIC SERVICES.

Each facility must provide to the resident: (3-29-10)

01. Common Shared Furnishings. Appropriately designed and constructed furnishings to meet the needs of each resident, including reading lamps, tables, and comfortable chairs or sofas. All items must be in good repair, clean, safe, and provided at no additional cost to the resident. (3-29-10)

02. Resident Sleeping Room Furnishings. Comfortable furnishings and individual storage, such as a dresser, for personal items for each resident in each sleeping room. All items must be in good repair, clean, and safe. (3-29-10)

03. Resident Bed. Each resident must be provided his own bed, which will be at least thirty-six (36) inches wide, substantially constructed, clean, and in good repair. Roll-away beds, cots, futons, folding beds, or double bunks are prohibited. Bed springs must be in good repair, clean, and comfortable. Bed mattresses must be standard for the bed, clean, and odor free. A pillow must be provided. (3-29-10)

04. Resident Telephone Privacy. The facility must have at least one (1) telephone that is accessible to all residents, and provide local calls at no additional cost. The telephone must be placed in such a manner as to provide the resident privacy while using the telephone. (3-29-10)

05. Basic Services. The following are basic services to be provided to the resident by the facility within the basic services rate: (3-29-10)

- a. Rent; (3-29-10)
- b. Utilities; (3-29-10)
- c. Food; (3-29-10)
- d. Activities of daily living services; (3-29-10)
- e. Supervision; (3-29-10)
- f. First aid; (3-29-10)
- g. Assistance with and monitoring of medications; (3-29-10)
- h. Laundering of linens owned by the facility; (3-29-10)
- i. Emergency interventions and coordination of outside services; (3-29-10)
- j. Routine housekeeping and maintenance of common areas; and (3-29-10)
- k. Access to basic television in common areas. (3-29-10)

06. Basic Supplies. The following are to be supplied by the facility at no additional cost to the resident: linens, towels, wash cloths, liquid hand soap, non-sterile exam gloves, toilet paper, and first aid supplies, unless the resident chooses to provide his own. (3-29-10)

07. Personal Supplies. Soap, shampoo, hair brush, comb, electric razor or other means of shaving, toothbrush, toothpaste, sanitary napkins, and incontinent supplies must be provided by the facility unless the resident chooses to provide his or her own. The facility may charge the resident for personal supplies the facility provides and must itemize each item being charged to the resident. (3-29-10)

08. Resident Supplies and Furnishings. If a resident chooses to provide his or her own supplies or furnishings, the facility must assure that the resident's supplies or furnishings meet the minimum standards as identified in Subsections 430.01 through 430.06 of this rule. (3-29-10)

431. -- 449. (RESERVED)

450. REQUIREMENTS FOR FOOD AND NUTRITIONAL CARE SERVICES.

The facility must meet the standards in the Idaho Food Code, IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," as incorporated in Section 004 of these rules. The facility must also implement the operational policies as described in Section 158 of these rules. (3-30-06)

451. MENU AND DIET PLANNING.

The facility must provide each resident with at least the minimum food and nutritional needs in accordance with the Recommended Dietary Allowances established by the Food and Nutrition Board of the National Academy of Sciences. These recommendations are found in the Idaho Diet Manual incorporated by reference in Section 004 of these rules. The menu must be adjusted for age, sex, and activity as approved by a registered dietitian. (3-30-06)

01. Menu. The facility must have a menu planned or approved, signed and dated by a registered dietitian prior to being served to the resident. The planned menu must meet nutritional standards. (3-30-06)

a. Menus will provide a sufficient variety of foods in adequate amounts at each meal. (3-30-06)

b. Food selections must include foods that are served in the community, in season, as well as residents' preferences, food habits, and physical abilities. (3-30-06)

c. The menus must be prepared in advance and available to residents on request. (3-30-06)

d. The facility must serve the planned menu and if substitutions are made the menu must be corrected to reflect the substitutions. (3-30-06)

02. Snacks. Snacks must be available and offered to residents between meals and at bedtime. (3-30-06)

03. Therapeutic Diets. The facility must have a therapeutic diet menu planned or approved, signed and dated by a registered dietitian prior to being served to a resident. (3-30-06)

a. The therapeutic diet planned menu, to the extent it is possible, must meet nutritional standards; (3-30-06)

b. The therapeutic diet menu must be planned as close to a regular diet as possible; and (3-30-06)

c. The facility must have for each resident on a therapeutic diet, an order from a physician or authorized provider. (3-30-06)

04. Facilities Licensed for Sixteen Beds or Less. In facilities licensed for sixteen (16) beds or less, menus must be planned in writing at least one week in advance. (3-30-06)

05. Facilities Licensed for Seventeen Beds or More. Facilities licensed for seventeen (17) beds or more must: (3-30-06)

a. Develop and implement a cycle menu which covers a minimum of two (2) seasons and is four (4) to five (5) weeks in length; (3-30-06)

b. Follow standardized recipes; and (3-30-06)

c. Have available in the kitchen a current diet manual approved by the Licensing and Survey Agency. (3-30-06)

452. -- 454. (RESERVED)

455. FOOD SUPPLY.

The facility must maintain a seven (7) day supply of nonperishable foods and a two (2) day supply of perishable foods. The facility's kitchen must have the types and amounts of food to be served readily available to meet the planned menu. (3-30-06)

456. -- 459. (RESERVED)

460. FOOD PREPARATION AND SERVICE.

01. Food Preparation. Foods must be prepared by methods that conserve nutritional value, flavor, and appearance. (3-30-06)

02. Frequency of Meals. (3-30-06)

a. The facility must provide residents at least three (3) meals daily, at regular times comparable to normal mealtimes in the community; (3-30-06)

b. There must not be more than fourteen (14) hours between a substantial evening meal and breakfast; (3-30-06)

c. The facility must assure that residents who are not in the facility for the noon meal are offered a substantial evening meal; and (3-30-06)

d. The facility must offer evening snacks. (3-30-06)

03. Food Preparation Area. (3-30-06)

a. No live animals or fowl will be kept or maintained in the food service preparation or service area. (3-30-06)

b. Neither food preparation nor food service areas will be used as living quarters for staff. (3-30-06)

04. Disposable Items. The facility will not use single use items except in unusual circumstances for a short period of time or for outdoor outings. (3-30-06)

461. -- 499. (RESERVED)

500. REQUIREMENTS FOR NOTICE OF MONTHLY FEE INCREASE.

The resident or resident's legal guardian, or conservator must be notified in writing of an increase in the facility monthly rates at least thirty (30) calendar days prior to such a raise taking effect. (3-30-06)

501. -- 504. (RESERVED)

505. REQUIREMENTS FOR HANDLING OF RESIDENT FUNDS.

01. Separate Trust Account Established. If a facility agrees to handle resident funds, a separate trust account must be established for each resident and an accounting record maintained. There can be no commingling of resident funds with facility funds. Borrowing between resident accounts is prohibited. (3-30-06)

a. The facility cannot require a resident to purchase goods or services from the facility for other than those designated in the admission policies, or the admission agreement, or both; (3-30-06)

b. Each transaction must be documented at the time of the transaction, with facility personnel and resident signatures for the transaction; and (3-30-06)

- c. The facility must assure that the resident has access to his personal funds during reasonable hours. (3-30-06)

02. Resident's Funds Upon Permanent Discharge. When the facility manages the resident's funds and the resident permanently leaves the facility, the facility can only retain room and board funds prorated to the last day of the thirty (30) day notice, except in situations described in Subsections 220.07.c.i. and 220.07.c.ii. of these rules. All remaining funds are the property of the resident. In the event of the resident's death, the resident's facility's fees cease accruing fifteen (15) days after death. (3-30-06)

506. -- 509. (RESERVED)

510. REQUIREMENTS TO PROTECT RESIDENTS FROM ABUSE.

The administrator must assure that policies and procedures are implemented to assure that all residents are free from abuse. (3-30-06)

511. -- 514. (RESERVED)

515. REQUIREMENTS TO PROTECT RESIDENTS FROM EXPLOITATION.

The administrator must assure that policies and procedures are implemented to assure that all residents are free from exploitation. (3-30-06)

516. -- 519. (RESERVED)

520. REQUIREMENTS TO PROTECT RESIDENTS FROM INADEQUATE CARE.

The administrator must assure that policies and procedures are implemented to assure that all residents are free from inadequate care. (3-30-06)

521. -- 524. (RESERVED)

525. REQUIREMENTS TO PROTECT RESIDENTS FROM NEGLECT.

The administrator must assure that policies and procedures are implemented to assure that all residents are free from neglect. (3-30-06)

526. -- 549. (RESERVED)

550. REQUIREMENTS FOR RESIDENTS' RIGHTS.

The administrator must assure that policies and procedures are implemented to assure that residents' rights are observed and protected. (3-30-06)

01. Resident Records. The facility must maintain and keep current a record of the specific information on each resident. Upon request a resident must be provided access to information in his record. (3-30-06)

a. A copy of the resident's current Negotiated Service Agreement and physician or authorized provider's order; (3-30-06)

b. Written acknowledgement that the resident has received copies of the rights; (3-30-06)

c. A record of all personal property and funds that the resident has entrusted to the facility, including copies of receipts for the property; (3-30-06)

d. Information about any specific health problems of the resident that may be useful in a medical emergency; (3-30-06)

e. The name, address, and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident; (3-30-06)

f. Any other health-related, emergency, or pertinent information which the resident requests the facility to keep on record; and (3-30-06)

- g.** The current admission agreement between the resident and the facility. (3-30-06)
- 02. 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. (3-30-06)
- 03. Humane Care and Environment.** (3-30-06)
- a.** Each resident has the right to humane care and a humane environment, including the following: (3-30-06)
- i.** The right to a diet that is consistent with any religious or health-related restrictions; (3-30-06)
- ii.** The right to refuse a restricted diet; and (3-30-06)
- iii.** The right to a safe and sanitary living environment. (3-30-06)
- b.** Each resident has the right to be treated with dignity and respect, including: (3-30-06)
- i.** The right to be treated in a courteous manner by staff; (3-30-06)
- ii.** The right to receive a response from the facility to any request of the resident within a reasonable time; and (3-30-06)
- iii.** The right to be communicated with, orally or in writing, in a language they understand. If the resident's knowledge of English or the predominant language of the facility is inadequate for comprehension, a means to communicate in a language familiar to the resident must be available and implemented. There are many possible methods such as bilingual staff, electronic communication devices, family and friends to translate. The method implemented must assure the resident's right of confidentiality, if the resident desires. (3-30-06)
- 04. Personal Possessions.** Each resident has the right to: (3-30-06)
- a.** Wear his own clothing; (3-30-06)
- b.** Determine his own dress or hair style; (3-30-06)
- c.** Retain and use his own personal property in his own living area so as to maintain individuality and personal dignity; and (3-30-06)
- d.** Be provided a separate storage area in his own living area and at least one (1) locked cabinet or drawer for keeping personal property. (3-30-06)
- 05. Personal Funds.** Residents whose board and care is paid for by public assistance will retain, for their personal use, the difference between their total income and the applicable board and care allowance established by Department rules. (3-30-06)
- a.** A facility must not require a resident to deposit his personal funds with the facility; and (3-30-06)
- b.** Once the facility accepts the written authorization of the resident, it must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph. (3-30-06)
- 06. Management of Personal Funds.** Upon a facility's acceptance of written authorization of a resident, the facility must manage and account for the personal funds of the resident deposited with the facility as follows: (3-30-06)

a. The facility must deposit any amount of a resident's personal funds in excess of five (5) times the personal needs allowance in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credit all interest earned on such separate account to such account. The facility must maintain any other personal funds in a non-interest bearing account or petty cash fund; (3-30-06)

b. The facility must assure a full and complete separate accounting of each resident's personal funds, maintain a written record of all financial transactions involving each resident's personal funds deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record; and (3-30-06)

c. Upon the death of a resident with such an account, the facility must promptly convey the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate. For clients of the Department, the remaining balance of funds must be refunded to the Department. (3-30-06)

07. Access and Visitation Rights. Each facility must permit: (3-30-06)

a. Immediate access to any resident by any representative of the Department, by the state ombudsman for the elderly or his designees, or by the resident's individual physician; (3-30-06)

b. Immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives; (3-30-06)

c. Immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident; and (3-30-06)

d. 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. (3-30-06)

08. Employment. Each resident must have the right to refuse to perform services for the facility except as contracted for by the resident and the administrator of the facility. If the resident is hired by the facility to perform services as an employee of the facility, the wage paid to the resident must be consistent with state and federal law. (3-30-06)

09. Confidentiality. Each resident must have the right to confidentiality of personal and clinical records. (3-30-06)

10. Freedom from Abuse, Neglect, and Restraints. Each resident must have the right to be free from physical, mental or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints. (3-30-06)

11. Freedom of Religion. Each resident must have 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. (3-30-06)

12. Control and Receipt of Health-Related Services. Each resident must have the right to control his receipt of health related services, including: (3-30-06)

a. The right to retain the services of his own personal physician, dentist, and other health care professionals; (3-30-06)

b. The right to select the pharmacy or pharmacist of his choice so long as it meets the statute and rules governing residential care or assisted living and the policies and procedures of the residential care or assisted living facility; (3-30-06)

c. The right to confidentiality and privacy concerning his medical or dental condition and treatment; and (3-30-06)

d. The right to refuse medical services based on informed decision making. Refusal of treatment does not relieve the facility of its obligations under this chapter. (3-30-06)

i. The facility must document the resident and his legal guardian have been informed of the consequences of the refusal; and (3-30-06)

ii. The facility must document that the resident’s physician or authorized provider has been notified of the resident’s refusal. (3-30-06)

13. Grievances. Each resident must have the right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents. (3-30-06)

14. Participation in Resident and Family Groups. Each resident must have the right to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility. (3-30-06)

15. Participation in Other Activities. Each resident must have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility. (3-30-06)

16. Examination of Survey Results. Each resident must have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Licensing and Certification Unit with respect to the facility and any plan of correction in effect with respect to the facility. (3-29-10)

17. Access by Advocates and Representatives. A residential care or assisted living facility must permit advocates and representatives of community legal services programs, whose purposes include rendering assistance without charge to residents, to have access to the facility at reasonable times in order to: (3-30-06)

a. Visit, talk with, and make personal, social, and legal services available to all residents; (3-30-06)

b. Inform residents of their rights and entitlements, and their corresponding obligations, under state, federal and local laws by distribution of educational materials and discussion in groups and with individuals; (3-30-06)

c. Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance and social security benefits, and in all other matters in which residents are aggrieved, that may be provided individually, or in a group basis, and may include organizational activity, counseling and litigation; (3-30-06)

d. Engage in all other methods of assisting, advising, and representing residents so as to extend to them the full enjoyment of their rights; (3-30-06)

e. Communicate privately and without restrictions with any resident who consents to the communication; and (3-30-06)

f. Observe all common areas of the facility. (3-30-06)

18. Access by Protection and Advocacy System. A residential care or assisted living facility must permit advocates and representatives of the protection and advocacy system designated by the governor under 42 U.S.C. Section 15043 and 42 U.S.C. Section 10801 et seq., access to residents, facilities, and records in accordance with applicable federal statutes and regulations. (3-30-06)

19. Access by the Long Term Care Ombudsman. A residential care or assisted living facility must permit advocates and representatives of the long term care ombudsman program pursuant to 42 U.S.C. Section 3058, Section 67 5009, Idaho Code, and IDAPA 15.01.03, “Rules Governing the Ombudsman for the Elderly Program,” access to residents, facilities and records in accordance with applicable federal and state law, rules, and regulations. (3-30-06)

20. Transfer or Discharge. Each resident must have the right to be transferred or discharged only for medical reasons, or for his welfare or that of other residents, or for nonpayment for his stay. In non-emergency conditions, the resident must be given at least thirty (30) calendar days notice of discharge. A resident has the right to appeal any involuntary discharge. (3-30-06)

21. Citizenship Rights. Each resident has a right to be encouraged and assisted to exercise rights as a citizen, including the right to be informed and to vote. (3-30-06)

22. Advanced Directives. Each resident has the right to be informed, in writing, regarding the formulation of an advanced directive as provided under Section 39-4510, Idaho Code. (3-29-10)

23. Fee Changes. Each resident has the right to written notice of any fee change not less than thirty (30) days prior to the proposed effective date of the fee change, except: (3-29-10)

a. When a resident needs additional care, services, or supplies, the facility must provide to the resident, the resident's legal guardian, or conservator written notice within five (5) days of any fee change taking place; and (3-29-10)

b. The resident, the resident's legal guardian, or conservator must be given the opportunity to agree to an amended negotiated service agreement. If the two parties do not reach an agreement on the proposed fee change, the facility is entitled to charge the changed rate after five (5) days have elapsed from the date of the facility's written notice. (3-29-10)

551. -- 559. (RESERVED)

560. NOTICE OF RESIDENTS' RIGHTS. Each facility must; (3-30-06)

01. Inform Residents Orally and in Writing. Inform each resident, orally and in writing at the time of admission to the facility, of his legal rights during the stay at the facility. (3-30-06)

02. Written Statements. Make available to each resident, upon reasonable request, a written statement of such rights and when the rights change the resident is notified. (3-30-06)

03. Written Description of Rights. Assure the written description of legal rights under Section 560 must include a description of the protection of personal funds and a statement that a resident may file a complaint with the Department respecting resident abuse and neglect and misappropriation of resident property in the facility. (3-30-06)

04. Posting of Resident Rights. Conspicuously post the residents' rights in the facility at all times. (3-30-06)

561. -- 599. (RESERVED)

600. REQUIREMENTS FOR STAFFING STANDARDS.

01. On-Duty Staff During Residents' Sleeping Hours for Facilities of Fifteen Beds or Less. For facilities licensed for fifteen (15) beds or less, there must be at least one (1), or more qualified and trained staff, up, awake, and immediately available in the facility during resident sleeping hours. (7-1-15)

02. On-Duty Staff Up and Awake During Residents' Sleeping Hours for Facilities Licensed for Sixteen Beds or More. For facilities licensed for sixteen (16) beds or more, qualified and trained staff must be up and awake and immediately available, in the facility during resident sleeping hours. (3-30-06)

03. Detached Buildings or Units. Facilities with residents housed in detached buildings or units, must have at least one (1) staff present, and available in each building or unit when residents are present in the building or

unit. The facility must also assure that each building or unit complies with the requirements for on-duty staff during resident sleeping hours to be up, awake, and immediately available in accordance with the facility's licensed bed capacity as provided in Subsections 600.01 and 600.02 of these rules. The Licensing and Survey Agency will consider a variance based on the facility's written submitted plan of operation. (7-1-15)

04. Mental Health Bed Contract Facility. Facilities that have entered into a Mental Health Bed contract with the Department must be staffed with at least one (1) staff up and awake at night to assure the safety of all residents. (3-30-06)

05. Supervision. The administrator must provide supervision for all personnel to include contract personnel. Staff who have not completed the orientation training requirements must work under the supervision of a staff who has completed the orientation training. (3-30-06)

06. Sufficient Personnel. The facility will employ and the administrator will schedule sufficient personnel to: (3-30-06)

a. Provide care, during all hours, required in each resident's Negotiated Service Agreement, to assure residents' health, safety, comfort, and supervision, and to assure the interior and exterior of the facility is maintained in a safe and clean manner; and (3-30-06)

b. To provide for at least one (1) direct care staff with certification in first aid and cardio-pulmonary resuscitation (CPR) in the facility at all times. Facilities with multiple buildings or units will have at least one (1) direct care staff with certification in first aid and CPR in each building or each unit at all times. (3-30-06)

601. -- 619. (RESERVED)

620. REQUIREMENTS FOR TRAINING OF FACILITY PERSONNEL.

The facility must follow structured written training programs designed to meet the training needs of personnel in relation to responsibilities, as specified in the written job description, to provide for quality of care and compliance with these rules. Signed evidence of personnel training, indicating hours and topic, must be retained at the facility. (3-30-06)

621. -- 624. (RESERVED)

625. ORIENTATION TRAINING REQUIREMENTS.

01. Number of Hours of Training. A minimum of sixteen (16) hours of job-related orientation training must be provided to all new personnel before they are allowed to provide unsupervised personal assistance to residents. The means and methods of training are at the facility's discretion. (3-30-06)

02. Timeline for Completion of Training. All orientation training must be completed within thirty (30) days of hire. (7-1-15)

03. Content for Training. Orientation training must include the following: (3-30-06)

a. The philosophy of residential care or assisted living and how it guides care giving; (3-30-06)

b. Resident Rights; (3-30-06)

c. Cultural awareness; (3-30-06)

d. Providing assistance with activities of daily living and instrumental activities of daily living; (3-30-06)

e. How to respond to emergencies; (3-30-06)

f. Documentation associated with resident care needs and the provision of care to meet those needs; (3-30-06)

- g.** Identifying and reporting changes in residents' health and mental condition or both; (3-30-06)
- h.** Documenting and reporting adverse outcomes (such as resident falls, elopement, lost items); (3-30-06)
- i.** Advance Directives and do not resuscitate (DNR) orders; (3-30-06)
- j.** Relevant policies and procedures; (3-30-06)
- k.** The role of the Negotiated Service Agreement; and (3-30-06)
- l.** All staff employed by the facility, including housekeeping personnel, or contract personnel, or both, who may come into contact with potentially infectious material, must be trained in infection control procedures for universal precautions. (3-30-06)

626. -- 629. (RESERVED)

630. TRAINING REQUIREMENTS FOR FACILITIES ADMITTING RESIDENTS WITH DIAGNOSIS OF DEMENTIA, MENTAL ILLNESS, DEVELOPMENTAL DISABILITY, OR TRAUMATIC BRAIN INJURY.

A facility admitting and retaining residents with diagnosis of dementia, mental illness, developmental disability, or traumatic brain injury must train staff to meet the specialized needs of these residents. Staff must receive specialized training within thirty (30) days of hire or of admission of a resident with one (1) of these conditions. The means and methods of training are at the facility's discretion. The training should address the following areas: (7-1-15)

- 01. Dementia:** (3-30-06)
 - a.** Overview of dementia; (3-30-06)
 - b.** Symptoms and behaviors of people with memory impairment; (3-30-06)
 - c.** Communication with people with memory impairment; (3-30-06)
 - d.** Resident's adjustment to the new living environment; (3-30-06)
 - e.** Behavior management; (3-30-06)
 - f.** Activities of daily living; and (3-30-06)
 - g.** Stress reduction for facility personnel and resident. (3-30-06)
- 02. Mental Illness:** (3-30-06)
 - a.** Overview of mental illnesses; (3-30-06)
 - b.** Symptoms and behaviors specific to mental illness; (3-30-06)
 - c.** Resident's adjustment to the new living environment; (3-30-06)
 - d.** Behavior management; (3-30-06)
 - e.** Communication; (3-30-06)
 - f.** Activities of daily living; (3-30-06)
 - g.** Integration with rehabilitation services; and (3-30-06)

- h.** Stress reduction for facility personnel and resident. (3-30-06)
 - 03. Developmental Disability:** (3-30-06)
 - a.** Overview of developmental disabilities; (3-30-06)
 - b.** Interaction and acceptance; (3-30-06)
 - c.** Promotion of independence; (3-30-06)
 - d.** Communication; (3-30-06)
 - e.** Behavior management; (3-30-06)
 - f.** Assistance with adaptive equipment; (3-30-06)
 - g.** Integration with rehabilitation services; (3-30-06)
 - h.** Activities of daily living; and (3-30-06)
 - i.** Community integration. (3-30-06)
 - 04. Traumatic Brain Injury:** (3-30-06)
 - a.** Overview of traumatic brain injuries; (3-30-06)
 - b.** Symptoms and behaviors specific to traumatic brain injury; (3-30-06)
 - c.** Adjustment to the new living environment; (3-30-06)
 - d.** Behavior management; (3-30-06)
 - e.** Communication; (3-30-06)
 - f.** Integration with rehabilitation services; (3-30-06)
 - g.** Activities of daily living; (3-30-06)
 - h.** Assistance with adaptive equipment; and (3-30-06)
 - i.** Stress reduction for facility personnel and resident. (3-30-06)
- 631. -- 639. (RESERVED)**
- 640. CONTINUING TRAINING REQUIREMENTS.**
Each employee must receive a minimum of eight (8) hours of job-related continuing training per year. (7-1-15)
- 641. ADDITIONAL TRAINING RELATED TO CHANGES.**
When policies or procedures are added, modified, or deleted, staff must receive additional training relating to the changes. (7-1-15)
- 642. -- 644. (RESERVED)**
- 645. ASSISTANCE WITH MEDICATION CERTIFICATION REQUIREMENT.**
Before staff can begin assisting residents with medications, the staff must have successfully completed a Board of Nursing approved medication assistance course. This training is not included as part of the minimum of sixteen (16)

hours of orientation training or minimum of eight (8) hours of continuing training requirement per year. (3-30-06)

646. -- 649. (RESERVED)

650. REQUIREMENTS FOR UNIFORM ASSESSMENT CRITERIA FOR PRIVATE PAY RESIDENTS.

01. Facility Responsibility For Assessing Private-Pay Residents. The facility must develop, identify, assess, or direct a uniform assessment for private-pay residents who seek admission to the residential care or assisted living facility. The Department's uniform assessment tool may be used as the facility's identified uniform assessment. (3-30-06)

02. Information Included in a Uniform Assessment. The uniform assessment used by the facility will include, but not be limited to identification/background information, medical diagnosis, medical and health problems, prescription and over the counter medications, behavior patterns, cognitive function, and functional status. (3-30-06)

03. Qualifications of Person Making Uniform Assessment. The uniform assessment can only be conducted by persons who are trained and knowledgeable in administering the facility's identified uniform assessment. (3-30-06)

04. Time Frames for Completing the Uniform Assessment. The assessment must be completed no later than fourteen (14) calendar days after admission. The assessment will be reviewed when there is a change in the resident's medical condition or mental status or every twelve (12) months, whichever comes first. (3-30-06)

05. Use of Uniform Assessment for Determining the Ability of Facility to Meet Private-Pay Resident Needs. The results of the assessment must be used to evaluate the ability of an administrator and facility to meet the identified residents' needs. The results of the assessment must also be used to determine the need for special training in caring for certain residents. (3-30-06)

651. -- 654. (RESERVED)

655. USE OF THE UNIFORM ASSESSMENT CRITERIA IN DETERMINING FACILITY STAFFING. A facility will have sufficient numbers and types of personnel to provide care and supervision to all residents within the facility's care in accordance with each resident's Negotiated Service Agreement based on the uniform assessment and in accordance with all rules and statutes governing the facility. The facility must include both private-pay and residents who are clients of the Department in the total number when determining staffing requirements. (3-30-06)

656. -- 659. (RESERVED)

660. REQUIREMENTS FOR UNIFORM ASSESSMENT CRITERIA FOR DEPARTMENT CLIENTS. Department clients will be assessed by the Department in compliance with IDAPA 16.03.23, "Rules Governing Uniform Assessments for State-Funded Clients." (3-30-06)

661. -- 699. (RESERVED)

700. RECORDS.

The administrator must assure that facility policies and procedures for record keeping are implemented and followed as described in Sections 700 through 750 of these rules. (3-30-06)

01. Records Information. Entries must include date, time, name, and title of the person making the entry. Staff must sign each entry made by him during his shift. (3-30-06)

02. Availability of Records. Resident care records must be available at all times to caregivers when on duty. (3-30-06)

03. Electronic Records. Electronic records must be able to be printed in the facility at the request of the resident, legal guardian, payer, or survey agency. (3-30-06)

701. -- 704. (RESERVED)

705. RESIDENT BUSINESS RECORDS.

Resident business records must contain the records described in Subsection 705.01 through 705.07 of these rules. (3-30-06)

01. Individual Responsible for Payment. Name, address, and telephone number of the individual responsible for payment. (3-30-06)

02. Written Admissions Agreement. Written admission agreement that is signed and dated by the administrator, the resident, or his legal guardian or conservator. (3-30-06)

03. Payment Schedule. A copy of the payment schedule and fee structure signed and dated by the resident, or his legal guardian or conservator, if such is separate from the admission agreement. (3-30-06)

04. Resident Rights. A signed copy of the resident's rights as identified in Section 550 of these rules or a signed and dated statement that the resident or his legal guardian or conservator has read and understands his rights as a resident of the facility. (3-30-06)

05. Completion of Admissions Process. Name, title of the facility representative who completed the admission process with the resident, legal guardian, or conservator. (3-30-06)

06. Agreement to Handle Resident's Funds. If the facility handles resident funds, there must be a signed and dated written agreement between the facility and the resident or the resident's legal guardian or conservator setting the terms. Documentation of each financial transaction at the time the transaction occurs with signatures by the administrator or his designee and the resident. (3-30-06)

07. Emergency Condition Advisory. Documentation indicating that the resident has been advised of actions required under emergency conditions. (3-30-06)

706. -- 709. (RESERVED)

710. RESIDENT CARE RECORDS.

The administrator must assure that the facility's policies and procedures for resident care records are implemented and meet the requirements described in Subsections 710.01 through 710.08 of these rules. (3-30-06)

01. Resident Demographics. Records required for admission to the facility must include: (3-30-06)

a. Name; (3-30-06)

b. Permanent address, if other than the facility; (3-30-06)

c. Marital Status; (3-30-06)

d. Gender; (3-30-06)

e. Date and Place of Birth; (3-30-06)

f. Name and address of emergency contact(s); and (3-30-06)

g. Admission date and where admitted from. (3-30-06)

02. Providers of Choice. Providers of choice including address and telephone numbers; (3-30-06)

a. Physician or authorized provider; (3-30-06)

- b.** Dentist; (3-30-06)
- c.** Pharmacy; and (3-30-06)
- d.** Others; such as outside service providers, e.g., home health, hospice, psychosocial services rehabilitation specialist, case manager. (3-30-06)
- 03. Religious Affiliation.** Religious affiliation, if the resident chooses to state. (3-30-06)
- 04. Prior History and Physical.** Results of a history and physical examination performed by a physician or authorized provider within six (6) months prior to admission. (3-30-06)
- 05. Prescribed Medication and Treatment List.** A list of medications, diet, treatments, and any limitations, prescribed for the resident that is signed and dated by a physician or authorized provider giving the order. (3-30-06)
- 06. Social Information.** Social information, obtained by the facility through interviews with the resident, family, legal guardian, conservator or outside service provider. The information must include the resident's social history, hobbies, and interests. (3-30-06)
- 07. Initial Uniform Assessment.** The resident's initial uniform assessment. (3-30-06)
- 08. Initial Interim Plan and Negotiated Service Agreement.** The resident's initial signed and dated interim plan and Negotiated Service Agreement. (3-30-06)
- 711. ONGOING RESIDENT CARE RECORDS.**
The administrator must assure that the facility's policies and procedures for ongoing resident care records are implemented and meet the requirements described in Subsections 711.01 through 711.14 of these rules. (3-30-06)
- 01. Behavior Management Records.** The facility must have behavior management records for residents when applicable. These records must document requirements in Section 225 and Subsection 320.02 of these rules. The records must also include the following: (3-30-06)

 - a.** The date and time a specific behavior was observed; (3-30-06)
 - b.** What interventions were used; and (3-30-06)
 - c.** The effectiveness of the intervention. (3-30-06)
- 02. Complaints.** The facility must assure that the individual resident's record documents complaints and grievances, the date received, the investigation, outcome, and the response to the individual who made the complaint or grievance. (3-30-06)
- 03. Involuntary Discharge.** The facility's records must maintain documentation of: (3-30-06)

 - a.** The facility's efforts to resolve the situation; and (3-30-06)
 - b.** A copy of the signed and dated notice of discharge. (3-30-06)
- 04. Refusal of Care Consequences.** Documented evidence that if the resident refuses care or services, the resident has been informed of the consequences of the refusal and the notification of the resident's physician or authorized provider being notified. (3-30-06)
- 05. Assessments.** The resident's uniform assessment, including the admission assessment, and all assessments for the prior eighteen (18) months after the admission to the facility. (3-30-06)
- 06. Negotiated Services Agreement.** Signed and dated negotiated services agreements, including the

admission Negotiated Service Agreement, and any modification and new agreements for the prior eighteen (18) months. (3-30-06)

07. Care Plans. Signed and dated copies of all care plans prepared by outside service agencies, if appropriate, to include who is responsible for the integration of care and services. (3-30-06)

08. Care Notes. Care notes that are signed and dated by the person providing the care and services must include: (3-30-06)

a. When the Negotiated Service Agreement is not followed, such as resident refusal, and the facility's response; (3-30-06)

b. Delegated nursing tasks, such as treatments, wound care, and assistance with medications; (3-30-06)

c. Unusual events such as incidents, reportable incidents, accidents, altercations and the facility's response; (3-30-06)

d. Calls to the physician or authorized provider, reason for the call, and the outcome of the call; (3-30-06)

e. Notification of the licensed registered nurse of a change in the resident's physical or mental condition; and (3-30-06)

f. Notes of care and services provided by outside contract entities, such as nurses, home health, hospice, case managers, psychosocial rehabilitation specialists, or service coordinator. (3-30-06)

09. Current List of Medications, Diet and Treatments. A current list of medications, diet, treatments prescribed for the resident which is signed and dated by a physician or authorized provider giving the order. (3-30-06)

10. Six Month Review of Medications. Written documentation, signed and dated by the physician or authorized provider documenting their every six (6) month review, for possible dose reduction, of the resident's use of psychotropic or behavioral modifying medications. (3-30-06)

11. Medications Not Taken. 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. (3-30-06)

12. PRN Medication. Documentation of all PRN medication with the reason for taking the medication. (3-30-06)

13. Nursing Assessments. Nursing assessments, signed and dated, from the licensed registered nurse documenting the requirements in Section 305 of these rules. (3-30-06)

14. Discharge Information. Date of discharge, location to where the resident was discharged, and disposition of the resident's belongings. (3-30-06)

712. -- 714. (RESERVED)

715. MENTAL HEALTH CONTRACT BED RECORDS.

The administrator must assure that the facility's records for mental health contract beds are maintained as described in Subsections 715.01 and 715.02, of these rules. (3-30-06)

01. Contract with Department. The facility must maintain on file a written contract with the Department outlining the responsibilities of both parties and lists the names and telephone numbers of individuals who may be contacted if questions arise regarding the resident's care. (3-30-06)

02. Department Assessment. Results of the Department assessment for each mental health contract resident, which clearly assures that the resident is not a danger to himself or others must be in the resident's care record. (3-30-06)

716. -- 719. (RESERVED)

720. ADULT HOURLY CARE RECORDS.

The administrator must assure that the facility's hourly adult care records are maintained as described in Subsections 720.01 and 720.02 of these rules. (3-30-06)

01. Required Records for Each Hourly Adult Care Individual. The facility must maintain a record for each hourly adult care individual which includes: (3-30-06)

a. Admission identification information including responsible party and emergency telephone numbers of family members and the physician or authorized provider; (3-30-06)

b. Pertinent health and social information relevant to the supervision of the individual; and (3-30-06)

c. Care and services provided to the individual including medication assistance. (3-30-06)

02. Length of Time Records Kept for Adult Hourly Care. The records for each adult hourly care individual must be maintained for three (3) years. (3-30-06)

721. -- 724. (RESERVED)

725. FACILITY ADMINISTRATIVE RECORDS FOR ADMISSIONS AND DISCHARGE REGISTER.

The administrator must assure that the facility's administrative records for admission and discharge are maintained as described in Subsections 725.01 through 725.02 of these rules. (3-30-06)

01. Admission and Discharge Register. Each facility must maintain an admission and discharge register listing the name of each resident, date admitted, date discharged. The admissions and discharge register must be produced as a separate document, apart from the individual resident records, and must be kept current. (3-30-06)

02. Hourly Adult Care Log. A log of hourly adult care individuals, including the dates of service, must be maintained and kept for three (3) years. (3-30-06)

726. -- 729. (RESERVED)

730. FACILITY ADMINISTRATIVE RECORDS FOR PERSONNEL AND STAFFING.

The administrator must assure that the facility's personnel and staffing records are maintained as described in Subsections 730.01 through 730.03 of these rules. (3-30-06)

01. Personnel. A record for each employee must be maintained and available which includes the following: (3-30-06)

a. Name, address, phone number, and date of hire; (3-30-06)

b. Job description that includes purpose, responsibilities, duties, and authority; (3-30-06)

c. Evidence that on or prior to hire, staff were notified in writing that the facility does not carry professional liability insurance. If the facility cancels the professional liability insurance, all staff must be notified of the change in writing; (3-30-06)

d. A copy of a current license for all nursing staff and verification from the Board of Nursing that the license is in good standing or identification of restrictions; (3-30-06)

e. Signed evidence of training; (3-30-06)

- f. CPR, first aid, and assistance with medication certification; (3-30-06)
 - g. Criminal history clearance as required by Section 56-1004A, Idaho Code, and IDAPA 16.05.06, “Criminal History and Background Checks,” and Section 009 of these rules; (7-1-15)
 - h. Documentation by the licensed registered nurse of delegation to unlicensed staff to assist residents with medications and other nursing tasks; (3-30-06)
 - i. A signed document authorizing by position title of, the individual responsible for acting on behalf of the administrator in his absence. (3-30-06)
- 02. Work Records.** Work records must be maintained in writing for the previous three (3) years which reflect: (3-30-06)
- a. Personnel on duty, at any given time; and (3-30-06)
 - b. The first and last names, of each employee, and their position. (3-30-06)
- 03. Contract Records.** Copies of contracts with outside service providers and contract staff. (3-30-06)
- 731. -- 734. (RESERVED)**
- 735. FACILITY ADMINISTRATIVE RECORDS FOR HANDLING OF MEDICATIONS AND CONTROLLED SUBSTANCES.**
The administrator must assure that the facility’s records for handling of medications and controlled substances are maintained as described in Subsections 735.01 through 735.04 of these rules. (3-30-06)
- 01. Documentation of Cold Storage Temperature.** Daily monitoring documentation of the refrigerated temperature where biologicals and other medications requiring cold storage are stored to assure the temperature is maintained at thirty-eight to forty-five degrees (38-45 F) Fahrenheit for the previous twelve (12) months. (3-30-06)
 - 02. Return Medication Agreement.** If appropriate, the written agreement between the facility and the pharmacy to return unused, unopened medications to the pharmacy for proper disposition and credit. See IDAPA 16.03.09, “Medicaid Basic Plan Benefits,” Sections 664 and 665, and IDAPA 27.01.01, “Rules of the Idaho Board of Pharmacy.” (3-30-06)
 - 03. Documentation of Medication Disposal.** A written record of all drug disposals must be maintained in the facility and include: (3-30-06)
 - a. A description of the drug, including the amount; (3-30-06)
 - b. Name of resident for prescription medication; (3-30-06)
 - c. The reason for disposal; (3-30-06)
 - d. The method of disposal; (3-30-06)
 - e. The date of disposal; and (3-30-06)
 - f. Signatures of responsible facility personnel and witness. (3-30-06)
 - 04. Tracking Controlled Substances Documentation.** The facility must maintain a written record tracking all controlled substances entering the facility in accordance with Title 37, Chapter 27, Idaho Code, IDAPA 27.01.01 “Rules of the Idaho Board of Pharmacy,” Section 495, and IDAPA 23.01.01, “Rules of the Idaho Board of Nursing,” Section 490. (3-30-06)

736. -- 739. (RESERVED)

740. FACILITY ADMINISTRATIVE RECORDS FOR DIETARY.

The administrator must assure that the facility's records for dietary are maintained as described in Subsections 740.01 and 740.02 of these rules. (3-30-06)

01. Menu Plan Documentation. The facility must maintain copies of menus, including therapeutic menus planned, approved, signed, and dated by a dietitian in the facility. (3-30-06)

02. Length of Time Documentation Kept for Menu Plans. The facility must maintain three (3) months of as served menus, including therapeutic menus, corrected to reflect substitutions. (3-30-06)

741. -- 744. (RESERVED)

745. FACILITY ADMINISTRATIVE RECORDS FOR WATER SUPPLY.

The administrator must assure that the facility's records for water supply are maintained. Copies of the laboratory reports documenting the bacteriological examination of testing private water supply must be kept on file in the facility. (3-30-06)

746. -- 749. (RESERVED)

750. FACILITY ADMINISTRATIVE RECORDS FOR FIRE AND LIFE SAFETY.

The administrator must assure that the facility's records for fire and life safety are maintained as described in Subsections 750.01 through 750.06 of these rules. (3-30-06)

01. Fire Drill Documentation. Written documentation of each fire drill, one (1) per shift per quarter, must be maintained on file at the facility and must contain a description of each drill, the date and time of the drill, response of the personnel and residents, problems encountered and recommendations for improvement. (3-30-06)

02. Report of Fire Documentation. A copy of the reporting form, "Facility Fire Incident Report," must be completed and submitted to the Licensing and Survey Agency, The specific data must include, date of incident, origin, extent of damage, method of extinguishment, and injuries if any. (3-30-06)

03. Fuel-Fired Heating Inspection Documentation. The facility will maintain a copy of the annual results of the inspection in the facility. (3-30-06)

04. Portable Fire Extinguisher Examination Documentation. The facility must maintain records of the monthly examination of the Portable Fire Extinguishers documenting the following: (3-30-06)

- a.** Each extinguisher is in its designated location; (3-30-06)
- b.** Each extinguisher seal or tamper indicator is not broken; (3-30-06)
- c.** Each extinguisher has not been physically damaged; (3-30-06)
- d.** Each extinguisher gauge, if provided, shows a charged condition; and (3-30-06)
- e.** The inspection tag attached to the extinguisher shall show at least the initials of the person making the monthly examination and the date of the examination. (3-30-06)

05. Fire Alarm Smoke Detection System Service and Testing. The facility must maintain on file in the facility the following reports: (3-30-06)

- a.** The results of the annual inspection and test, by a person or business professionally engaged in the servicing of such systems; and (3-30-06)

b. The results of the monthly inspection and testing of the fire alarm, smoke detection system designated facility employee. (3-30-06)

06. Automatic Fire Extinguishing System Service and Testing. The facility must maintain on file in the facility the results of the annual inspection, testing and service, by a person or business professionally engaged in servicing of such systems. (3-30-06)

751. -- 899. (RESERVED)

900. ENFORCEMENT ACTIONS.

The Department will consider the facility's compliance history, change of ownership, the number of deficiencies, and scope and severity of the deficiencies when determining an enforcement action. The Department can impose any of the enforcement actions, independently or in conjunction with others, as described in Sections 900 through 940 of these rules. (3-30-06)

01. Immediate Danger to Residents. When the Department finds that the facility's deficiency(s) immediately places the health or safety of its residents in danger, the Director of the Department or his designee may impose one (1) or more of the following: (3-30-06)

a. Appoint temporary management; or (3-30-06)

b. Summarily suspend the facility's license and transfer residents (3-30-06)

02. Not an Immediate Danger to Residents. When the Department finds that the facility's deficiency does not immediately place the residents' health or safety in danger, the Department will initiate one (1) of the Enforcement Actions "A" through "C" described in Subsections 900.03 through 900.05 of these rules, or "Enforcement Remedy of Revocation of License" described in Section 940 of these rules. (3-30-06)

03. Enforcement Action "A." (3-30-06)

a. The facility has forty-five (45) days from the date the facility was found out of compliance with core issue requirements to comply; (3-30-06)

b. An acceptable Plan of Correction is required as described in Section 130.08 of these rules; and (3-30-06)

c. When an acceptable Plan of Correction is not submitted within thirty (30) days from the date the facility was found out of compliance with core issue requirements, the Department may take Enforcement Action "B." (3-30-06)

d. A follow-up survey for Enforcement Action "A" will be conducted after forty-five (45) days from the date the facility was found out of compliance with core issue requirements. During this survey, if the deficiency still exists or a new core issue deficiency is issued, Enforcement Action "B" will be taken. (3-30-06)

04. Enforcement Action "B." (3-30-06)

a. The facility has forty-five (45) days, from the date of the follow-up survey for Enforcement Action "A" in which the facility was found out of compliance with core issue requirements, to comply; (3-30-06)

b. An acceptable Plan of Correction for core issues is required as described in Section 130.08 of these rules; (3-30-06)

c. When an acceptable Plan of Correction is not submitted within thirty (30) days from the date the facility was found out of compliance with core issue requirements, the Department may take Enforcement Action "C." (3-30-06)

d. In addition the Department may impose the following enforcement actions: (3-30-06)

- i. A provisional license may be issued; (3-30-06)
- ii. Admissions to the facility may be limited; or (3-30-06)
- iii. The facility may be required to hire a consultant who submits periodic reports to the Licensing and Survey Agency. (3-30-06)

e. A follow-up survey for Enforcement Action “B” will be conducted after forty-five (45) days from the date the facility was found out of compliance with core issue requirements. During this survey, if the deficiency still exists or a new core issue deficiency is issued, Enforcement Action “C” will be taken. (3-30-06)

05. Enforcement Action “C.” (3-30-06)

a. The facility has forty-five (45) days, from the date of the follow-up survey for Enforcement Action “B” in which the facility was found out of compliance with core issue requirements to comply; (3-30-06)

b. An acceptable Plan of Correction for core issues is required as described in Section 130.08 of these rules; (3-30-06)

c. When an acceptable Plan of Correction is not submitted within thirty (30) days from the date the facility was found out of compliance with core issue requirements, the Department may initiate the remedy of revocation of license as described in Section 940 of these rules; (3-30-06)

d. In addition the Department may impose the following enforcement actions: (3-30-06)

i. The provisional license will be continued; (3-30-06)

ii. Limit on admissions; (3-30-06)

iii. Temporary management; (3-30-06)

iv. Civil monetary penalties as described in Section 925 of these rules; (3-30-06)

e. A follow-up survey for Enforcement Action “C” will be conducted after forty-five (45) days from the date the facility was found out of compliance with core issue requirements; and (3-30-06)

f. When the facility fails to comply with this enforcement action, the Department may initiate an enforcement remedy of revocation of license as described in Section 940 of these rules. (3-30-06)

901. -- 904. (RESERVED)

905. CORE ISSUES DEFICIENCY.

The Licensing and Survey Agency will issue a deficiency and appropriate agencies will be notified when core issue deficiencies are found during a survey. When the Department finds that the facility's deficiency does not immediately place the residents' health or safety in danger, the Department will initiate one (1) of the Enforcement Actions “A” through “C” described in Subsections 900.03 through 900.05 of these rules, or “Enforcement Remedy of Revocation of License” described in Section 940 of these rules. (3-30-06)

906. -- 909. (RESERVED)

910. NON-CORE ISSUES DEFICIENCY.

The Licensing and Survey Agency will issue a deficiency for non-core issues that are found during a survey. (3-30-06)

01. Evidence of Resolution. Acceptable evidence of resolution as described in Subsection 130.09 of these rules, must be submitted by the facility to the Licensing and Survey Agency. If acceptable evidence of

resolution is not submitted within sixty (60) days from when the facility was found to be out of compliance, the Department may impose enforcement actions as described in Subsection 910.02.a. through 910.02.c. of these rules. (3-30-06)

02. First Follow-Up Survey. When the Licensing and Survey Agency finds on the first follow-up survey that repeat non-core deficiencies exist, the Department may initiate any of the following enforcement actions: (3-30-06)

- a. A provisional license may be issued; (3-30-06)
- b. Admissions to the facility may be limited; or (3-30-06)
- c. The facility may be required to hire a consultant who submits periodic reports to the Licensing and Survey Agency. (3-30-06)

03. Second Follow-Up Survey. When the Licensing and Survey Agency finds on the second follow-up survey that repeat non-core deficiencies still exist, the Department may initiate the “Enforcement Remedy of Civil Monetary Penalties,” as described in Section 925 of these rules. (3-30-06)

911. -- 919. (RESERVED)

920. ENFORCEMENT REMEDY OF LIMIT ON ADMISSIONS.

01. Notification of Limit on Admissions. The Department will notify the facility limiting admissions or limiting admissions of residents with specific diagnosis to the facility pending correction of deficiencies. Limits of admissions to the facility remain in effect until the Department determines the facility has achieved full compliance with requirements or have received written evidence and statements from the outside consultant that the facility is in compliance. (3-30-06)

02. Reasons for Limit on Admissions. The Department may limit admissions for the following reasons: (3-30-06)

- a. The facility is inadequately staffed or the staff is inadequately trained to handle more residents. (3-30-06)
- b. The facility otherwise lacks the resources necessary to support the needs of more residents. (3-30-06)
- c. Enforcement Action “B” or “C” is taken as described in Sections 900.04 and 900.05, of these rules. (3-30-06)
- d. Enforcement Remedy for Revocation of License as described in Section 940 of these rules. (3-30-06)

921. -- 924. (RESERVED)

925. ENFORCEMENT REMEDY OF CIVIL MONETARY PENALTIES.

01. Civil Monetary Penalties. Civil monetary penalties are based upon one (1) or more deficiencies of noncompliance. Nothing will prevent the Department from imposing this remedy for deficiencies which existed prior to the survey or complaint investigation through which they are identified. Actual harm to a resident or residents does not need to be shown. A single act, omission or incident will not give rise to imposition of multiple penalties, even though such act, omission or incident may violate more than one (1) rule. (3-30-06)

02. Assessment Amount for Civil Monetary Penalty. When civil monetary penalties are imposed, such penalties are assessed for each day the facility is or was out of compliance. The amounts below are multiplied by the total number of occupied licensed beds according to the records of the Department at the time non-compliance is established. (3-30-06)

a. Initial deficiency is eight dollars (\$8). Example below:

Number of Occupied Beds in Facility	Initial Deficiency	Times Number of Days Out of Compliance	Amount of Penalty
11	\$8.00	45 days	\$3960

(3-30-06)

b. Repeat deficiency is ten dollars (\$10). Example below:

Number of Occupied Beds in Facility	Repeat Deficiency	Times Number of Days Out of Compliance	Amount of Penalty
11	\$10.00	30 days	\$3300

(3-30-06)

c. In any ninety (90) day period, the penalty amounts may not exceed the limits shown in the following table:

Limits on Accruing Civil Monetary Amount.		
Number of Occupied Beds in Facility	Initial Deficiency	Repeat Deficiency
3-4 Beds	\$1440	\$2880
5-50 Beds	\$3200	\$6400
51-100 Beds	\$5400	\$10,800
101-150 Beds	\$8800	\$17,600
151 or More Beds	\$14,600	\$29,200

(3-30-06)

03. Notice of Civil Monetary Penalties and Appeal Rights. The Department will give written notice informing the facility of the amount of the penalty, the basis for its assessment and the facility's appeal rights.

(3-30-06)

04. Payment of Penalties. The facility must pay the full amount of the penalty within thirty (30) calendar days from the date the notice is received, unless the facility requests an administrative review of the decision to assess the penalty. The amount of a civil monetary penalty determined through administrative review must be paid within thirty (30) calendar days of the facility's receipt of the administrative review decision unless the facility requests an administrative hearing. The amount of the civil monetary penalty determined through an administrative hearing must be paid within thirty (30) calendar days of the facility's receipt of the administrative hearing decision unless the facility files a petition for judicial review. Interest accrues on all unpaid penalties at the legal rate of interest for judgments. Such interest accrual will begin one (1) calendar day after the date of the initial assessment of the penalty;

(7-1-15)

05. Failure to Pay. Failure of a facility to pay the entire penalty, together with any interest, is cause for revocation of the license or the amount will be withheld from Medicaid payments to the facility.

(3-30-06)

926. -- 929. (RESERVED)

930. ENFORCEMENT REMEDY OF TEMPORARY MANAGEMENT.

01. Need for Temporary Management. The Department may impose the remedy of temporary management in situations where there is a need to oversee operation of the facility and to assure the health and safety of the facility's residents: (3-30-06)

a. During an orderly transfer of residents of the facility to other facilities; or (3-30-06)

b. Pending improvements to bring the facility into compliance with program requirements. (3-30-06)

02. Notice of Temporary Management. The Department will give written notice to the facility of the imposition of temporary management. (3-30-06)

03. Who May Serve as a Temporary Manager. The Department may appoint any person or organization that meets the following qualifications: (3-30-06)

a. The temporary manager must not have any pecuniary interest in or preexisting fiduciary duty to the facility to be managed; (3-30-06)

b. The temporary manager must not be related, within the first degree of kinship, to the facility's owner, manager, administrator, or other management principal; (3-30-06)

c. The temporary manager must possess sufficient training, expertise and experience in the operation of a facility as would be necessary to achieve the objectives of temporary management. If the temporary manager is to serve in a facility, the manager must possess an Idaho Residential Care Administrator's license; and (3-30-06)

d. The temporary manager must not be an existing competitor of the facility who would gain an unfair competitive advantage by being appointed as temporary manager of the facility. (3-30-06)

04. Powers and Duties of the Temporary Manager. The temporary manager has the authority to direct and oversee the management, hiring and discharge of any consultant or personnel, including the administrator of the facility. The temporary manager has the authority to direct the expenditure of the revenues of the facility in a reasonable and prudent manner, to oversee the continuation of the business and the care of the residents, to oversee and direct those acts necessary to accomplish the goals of the program requirements and to direct and oversee regular accounting. When the facility fails or refuses to carry out the directions of the temporary manager, the Department will revoke the facility's license. (3-30-06)

a. The temporary manager must observe the confidentiality of the operating policies, procedures, employment practices, financial information, and all similar business information of the facility, except that the temporary manager must make reports to the Department; (3-30-06)

b. The temporary manager may be liable for gross, willful or wanton negligence, intentional acts or omissions, unexplained shortfalls in the facility's fund, and breaches of fiduciary duty; (3-30-06)

c. The temporary manager does not have authority to cause or direct the facility, its owner, or administrator to incur debt, unless to bring the facility into compliance with these rules, or to enter into any contract with a duration beyond the term of the temporary management of the facility; (3-30-06)

d. The temporary manager does not have authority to incur, without the permission of the owner, administrator or the Department, capital expenditures in excess of two thousand dollars (\$2,000), unless the capital expenditures are directly related to correcting the identified deficiencies; (3-30-06)

e. The temporary manager does not have authority to cause or direct the facility to encumber its assets or receivables; (3-30-06)

f. The temporary manager does not have authority to cause or direct a facility, which holds liability or casualty insurance coverage, to cancel or reduce its liability or casualty insurance coverage; and (3-30-06)

g. The temporary manager does not have authority to cause or direct the sale of the facility, its assets or the premises on which it is located. (3-30-06)

05. Responsibility for Payment of the Temporary Manager. All compensation and per diem costs of the temporary manager must be paid by the licensee. (3-30-06)

06. Termination of Temporary Management. A temporary manager may be replaced under the following conditions: (3-30-06)

a. The Department may require replacement of any temporary manager whose performance is deemed unsatisfactory by the Department. No formal procedure is required for such removal or replacement, but written notice of any action will be given to the facility. (3-30-06)

b. A facility subject to temporary management may petition the Department for replacement of a temporary manager whose performance it considers unsatisfactory. The petition must include why the replacement of a temporary manager is necessary or appropriate. (3-30-06)

931. -- 934. (RESERVED)

935. ENFORCEMENT REMEDY OF PROVISIONAL LICENSE.

A provisional license may be issued when a facility is cited with one (1) or more core issue deficiencies, or when non-core issues have not been corrected or become repeat deficiencies. The provisional license will state the conditions the facility must follow to continue to operate. See Subsections 900.04, 900.05 and 910.02 of these rules. (3-30-06)

936. -- 939. (RESERVED)

940. ENFORCEMENT REMEDY OF REVOCATION OF FACILITY LICENSE.

01. Revocation of Facility's License. The Department may revoke a license when the facility endangers the health or safety of residents, or when the facility is not in substantial compliance with the provisions of Title 39, Chapter 33, Idaho Code, or this chapter of rules. (3-30-06)

02. Reasons for Revocation or Denial of a Facility License. The Department may revoke or deny any facility license for any of the following reasons: (3-30-06)

a. The licensee has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining a license; (3-30-06)

b. When persuaded by a preponderance of the evidence that such conditions exist which endanger the health or safety of any resident; (3-30-06)

c. Any act adversely affecting the welfare of residents is being permitted, aided, performed, or abetted by the person or persons in charge of the facility. Such acts may include, but are not limited to, neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, criminal activity, or exploitation; (3-30-06)

d. The licensee has demonstrated or exhibited a lack of sound judgment essential to the operation and management of a facility; (3-30-06)

e. The licensee has violated any of the conditions of a provisional license; (3-30-06)

f. The facility lacks adequate personnel, as required by these rules or as directed by the Department, to properly care for the number and type of residents residing at the facility; (3-30-06)

g. Licensee refuses to allow the Department or the Protection and Advocacy agencies full access to the facility environment, facility records, and the residents as described in Subsections 130.04 through 130.06, and 550.18 through 550.19 of these rules; (3-30-06)

- h.** The licensee has been guilty of fraud, gross negligence, abuse, assault, battery, or exploitation with respect to the operation of a health facility or residential care or assisted living facility or certified family home; (3-30-07)
- i.** The licensee is actively affected in his performance by alcohol or the use of drugs classified as controlled substances; (3-30-07)
- j.** The licensee has been convicted of a criminal offense other than a minor traffic violation within the past five (5) years; (3-30-07)
- k.** The licensee is of poor moral and responsible character or has been convicted of a felony or defrauding the government; (3-30-07)
- l.** The licensee has been denied, or the licensee's wrong doing, has caused the revocation of any license or certificate of any health facility, residential care or assisted living facility, or certified family home; (3-30-07)
- m.** The licensee has previously operated any health facility or residential care or assisted living facility without a license or certified family home without a certificate; (7-1-15)
- n.** The licensee is directly under the control or influence of any person who has been the subject of proceedings as described in Subsection 940.02.m. of these rules; (4-11-06)
- o.** The licensee is directly under the control or influence of any person who is of poor moral and responsible character or has been convicted of a felony or defrauding the government; (4-11-06)
- p.** The licensee is directly under the control or influence of any person who has been convicted of a criminal offense other than a minor traffic violation in the past five (5) years; (4-11-06)
- q.** The licensee fails to pay civil monetary penalties imposed by the Department as described in Section 925 of these rules; (4-11-06)
- r.** The licensee fails to take sufficient corrective action as described in Sections 900, 905 and 910 of these rules; or (4-11-06)
- s.** The number of residents currently in the facility exceeds the number of residents the facility is licensed to serve. (4-11-06)

941. -- 999. (RESERVED)

16.04.07 – RULES GOVERNING FEES FOR STATE HOSPITAL NORTH

000. LEGAL AUTHORITY.

The Idaho Board of Health and Welfare is authorized under Section 66-118, Idaho Code, to adopt rules for establishing and charging fees for services provided at State Hospital North and State Hospital South. Under Section 56-1007, Idaho Code, the Department of Health and Welfare is authorized to charge and collect reasonable fees, established by rule, for such services. Section 66-354, Idaho Code, authorizes a state facility to cause an inquiry to be made and collect fees and charges for treatment. Under Sections 56-1003(3)(e), 66-116 and 66-118, Idaho Code, the Idaho Board of Health and Welfare and Director are jointly authorized to administer, manage, and control State Hospital North and State Hospital South. ()

001. TITLE AND SCOPE.

The scope of these rules is to establish fees for services provided at State Hospital North (SHN) or State Hospital South (SHS) and are titled IDAPA 16.04.07, "Fees for State Hospital North and State Hospital South." ()

002. POLICY.

Fees for services will be established and charged to all patients or responsible relatives. Further, SHN and SHS must not refuse service to any person because of race, color, religion, handicap, or ability or inability to pay. ()

003. -- 009 (RESERVED)

010. DEFINITIONS.

01. Charge. The dollar amount determined by costs per patient day for service received from SHN or SHS for specialized services. ()

02. Cost Per Patient Day. An accounting process of allocating all cost centers for the hospital to a twenty-four (24) hour period of time the patient occupies the hospital. (5-1-82)

03. Responsible Relatives. Relatives as defined by Section 66-354, Idaho Code. (5-1-82)

04. Services. May include reasonable and customary services such as: medical, nursing, pharmacy, individual and group counseling, etc. Services covered may differ between SHN and SHS. ()

05. Third Party Payor. A payor other than a patient or responsible relative who is legally liable for all or part of patient charge. (5-1-82)

011. -- 029 (RESERVED)

030. FEES.

01. State Hospital North (SHN) - Diagnostic and Treatment Unit Costs. Costs per patient day for the diagnostic and treatment units will be determined by annual cost allocations and will be effective the first day of October of each calendar year. ()

02. State Hospital South (SHS) - Nursing Facility and Treatment Unit Costs. Costs per patient day for the nursing facility and individual treatment units will be determined by annual cost allocations and will be effective the first day of October of each calendar year. ()

03. Specialized Service Costs. Specialized services provided by the Hospital Mini Clinic will be billed in addition to the cost per patient day and receipts will be deducted from cost allocations. Specialized services provided outside SHN or SHS will be billed in addition to cost per patient day. ()

031. -- 049 (RESERVED)

050. CHARGES.

Charges will be established and billed based on fees calculated for services provided. The ability of a patient or responsible relative to pay charges will be determined from the following: ()

01. Insurance. ()

a. State Hospital North (SHN) - Claims will be itemized by cost per patient day unless the insurance requires a claim itemized by cost per service. No insurance claim will be filed without an assignment of insurance

benefits to the hospital. All benefits from insurance must be made available in total to be applied toward payment of fees set forth herein. ()

b. State Hospital South (SHS) - Patients with third-party insurance capability will be charged one hundred percent (100%) of cost. No insurance claims will be filed without an assignment of insurance benefits to SHS. All benefits from insurance must be made available in total to be applied toward payment of fees set forth herein. ()

02. Other Benefits. All patient benefits from Social Security, Veterans Administration, retirement, trust accounts, and other periodic benefits and earnings will be made available in total to SHN or SHS to be applied toward payment of fees set forth in this chapter unless otherwise dictated by benefit sources. ()

051. -- 069 (RESERVED)

070. WAIVER.

Upon a showing of good cause, the Administrators of SHN or SHS or a designee may waive a patient's fees for any given month or portion thereof. Also, the Administrator of State Hospital North or designee may increase or decrease the amount set aside for patient personal needs. ()

071. -- 089 (RESERVED)

090. PERSONAL NEEDS ALLOWANCE.

01. State Hospital North (SHN). ()

a. Set-Aside Amount. Excluded and set aside from all income or benefits for patients will be a personal needs allowance established by the hospital or as required by the benefit source. ()

b. Use of Monies. These moneys will not be applied toward payment of charges and will be accumulated and held for the patient to spend for his personal needs. ()

02. State Hospital South (SHS). ()

a. Set Aside Amount -- Nursing Facility. Excluded and set aside from all income or benefits for each patient on the Nursing Facility will be the amount of forty dollars (\$40) per month as a personal needs allowance. ()

b. Set Aside Amount -- Treatment Units. Excluded and set aside from all income or benefits for patients will be a personal needs allowance established by the hospital or as required by the benefit source. ()

c. Use of Monies. These monies will not be applied toward payment of charges and will be accumulated and held for the patient to spend for his personal needs. ()

091. -- 999. (RESERVED)

16.05.06 – CRIMINAL HISTORY AND BACKGROUND CHECKS

000. LEGAL AUTHORITY.

The Idaho Legislature has authorized the Department of Health and Welfare to promulgate rules to conduct criminal history and background checks under Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code. Under 42 USC Section 9858f, the Department is required to check certain records for federal child care programs. (7-1-17)

001. TITLE, SCOPE AND POLICY.

01. Title. These rules are titled IDAPA 16.05.06, “Criminal History and Background Checks.” (3-26-08)

02. Scope. These rules assist the Department in the protection of children and vulnerable adults by providing requirements to conduct criminal history and background checks of individuals licensed or certified by the Department, or who provide care or services to children or vulnerable adults. Individuals requiring a criminal history check are identified in Department rules. (7-1-17)

03. Policy. It is the Department’s policy to conduct fingerprint-based criminal history and background checks on individuals who have completed a criminal history application. The criminal history applicant is required to disclose any pertinent information regarding crimes or findings that would disqualify the individual from providing care or services to children or vulnerable adults. The Department may obtain information for these criminal history and background checks from the following sources: (7-1-17)

- a. Federal Bureau of Investigation; (3-26-08)
- b. National Crime Information Center; (3-26-08)
- c. Idaho State Police Bureau of Criminal Identification; (3-26-08)
- d. Any state or federal Child Protection Registry; (7-1-17)
- e. Any state or federal Adult Protection Registry; (7-1-17)
- f. Any state or federal Sexual Offender Registry; (7-1-17)
- g. Office of Inspector General List of Excluded Individuals and Entities; (3-26-08)
- h. Idaho Department of Transportation Driving Records; (3-26-08)
- i. Nurse Aide Registry; (3-26-08)
- j. Other states and jurisdictions records and findings. (7-1-17)

002. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

For the purposes of this chapter of rules, the following terms apply: (7-1-12)

01. Agency. An administrative subdivision of government or an establishment engaged in doing business for another entity. This term is synonymous with the term employer. (7-1-12)

02. Application. An individual’s request for a criminal history and background check in which the individual discloses any convictions, pending charges, or child or adult protection findings, and authorizes the Department to obtain information from available databases and sources relating to the individual. (3-26-08)

03. Clearance. A clearance is a document designated by the Department as the official result of a completed criminal history and background check with no disqualifying crimes or relevant records found. (7-1-17)

04. Conviction. An individual is considered to have been convicted of a criminal offense as defined in Subsections 010.03.a. through 010.03.d. of this rule: (3-26-08)

- a.** When a judgment of conviction, or an adjudication, has been entered against the individual by any federal, state, military, or local court; (3-26-08)
- b.** When there has been a finding of guilt against the individual by any federal, state, military, or local court; (3-26-08)
- c.** When a plea of guilty or nolo contendere by the individual has been accepted by any federal, state, military, or local court; (3-26-08)
- d.** When the individual has entered into or participated in first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. This includes: (3-26-08)
- i.** When the individual has entered into participation in a drug court; or (3-26-08)
- ii.** When the individual has entered into participation in a mental health court. (3-26-08)
- 05. Criminal History and Background Check.** A criminal history and background check is a fingerprint-based check of an individual's criminal record and other relevant records. (3-4-11)
- 06. Criminal History Unit.** The Department's Unit responsible for processing fingerprint-based criminal history and background checks, conducting exemption reviews, and issuing clearances or denials according to these rules. (3-26-08)
- 07. Denial.** A denial is issued by the Department when an individual has a relevant record or disqualifying crime. There are two (2) types of denials: (3-26-08)
- a.** Conditional Denial. A denial of an applicant because of a relevant record found in Section 230 of these rules. (3-26-08)
- b.** Unconditional Denial. A denial of an applicant because of a conviction for a disqualifying crime or a relevant record found in Sections 200 and 210 of these rules. (3-4-11)
- 08. Department.** The Idaho Department of Health and Welfare or its designee. (3-26-08)
- 09. Disqualifying Crime.** A disqualifying crime is a designated crime listed in Section 210 of these rules that results in the unconditional denial of an applicant. (3-26-08)
- 10. Employer.** An entity that hires people to work in exchange for compensation. This term is synonymous with the term agency. (7-1-12)
- 11. Enhanced Clearance.** An enhanced clearance is a clearance issued by the Department that includes a search of child protection registries in states or jurisdictions in which an applicant has resided during the preceding five (5) years. See Section 126 of these rules. (7-1-17)
- 12. Exemption Review.** A review by the Department at the request of the applicant when a conditional denial has been issued. (3-26-08)
- 13. Federal Bureau of Investigation (FBI).** The federal agency where fingerprint-based criminal history and background checks are processed. (3-26-08)
- 14. Good Cause.** Substantial reason, one that affords a legal excuse. (3-4-11)
- 15. Idaho State Police Bureau of Criminal Identification.** The state agency where fingerprint-based criminal history and background checks are processed. (3-26-08)
- 16. Relevant Record.** A relevant record is a record that is found in a search of criminal records or registries checked by the Department as provided in Section 56-1004A, Idaho Code. (7-1-12)

011. -- 049. (RESERVED)

050. FEES AND COSTS FOR CRIMINAL HISTORY AND BACKGROUND CHECKS.

The fee for a Department fingerprint-based criminal history and background check is up to seventy dollars (\$70) for an individual. The applicant is responsible for the cost of the criminal history and background check except where otherwise provided by Department rules. An applicant is responsible for any additional costs incurred by the Department paid to agencies, judicial, or law enforcement jurisdictions in other states. The Department will collect the additional funds to cover its costs. (7-1-17)

051. -- 059. (RESERVED)

060. EMPLOYER REGISTRATION.

01. Initial Registration. Employers required to have Department criminal history and background checks on their employees, contractors, or staff must register with the Department and receive an employer identification number before criminal history and background check applications can be processed or accessed. (7-1-14)

02. Change in Name or Ownership. When an agency or facility: (7-1-14)

a. Is acquired by another entity, the new ownership must register as a new employer and provide contact information to obtain a new employer identification number and website access within thirty (30) calendar days of acquisition. (7-1-14)

b. Changes its name or location, the employer must provide the new name, location, and contact information to the Department within thirty (30) calendar days of the change. (7-1-14)

061. EMPLOYER RESPONSIBILITIES.

The criminal history and background check clearance is not a determination of suitability for employment. The Department's criminal history and background check clearance means that an individual was found to have no disqualifying crime or relevant record. Employers are responsible for determining the individual's suitability for employment as described in Subsections 061.01 through 061.03 of these rules. (3-26-08)

01. Screen Applicants. The employer should screen applicants prior to initiating a criminal history and background check in determining the suitability of the applicant for employment. If an applicant discloses a disqualifying crime or offense, or discloses other information that would indicate a risk to the health and safety of children and vulnerable adults, a determination of suitability for employment should be made during the initial application screening. (3-26-08)

02. Maintain Printed Copy of Application. The employer must maintain a copy of the printed, signed, and notarized criminal history and background check application for all individuals required to obtain a criminal history and background check. This copy must be readily available for inspection to verify compliance with this requirement. An employer who chooses to use a criminal history and background check obtained for a previous employer must comply with Section 300 of these rules and maintain copies of the records. (7-1-17)

03. Ensure Time Frames Are Met. The employer is responsible to ensure that the required time frames are met for completion and submission of the application and fingerprints to the Department as required in Section 150 of these rules. (3-26-08)

04. Employment Determination. The employer is responsible for reviewing the results of the criminal history and background check even if a clearance that resulted in no disqualifying crimes or offenses found is issued by the Department. The employer must then make a determination as to the ability or risk of the individual to provide care or services to children or vulnerable adults. (3-4-11)

062. -- 069. (RESERVED)

070. NON-COMPLIANCE WITH THESE RULES.

The Department will report an individual's or an employer's non-compliance with these rules to the applicable licensing or certification unit. (3-26-08)

071. -- 099. (RESERVED)

100. INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.

Individuals subject to a Department criminal history and background check are those persons or classes of individuals who are required by statute, or Department rules to complete a criminal history and background check. (3-4-11)

01. Adoptive Parent Applicants. Individuals who must comply with IDAPA 16.06.01, "Child and Family Services," and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)

02. Behavioral Health Programs. Individuals who must comply with IDAPA 16.07.15, "Behavioral Health Programs." (3-24-17)

03. Certified Family Homes. Individuals who must comply with Section 39-3520, Idaho Code, IDAPA 16.03.19, "Rules Governing Certified Family Homes," and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)

04. Children's Residential Care Facilities. Individuals who must comply with Section 39-1210, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)

05. Children's Therapeutic Outdoor Programs. Individuals who must comply with Section 39-1208, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)

06. Citizen Review Panel Members. Public health district volunteers who must comply with Section 16-1647, Idaho Code, "Citizen Review Panels - Child Protection Legislative Review Panel." ()

07. Contracted Non-Emergency Medical Transportation Providers. Individuals who must comply with IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (3-4-11)

08. Court Appointed Guardians and Conservators. Individuals who must comply with the requirements of Title 15, Chapter 5, Idaho Code, and Title 66, Chapter 4, Idaho Code. Court required guardian and conservator criminal history and background checks are not provided Department clearances described in Section 180.01 of these rules. (3-20-14)

09. Designated Examiners and Designated Dispositioners. Individuals who must comply with IDAPA 16.07.39, "Appointment of Designated Examiners and Designated Dispositioners." (3-4-11)

10. Developmental Disabilities Agencies. Individuals who must comply with IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)," and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)

11. Emergency Medical Services (EMS). Individuals who must comply with IDAPA 16.01.05, "Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements," and IDAPA 16.01.07, "Emergency Medical Services (EMS) -- Personnel Licensing Requirements." (3-24-17)

12. High Risk Providers of Medicaid. Individuals who must comply with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," and the Medicaid Provider Handbook. (4-6-15)

13. Home and Community-Based Services (HCBS). Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," and IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies." (7-1-12)

14. Home Health Agencies. Individuals who must comply with IDAPA 16.03.07, "Home Health Agencies." (3-4-11)

- 15. Idaho Behavioral Health Plan (IBHP).** Individuals who are contractors, contractor’s employees, and subcontractors in accordance with IDAPA 16.03.09, “Medicaid Basic Plan Benefits.” (4-6-15)
- 16. Idaho Child Care Program (ICCP).** Individuals who must comply with IDAPA 16.06.12, “Rules Governing the Idaho Child Care Program.” (3-4-11)
- 17. Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID).** Individuals who must comply with IDAPA 16.03.11, “Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID).” (3-4-11)
- 18. Licensed Foster Care.** Individuals who must comply with Section 39-1211, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-4-11)
- 19. Licensed Day Care.** Individuals who must comply with Sections 39-1105, 39-1113, and 39-1114, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-4-11)
- 20. Mental Health Services.** Individuals who must comply with IDAPA 16.07.33, “Adult Mental Health Services,” and IDAPA 16.07.37, “Children’s Mental Health Services.” (4-6-15)
- 21. Personal Assistance Agencies.** Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)
- 22. Personal Care Service Providers.** Individuals who must comply with Section 39-5604, Idaho Code, and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)
- 23. Residential Care or Assisted Living Facilities in Idaho.** Individuals who must comply with IDAPA 16.03.22, “Residential Care or Assisted Living Facilities in Idaho.” (3-4-11)
- 24. Service Coordinators and Paraprofessional Providers.** Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)
- 25. Skilled Nursing and Intermediate Care Facilities.** Individuals who must comply with IDAPA 16.03.02, “Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities.” (3-4-11)
- 26. Substance Use Disorders Services.** Individuals who must comply with IDAPA 16.07.17, “Substance Use Disorders Services.” (4-11-19)
- 27. Support Brokers and Community Support Workers.** Individuals who must comply with IDAPA 16.03.13, “Consumer-Directed Services.” (3-4-11)

101. DEPARTMENT INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.

The following Department employees, contractors, and volunteers are subject to criminal history and background checks. (7-1-12)

- 01. Employees, Contractors, and Volunteers.** Employees, contractors, and volunteers, providing direct care services or who have access to children or vulnerable adults as defined in Section 39-5302(10), Idaho Code. (3-29-10)
- 02. Employees of Bureau of Audits and Investigations.** (3-26-08)
- a.** Fraud Investigators; (3-26-08)
- b.** Utilization Review Analysts; and (3-26-08)
- c.** Criminal History Staff. (3-26-08)

- 03. Employees at State Institutions.** All employees of the following state funded institutions; (3-26-08)
- a.** Southwest Idaho Treatment Center, Nampa, Idaho; (3-26-08)
 - b.** State Hospital North, Orofino, Idaho; and (3-26-08)
 - c.** State Hospital South, Blackfoot, Idaho. (3-26-08)
- 04. Emergency Medical Services (EMS) Employees.** EMS communication specialists and managers. (3-26-08)
- 05. Other Employees.** Other Department employees as determined by the Director. (3-26-08)

102. -- 119. (RESERVED)

120. APPLICATION FOR A CRIMINAL HISTORY AND BACKGROUND CHECK.

Individuals who are subject to a criminal history and background check must complete an application and have it notarized. The application must include disclosure of any disqualifying crimes, offenses, or relevant records. (3-26-08)

01. Application Form. The applicant must request a criminal history and background check by completing the Department's application form and submitting it on-line or by mail. The individual's application authorizes the Department to obtain information and release it as required in accordance with applicable state and federal law. The following information is required to complete the application: (3-26-08)

- a.** Name, current and former names, or aliases; (3-26-08)
- b.** Current and former addresses as requested in the application; (7-1-17)
- c.** Date of birth, that appears on a valid identification document issued by a governmental entity; (3-26-08)
- d.** State and country of birth; and (3-26-08)
- e.** Driver's license number, if licensed, state where licensed, and whether a license has ever been revoked or suspended. (3-26-08)
- f.** Other identifying information, including gender, race, height, weight, eye color, and hair color; (3-26-08)
- g.** Employer information; (3-26-08)
- h.** Any criminal record or criminal offense information; (3-26-08)
- i.** Any pending charges or outstanding warrants; (3-26-08)
- j.** Any child or adult protection involvement; (3-26-08)
- k.** Any Medicare or Medicaid Provider Exclusion; and (3-26-08)
- l.** Any other information requested on the application. (3-26-08)

02. Disclosures. The individual must disclose any conviction, pending charges or indictment for crimes, and furnish a description of the crime and the particulars on the application. The individual must also disclose any notice by a state or local agency of substantiated child or substantiated vulnerable adult abuse, neglect, exploitation, or abandonment complaint, and any other information as required. (3-26-08)

03. Failure to Disclose Information. (7-1-17)

a. An applicant who falsifies or fails to disclose information on the application, may be subject to a conditional denial under Section 230.01 and prosecution under Sections 18-3203, 18-5401, and 56-227A, Idaho Code. (3-26-08)

b. An applicant required to obtain a criminal history and background check under Section 126 of these rules that knowingly makes a materially false statement in connection to their background check will receive an unconditional denial as provided in Section 200 of these rules. (7-1-17)

121. -- 124. (RESERVED)

125. IDAHO CHILD PROTECTION CENTRAL REGISTRY CHECKS.

The Department will provide the results of a check of the Idaho Child Protection Central Registry to any agency that requires it to comply with the provisions of applicable federal or state law. The Department will process those requests as described in this rule. (7-1-17)

01. Request for an Idaho Child Protection Central Registry Check. A request for an Idaho Child Protection Central Registry check must be submitted by mail, facsimile transmission, or e-mail attachment on state or agency letterhead with the requesting authority contact information, and must include the following: (7-1-17)

a. Name of the subject of the check, and any aliases; (4-7-11)

b. Date of birth and Social Security Number of the subject of the check; and (4-7-11)

c. A notarized signature of the subject of the check authorizing the request. (4-7-11)

02. Fee Amount. The fee for an Idaho Child Protection Central Registry check is twenty dollars (\$20) for each subject checked. (4-7-11)

03. Department Response. A response will be returned to the agency initiating the request for the check within fourteen (14) days of receipt of the request. The Department's contact information will be included along with the result of the check. (7-1-17)

126. APPLICANTS RECEIVING A DEPARTMENT ENHANCED CLEARANCE.

The following classes of individuals are required to provide their previous residence information for the preceding five (5) years in their application for a criminal history and background check. (7-1-17)

01. Adoptive Parent Applicants. Described in Subsection 100.01 of these rules. (7-1-17)

02. Behavioral Health Programs. Described in Subsection 100.02 of these rules. (7-1-17)

03. Children's Residential Care Facilities. Described in Subsection 100.04 of these rules. (7-1-17)

04. Children's Therapeutic Outdoor Programs. Described in Subsection 100.05 of these rules. (7-1-17)

05. Idaho Child Care Program (ICCP). Described in Subsection 100.16 of these rules. (7-1-17)

06. Licensed Foster Care. Described in Subsection 100.18 of these rules. (7-1-17)

07. Licensed Day Care. Described in Subsection 100.19 of these rules. (7-1-17)

08. Mental Health Services. Described in Subsection 100.20 of these rules. (7-1-17)

09. Substance Use Disorders Services. Described in Subsection 100.26 of these rules. (4-11-19)

127. -- 129. (RESERVED)

130. SUBMISSION OF APPLICATION.

An application for a criminal history and background check must be initiated, submitted, and received on the Department's website before a criminal history and background check can be processed. The application is pending until the Department issues a clearance or denial, or the individual withdraws the application. (7-1-14)

131. -- 139. (RESERVED)

140. SUBMISSION OF FINGERPRINTS.

The Department's criminal history and background check is a fingerprint-based check. Ten (10) rolled fingerprints must be collected from the individual and submitted to the Department within the time frame for submitting applications as provided in Section 150 of these rules in order for a criminal history and background check request to be processed. The Department obtains fingerprints electronically at each of its fingerprint locations, or the Department's fingerprint card must be used. A Department fingerprint card can be obtained by contacting the Criminal History Unit, described in Section 005 of these rules. (7-1-14)

01. Department Fingerprinting Locations. A fingerprint appointment is scheduled at designated Department locations where the Department will collect the individual's fingerprints. Locations for the closest Department fingerprint collection office where an individual may submit fingerprints are listed on the Department's website. The applicant may contact the Criminal History Unit as described in Section 005 of these rules for additional guidance. (7-1-17)

02. Submitting Fingerprints by Mail. When an individual elects to have fingerprints collected by a local law enforcement agency or by the applicant's employer, the Department's fingerprint card must be used. The fingerprint card must be completed in accordance with the instructions provided, signed, and mailed along with the completed notarized application and applicable fee to the address indicated on the Department's website. The notarized application and fees must be received by the Department in the time frame required in Section 150 of these rules. (7-1-14)

03. Submission of Reprints. In the event that an individual's submitted fingerprints are deemed unreadable by the Department, Idaho State Police, or the FBI, the applicant must comply with a request for reprints from the Department within fifteen (15) calendar days from the date of the notice. Failure to comply with the Department's reprint request will result in the applicant being unavailable to provide services. (7-1-14)

141. -- 149. (RESERVED)

150. TIME FRAME FOR SUBMITTING APPLICATION AND FINGERPRINTS.

The completed notarized application and fingerprints must be received by the Department within twenty-one (21) days from the date of notarization whether submitted by mail or at a Department fingerprinting location. (7-1-14)

01. Availability to Provide Services. The applicant: (7-1-14)

a. Is available to provide services on the day the application is signed and notarized, as long as the applicant has not disclosed any disqualifying crimes or relevant records. The applicant must provide the Department a copy of the signed and notarized application to validate the date of applicant's availability to provide services. (7-1-14)

b. Becomes unavailable to provide services or be licensed or certified when the notarized application is not received or the fingerprints have not been collected within this time frame. (7-1-14)

c. Who submits a complete application and fingerprints by mail, and the application is deemed inadequate or incomplete for processing by the Department, is unavailable to provide services until the application is received by the Department completed and corrected. (7-1-14)

02. Incomplete Application. The criminal history and background check is incomplete and will not be processed by the Department if this time frame is not met. (7-1-12)

03. No Extension of Time Frame. The Department will not extend the twenty-one (21) day time frame, unless the applicant or employer provides just cause. An applicant for employment or employer can not submit a new application for the same purpose, or repeatedly re-sign and re-notarize the original application. (7-1-12)

151. -- 159. (RESERVED)

160. WITHDRAWAL OF APPLICATION.

An individual may withdraw their application for a criminal history and background check at any time. An individual who withdraws their application cannot provide services, or receive licensure or certification. Fees paid for the cost of the criminal history and background check are non-refundable once the fingerprints have been submitted by the Department to the Idaho State Police. (3-26-08)

161. -- 169. (RESERVED)

170. AVAILABILITY TO PROVIDE SERVICES PENDING COMPLETION OF THE CRIMINAL HISTORY AND BACKGROUND CHECK.

An individual is available to provide services pending completion of the criminal history and background check as described in Subsections 170.01 and 170.02 of this rule. The individual must have submitted a signed notarized application and fingerprints in the time frame required in Section 150 of these rules, in order to provide services. (7-1-14)

01. Employees of Providers, Contractors, Emergency Medical Services (EMS), or the Department. An individual is available to provide services on a provisional basis at the discretion of the employer or EMS Bureau as long as no disqualifying crimes or relevant records are disclosed on the application. The employer must review the application for any disqualifying crimes listed in Section 210 of these rules or other relevant records listed in Sections 230 and 240 of these rules. The employer must determine whether the applicant poses a health or safety risk to vulnerable clients before allowing the individual to provide services until a clearance or denial is issued by the Department. (7-1-14)

02. Individuals Licensed or Certified by the Department. Individuals applying for licensure or certification by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is complete and a clearance is issued by the Department. The following are individuals required to have a clearance prior to providing services: (3-26-08)

- a.** Adoption or foster care applicants and adults in the home; (3-26-08)
- b.** Certification or licensure applicants; (3-26-08)
 - i.** Certified family homes; (3-26-08)
 - ii.** Licensed child care providers; (3-26-08)

171. -- 179. (RESERVED)

180. CRIMINAL HISTORY AND BACKGROUND CHECK RESULTS.

The Department will issue a clearance or denial once the criminal history and background check is completed. (7-1-17)

01. Results of Criminal History and Background Checks. The results may be accessed by the individual on the Department's website. The employer may access the information that is provided by the applicant and information obtained from the state, county, or through registries. (7-1-17)

02. Findings for Court Required Criminal History and Background Checks. As required in Section 56-1004A(2)(b), Idaho Code, the Department will provide findings of a court ordered criminal history and background check to individuals appointed by the court according to Title 15, Chapter 5, or Title 66, Chapter 4, Idaho Code. (3-20-14)

181. APPLICATION STATUS.

An individual and their employer may check on the criminal history and background check status and the individual's availability to work on the Department website at <https://chu.dhw.idaho.gov/>. (3-26-08)

182. -- 189. (RESERVED)

190. CRIMINAL HISTORY AND BACKGROUND CHECK CLEARANCE.

01. Clearance. A criminal history and background check clearance is issued by the Department once all relevant records and findings have been reviewed and the Department has cleared the applicant. The clearance will be published on the Department's website and the individual may print copies of the clearance. The employer must print the clearance within fourteen (14) calendar days of the clearance being accessible on the Department's website, and maintain a copy readily available for inspection for a period consistent with the employer's own personnel documentation retention schedule. (7-1-17)

02. Clearance Types. An applicant required to pass a criminal history and background must receive a clearance as provided below: (7-1-17)

a. A clearance for an applicant who is not seeking an enhanced clearance for employment in classes listed in Section 126 of these rules, may receive a clearance for a criminal history and background check when a relevant record identified on any child protection registry is disclosed, but the applicant has no conviction of any crimes listed in Subsections 210.01 or 210.02 of these rules. (7-1-17)

b. An applicant who receives an enhanced clearance has met the criteria to have obtained a clearance as provided in Subsection 190.02.a. of this rule. An enhanced clearance is required for each of the classes listed in Section 126 of these rules and requires searches from states and jurisdictions where the applicant has resided in the previous five (5) years. A relevant record on any child protection registry will result in a denial under Subsection 200.01 of these rules and no clearance will be issued. An applicant who applies to work in any of these classes must receive or have an enhanced clearance. (7-1-17)

03. Revocation of Clearance. An individual's previously issued clearance may be revoked for the following: (7-1-17)

a. The individual fails to comply with the Department's request to submit to a new criminal history and background check according to Subsection 300.04 of these rules. (7-1-14)

b. The individual completes a new criminal history and background check and is found to have a criminal or relevant record that results in an inability to proceed action or in a denial as described in Sections 190 or 200 of these rules. (7-1-14)

c. The criminal history and background check fees are not paid, or are insufficient to cover the costs of the background check. (7-1-17)

191. -- 199. (RESERVED)

200. UNCONDITIONAL DENIAL.

An individual who receives an unconditional denial is not available to provide services, have access, or to be licensed or certified by the Department. (3-26-08)

01. Reasons for an Unconditional Denial. Unconditional denials are issued for: (3-4-11)

a. Disqualifying crimes described in Section 210 of these rules; (3-4-11)

b. A relevant record on any Child Protection Registry for the classes of individuals listed in Section 126 of these rules; (4-11-19)

- c. A relevant record on the Idaho Child Protection Central Registry with a Level one (1) or Level two (2) designation for all other applicants covered by these rules; (4-11-19)
- d. A relevant record on the Nurse Aide Registry; (7-1-14)
- e. A relevant record on either the state or federal sex offender registries; (7-1-17)
- f. A relevant record on the state or federal Medicaid Exclusion List, described in Section 240 of these rules; or (7-1-17)
- g. A materially false statement made knowingly in connection to the Department's criminal history and background check application for the classes of individuals listed in Section 126 of these rules will result in a five-year disqualification period for the applicant. (7-1-17)

02. Issuance of an Unconditional Denial. The Department will issue an unconditional denial within fourteen (14) days of completion of a criminal history and background check. (3-26-08)

03. Challenge of Department's Unconditional Denial. An individual has twenty-eight (28) days from the date the unconditional denial is issued to challenge the Department's unconditional denial. The individual must submit the challenge in writing and provide court records or other information which demonstrates the Department's unconditional denial is incorrect. These documents must be filed with the Criminal History Unit described in Section 005 of these rules. (7-1-14)

a. If the individual challenges the Department's unconditional denial, the Department will review the court records, documents and other information filed by the individual. The Department will issue a decision within thirty (30) days of the receipt of the challenge. The Department's decision will be a final order under IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings," Section 152. ()

b. If the individual does not challenge the Department's unconditional denial within thirty (30) days, it becomes a final order of the Department under IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings," Section 152. ()

04. No Exemption Review. No exemption review, as described in Section 250 of these rules, is allowed for an unconditional denial. (3-26-08)

05. Appeal of an Unconditional Denial. Following a challenge of the Department's unconditional denial, an individual may appeal the Department's decision under the provisions in IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." The request to appeal an unconditional denial does not stay the action of the Department. ()

201. -- 209. (RESERVED)

210. DISQUALIFYING CRIMES RESULTING IN AN UNCONDITIONAL DENIAL.

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a conviction for a disqualifying crime on his record as described in Subsections 210.01 and 210.02 of this rule. (3-26-08)

01. Disqualifying Crimes. The disqualifying crimes, described in Subsections 210.01.a. through 210.01.cc. of this rule, or any substantially conforming foreign criminal violation, will result in an unconditional denial being issued. (7-1-17)

- a. Crimes against vulnerable adults: (7-1-17)
 - i. Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code; (3-26-08)
 - ii. Abandoning a vulnerable adult, as defined in Section 18-1505A, Idaho Code; (7-1-17)

- iii. Sexual abuse and exploitation of a vulnerable adult, as defined in Section 18-1505B, Idaho Code. (7-1-17)
- b. Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code; (3-26-08)
- c. Crimes against nature, as defined in Section 18-6605, Idaho Code; (3-26-08)
- d. Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; (3-26-08)
- e. Hiring, employing, or using a minor to engage in certain acts, as defined in Section 18-1517A, Idaho Code; (7-1-17)
- f. Human trafficking, as defined in Sections 18-8602 and 18-8603, Idaho Code; (7-1-17)
- g. Incest, as defined in Section 18-6602, Idaho Code; (3-26-08)
- h. Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; (3-26-08)
- i. Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; (3-26-08)
- j. Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; (3-26-08)
- k. Mayhem, as defined in Section 18-5001, Idaho Code; (3-26-08)
- l. Manslaughter: (7-1-12)
 - i. Voluntary manslaughter, as defined in Section 18-4006(1) Idaho Code; (7-1-12)
 - ii. Involuntary manslaughter, as defined in Section 18-4006(2), Idaho Code; (7-1-12)
 - iii. Felony vehicular manslaughter, as defined in Section 18-4006(3)(a) and (b), Idaho Code; (7-1-12)
- m. Murder in any degree or assault with intent to commit murder, as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code; (7-1-12)
- n. Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; (3-26-08)
- o. Rape, as defined in Section 18-6101, Idaho Code; (3-26-08)
- p. Robbery, as defined in Section 18-6501, Idaho Code; (3-26-08)
- q. Felony stalking, as defined in Section 18-7905, Idaho Code; (3-26-08)
- r. Sale or barter of a child, as defined in Section 18-1511, Idaho Code; (3-26-08)
- s. Ritualized abuse of a child, as defined in Section 18-1506A, Idaho Code; (7-1-17)
- t. Sexual abuse or exploitation of a child, as defined in Sections 18-1506, Idaho Code; (7-1-17)
- u. Felony sexual exploitation of a child, as defined in Section 18-1507, Idaho Code; (7-1-17)
- v. Sexual battery of a minor child under sixteen (16) or seventeen (17) years of age, as defined in Section 18-1508A, Idaho Code; (7-1-17)

- w. Video voyeurism, as defined in Section 18-6609, Idaho Code; (3-26-08)
 - x. Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; (3-26-08)
 - y. 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; (3-26-08)
 - z. Any felony punishable by death or life imprisonment; (7-1-17)
 - aa. Attempted strangulation, as defined in Section 18-923, Idaho Code; (7-1-17)
 - bb. Felony domestic violence, as defined in Section 18-918, Idaho; or (7-1-17)
 - cc. 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. (3-29-10)
- 02. Disqualifying Five-Year Crimes.** The Department will issue an unconditional denial for an individual who has been convicted of the following described crimes for five (5) years from the date of the conviction for the crimes listed in Subsections 210.02.a. through 210.02.n. of this rule, or any substantially conforming foreign criminal violation: (7-1-17)
- a. Any felony not described in Subsection 210.01, of this rule; (3-4-11)
 - b. Misdemeanor domestic violence, as defined in Section 18-918, Idaho Code; (7-1-17)
 - c. Failure to report abuse, abandonment or neglect of a child, as defined in Section 16-1605, Idaho Code; (7-1-17)
 - d. Misdemeanor forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 through 18-3128, Idaho Code; (3-4-11)
 - e. Misdemeanor forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; (3-4-11)
 - f. Misdemeanor identity theft, as defined in Section 18-3126, Idaho Code; (3-4-11)
 - g. Misdemeanor insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; (3-4-11)
 - h. Public assistance fraud, as defined in Sections 56-227, 56-227A, 56-227D, 56-227E and 56-227F, Idaho Code; (7-1-17)
 - i. Sexual exploitation of a child by electronic means, felony or misdemeanor, as defined in Section 18-1507A, Idaho Code; (7-1-17)
 - j. Stalking in the second degree, as defined in Section 18-7906, Idaho Code; (7-1-12)
 - k. Misdemeanor vehicular manslaughter, as defined in Section 18-4006(3)(c), Idaho Code; (7-1-14)
 - l. Sexual exploitation by a medical care provider, as defined in Section 18-919, Idaho Code; (7-1-17)
 - m. Operating a certified family home without certification, as defined in Section 39-3528, Idaho Code; (7-1-17)
 - n. 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 five (5) year crimes. (3-29-10)

03. Underlying Facts and Circumstances. The Department may consider the underlying facts and

circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: (3-26-08)

- a. A withheld judgment; (3-26-08)
- b. A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; (3-26-08)
- c. An order according to Section 19-2604, Idaho Code, or other equivalent state law; or (3-26-08)
- d. A sealed record. (3-26-08)

211. -- 219. (RESERVED)

220. CONDITIONAL DENIAL.

The Department may issue a conditional denial within fourteen (14) days of the completion of a criminal history and background check. An individual who receives a conditional denial is not available to provide services or be licensed or certified by the Department. (3-26-08)

01. Reasons for a Conditional Denial Issuance. A conditional denial is issued when the criminal history and background check reveals a relevant record as described in Section 230 of these rules. (3-26-08)

02. Effective Date of a Conditional Denial. A conditional denial is effective immediately. An applicant may not reapply for a criminal history and background check for three (3) years from the date of the conditional denial. (3-26-08)

03. Request an Exemption Review. An individual may request an exemption review as described in Section 250 of these rules when a conditional denial has been issued. (3-26-08)

221. -- 229. (RESERVED)

230. RELEVANT RECORDS RESULTING IN A CONDITIONAL DENIAL.

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a relevant record on their record as described Subsections 230.01 and 230.02 of this rule. (3-26-08)

01. Individuals Licensed or Certified by the Department or a Department Employee. A conditional denial may be issued when an individual who is licensed or certified by the Department, or who is a Department employee discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.01.a. through 230.01.d. of this rule: (7-1-14)

- a. A substantiated child protection complaint or a substantiated adult protection complaint; (3-26-08)
- b. The Department determines there is a potential health and safety risk to vulnerable adults or children; (3-26-08)
- c. The individual has falsified or omitted information on the application form; or (7-1-14)
- d. The Department determines additional information is required. (3-26-08)

02. Employees of Providers or Contractors. A conditional denial may be issued when an individual who is employed by a provider or contractor discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.02.a. through 230.02.b. of this rule. (7-1-14)

- a. A substantiated child protection complaint or a substantiated adult protection complaint; or (7-1-14)

- b.** The Department determines additional information is required. (3-26-08)

03. Underlying Facts and Circumstances. The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: (3-26-08)

- a.** A withheld judgment; (3-26-08)
- b.** A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; (3-26-08)
- c.** An order according to Section 19-2604, Idaho Code, or other equivalent state law; or (3-26-08)
- d.** A sealed record. (3-26-08)

231. -- 239. (RESERVED)

240. MEDICAID EXCLUSION.

Individuals subject to these rules, who are excluded by the Office of the Inspector General, Department of Health and Human Services; or, are listed in the State of Idaho Medicaid Exclusion list, cannot provide Department funded services within the scope of these rules. At the expiration of the exclusion, the individual may reapply for a criminal history and background check. (7-1-12)

241. -- 249. (RESERVED)

250. EXEMPTION REVIEWS.

An individual cannot request an exemption review for an unconditional denial. An individual may request an exemption review within fourteen (14) days from the date of the issuance of a conditional denial by the Department, unless good cause is shown for a delay. Once the Department receives the request for an exemption review, the Department will initiate a review for crimes or actions not designated in Section 210 of these rules. The review may consist of examining documents and supplemental information provided by the individual, a telephone interview, an in-person interview, or any other review the Department determines is necessary. Exemption reviews are governed and conducted as provided in Subsections 250.01 through 250.05 of this rule. (3-26-08)

01. Scheduling an Exemption Review. Upon receipt of a request for an exemption review, the Department will determine the type of review and conduct the review within thirty (30) days from the date of the request. Where an in-person review is appropriate, the Department will provide the individual at least seven (7) days notice of the review date unless the time is waived by the individual. When an in-person review is scheduled, the individual is notified by the Department that they are able to bring witnesses and present evidence during the review. (3-26-08)

02. Factors Considered at the Exemption Review. The Department will consider the following factors or evidence during the exemption review: (3-26-08)

- a.** The severity or nature of the crime or other findings; (3-26-08)
- b.** The period of time since the incident under review occurred; (3-26-08)
- c.** The number and pattern of incidents; (3-26-08)
- d.** Circumstances surrounding the incident that would help determine the risk of repetition; (3-26-08)
- e.** Relationship of the incident to the care of children or vulnerable adults; (3-26-08)
- f.** Activities since the incident, such as continuous employment, education, participation in treatment, payment of restitution, or any other factors that may be evidence of rehabilitation; (3-26-08)

- g.** Granting of a pardon by the Governor or the President; and (3-26-08)
- h.** The falsification or omission of information on the application form and other supplemental forms submitted. (3-26-08)

03. Exemption Review Determination. The Department determines the individual's suitability based upon the information provided during the exemption review. The Department will issue a notice of decision within fifteen (15) business days of the close of the review. (3-26-08)

04. Exemption Review Decision Effective Dates. The Department's exemption review decision is effective for three (3) years from the date of the notice of decision. (3-26-08)

05. Exemption Review Appeal. Exemption reviews conducted under this section of rule may be appealed under IDAPA 16.05.03, "Contested Cases Proceedings and Declaratory Rulings." The filing of a notice of appeal does not stay the action of the Department. The individual who files an appeal must establish that the Department's denial was arbitrary and capricious. ()

251. -- 259. (RESERVED)

260. PREVIOUS EXEMPTION REVIEW DENIALS.

The individual's current request for a criminal history and background check for any Department program when there has been a denial from an exemption review within the last three (3) years will automatically be denied. (3-26-08)

261. -- 269. (RESERVED)

270. CRIMINAL OR RELEVANT RECORD - ACTION PENDING.

01. Notice of Inability to Proceed. When the applicant is identified as having a pending criminal action for a crime or relevant record that may disqualify them from receiving a clearance for the criminal history and background check, the Department may issue a notice of inability to proceed. (7-1-12)

02. Availability to Provide Services. The applicant is not available to provide service when a notice of inability to proceed or denial is issued by the Department. Any previous clearance issued by the Department will be revoked as described in Section 190 of these rules. (7-1-14)

03. Reconsideration of Action Pending. In the case of an inability to proceed status, the applicant can submit documentation that the matter has been resolved to the Department for reconsideration within one hundred and twenty (120) calendar days from the date of notice. When the Department receives this documentation, the Department will notify the applicant of the reconsideration and issue a clearance or denial. When the Department's reconsideration results in a clearance after review, any previously revoked clearance will be restored as described in Section 190 of these rules. (7-1-14)

271. -- 299. (RESERVED)

300. UPDATING CRIMINAL HISTORY AND BACKGROUND CHECKS.

The employer is responsible for confirming that the applicant has completed a criminal history and background check as provided in Section 190 of these rules. Once a clearance is issued by the Department, verifiable continuous employment of the applicant with the same employer eliminates the requirement for a new background check. The provisions stipulated on Subsections 300.03 and 300.04 of this rule still apply. (7-1-12)

01. New Criminal History and Background Check. Any individual required to have a criminal history and background check under these rules must complete a new application, including fingerprints when: (3-26-08)

- a.** Accepting employment with a new employer; or (3-26-08)
- b.** Applying for licensure or certification with the Department; and (3-26-08)

c. His last Department criminal history and background check was completed more than three (3) years prior to his employment date or licensure application date. (3-26-08)

02. Use of Criminal History Check Within Three Years of Completion. Any employer may use a Department criminal history and background check clearance obtained under these rules if: (3-26-08)

a. The individual has received a Department's criminal history and background check clearance within three (3) years from the date of employment; (4-6-15)

b. Prior to allowing the individual to provide services, the employer must obtain access to the individual's background check results and clearance through the Department's website by having the employer's identification number added to the individual's background check results, and (4-6-15)

c. The employer completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal Identification, and no disqualifying crimes are found. (3-26-08)

i. The action must be initiated by the employer within thirty (30) calendar days of obtaining access to the individual's criminal history and background check clearance issued by the Department; and (7-1-12)

ii. The employer must be able to provide proof of this action by maintaining a copy of the records required in Subsections 300.02.a. and 300.02.c. of this rule for a period consistent with the employer's own personnel documentation retention schedule. (7-1-17)

d. An employer not listed in Section 126 of these rules, may use an individual's Department clearance or enhanced clearance that was obtained within three (3) years from date of employment. (7-1-17)

e. An individual with a current clearance that is within three (3) years from date of employment, who applies to a new agency or employer identified in Section 126 of these rules, must submit an application for a new criminal history and background check to obtain an enhanced clearance. (7-1-17)

03. Employer Discretion. Any agency or employer, at its discretion, may require an individual to complete a Department criminal history and background check at any time, even if the individual has received a criminal history and background check clearance within three (3) years. (7-1-17)

04. Department Discretion. The Department may, at its discretion or as provided in program rules, require a criminal history and background check of any individual covered under these rules at any time during the individual's employment, internship, or while volunteering. Any individual required to complete a criminal history and background check under Sections 100 and 101 of these rules, must be fingerprinted within fourteen (14) days from the date of notification by the Department that a new criminal history and background check is required. (3-26-08)

301. -- 349. (RESERVED)

350. CRIMINAL HISTORY AND BACKGROUND CHECK RECORDS.

Criminal history and background checks done under this chapter become the property of the Department and are held confidential. (3-26-08)

01. Release of Criminal History and Background Check Records. A copy of the criminal history and background check as defined in Section 010 of these rules will be released: (3-26-08)

a. To the individual who has requested the criminal history and background check and upon receipt of a written request to the Department, provided the individual releases the state from all liability; (3-26-08)

b. In response to a subpoena issued by a court of competent jurisdiction; or (3-26-08)

c. As otherwise required by law. (3-26-08)

02. Retention of Records. (3-26-08)

a. If an exemption is granted, the criminal history and background record, supplemental documentation received, notes from the review, and the decision will be retained by the Department for a period of at least five (5) years after the criminal history and background check is completed. (3-26-08)

b. If an exemption is denied, the Department retains all records and electronic recordings pertaining to the review for five (5) years after the criminal history and background check is completed. (3-26-08)

03. Use and Dissemination Restrictions for FBI Criminal Identification Records. According to the provisions under 28 CFR 50.12, the Department will: (3-26-08)

a. Notify the individual fingerprinted that the fingerprints will be used to check the criminal history records of the FBI; (3-26-08)

b. In determining the suitability for licensing or employment, provide the individual the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record; (3-26-08)

c. Notify the individual that they have fifteen (15) days to correct or complete the FBI identification record or to decline to do so; and (3-26-08)

d. Advise the individual who wishes to correct the FBI identification record that procedures for changing, correcting, or updating are provided in 28 CFR 16.34. (3-26-08)

351. -- 999. (RESERVED)

16.06.01 – CHILD AND FAMILY SERVICES

000. LEGAL AUTHORITY.

The Idaho Legislature has delegated to the Department, or the Board of Health and Welfare, or both jointly, the responsibility to establish and enforce such rules and methods of administration as may be necessary or proper to administer social services to people who are in need, under the following Sections: 16-1629, 16-1623, 16-2102, 16-2406, 16-2423, and 16-2433, 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. ()

001. TITLE, SCOPE, AND GOAL.

01. **Title.** These rules are titled IDAPA 16.06.01, “Child and Family Services.” (5-8-09)
02. **Scope.** These rules are established to govern the statewide provision of: (3-18-99)
 - a. Services associated with child protection, alternate care, and adoption; and (5-8-09)
 - b. As resources are available, services aimed at preventing child abuse, neglect, and abandonment. (5-8-09)
03. **Goal.** The goal of all Child and Family Services programs is the safety, permanency, and well-being of children, as well as promoting the stability and security of Indian tribes and families. (5-8-09)

002. -- 008. (RESERVED)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. **Compliance With Department Criminal History and Background Check.** All current Department employees, applicants, transfers, reinstated former employees, student interns, contract employees, Certified Adoption Professionals, volunteers, and others assigned to programs that involve direct contact with children or vulnerable adults as described in Section 39-5302, Idaho Code, must comply with the provisions in IDAPA 16.05.06, “Criminal History and Background Checks.” (3-30-07)

02. **Availability to Work or Provide Service.** Certain individuals are allowed to provide services after the self-declaration is completed as provided in Section 56-1004A, Idaho Code, except when they have disclosed a designated crime listed in IDAPA 16.05.06, “Criminal History and Background Checks.” The criminal history check requirements applicable to each provider type are found in the rules that state the qualifications or certification of those providers. (3-30-07)

03. **Adoption.** An individual applying to the Department to be an adoptive parent or petitioning the court for the adoption of a child must comply with the provisions in IDAPA 16.05.06, “Criminal History and Background Checks.” (3-30-07)

010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.

For the purposes of these rules, the following terms are used: (5-8-09)

01. **Adoption and Safe Families Act of 1997 (P.L. 105-89) (ASFA).** Federal law whose purpose is to improve the safety of children, to promote adoption and other permanent homes for children who need them, and to support families. (4-7-11)

02. **Adoption Assistance.** Funds provided to adoptive parent(s) of a child who has special needs or who could not be adopted without financial or medical assistance. (5-8-09)

03. **Adoption Services.** Protective services through which a child is provided with a permanent home, under new legal parentage, including transfer of the mutual rights and responsibilities that prevail in the parent-child relationship. (5-8-09)

04. **Alternate Care.** Temporary living arrangements, when necessary for a child to leave their own home, through a variety of foster care, respite care, residential treatment, and institutional resources, under the protections established in Public Law 96-272, the federal “Adoption Assistance and Child Welfare Act of 1980” as amended by Public Law 105-89, the Adoption and Safe Families Act of 1997, the Child Protective Act, Section 16-1601 et seq., Idaho Code, and the Indian Child Welfare Act, 25 U.S.C. Sections 1901-1963. (5-8-09)

05. **Alternate Care Plan.** A federally required component of the Family Plan for a child in alternate

care. The alternate care plan contains elements related to reasonable efforts, the family's plan, the child's alternate care provider, compelling reasons for not terminating parental rights, Indian status, education, immunization, medical, and other information important to the day-to-day care of the child. (5-8-09)

06. Board. The Idaho State Board of Health and Welfare. (3-18-99)

07. Case Management. A change-oriented service to families that ensures and coordinates the provision of family ongoing assessment, family service planning, treatment, planning for permanency, protection, advocacy, review and reassessment, documentation, and timely closure of a case. (4-7-11)

08. Certified Adoption Professional (formerly "qualified individual"). An individual certified by the Department who meets the qualifications specified in Section 889 of these rules for completion of pre-placement adoption home studies, reports to the court under the Termination of Parent and Child Relationship and Adoption of Children Acts, and placement supervision reports. (3-20-04)

09. Child and Family Services (CFS). Those programs and services provided to families and children, administered by the Department in accordance with these rules. (4-7-11)

10. Child Protection. All children under eighteen (18) who have been harmed or threatened with harm by a person responsible for their health or welfare through non-accidental physical or mental injury, sexual abuse (as defined by state law) or negligent treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter must be served without regard to income. (3-30-07)

11. Child Protective Services. Services provided in response to potential, alleged, or actual abuse, neglect, or abandonment of individuals under the age of eighteen (18) in accordance with the provisions of Section 16-1601 et seq., Idaho Code, the "Child Protective Act." (5-8-09)

12. Compact Administrator. The individual designated to coordinate interstate transfers of persons requiring special services in accordance with the provisions of Section 16-1901 et seq., Idaho Code, "Interstate Compact for Juveniles"; Section 16-2101 et seq., Idaho Code, "Interstate Compact on the Placement of Children"; or Section 39-7501 et seq., Idaho Code, "Interstate Compact on Adoption and Medical Assistance." (5-8-09)

13. Daycare for Children. Care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood or marriage to the person or persons providing the care, in a place other than the child's or children's own home or homes. (3-18-99)

14. Department. The Idaho Department of Health and Welfare. (3-18-99)

15. Deprivation. One of the factors used in determining Aid to Families with Dependent Children -- Foster Care (AFDC-FC) eligibility for children in foster care. Deprivation is a lack of, or interruption in, the maintenance, physical care, and parental guidance a child ordinarily receives from one (1) or both parents. A child is deprived by the continued absence of a parent, incapacity of a parent, death of a parent, unemployment or underemployment of the principal wage earner parent. (3-30-07)

16. Director. The Director of the Idaho Department of Health and Welfare or their designee. (3-30-07)

17. Extended Family Member of an Indian Child. As defined by the law, or custom of an Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (3-30-01)

011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.
For the purposes of these rules, the following terms are used: (5-8-09)

01. Family. Parent(s), legal guardian(s), related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (5-3-03)

- 02. Family Assessment.** An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and safety threats to family integrity, unity, or the ability to care for their members. (3-30-07)
- 03. Family Case Record.** Electronic and hard copy compilation of all documentation relating to a family, including legal documents, identifying information, and evaluations. (5-8-09)
- 04. Family (Case) Plan.** Also referred to as a family service plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how, and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders or leaders should be consulted early in the plan development. (3-30-07)
- 05. Family Services Worker.** Any of the direct service personnel, including social workers, working in regional Child and Family Services Programs. (5-8-09)
- 06. Federally-Funded Guardianship Assistance for Relatives.** Benefits described in Subsection 702.04 and Section 703 of these rules provided to a relative guardian for the support of a child who is fourteen (14) years of age or older, who, without guardianship assistance, would remain in the legal custody of the Department of Health and Welfare. (4-7-11)
- 07. Field Office.** A Department of Health and Welfare service delivery site. (3-18-99)
- 08. Goal.** A statement of the long term outcome or plan for the child and family. (3-18-99)
- 09. Independent Living.** Services provided to eligible foster or former foster youth, ages fourteen (14) to twenty-one (21), designed to support a successful transition to adulthood. (3-29-17)
- 10. Indian.** Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (3-18-99)
- 11. Indian Child.** Any unmarried person who is under the age of eighteen (18) who is: (3-18-99)
- a.** A member of an Indian tribe; or (3-29-12)
 - b.** Eligible for membership in an Indian tribe, and who is the biological child of a member of an Indian tribe. (3-29-12)
- 12. Indian Child Welfare Act (ICWA).** The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (3-18-99)
- 13. Indian Child's Tribe.** (3-18-99)
- a.** The Indian tribe in which an Indian child is a member or eligible for membership, or (3-18-99)
 - b.** In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (3-18-99)
- 14. Indian Tribe.** Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (3-18-99)
- 15. Intercountry Adoption Act of 2000 (P.L. 106-279).** Federal law designed to protect the rights of, and prevent abuses against children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and to insure that such adoptions are in the children's best interests; and to improve the ability of the federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the

Convention seeking to adopt children from the United States. (5-3-03)

16. Interethnic Adoption Provisions of 1996 (IEP). IEP prohibits delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent(s), or the child involved. (4-7-11)

17. Interstate Compact on the Placement of Children (ICPC). Interstate Compact on the Placement of Children (ICPC) in Title 16, Chapter 21, Idaho Code, ensures that the jurisdictional, administrative, and human rights obligations of interstate placement or transfers of children are protected. (3-20-04)

18. Kin. Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers, and members of a child’s Indian tribe. Also known as fictive kin. (3-30-01)

012. DEFINITIONS AND ABBREVIATIONS L THROUGH R.

For the purposes of these rules, the following terms are used: (5-8-09)

01. Legal Guardianship. A judicially-created relationship, in accordance with Title 15, Chapter 5, Part 2, Idaho Code, including one made by a tribal court, between a child and a relative or non-relative. (4-7-11)

02. Licensed. Facilities or programs are licensed in accordance with the provisions of IDAPA 16.06.02, “Child Care Licensing.” ()

03. Licensing. See IDAPA 16.06.02, “Child Care Licensing,” Section 100. ()

04. Medicaid. See “Title XIX.” (3-30-01)

05. Multiethnic Placement Act of 1994 (MEPA). MEPA prohibits states or public and private foster care and adoption agencies that receive federal funds from delaying or denying the placement of any child solely on the basis of race, color, or national origin. (3-18-99)

06. Parent. A person who, by birth or through adoption, is considered legally responsible for a child. The term “legal guardian” is not included in the definition of parent. (5-8-09)

07. Permanency Planning. A primary function of family services initiated in all cases to identify programs, services, and activities designed to establish permanent home and family relationships for children within a reasonable amount of time. (3-18-99)

08. Personal Care Services (PCS). Services to eligible Medicaid recipients that involve personal and medically-oriented tasks dealing with the physical or functional impairments of the individual. (3-18-99)

09. P.L. 96-272. Public Law 96-272, the federal “Adoption Assistance and Child Welfare Act of 1980.” (3-30-01)

10. P.L. 105-89. Public Law 105-89, the federal “Adoptions and Safe Families Act of 1997,” amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (3-30-01)

11. Planning. An orderly rational process that results in identification of goals and formulation of timely strategies to fulfill such goals, within resource constraints. (3-30-01)

12. Qualified Expert Witness--ICWA. An individual who is an expert regarding tribal customs pertaining to family organization and child rearing practice, and is qualified to render an opinion as to whether continued custody of the child by the parent(s), or Indian custodian(s), is likely to result in serious emotional or physical damage to the child. (3-29-12)

13. Relative. Person related to a child by blood, marriage, or adoption. (3-30-01)

14. Relative Guardian. A relative who is appointed a child's legal guardian in accordance with Title 15, Chapter 5, Part 2, Idaho Code, including a guardianship established by a tribal court. (4-7-11)

15. Reservation. A reservation is an area of land "reserved" by or for an Indian band, village, or tribe(s) to live on and use. Reservations were created by treaty, by congressional legislation, or by executive order. Since 1934, the Secretary of the Interior has had the responsibility of establishing new reservations or adding land to existing reservations. (3-29-12)

16. Respite Care. Time-limited care provided to children. Respite care is utilized in circumstances that require short term, temporary care of a child by a licensed or agency-approved caregiver different from their usual caregiver. The duration of an episode of respite care ranges from one (1) partial day up to fourteen (14) consecutive days. (5-8-09)

17. Responsible Party. A Department social worker, clinician, or contracted service provider who maintains responsibility and authority for case planning and case management. (4-7-11)

013. DEFINITIONS AND ABBREVIATIONS S THROUGH Z.

For the purposes of these rules, the following terms are used: (5-8-09)

01. SSI (Supplemental Security Income). Income maintenance grants for eligible persons who are aged, blind, or disabled. These grants are provided under Title VI of the Social Security Act and are administered by the Social Security Administration and local Social Security Offices. (3-18-99)

02. Safety Assessment. A process and standardized tool for contact between a family services worker and a family to objectively determine if safety threats, or immediate service needs exist that require further Child and Family Services response. (4-7-11)

03. Safety Plan. Plan developed by the Department and a family that assures the immediate safety of a child who has been determined to be conditionally safe or unsafe. (3-30-01)

04. Sibling. One (1) of two (2) or more persons who shares the same biological or adoptive mother or father, or both. Siblings may be full-siblings or half-siblings. Siblings include those children who would be considered a sibling if not for the disruption in parental rights due to termination of parental rights or the death of a parent. (3-25-16)

05. State-Funded Guardianship Assistance. Benefits described in Subsection 702.04 and Section 704 of these rules provided to a legal guardian for the support of a child who meets the eligibility criteria. (4-7-11)

06. TAFI. Temporary Assistance to Families in Idaho. (3-18-99)

07. Title IV-E. Title under the Social Security Act that provides funding for foster care maintenance and adoption assistance payments for certain eligible children. (3-20-04)

08. Title IV-E Foster Care. Child care provided in lieu of parental care in a foster home, children's agency, or institution eligible to receive Aid to Dependent Children under Title IV-E of the Social Security Act. (5-8-09)

09. Title XIX (Medicaid). Title under the Social Security Act that provides "Grants to States for Medical Assistance Programs." (3-18-99)

10. Title XXI. (Children's Health Insurance Program). Title under the Social Security Act that provides access to health care for uninsured children under the age of nineteen (19). (3-18-99)

11. Tribal Court. A court with jurisdiction over child custody proceedings including a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe vested with authority over child custody proceedings. ()

12. Unmarried Parents' Services. Services aimed at achieving or maintaining self-reliance or self-support for unmarried parents. These services include counseling for any unmarried parents who need such service in relation to their plans for their children and arranging for and paying for prenatal and confinement care for the well-being of the parent and infant. Services for unmarried parents are provided in accordance with Section 56-204A, Idaho Code. (5-8-09)

13. Voluntary Services Agreement. A written and executed agreement between the Department and parents or legal guardians regarding the goal, areas of concern, desired results, and task responsibility, including payment. (5-8-09)

014. -- 019. (RESERVED)

GENERAL REQUIREMENTS AND SERVICES
(Sections 020 - 239)

020. GENERAL REQUIREMENTS APPLICABLE TO ALL CHILD AND FAMILY SERVICES PROGRAMS.

01. Information, Referral and Screening. All residents of the state of Idaho, regardless of the duration of their residency or their income are entitled to receive, upon referral or request: (3-30-07)

a. Accurate and current information about services to children and families provided through the Department. (3-18-99)

b. Referral to other appropriate public or private services available in the community; and (3-18-99)

c. A screening to determine service needs and safety threats that can be addressed through Child and Family Services. (5-8-09)

02. Initiating Child and Family Services. Child and Family Services are initiated upon referral for services that the program is legally mandated to provide or after completion of a written voluntary request for services. Efforts will be made to identify any Indian children in the family and all possible tribes in which a child may be a member or eligible for membership. (5-8-09)

03. Individual Authorized to Request Voluntary Services. Requests for voluntary services must be made by a family member or by an authorized representative, or by someone acting on behalf of an incompetent or incapacitated person. (3-30-07)

04. Record of Request for Services. The date of referral or request for services will be documented in the records of the field office. (3-30-07)

05. Information to Be Provided to Family. Upon referral or application for services, the family services worker must inform the family that: (3-30-07)

a. They have the right to accept or reject services offered by the Department, except those services imposed by law or by a court order; (3-18-99)

b. Fees may be charged for certain services, and that the parent(s) has financial responsibility for the child in care; (5-8-09)

c. They have the right to pursue an administrative appeal of any decision of Child and Family Services relating to them, including any decision not to provide services or to discontinue planned services; the Department's failure to act upon a referral or request for services within thirty (30) days; or an decision to remove a child from an alternate care placement unless court-ordered or court-authorized. (5-8-09)

021. -- 029. (RESERVED)

030. CORE CHILD AND FAMILY SERVICES.

The following core services are the state and federally mandated services provided by or through regional Child and Family Services offices: (5-8-09)

01. Crisis Services. Crisis Services are an immediate response to ensure safety when a child is believed to be in imminent danger as a result of child abuse, neglect, or abandonment. Crisis services require immediate access to services, twenty-four (24) hours per day, seven (7) days per week to assess safety and place in alternate care, if necessary, to ensure safety for the child. (4-7-11)

02. Screening Services. Initial contact with families and children to gather information to determine whether or not the child meets eligibility criteria to receive child protection or adoption services. When eligibility criteria is not met for Department mandated services, appropriate community referrals are made. (5-8-09)

03. Assessment and Safety/Service Planning Services. Process in which the safety threats to the child, and the family's concerns, strengths, and resources are identified. Based on this assessment, a written plan is developed by the worker, together with the family and other interested parties. Each plan must have a long-term goal that identifies behaviorally-specific and measurable desired results and has specific tasks that identify who, how, and when the tasks will be completed. (4-7-11)

04. Preventative Services. Community-based services that support children and families and are designed to reduce the risk of child abuse, neglect, or abandonment. These services can involve direct services, but are primarily implemented through community education, and partnerships with other community agencies such as schools and courts. (5-8-09)

05. Court-Ordered Services. These services primarily involve court-ordered investigations or assessments of situations where children are believed to be at risk due to child abuse, neglect, or abandonment. (5-8-09)

06. Alternate Care (Placement) Services. Temporary living arrangements outside of the family home for children and youth who are victims of child abuse, neglect, or abandonment. These out-of-home placements are arranged for and financed, in full or in part, by the Department. Alternate care is initiated through either a court order or voluntarily through an out-of-home placement agreement. Payment will be made on behalf of a child placed in the licensed home of an individual or relative, a public or private child care institution, a home licensed or approved by an Indian child's tribe, or in a state-licensed public child care institution accommodating no more than twenty-five (25) children. Payments may be made to individuals or to a public or private child placement or child care agency. (3-29-12)

07. Community Support Services. Services provided to a child and family in a community-based setting designed to increase the strengths and abilities of the child and family and to preserve the family whenever possible. Services include respite care and family preservation. (5-8-09)

08. Interstate Compact on Out-of-State Placements. Where necessary to encourage all possible positive contacts with family, including extended family, placement with family members or others who are outside the state of Idaho will be considered. On very rare occasion the Department may contract with a residential facility out of state if it best serves the needs of the child and is at a comparable cost to facilities within Idaho. When out-of-state placement is considered in the permanency planning for a child, such placement will be coordinated with the respective interstate compact administrator according to the provisions of Section 16-2101, et seq., Idaho Code, the "Interstate Compact on the Placement of Children." Placements must be in compliance with all state and federal laws. (5-8-09)

09. Independent Living. Services, including assessment and planning, provided to eligible youth to promote self-reliance and successful transition to adulthood. (5-8-09)

a. Eligibility Requirements for Current Foster Youth. To be eligible for independent living services, a current foster youth must: (5-8-09)

i. Be fourteen (14) to nineteen (19) years of age; (3-29-17)

ii. Currently be under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or be under a voluntary agreement for continued care if the youth is between eighteen (18) and nineteen (19) years of age; and (5-8-09)

iii. Have been in foster care or similar eligible setting for a minimum of ninety (90) total days. (5-8-09)

b. Eligibility Requirements for Former Foster Youth. To be eligible for independent living services, a former foster youth must: (5-8-09)

i. Be a former foster youth who is currently under twenty-one (21) years of age; and (5-8-09)

ii. Have been under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or under a voluntary agreement for continued care after the youth has reached eighteen (18) years of age; and (5-8-09)

iii. Have been placed in foster care or similar eligible setting for a minimum of ninety (90) days total after reaching fourteen (14) years of age; or (3-29-17)

iv. Be eighteen (18) to twenty-one (21) years of age, provide verification of meeting the Independent Living eligibility criteria in another state, and currently be a resident of Idaho. (5-8-09)

c. Eligibility Limit. Once established, a youth's eligibility is maintained up to their twenty-first birthday, regardless of whether they continue to be the responsibility of the Department, tribe, or be in foster care. (5-8-09)

10. Adoption Services. Department services designed to promote and support the permanency of children with special needs through adoption. This involves the legal and permanent transfer of all parental rights and responsibilities to the family assessed as the most suitable to meet the needs of the individual child. Adoption services also seeks to build the community's capacity to deliver adoptive services. (3-30-01)

11. Administrative Services. Regulatory activities and services that assist the Department in meeting the goals of safety, permanency, health and well-being for children and families. These services include: (5-8-09)

a. Child care licensing; (3-30-01)

b. Daycare licensing; (3-30-01)

c. Community development; and (5-8-09)

d. Contract development and monitoring. (5-8-09)

031. -- 049. (RESERVED)

050. PROTECTIONS AND SAFEGUARDS FOR CHILDREN AND FAMILIES.

The federal and state laws that are the basis for these rules include a number of mandatory protections and safeguards intended to ensure timely permanency for children and to protect the rights of children, their families, and their tribes. (4-7-11)

01. Reasonable Efforts. Services offered or provided to a family intended to prevent or eliminate the need for removal of the child from the family, to reunify a child with their family, and to finalize a permanent plan. The following efforts must be made and specifically documented by the Department in reports to the court. The court will make the determination of whether or not the Department's efforts were reasonable. (4-7-11)

- a. Efforts to prevent or eliminate the need for a child to be removed from their home; (5-8-09)
- b. Efforts to return a child home are not required due to a judicial determination of aggravated circumstances; and (5-3-03)
- c. Efforts to finalize a permanent plan, so that each child in the Department's care will have a family with whom the child can have a safe and permanent home. (5-3-03)
- 02. Active Efforts.** The efforts required under ICWA to provide remedial services and rehabilitative programs designed to prevent the breakup of an Indian family, or to reunify an Indian family. Active efforts must include contacts and work with an Indian child's tribe. (3-29-12)
- 03. ICWA Placement Preferences.** (3-29-12)
- a. When the Indian child's permanency goal is reunification, the preferences are described in Section 402 of these rules. (3-29-12)
- b. When the Indian child's permanency goal is adoption or guardianship, the preferences are described in Subsection 800.01 of these rules. (3-29-12)
- c. When the placement preferences are not followed, the court must determine that good cause exists for not following the preferences. (3-29-12)
- 04. Least Restrictive Setting.** Efforts will be made to ensure that any child in the Department's care resides in the least restrictive, most family-like setting possible. Placement will be made in the least restrictive setting and in close proximity to the parent(s) or if not, written justification that the placement is in the best interest of the child. (3-29-12)
- 05. Legal Requirements for Indian Children.** When there is reason to believe that a child is an Indian child, notice of the pending proceeding must be sent according to the notice provisions specified in Section 051 of these rules. Notice must also include notice of the tribe's right to intervene; their right to twenty (20) days additional time to prepare for the proceeding; the right to appointment of counsel if the parent(s) or Indian custodian(s) is indigent; and the right to examine all documents filed with the court upon which placement may be based. (3-29-12)
- 06. Visitation for Child's Parent(s) or Legal Guardian(s).** Visitation arrangements must be provided to the child's parent(s) or legal guardian(s) unless visitation is contrary to the child's safety. (3-30-07)
- 07. Notification of Change in Placement.** Written notification must be made within seven (7) days of a change of placement of the foster child if a child is relocated to another foster care setting. Notification must be sent to the child's parent(s) or legal guardian(s). When the child is an Indian child, written notification must also be sent to the child's Indian custodian(s), if applicable, and to the child's tribe. (3-29-12)
- 08. Notification of Change in Visitation.** Written notification to the child's parent(s) or legal guardian(s) if there is to be a change in their visitation schedule with their child or ward in foster care. (5-3-03)
- 09. Notification of Right to Participate and Appeal.** Written notification to the child's parent(s) or legal guardian(s) must be made regarding their right to discuss any changes and the opportunity to appeal if they disagree with changes in placement or visitation. (3-30-07)
- 10. Qualified Expert Witness--ICWA.** The testimony of an expert witness is required at the hearing in which a child is placed in state custody, typically the adjudicatory, and at the hearing for termination of parental rights. A person who is most likely to be a qualified expert witness in the placement of an Indian child is: (3-29-12)
- a. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child rearing practices; (3-29-12)
- b. An individual who is not a tribal member who has substantial experience in the delivery of child

and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or (3-29-12)

c. A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community. (3-29-12)

11. Compliance with Requirements of the Multiethnic Placement Act of 1994 (MEPA) as Amended by the Interethnic Adoption Provisions (IEP) of 1996. (4-7-11)

a. The Department prohibits entities that are involved in foster care or adoption placements and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program from delaying or denying a child's foster care or adoptive placement on the basis of the child's or the prospective foster or adoptive parent's race, color, or national origin. (4-7-11)

b. The Department prohibits entities that are involved in foster care or adoption placements and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program, from denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective foster or adoptive parent's or the child's race, color, or national origin; (4-7-11)

c. To remain eligible for federal assistance for their child welfare programs, the Department must diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of the children in the state who need foster and adoptive homes; (4-7-11)

d. A child's race, color, or national origin cannot be routinely considered as a relevant factor in assessing the child's best interests; (4-7-11)

e. Failure to comply with MEPA/IEP's prohibitions against discrimination is a violation of Title VI of the Civil Rights Act of 1964; and (4-7-11)

f. Nothing in MEPA/IEP is to be construed to affect the application of the Indian Child Welfare Act of 1978. (4-7-11)

12. Family Decision-Making and Plan Development. (3-30-01)

a. A family plan will be completed within thirty (30) days of the date the case was opened. (3-30-07)

b. Families will be given ample opportunity to participate in the identification of areas of concern, their strengths, and developing service goals and tasks. The family plan and any changes to it must be signed and dated by the family. If the family refuses to sign the plan, the reason for their refusal will be documented on the plan. (3-30-07)

c. Plans are to be reviewed with the family no less frequently than once every three (3) months. When there are major changes to the plan including a change in the long term goal, the family plan must be renegotiated by the Department and the family as well as signed by the family. A new plan must be negotiated at least annually. (3-30-01)

13. Compelling Reasons. Reasons why the parental rights of a parent of a child in the Department's care and custody should not be terminated when the child has been in the custody of the Department for fifteen (15) out of the most recent twenty-two (22) months. ()

a. These reasons must be documented in the Alternate Care Plan, in a report to the court, and the court must make a determination if the reasons are sufficiently compelling. ()

b. A compelling reason must be documented when a child's plan for permanency is not adoption, guardianship, or return home. ()

c. When compelling reasons are not appropriate, the petition for termination of parental rights must be filed by the end of the child's fifteenth month in foster care. ()

14. ASFA Placement Preferences. The following placement preferences will be considered in the order listed below when recommending and making permanency decisions: (5-8-09)

- a. Return home if safe to do so; (3-30-01)
- b. Adoption or legal guardianship by a relative or kin; (5-8-09)
- c. Adoption or legal guardianship by non-relative; (3-30-01)
- d. Another planned permanent living arrangement such as long-term foster care. (5-8-09)

051. NOTICE REQUIREMENTS FOR ICWA.

01. Notice of Pending Proceedings -- Who is Notified. When there is reason to believe that a child is an Indian child, the initial and any subsequent Notice of Pending Proceedings must be sent to the Indian child's parent(s), custodian(s), and tribe. Notices of Pending Proceedings must be sent to the ICWA Designated Agent for the child's tribe via Registered Mail, Return Receipt Requested. All Notices of Pending Proceedings must be received by the child's parent(s), Indian custodian(s) and tribe at least 10 (ten) days before the proceeding is scheduled to occur. Returned receipts are to be kept in the child's file and made available for review by the court. ()

02. Rights Under a Notice of Pending Proceedings. Notices of Pending Proceedings must also include notice of the tribe's right to intervene; their right to twenty (20) additional days to prepare for the proceedings; the right to appointment of counsel if the parent(s) or Indian custodian(s) are indigent; and the right to examine all documents filed with the court upon which placement may be based. (3-29-12)

03. Notice of Pending Proceedings--When Identity or Location of Parent(s), Indian Custodian(s), or Tribe is Unknown. If the identity or location of the parent(s) or Indian custodian(s) or the tribe is unknown, the Notice of Pending Proceedings must be sent to the Secretary of the Interior by certified mail with a return receipt requested at the following address: Department of the Interior, Bureau of Indian Services, Division of Human Services, Code 450, Mail Stop, 1849 C Street N.W., Washington, D.C. 20240. (3-29-12)

052. -- 059. (RESERVED)

060. FAMILY CASE RECORDS.

01. Electronic and Physical Files. The Department will maintain an electronic file and a physical file containing information on each family receiving services. The physical file will contain non-electronic documentation such as originals or original copies of all court orders, birth certificates, social security cards, and assessment information that is original outside the Department. (5-8-09)

02. Storage of Records. All physical family case records must be stored in a secure file storage area, away from public access and retained not less than five (5) years after the case is closed, after which they may be destroyed. (5-8-09)

a. Exception for Adoption Records. Complete family case records involving adoptive placements must be forwarded to the Department's central adoption unit for permanent storage. (5-8-09)

b. Exception for Case Records Involving an Indian Child. A case record involving an Indian child must be available at any time at the request of an Indian child's tribe or the Secretary of the Interior. (5-8-09)

061. -- 239. (RESERVED)

REVIEWS AND HEARINGS
(Sections 240 - 399)

240. SIX-MONTH REVIEWS FOR CHILDREN IN ALTERNATE CARE PLACEMENT.

When a judicial review does not occur at the end of a six (6) month period for any child in alternate care placement, the Department will conduct a case review to assure compliance with all applicable state and federal laws, and to ensure the plan focuses on the goals of safety, permanency and well-being of the child. (5-8-09)

01. Notice of Six Month Review. The parent(s) or legal guardian(s), foster parent(s) of a child, and any preadoptive parent(s) or relative(s) providing care for the child, are to be provided with notice of their right to be heard in the six-month review. In the case of an Indian child, the child's tribe and any Indian custodian must also be provided with notice. This must not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to the review solely on the basis of the receipt of such notice. Participants have the right to be represented by the individual of their choice. (5-8-09)

02. Procedure in the Six Month Review. The parties who received notice will be given the opportunity to participate in the case review. (5-8-09)

03. Members of Six-Month Review Panel. The six-month review panel must include a Department employee who is not in the direct line of supervision in the delivery of services to the child or parent(s) or legal guardian(s) being reviewed. The review panel may include agency staff, staff of other agencies, officers of the court, members of Indian tribes, and citizens qualified by experience, professional background, or training. Members of the panel will be chosen by and receive instructions from the Department's Child and Family Services Program Manager or their designee, to enable them to understand the review process and their roles as participants. (5-8-09)

04. Considerations in Six-Month Review. Whether conducted by the court in a review hearing or a Department review panel, under State law, Federal law and regulation, each of the following must be addressed in a six-month review: (5-8-09)

- a.** Determine the extent of compliance with the family services plan; (5-3-03)
- b.** Determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement; (5-3-03)
- c.** Review compliance with the Indian Child Welfare Act, when applicable; (5-3-03)
- d.** Determine the safety of the child, the continuing need for and appropriateness of the child's placement; and (5-3-03)
- e.** Project a date by which the child may be returned and safely maintained at home or placed for adoption, legal guardianship, or other permanent placement. (5-8-09)

05. Recommendations and Conclusions of Six-Month Review Panel. Following the six-month review, written conclusions and recommendations will be provided to all participants, subject to Department safeguards for confidentiality. The document containing the written conclusions and recommendations must also include appeal rights. (5-8-09)

251. -- 399. (RESERVED)

ALTERNATE (OUT-OF-HOME) CARE
(Sections 400 - 424)

400. AUTHORITY FOR ALTERNATE CARE SERVICES.

Upon approval of the regional Child and Family Services Program Manager or their designee, the Department may provide or purchase alternative care under the following conditions: (5-8-09)

01. Department Custody. When the child is in the legal custody or guardianship of the Department; or (3-18-99)

02. Voluntary Placement. Upon agreement with the parent(s) or legal guardian(s) when circumstances interfere with their provision of proper care or they are no longer able to maintain a child in their home and they can benefit from social work and treatment services. ()

a. A service plan and an out-of-home placement agreement must be developed between the Department and the family. The service plan will identify areas of concern, goals, desired results, time frames, tasks and task responsibilities. The out-of-home placement agreement will include the terms for reimbursement of costs with any necessary justification for deviation from Child Support guidelines. ()

b. A voluntary agreement for out-of-home placement entered into between the Department and the parent(s) or legal guardian(s) of a minor child may be revoked at any time by the child's parent(s) or legal guardian(s) and the child must be returned to the parent or legal guardian upon their request. ()

c. A contract between the Department and the service provider, if applicable, must also be in effect. ()

d. Voluntary out-of-home placements exceeding one hundred eighty (180) days without a judicial determination that it is in the best interests of the child to continue their current placement cannot be reimbursed by Title IV-E funds. (3-29-12)

401. CONSIDERATIONS FOR PLACEMENT IN ALTERNATE CARE.

The Department will make meaningful reasonable attempts, both verbally and in writing, to inform in priority order, individuals identified below of the potential imminent placement and the requirements for consideration as a placement resource. The Department will place children in a safe and trusted environment consistent with the best interest and special needs of the children as required by P.L.96-272, Section 475(5). Ideally, placement priority will be given in the following order: (a) Immediate family; (b) Extended family members; (c) Non-family members with a significant established relationship with the child; (d) other licensed foster parent(s). Upon immediate contact with persons in categories a) through d) above, and after preliminary screening, within seventy-two (72) hours of decision to place, Departmental staff will make reasonable attempts to inform immediate family members of the way to become a placement resource. Alternate care placement will in all cases include consideration of: (5-8-09)

01. Family Assessment. The family assessment conducted in accordance with the provisions of the CFS Practice Standards. (3-29-12)

02. Ability of Providers. The ability of potential alternate care providers to address and be sensitive to the unique and individual needs of the child and ability to comply and support the plan for the child and their family. (3-18-99)

03. Family Involvement. The involvement of the family in planning and selecting the placement. The Department will use a family unity meeting concept making reasonable efforts to gather immediate and extended family members and other significant supporters to identify family strengths relevant to creating a safe environment for the child. This process will be fully reported to the court along with resulting plans and commitments. (5-8-09)

402. INVOLUNTARY PLACEMENT OF INDIAN CHILDREN.

Involuntary placement of an Indian child in foster care must be based upon clear and convincing evidence, including information from qualified expert witnesses, that the continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child. In the absence of good cause to the contrary, a preference must be given to placement with: (3-29-12)

01. Extended Family. A member of the Indian child's extended family; (3-18-99)

02. Foster Home Approved by Tribe. A foster home licensed or approved by the Indian child's tribe; (3-29-12)

03. Licensed Indian Foster Home. An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (3-18-99)

04. Indian Institution. An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs. (3-18-99)

403. DATE A CHILD ENTERED FOSTER CARE.

A child is considered to have entered foster care on the date the child is actually removed from their home. All foster care benefits and eligibility determinations must be based on this date. All periodic reviews, permanency hearings, and time frames for termination of parental rights must be based on the date the child entered foster care. (5-8-09)

404. FOSTER CARE GOAL.

It is the goal of the Department that not more than twenty-five percent (25%) of foster youth will be in foster care longer than twenty-four (24) months. The Department will monitor this goal annually. (5-8-09)

405. ALTERNATE CARE CASE MANAGEMENT.

Case management must continue while the child is in alternate care and must ensure the following: (3-30-07)

01. Preparation for Placement. Preparing a child for placement in alternate care is the joint responsibility of the child's family, the child (when appropriate), the family services worker, and the alternate care provider. (3-30-07)

02. Information for Alternate Care Provider. The Department and the family have informed the alternate care provider of their roles and responsibilities in meeting the needs of the child including: ()

a. Any medical, health and dental needs of the child including the names and address of the child's health and educational providers, a record of the child's immunizations, the child's current medications, the child's known medical problems, and any other pertinent health information concerning the child; (3-18-99)

b. The name of the child's doctor; (3-18-99)

c. The child's current functioning and behaviors; (3-18-99)

d. A copy of the child's portion of the service plan including any visitation arrangements; (4-4-13)

e. The case history of the child, including the reason the child came into foster care, the child's legal status, and the permanency goal for the child; (4-4-13)

f. A history of the child's previous placements and reasons for placement changes, excluding information that identifies or reveals the location of any previous alternate care providers without their consent; (4-4-13)

g. The child's cultural and racial identity; (3-18-99)

h. Any educational, developmental, or special needs of the child; (3-18-99)

i. The child's interest and talents; (3-18-99)

j. The child's attachment to current caretakers; (3-18-99)

k. The individualized and unique needs of the child; (3-18-99)

l. Procedures to follow in case of emergency; and (3-18-99)

m. Any additional information, that may be required by the terms of the contract with the alternate care provider. (3-18-99)

03. Consent for Medical Care. Parent(s) or legal guardian(s) have signed a Departmental form of

consent for medical care and keep the family services worker advised of where they can be reached in case of an emergency. Any refusal to give medical consent must be documented in the family case record. ()

04. Financial Arrangements. The family services worker must assure that the alternate care provider understands the financial and payment arrangements and that necessary Department forms are completed and submitted. (3-30-07)

05. Contact with Child. The family, the family services worker, and the alternate care provider have established a schedule for frequent and regular visits with the child by the family and by the family services worker or designee. ()

a. Face-to-face contact with a child by the responsible party must occur at least monthly or more frequently depending on the needs of the child or the provider, or both, and the stability of the placement. Face-to-face contact may be made in settings other than where the child resides as long as contact between the responsible party and the child occurs where the child resides a minimum of once every sixty (60) days. (5-8-09)

b. The Department will have strategies in place to detect abuse, neglect, or abandonment of children in alternate care. (5-8-09)

c. Face-to-face contact between the responsible party and a child placed in an in-state group or residential care facility, located a significant distance from the responsible party's office is required a minimum of once every ninety (90) days. Communication by phone between the responsible party and the child must occur at least monthly. (5-8-09)

d. Frequent and regular contact between the child and parents and other family members will be encouraged and facilitated unless it is specifically determined not to be in the best interest of the child. Such contact will be face-to-face if possible, with this contact augmented by telephone calls, written correspondence, pictures, and the use of video and other technology as may be relevant and available. (3-30-07)

e. Children who are in out-of-state placements through the Interstate Compact on the Placement of Children (ICPC) must be contacted face-to-face no less frequently than every six (6) months, by either the responsible party in Idaho, by a representative of the state in which the child is placed, or by a private agency contracted by either. Idaho will request the state in which the child is placed to have face-to-face contact with the child on a monthly basis. If the policy of the state in which the child is placed allows only for face-to-face contact every six (6) months, the responsible party in Idaho will contact the child and the child's caregiver each month by phone to confirm the child's safety and well-being. (4-7-11)

06. Discharge Planning. Planning for discharge from alternate care are developed with all concerned parties. Discharge planning will be initiated at the time of placement and completed prior to the child's return home or to the community. ()

07. Transition Planning. Planning for discharge from alternate care into a permanent placement are developed with all concerned parties. Discharge planning will be initiated at the time of placement and completed prior to the child's return home or to the community. ()

08. Financial and Support Services. As part of the discharge planning, Departmental resources are coordinated to expedite access to Department financial and medical assistance and community support services. ()

406. -- 421. (RESERVED)

422. ALTERNATE CARE PLANNING. The elements of alternate care planning are mandated by the provisions of Title IV-E, Sections 471(a)(16), 475(1), and 475(5)(A) and (D) of the Social Security Act. (4-7-11)

01. Alternate Care Plan Required. Each child receiving alternate care under the supervision of the state must have a standardized written alternate care plan. (5-8-09)

a. The purpose of the alternate care plan is to facilitate the safe return of the child to their own home as expeditiously as possible or to make other permanent arrangements for the child if such return is not feasible. (4-7-11)

b. The alternate care plan must be included as part of the family service plan. (5-8-09)

02. Written Alternate Care Plan. The Department must complete a written alternate care plan within thirty (30) days after a child has been placed in alternate care and at least every six (6) months thereafter. A copy of the alternate care plan will be provided to the child's parent, legal guardian, foster parent, Indian custodian, tribe, and to the child if they are over twelve (12) years of age. (4-7-11)

423. -- 424. (RESERVED)

ELIGIBILITY AND FUNDING INFORMATION
(Sections 425 - 441)

425. TITLE IV-E ELIGIBILITY.

The state will claim Title IV-E funding for a foster child who meets the following criteria: (3-28-18)

01. Physical or Constructive Removal of the Child. The child was physically or constructively removed from the home: (3-28-18)

a. Under a voluntary placement agreement; or (3-28-18)

b. As the result of a judicial determination that: (3-28-18)

i. Remaining in the home would be contrary to the child's welfare; or (3-28-18)

ii. Placement in foster care would be in the best interest of the child. (3-28-18)

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. (3-28-18)

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: (3-28-18)

a. Removal court proceedings were initiated; or (3-28-18)

b. The voluntary placement agreement was signed. (3-28-18)

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. (3-28-18)

04. "Removal From" and "Living With" Requirements. The "removal from" (01. of this rule) and "living with" (Subsection 425.02. of this rule) requirements must be satisfied by the same specified relative who meets AFDC eligibility (Subsection 425.03. 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. (3-28-18)

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. (3-28-18)

07. Child in Foster Care or Childcare Institution. The child is in a fully licensed or approved foster family home, or childcare institution. (3-28-18)

08. Compliance with Safety Requirements. Compliance with the safety requirements was documented for the prospective foster family home or childcare institution. (3-28-18)

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). (3-28-18)

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). (3-28-18)

426. (RESERVED)

427. DETERMINATION OF ELIGIBILITY FOR TITLE IV-E.

The family services workers must submit an application to the Child Welfare Funding Team to evaluate for Title IV-E eligibility. (3-28-18)

428. CUSTODY AND PLACEMENT.

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. (3-28-18)

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.

Claims for Title IV-E maintenance may begin as early as the first day of placement in the month in which all initial Title IV-E eligibility factors are met. A child cannot receive SSI and Title IV-E foster maintenance payments during the same time period. (3-28-18)

430. ONGOING ELIGIBILITY.

To continue eligibility for Title IV-E, a child must meet the following conditions: (3-28-18)

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). (3-28-18)

02. Department Custody. The child remains 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. (3-28-18)

03. Child's Residence. The child continues to live in a fully licensed or approved foster family home, or childcare institution, or on a court-ordered home visit. ()

04. Redetermination. A redetermination is used for a child who: (3-28-18)

- a. Left foster care; (3-28-18)
- b. Was placed in a Title IV-E ineligible living situation such as: unlicensed placement, a hospital, or a detention center; (3-28-18)
- 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 (3-28-18)
- 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. (3-28-18)

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. (3-28-18)

431. (RESERVED)

432. TITLE XIX FOSTER CHILD.

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. (3-28-18)

433. INCOME, BENEFITS AND SAVINGS OF CHILDREN IN FOSTER CARE.

On behalf of the child and with the assistance of CWFT staff, family services workers are required to identify and apply for income or benefits from (one (1) or) every available source including Social Security, tribal benefits, or estates of deceased parents. The address of the payee must be DHW-FACS-CWFT, 450 West State Street, P. O. Box 83720 Boise, ID 83720-0036. (3-28-18)

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 a family services worker giving the name and address of the person in order to discontinue accrual of child support owed to the State. (3-28-18)

02. Return to Foster Care. If the child returns to foster care, the Department’s Child Support Unit must be notified immediately of the correct payee. (3-28-18)

435. RESERVED

436. PARENTAL FINANCIAL SUPPORT FOR CHILDREN IN ALTERNATE CARE.

In accordance with Section 56-203B, Idaho Code, parents are responsible for costs associated with the care of their child in alternate care. (5-8-09)

01. Notice of Parental Responsibility. The Department will provide the parents(s) with written notification of their responsibility to contribute toward the cost of their child’s support, treatment, and care, including clothing, medical, incidental, and educational costs. (5-8-09)

02. Financial Arrangements with Parent(s). Parent(s) are responsible to reimburse the Department for the costs of alternate care when their child is placed in alternate care in accordance with a court order or voluntary placement agreement. (5-8-09)

a. The amount of support is based on the parents’ income, the costs of care for the child, and any unique circumstances affecting the parents’ ability to pay. (5-8-09)

b. Every parent is expected to contribute to the cost of their child’s care, but no parent will be asked to

pay more than the actual cost of care, including clothing, medical, incidental and educational costs. The cost of room and board must be paid by the parent(s) to the Department, and the Department will in turn reimburse the alternate care providers. (5-8-09)

437. ACCOUNTING AND REPORTING.

The Department's Division of Family and Community Services, 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. (3-28-18)

438. SUPPORT AGREEMENT FOR VOLUNTARY PLACEMENTS.

If the placement is voluntary, the parent(s) must sign an agreement that specifies the amount of support to be paid, when it is to be paid to the payee, and the address to which it is to be paid. (5-8-09)

439. SUPPORT IN COURT-ORDERED PLACEMENT.

In the case of a court-ordered placement, if no support agreement has been reached with the parent(s) prior to the custody or commitment hearing, the Department's report to the Court will indicate the necessity to hold a support hearing. (5-8-09)

440. INSURANCE COVERAGE.

The parent(s) or legal guardian(s) must inform the Department of all insurance policies covering the child, including names of carriers, and policy or subscriber numbers. If medical, health, and dental insurance coverage are available for the child, the parent(s) must acquire and maintain such insurance. (5-8-09)

441. REFERRAL TO CHILD SUPPORT SERVICES.

The Department will refer the parent(s) to the Bureau of Child Support Services for support payment arrangements. (5-8-09)

01. Assignment of Child Support. The Department through the Bureau of Child Support Services will secure assignment of any support due to the child while in alternate care. Social Security and Supplemental Security Income benefits are specifically aimed at meeting the child's needs and therefore will follow the child in placement and the Department must request to be named payee for all funds for placements extending over thirty (30) days. (5-8-09)

02. Collection of Child Support. The Department must take action to collect any child support ordered in a divorce decree. (5-8-09)

MEDICAL AND DENTAL FOR CHILDREN IN OUT-OF-HOME CARE
(Sections 442 - 479)

442. MEDICAID FOR CHILDREN IN ALTERNATE CARE.

Every child placed in alternate care will receive a medical card each month. (5-8-09)

443. EPSDT SCREENING.

Children in alternate care will receive the Early Periodic Screening, Diagnosis and Treatment (EPSDT) services allowable under Medicaid. Those children already receiving Medicaid at the time of placement will be screened within thirty (30) days after placement. Children not receiving Medicaid at the time of placement will receive a screening within thirty (30) days from the date Medicaid eligibility is established. (5-8-09)

444. MEDICAL EMERGENCIES.

In case of serious illness, the alternate care provider must notify the child's doctor and the Department immediately. The parent(s) or legal guardian(s) or the court in an emergency, or the Department if it is the guardian of the child, have the authority to consent to major medical care or hospitalization. (5-8-09)

445. DENTAL CARE.

Each child age three (3) who is placed in alternate care must receive a dental examination as soon as possible after placement, but not later than ninety (90) days, and thereafter according to a schedule prescribed by the dentist.

(3-30-07)

01. Costs Paid by Medicaid. If dental care not included in the state medical assistance program is recommended, a request for payment must be submitted to the state Medicaid dental consultant. (5-8-09)

02. Emergencies. For children in shelter care, emergency dental services will be provided for and paid for by the Department, if there are no other financial resources available. (5-8-09)

446. COSTS OF PRESCRIPTION DRUGS.

The Department will purchase prescribed drugs, at the Medicaid rate, for a child in alternate care through participating pharmacists, in excess of the Medicaid monthly maximum. (5-8-09)

447. MEDICAL EXAMINATION UPON ENTERING ALTERNATE CARE.

Within thirty (30) days of entering alternate care, each child will receive a medical examination to assess the child's health status, and thereafter according to a schedule prescribed by the child's physician or other health care professional. (5-3-03)

448. -- 450. (RESERVED)

451. DRIVERS' TRAINING, DRIVERS' LICENSES, AND PERMITS FOR CHILDREN IN ALTERNATE CARE.

No Department employee or foster parent is allowed to sign for any foster child's driver's license or permit without written authorization from the Child and Family Services Program Manager. Any Department employee or foster parent signing for a foster child's driver's license or permit without the approval of the Child and Family Services Program Manager assumes full personal responsibility and liability for any driving related damages that may be assessed against the child. Those damages will not be covered by the Department's insurance. (5-8-09)

01. Payments by Department. Subject to existing appropriations, the Department may make payments for driver's training, driver's license, and permits for a child in the Department's legal custody when driver's training or obtaining a driver's license or permit is part of the child's Independent Living Plan. In addition, subject to existing appropriations, the Department may reimburse a foster parent, licensed by the Department, for the cost of procuring owner's or operator's insurance listing a child residing in their home as a named insured with respect to the operation of a motor vehicle subject to the limits exclusive of interest and costs with respect to each motor vehicle as provided in Section 49-117, Idaho Code. (4-11-15)

02. Payment by Parent(s) or Legal Guardian(s). The parent(s) or legal guardian(s) of children in foster care may authorize drivers' training, provide payment and sign for drivers' licenses and permits. (5-3-03)

452. -- 479. (RESERVED)

LICENSURE AND REIMBURSEMENT OF ALTERNATE CARE PROVIDERS
(Sections 480 - 549)

480. ALTERNATE CARE LICENSURE.

All private homes and facilities providing care for children under these rules must be licensed in accordance with IDAPA 16.06.02, "Child Care Licensing," unless foster care placement of an Indian child is made with a foster home licensed or approved by the Indian child's tribe, or an institution for children approved by an Indian tribe or operated by an Indian organization. ()

481. FACILITIES OPERATED BY THE STATE.

Facilities operated by the State and providing care for children under these rules must meet the standards for child care licensure. (5-8-09)

482. PAYMENT FOR SHELTER CARE.

Payment for placement of children requiring temporary, emergency alternate care is twenty dollars (\$20) per day for children from birth through age seventeen (17), for a maximum of thirty (30) days of shelter care for each

uninterrupted placement. (3-18-99)

483. PAYMENT TO FAMILY ALTERNATE CARE PROVIDERS.

Monthly payments for care provided by family alternate care providers are:

Family Alternate Care Payments - Table 483			
Ages	0-5	6-12	13-18
Monthly Room and Board	\$395	\$439	\$584

(3-28-18)

01. Gifts. An additional thirty dollars (\$30) for Christmas gifts and twenty dollars (\$20) for birthday gifts will be paid in the appropriate months. (5-8-09)

02. Clothing. Costs for clothing will be paid, based upon the Department's determination of each child's needs. All clothing purchased for a child in alternate care becomes the property of the child. (5-8-09)

03. School Fees. School fees due upon enrollment will be paid directly to the school or to the alternate care providers, based upon the Department's determination of the child's needs. (5-8-09)

484. ADDITIONAL PAYMENTS TO FAMILY ALTERNATE CARE PROVIDERS.

For those children who require additional care above room, board, shelter, daily supervision, school supplies, personal incidentals, the Department may pay the family alternate care provider an additional amount to the amount paid under Section 483 of these rules. This family alternate care rate is based upon a ongoing assessment of the child's circumstances that necessitate special rates as well as the care provider's ability, activities, and involvement in addressing those special needs. Additional payment will be made as follows: (5-8-09)

01. Lowest Level of Need. Ninety dollars (\$90) per month for a child requiring a mild degree of care for documented conditions including: (5-8-09)

- a. Chronic medical problems; (3-18-99)
- b. Frequent, time-consuming transportation needs; (3-18-99)
- c. Behaviors requiring extra supervision and control; and (3-30-01)
- d. Need for preparation for independent living. (3-18-99)

02. Moderate Level of Need. One hundred fifty dollars (\$150) per month for a child requiring a moderate degree of care for documented conditions including: (5-8-09)

- a. Ongoing major medical problems; (3-18-99)
- b. Behaviors that require immediate action or control; and (3-30-01)
- c. Alcohol or other substance use disorder. (5-8-09)

03. Highest Level of Need. Two hundred forty dollars (\$240) per month for a child requiring an extraordinary degree of care for documented conditions including: (5-8-09)

- a. Severe emotional or behavioral disturbance; (5-8-09)
- b. Severe developmental disability; and (3-30-01)
- c. Severe physical disability such as quadriplegia. (3-18-99)

04. Reportable Income. Additional payments for more than ten (10) qualified children received during any calendar year must be reported as income to the Internal Revenue Service. (3-8-09)

485. TREATMENT FOSTER CARE.

A family home setting in which treatment foster parents provide twenty-four (24) hour room and board as well as therapeutic services and a high level of supervision. Services provided in treatment foster care are at a more intense level than provided in foster care and at a lower level than provided in residential care. Services may include the following: participation in the development and implementation of the child's treatment plan, behavior modification, community supports, crisis intervention, documentation of services and the child's behavior, participation as a member of a multi-disciplinary team, and transportation. Placement into a treatment foster home for children in the custody of the Department under the purview of the Child Protective Act, is based on the documented needs of the child, the inability of less restrictive settings to meet the child's needs, and the clinical judgement of the Department. (3-29-10)

01. Qualifications. Prior to being considered for designation and reimbursement as a treatment foster parent, each prospective treatment foster parent must accomplish the following: (3-29-10)

a. Meet all foster family licensure requirements as set forth in IDAPA 16.06.02, "Child Care Licensing"; ()

b. Complete Department-approved treatment foster care initial training; and (3-29-10)

c. Provide a minimum of two (2) references in addition to those provided to be licensed to provide foster care. The additional references must be from individuals who have worked with the prospective treatment foster parent. The additional references must verify that the prospective treatment foster parent has: (3-29-10)

i. Training related to, or experience working with, children or youth with mental illness or behavior disorders; and (3-29-10)

ii. Demonstrated cooperation and a positive working relationship with families and providers of child welfare or mental health services. (3-29-10)

02. Continuing Education. Following designation as a treatment foster home, each treatment foster home parent must complete fourteen (14) hours of additional training per year as specified in an agreement developed between the treatment foster parents and the Department. (3-29-10)

03. Availability. At least one (1) treatment foster parent, in each treatment family home, must be available twenty-four (24) hours a day, seven (7) days a week to respond to the needs of the foster child. (3-29-10)

04. Payment. The Department will pay treatment foster parents up to one thousand eight hundred (\$1,800) dollars per month, per child, which includes the monthly payment rate specified in Sections 483 and 484 of these rules. The payment will be made to treatment foster parents in accordance with a contract with the Department. The purpose of the contract is to make clear that the treatment foster parents must fulfill the requirements for treatment foster parents under the child's treatment plan referenced in Subsection 485.06 of this rule. (3-29-10)

05. Payment to Contractors. The Department may also provide treatment foster care through a contract with an agency that is a private provider of treatment foster care. The Department will specify the rate of payment in the contract with the agency. (3-29-10)

06. Treatment Plan. The treatment foster parent(s) must implement the portions of the Department-approved treatment plan for which they are designated as responsible, for each child in their care. This plan is incorporated as part of the family services plan identified in Section 011.05 of these rules. (3-29-10)

486. GROUP FOSTER CARE.

Group foster care is for children who generally require more structured activities and discipline than found in a family setting. Examples are intermediate residential treatment, short-term group care, and emancipation homes. (3-18-99)

01. Referral -- Group Foster Care. Any referral of a child to a group foster care facility where the Department would be making full or partial payment must be prior authorized by the Child and Family Services Program Manager or designee. (5-8-09)

02. Placement. Placement is based on the documented service needs of each child and the ability of the group care provider to meet those needs. (5-8-09)

03. Payment -- Group Foster Care. Payment will be in accordance with the contract authorized by the regional director or division administrator, based on the needs of the children being placed and the services to be provided. (5-8-09)

487. RESIDENTIAL CARE FACILITIES.

Placement into a residential care facility for children with a severe emotional or behavioral problems is based on the documented needs of the child and the inability of less restrictive settings to meet the child's needs. (5-8-09)

01. Referral. Any referral of a child to a residential care facility where the Department would be making full or partial payment must be prior authorized by the Child Services and Family Program Manager or designee. (5-8-09)

02. Payment. When care is purchased from private providers, payment must be made in accordance with a contract authorized by the Child Services and Family Program Manager, based on the needs of each child being placed and the services to be provided. When care is provided in facilities operated by the Department, payment will be arranged in cooperation with Department fiscal officers. (5-8-09)

488. -- 491. (RESERVED)

492. REIMBURSEMENT IN THE HOME OF A RELATIVE.

Relatives licensed as a foster family must be afforded the opportunity to receive foster care reimbursement for any child(ren) placed in their home through the Department. A relative foster family may choose not to accept a foster care reimbursement and apply for a TAFI grant or provide for the child's care using their own financial resources. (3-30-01)

493. -- 549. (RESERVED)

CHILD PROTECTION SERVICES
(Sections 550 - 639)

550. CHILD PROTECTION SERVICES.

Sections 56-204A, 56-204B, 16-1601, 16-1629 and 16-2001, Idaho Code, make the Department an official child protection agency of state government dealing with situations of reported child abuse, neglect, or abandonment. A respectful, non-judgmental approach should be the policy for assessments, especially during the initial contact with the family. Training in communication would include multicultural and diversity issues and interest-based conflict resolution. (5-8-09)

551. REPORTING ABUSE, NEGLECT, OR ABANDONMENT.

Professionals and other persons identified in Section 16-1605, Idaho Code, have a responsibility to report abuse, neglect, or abandonment and are provided protection for reporters. (5-8-09)

01. Ministers. Duly ordained ministers of religion are exempt from reporting child abuse, neglect, or abandonment if: (5-8-09)

a. The church qualifies as tax-exempt under 26. U.S.C. 501(c)(3); (3-18-99)

b. The confession or confidential communication was made directly to the duly ordained minister of religion; and (3-18-99)

c. The confession was made in the manner and context that places the duly ordained minister of religion specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine. (3-18-99)

02. Health and Welfare Employees. All Department of Health and Welfare personnel are responsible for recognizing and immediately reporting to Child and Family Services or to law enforcement any concern regarding abuse, neglect, or abandonment of a child or children. Failure to report as required by Section 16-1605, Idaho Code, is a misdemeanor. (5-8-09)

552. REPORTING SYSTEM.

Each region of the Department maintains a system for receiving and responding to reports or complaints on a twenty four (24) hour per day, seven (7) day per week basis throughout the entire region. The region will advertise the system to the public throughout the region and ensure the accurate recording of as many facts as possible at the time of the report. (5-8-09)

553. ASSIGNING REPORTS FOR SAFETY ASSESSMENT.

The Department must assign all reports of possible abuse, neglect, or abandonment of children for safety assessment, unless the field office has knowledge or information that discredits the report beyond a reasonable doubt. (4-7-11)

554. RESPONSE PRIORITIES.

The Department must use the following statewide standards for responding to allegations of abuse, neglect, or abandonment, using the determination of risk to the child as the primary criterion. Any variance from these response standards must be documented in the family's case file with a description of action taken, and must be reviewed and signed by the Child and Family Services Supervisor. (5-8-09)

01. Priority I. The Department must respond immediately if a child is in immediate danger involving a life-threatening or emergency situation. Emergency situations include sexual abuse when a child may have contact with the alleged perpetrator and circumstances indicate a need for immediate response. Law enforcement must be notified and requested to respond or to accompany a family services worker. Every attempt should be made to coordinate the Department's assessment with law enforcement's investigation. The child must be seen by a Department family services worker, law enforcement, and medical personnel if applicable, immediately unless written regional protocol agreements direct otherwise. All allegations of physical abuse of a child through the age of six (6) or with profound developmental disabilities should be considered under Priority I unless there is reason to believe that the child is not in immediate danger. (3-30-07)

02. Priority II. A child is not in immediate danger but allegations of abuse, including physical or sexual abuse, or serious physical or medical neglect are clearly defined in the referral. Law enforcement must be notified within twenty-four (24) hours. The child must be seen by the family services worker within forty-eight hours (48) of the Department's receipt of the referral. Law enforcement must be notified within twenty-four (24) hours of receipt of all Priority II referrals that involve concerns of abuse, neglect, or abandonment. (5-8-09)

03. Priority III. A child may be in a vulnerable situation because of services needs which, if left unmet, may result in harm, or a child is without parental care for safety, health and well being. The child and parent(s) or legal guardian(s) will be interviewed for substantiation of the facts, and to assure that there is no abuse, neglect, or abandonment by parent(s) or legal guardian(s). A family services worker must respond within three (3) calendar days and the child must be seen by the worker within five (5) calendar days of the Department's receipt of the referral. (5-8-09)

04. Notification of the Person Who Made the Referral. The Department must notify the person who made the child protection referral of the receipt of the referral within five (5) days. (3-30-07)

05. Disclosure of Information to Professionals. The Department has the discretion to disclose, on a need-to-know basis, minimally necessary information to individuals who are professionally involved in the ongoing care of the child who is the subject of a report of abuse, neglect, or abandonment. This includes information that the professional will need to know in order to fulfill their role in maintaining the child's safety and well-being. This provision applies to: (4-4-13)

- a. Physicians, residents on a hospital staff, interns, and nurses; (4-4-13)
- b. School teachers, school staff, and day care personnel; and (4-4-13)
- c. Mental health professionals, including psychologists, counselors, marriage and family therapists, and social workers. (4-4-13)

555. SUPERVISORY REVIEW - CERTAIN PRIORITY I AND II CASES.

In all Priority I and II cases where the alleged victim of abuse, neglect, or abandonment is through the age of six (6), review by supervisory or team of all case documentation and other facts will be conducted within forty-eight (48) hours of initiation of the safety assessment. Such review will be documented in the file with the signature of the supervisor or team leader, time and date, whether additional safety-related issues will be pursued and by whom, and any planning for initiation of services. (4-7-11)

556. REPORTS INVOLVING INDIAN CHILDREN.

Possible abuse, neglect, or abandonment of a child who is known or believed to be Indian will be reported to appropriate tribal authorities immediately. If the reported incident occurs off a reservation, the Department will perform the investigation. The Department will also investigate incidents reported on a reservation if requested to do so by appropriate authorities of the tribe. A record of any response will be maintained in the case record and written documentation will be provided to the appropriate tribal authorities. (3-29-12)

557. REPORTS INVOLVING MILITARY FAMILIES.

Reports of possible child abuse, neglect, or abandonment involving a military family must be reported in accordance with the provisions of any agreement with the appropriate military family advocacy representative, in accordance with the provisions of Section 811 of Public Law 99-145. Child abuse, neglect, or abandonment of a child on a military reservation falls under federal jurisdiction. (5-8-09)

558. COMMUNITY RESOURCES.

The Department will provide information and referral to community resources or may offer preventative services to the family. Information and referral services enable individuals to gain access to human services through providing accurate, current information on community and Department resources. (3-30-07)

559. CHILD PROTECTION SAFETY AND COMPREHENSIVE ASSESSMENTS.

The Department's safety and comprehensive assessments must be conducted in a standardized format and utilize statewide assessment and multi-disciplinary team protocols. The assessment must include contact with the child(ren) involved and the immediate family and a records check for history with respect to child protection issues. (4-7-11)

01. Assessment of a Child. The family services worker must make an assessment of every child of concern. When the child is interviewed as part of a safety and comprehensive assessment, the interview of a child concerning a child protection report must be conducted: ()

- a. In a manner that protects all children involved from undergoing any unnecessary traumatic experience, including multiple interviews; (3-30-07)
- b. By a professional with specialized training in using techniques that consider the natural communication modes and developmental stages of children; and (3-18-99)
- c. In a neutral, non-threatening environment, such as a specially equipped interview room, if available. (3-18-99)

02. Assessment of the Family. The family services worker conducting the interview must: ()

- a. Immediately notify the parent(s) or legal guardian(s) of the purpose and nature of the assessment. ()
- b. Provide at the initial contact the name and work phone numbers of the family services worker and their supervisor to ensure the family has a contact for questions and concerns that may arise following the visit;

()

- c. Inquire if the family is Indian, or has Indian heritage, for the purposes of ICWA; (3-29-12)
- d. Interview siblings who are identified as being at risk; and (3-18-99)
- e. Not divulge the name of the person making the report of child abuse or neglect. (3-30-07)

03. Collateral Interviews. Any assessment of an abuse or neglect report must include at least one (1) collateral interview with a person who is familiar with the circumstances of the child or children involved. Collateral interviews will be conducted with discretion and preferably with the parent(s)' or legal guardian(s)' permission. (3-30-07)

04. Completion of a Comprehensive Assessment. A Safety Assessment will be completed on each referral assigned for assessment of abuse or neglect, or both. When safety threats are identified in the safety assessment and the case remains open for services, a comprehensive assessment must be completed. (4-7-11)

05. Role of Law Enforcement. Section 16-1617, Idaho Code, specifies that the Department may enlist the cooperation of peace officers for phases of the safety assessment for which they have the expertise and responsibility and consistent with the relevant multidisciplinary team protocol. Such areas include: (3-30-07)

- a. Interviewing the alleged perpetrator; (3-18-99)
- b. Removing the alleged perpetrator from the child's home in accordance with Section 16-1608(b), Idaho Code, the "Domestic Violence Act"; and (3-18-99)
- c. Taking a child into custody in accordance with Section 16-1608, Idaho Code, where a child is endangered and prompt removal from their surroundings is necessary to prevent serious physical or mental injury. (3-18-99)

06. Notification of the Person Who Made the Referral. The Department must notify the person who made the child protection referral when the safety assessment has been completed. (4-7-11)

560. DISPOSITION OF CHILD PROTECTION REPORTS.

Within five (5) days following completion of safety assessments, the Department will determine whether the reports are substantiated or unsubstantiated. All persons who are the subject of a child protection safety assessment will be notified of the disposition of the assessment. (4-7-11)

01. Substantiated. Child abuse, neglect, or abandonment reports are substantiated by one (1) or more of the following: (5-8-09)

- a. Witnessed by a family services worker, as defined in Section 011 of these rules; (4-2-08)
- b. A court determines, in an adjudicatory hearing, that a child comes within the jurisdiction of the Child Protective Act, Title 16, Chapter 16, Idaho Code; (5-8-09)
- c. A confession; (4-2-08)
- d. Corroborated by physical or medical evidence; or (4-2-08)
- e. Established by evidence that it is more likely than not that abuse, neglect, or abandonment occurred. (5-8-09)

02. Unsubstantiated. Child abuse, neglect, or abandonment reports are unsubstantiated when they are not found to be substantiated under Subsection 560.01 of this rule. For intradepartmental statistical purposes, the Department will indicate whether the unsubstantiated disposition of the safety assessment was due to: (4-7-11)

- a. Insufficient evidence; or (5-3-03)
- b. An erroneous report. (4-2-08)

561. CHILD PROTECTION CENTRAL REGISTRY.

The Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248, July 27, 2006, 120 Stat. 587, has directed the states to establish a central registry for the purpose of sharing information about persons who have substantiated reports of abuse, neglect, or abandonment against children. The Child Protection Central Registry was established under the authority of Section 16-1629(3), Idaho Code. The primary purpose of the Child Protection Central Registry is to aid the Department in protecting children and vulnerable adults from individuals who have previously abused, neglected, or abandoned children. The Child Protection Central Registry maintained by the Department is separate and apart from the central registry for convicted sexual offenders maintained by the Idaho State Police under Title 18, Chapter 83, Idaho Code. The Child Protection Central Registry provisions in this chapter of rules apply to safety assessments conducted by the Department after October 1, 2007. (4-7-11)

562. CONFIDENTIALITY OF THE CHILD PROTECTION CENTRAL REGISTRY AND REQUESTS TO CHECK THE REGISTRY.

01. Confidentiality of Child Protection Central Registry. The names on the Child Protection Central Registry are confidential and may only be released with the written consent of the individual on whom a criminal history and background check is being conducted, unless otherwise required by federal or state law. No information is released regarding the severity or type of child abuse, neglect, or abandonment. (3-20-14)

02. Child Protection Central Registry Check Fee. The fee for requesting a name-based check of the Child Protection Central Registry is twenty (\$20) dollars. The request must be accompanied with a signed written consent by the individual whose name is being checked. (3-20-14)

563. LEVELS OF RISK ON THE CHILD PROTECTION CENTRAL REGISTRY.

When an incident of abuse, neglect, or abandonment has been substantiated, a level of risk is assigned to the incident. The level of risk is determined by the severity and type of the abuse, neglect, or abandonment and the potential risk of future harm to a child. The highest level of risk is designated as Level One and the lowest level of risk is Level Three. (5-8-09)

01. Child Protection Level One. An individual with a Level One designation has been determined to pose a high to severe risk to children. Names of individuals for whom an incident of abuse, neglect, or abandonment has been substantiated for any of the following will remain permanently on the Child Protection Central Registry at Level One. (5-8-09)

- a. Sexual Abuse as defined in Sections 16-1602(1)(b) and 18-1506, Idaho Code; (4-2-08)
- b. Sexual Exploitation as defined in Sections 18-1507 and 18-1507A, Idaho Code; (4-2-08)
- c. Physical abuse as described in Section 16-1602(1)(a), Idaho Code, that causes life-threatening, disabling, or disfiguring injury or damage; (4-2-08)
- d. Neglect as described in Section 16-1602(31), Idaho Code, that results in life-threatening, disabling, or disfiguring injury or damage; (4-2-08)
- e. Abandonment as described in Section 16-1602(2), Idaho Code, that results in life-threatening, disabling, or disfiguring injury or damage; (4-2-08)
- f. Death of a child; (4-2-08)
- g. Torture of a child as described in Section 18-4001, Idaho Code; (4-2-08)
- h. Aggravated Circumstances as described in Section 16-1602(6), Idaho Code; or (4-2-08)
- i. Occurrence of two (2) or more separate, substantiated incidents of abuse, neglect, or abandonment,

each of which falls under the circumstances listed under Subsection 563.02 of this rule. (5-8-09)

02. Child Protection Level Two. An individual with a Level Two designation has been determined to pose a medium to high risk to children and will remain on the Child Protection Central Registry for a minimum of ten (10) years. After the end of the ten-year (10) period, an individual may petition the Department to request their name be removed from the Child Protection Central Registry in accordance with Section 566 of these rules. Names of individuals for whom an incident of abuse, neglect, or abandonment has been substantiated for any of the following will be given the designation of Level Two. (5-8-09)

a. Prenatal use of any controlled substance as defined under Section 37-2701(e), Idaho Code, except as prescribed by a medical professional; (4-2-08)

b. Administering or knowingly allowing a child to absorb or ingest one (1) or more controlled substances as defined under Section 37-2701(e), Idaho Code, except in the amount prescribed for the child by a medical professional; (4-2-08)

c. Child exposed to: (5-8-09)

i. Drug paraphernalia, as defined in Section 37-2701(n), Idaho Code; (4-2-08)

ii. Manufacture of controlled substances, as defined under Section 37-2701(e), Idaho Code, and Section 37-2701(s), Idaho Code; or (4-2-08)

iii. Chemical components used in the manufacture of controlled substances, as defined under Section 37-2701(e), Idaho Code. (4-2-08)

d. Failure to thrive caused by abuse, neglect, or abandonment, as established by medical evidence; (5-8-09)

e. Physical abuse as described in Section 16-1602(1)(a), Idaho Code, abandonment as described in Section 16-1602(2), Idaho Code, or neglect as described in Section 16-1602(31), Idaho Code, that results in neither disabling nor disfiguring injury or damage, but may require medical or other treatment; (4-2-08)

f. The restraint or confinement of a child that poses a substantial risk of causing life-threatening, disabling, or disfiguring injury or damage; (5-8-09)

g. Medical neglect as described in Section 16-1602(31), Idaho Code, that poses a substantial risk of resulting in life-threatening, disabling, or disfiguring injury or damage; (5-8-09)

h. Malnutrition as established by medical evidence; or (4-2-08)

i. Occurrence of two (2) or more separate, substantiated incidents of abuse, neglect, or abandonment, each of which falls under the circumstances listed under Subsection 563.03 of this rule. (5-8-09)

03. Child Protection Level Three. An individual with a Level Three designation has been determined to pose a mild to medium risk of harm to the health, safety, or well-being of a child. The name of that individual will remain on the Child Protection Central Registry for a minimum of five (5) years. After the end of the five-year (5) period, an individual may petition the Department to request their name be removed from the Child Protection Central Registry in accordance with Section 566 of these rules. Names of individuals for whom an incident of abuse, neglect, or abandonment has been substantiated for any of the following are given the designation of Level Three. (5-8-09)

a. Lack of supervision; (5-8-09)

b. Failure to protect from abuse, neglect, or abandonment as described in Section 16-1602, Idaho Code; (5-8-09)

c. Failure to discharge parental responsibilities described under Section 16-1602(31), Idaho Code; or (5-8-09)

d. Physical abuse as described in Section 16-1602(1)(a), Idaho Code, or neglect as described in Section 16-1602(31), Idaho Code, that causes minor injuries or damage that does not require medical treatment. (4-2-08)

564. NOTIFICATION OF A SUBSTANTIATED INCIDENT OF ABUSE, NEGLECT, OR ABANDONMENT, AND RELATED ADMINISTRATIVE REVIEW AND CONTESTED CASE APPEAL RIGHTS.

01. Notification of Substantiated Incident. Prior to placement on the Child Protection Central Registry, the Department will notify by certified mail, return receipt requested, each individual for whom an incident of abuse, neglect, or abandonment has been substantiated. The individual has twenty-eight (28) days from the date on the notification to file a request for an administrative review under the requirements in IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." The Department's written notice will state: ()

a. The risk level assigned to the incident; (5-8-09)

b. The basis for the Department's decision; (5-8-09)

c. The individual's right to request an administrative review by the Department's Family and Community Services (FACS) Division Administrator of the Department's decision; and (5-8-09)

d. The Department's contact information. ()

02. Administrative Review Not Requested. If the individual does not request an administrative review by the FACS Division Administrator within twenty-eight (28) days from the date on the notification, their name will automatically be entered on the Child Protection Central Registry without further notice or right for appeal. (5-8-09)

03. Administrative Review Requested. If the individual requests an administrative review by the FACS Division Administrator within twenty-eight (28) days from the date on the notification, the incident will be reviewed by the FACS Division Administrator and a decision will be rendered to either affirm, reverse, or modify, the decision to substantiate the incident of abuse, neglect, or abandonment. The Department will notify the individual of the FACS Division Administrator's decision by mail. (5-8-09)

04. Reversal of Decision to Substantiate. When the FACS Division Administrator completes the administrative review and reverses the decision to substantiate the incident of abuse, neglect, or abandonment, and determines that the incident is not substantiated, then no further action is required by the individual. The individual's name will not be placed on the Child Protection Central Registry. (5-8-09)

05. Contested Case Appeal. When the FACS Division Administrator completes the administrative review and affirms the decision to substantiate the incident of abuse, neglect, or abandonment, the individual will be notified by mail that their name has been placed on the Child Protection Central Registry and informed of: (5-8-09)

a. The basis for the Department's decision; (5-8-09)

b. The procedures for filing a contested case appeal under IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings," Section 101; ()

c. The procedures for filing a petition for removal from the Child Protection Central Registry after the applicable minimum time has passed under Section 566 of these rules; and (5-8-09)

d. The Department's contact information.

565. PETITION FOR REMOVAL OF AN INDIVIDUAL'S NAME ON THE CHILD PROTECTION CENTRAL REGISTRY PRIOR TO OCTOBER 1, 2007.

After January 1, 2008, an individual whose name was placed on the Child Protection Central Registry prior to October 1, 2007, may file a petition to have their name removed from the registry in accordance with Subsection 566.01 of these rules. The petitioner will be assigned a child protection risk level in accordance with criteria under Section 563 of these rules and the case will be reviewed to determine if it meets the requirements for removal.

(5-8-09)

566. PETITION FOR REMOVAL OF AN INDIVIDUAL'S NAME FROM THE CHILD PROTECTION CENTRAL REGISTRY.

Any individual whose name is on the Child Protection Central Registry and whose required minimum time on the registry has elapsed, may petition the Department to remove their name from the Registry. An individual whose name appears with a Level One designation on the Child Protection Central Registry is not eligible to petition for removal.

(5-8-09)

01. Petition for Removal From the Child Protection Central Registry. Any individual whose name appears on the Child Protection Central Registry with a designation of either Level Two or Level Three, may petition to have their name removed from the Child Protection Central Registry after the minimum period of time has elapsed for the applicable level. The petition must include a written statement from the petitioner to the Department's FACS Division Administrator requesting that the petitioner's name be removed from the Child Protection Central Registry.

()

02. Criteria for Granting Petition for Removal From the Child Protection Central Registry. The petition for removal from the Child Protection Central Registry will be granted if:

(5-8-09)

a. There are no additional substantiated reports on the Child Protection Central Registry or that of other states in which the petitioner has resided since the last substantiated report of abuse, neglect, or abandonment in Idaho; and

(5-8-09)

b. There are no convictions, adjudications, or withheld judgments for any of the crimes listed under Subsection 566.03 of this rule:

(5-8-09)

i. On Idaho's central repository of criminal history records as established and maintained by the Idaho State Police under Title 67, Chapter 30, Idaho Code; or

(5-8-09)

ii. On the criminal history repository of other states in which the petitioner has resided since the last substantiated report of abuse, neglect, or abandonment in Idaho.

(5-8-09)

03. Criminal History Checks. It is the responsibility of the petitioner to request, pay for, and obtain the criminal history checks and submit them to the Department.

(5-8-09)

a. The Department will not remove a petitioner from the Child Protection Central Registry if a criminal history check reveals any of the following, within five (5) years of the receipt of the petition:

(4-2-08)

i. Physical Assault; (4-2-08)

ii. Battery; or (4-2-08)

iii. A drug-related offense. (4-2-08)

b. The Department will not remove a petitioner from the Child Protection Central Registry if a criminal history check reveals any of the following:

(4-2-08)

i. Child abuse or neglect; (4-2-08)

ii. Spousal abuse; (4-2-08)

iii. A crime against children, including child pornography; or (4-2-08)

iv. A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery. (4-2-08)

04. Granting or Denying Removal From the Child Protection Central Registry. The Department will issue a letter granting or denying removal of the petitioner's name from the Child Protection Central Registry within twenty-eight (28) days of receipt of the petition. (5-8-09)

05. Appeal of a Denial of Removal From the Child Protection Central Registry. The individual may appeal the denial of removal of their name from the Child Protection Central Registry under IDAPA 16.05.03, "Contested Cases Proceedings and Declaratory Ruling," Section 101. ()

567. "SAFE HAVEN" EXEMPTION FOR PARENTS OF CERTAIN ABANDONED INFANTS. No disposition will be made on the parent(s) and no information will be entered into the Child Protection Central Registry when a parent(s) relinquishes their infant within the first thirty (30) days of life to a "Safe Haven" according to Title 39, Chapter 82, Idaho Code, Idaho Safe Haven Act. (4-2-08)

568. COURT-ORDERED CHILD PROTECTION SAFETY ASSESSMENT. When, in any divorce proceeding or upon request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court may order that an investigation/safety assessment be conducted by the Department. Court orders for preliminary child protective safety assessment and for any subsequent assessment the court may deem necessary will be served on the Department supervisor for child protection services in the field office in which the court has geographical jurisdiction. The child protection supervisor must immediately initiate the safety assessment and consult with the court promptly if there are any obstacles preventing its completion. Immediately upon completing the report, the Department must make a written report to the court. (4-7-11)

569. PETITION UNDER THE CHILD PROTECTIVE ACT. If any incident of child abuse, neglect, or abandonment is substantiated through a safety or comprehensive assessment, or both, or during the provision of services, and cannot be resolved through informal processes or voluntary agreement that is adequate for protection of the child, the Department will request the prosecuting attorney to file a Child Protective Act petition. (4-7-11)

570. COOPERATION WITH LAW ENFORCEMENT. The Department will cooperate with law enforcement personnel in their handling of criminal investigations and the filing of criminal proceedings. (4-2-08)

571. CHILD CUSTODY INVESTIGATIONS FOR THE DISTRICT COURT. Where no other community resources are available and when ordered by the district courts, the Department will, for a fee of thirty-five dollars (\$35) per hour, conduct safety and comprehensive assessments and provide social information to assist the court in child custody actions, to assist the court to determine the most therapeutic placement for the child. (4-7-11)

01. Requests From Private Attorney. If a parent's attorney requests a safety or comprehensive assessment, or both, and a report of findings regarding the fitness of a parent, the attorney must be advised that such service is provided on behalf of a child but not on behalf of a litigant, and that any such assessment and report would be provided to the court pursuant to a court order. (4-7-11)

02. Conduct of the Assessment. In conducting the assessment, the family services worker must explain to the family the purpose for which the information is being obtained. If the judge intends to treat the report as evidence, the family must be informed that any information they provide will be brought out at the court hearing. If the family refuses to give information to the family services worker, the Department has no authority to require cooperation. However, the judge may issue an order directing the family to provide information to the family services worker for the purpose of making a report to the court. (3-30-07)

03. Report to Court. The family services worker will provide a report only to the Magistrate judge who ordered the assessment, and must use the Department's format for the assessment of need. The report must describe what was observed about the home conditions and the care of the child(ren). (3-30-07)

04. Department Clients. If the family is or has been a client of the Department, disclosure of

information must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (4-7-11)

572. -- 699. (RESERVED)

ADOPTION SERVICES
(Sections 700 - 710)

700. ADOPTION SERVICES POLICY.

Where reasonable efforts to reunite or preserve a family are unsuccessful, or where relinquishment is requested by the parent(s), the Department will consider whether termination of parental rights is in the best interests of the child. The Department must make every effort to place any child legally free for adoption in an appropriate adoptive home. Each child will be placed with an adoptive family who can support the racial, ethnic or cultural identity of the child, and is able to cope with any forms of discrimination the child may experience. (5-8-09)

701. SERVICES TO BE PROVIDED IN ADOPTIONS.

In addition to the core services provided under these rules, the Department must assure provision of the following: (5-8-09)

01. Response to Inquiries. Written or personal inquiries from prospective adoptive families must be answered within two (2) weeks. (3-30-07)

02. Pre-Placement Child/Family Assessment. An assessment of the child's family of origin history, needs as an individual and as part of a family, and completion of a life story book for each child preparing for adoptive placement. (3-18-99)

03. Compliance with Multi-Ethnic Placement Act and Interethnic Adoption Provisions. Selection of the most appropriate adoptive family consistent with the Multi-Ethnic Placement Act and Interethnic Adoption Provisions, if the child is not an Indian. (3-30-01)

04. (Pre-Placement) Home Study. An adoptive home study to ensure selection of an appropriate adoptive home. (3-18-99)

05. Preparation for Placement. Preparation of the child by an assigned social worker who will assist the child in addressing anticipated grief and loss due to separation from their parents and assisting the child with the transition into an adoptive home. (5-3-03)

06. Technical Assistance. Assistance in completing the legal adoption, including compliance with the Indian Child Welfare Act. (3-18-99)

07. Adoption Assistance. A determination of eligibility for adoption assistance must be made for each child placed for adoption through the Department prior to the finalization of their adoption. Eligibility for adoption assistance is determined solely on the child's need. No means test may be applied to the adoptive family's income or resources. Once eligibility is established, the Division will negotiate a written agreement with the adoptive family. The agreement must be fully executed by all parties prior to the finalization of the adoption in order to be valid. (3-30-07)

08. Period of Support Supervision. Once a child is placed with an adoptive family, a period of support and supervision by the Department lasting at least six (6) months must be completed prior to the finalization of the adoption. If the child has been a foster child placed with the family for a period of at least six (6) months, the family may submit a written request to the Department's Child and Family Services Program Manager to reduce the supervisory period to a minimum of three (3) months. (5-8-09)

09. Post Adoption Services. Services after an adoption is final are provided within available resources. Children with negotiated adoption assistance agreements, whether from Idaho or from another state, are eligible for any services available to Idaho children. International adoptees residing in Idaho are also eligible for any services available to Idaho children under the Inter-Country Adoption of 2000 (P.L.106-279). Children with either IV-

E or state adoption assistance agreements are eligible for Medicaid in Idaho. A referral from an Interstate Compact on Adoption and Medical Assistance member state will serve as a formal application for services in Idaho. Applications for Medicaid are made through the Department in accordance with IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." (3-30-07)

702. CONDITIONS FOR GUARDIANSHIP ASSISTANCE.

The following conditions must be met for a child to be eligible for federally-funded or state-funded guardianship assistance. (4-7-11)

01. Assessment of Suitability. The Department or its contractor will determine the suitability of an individual to become a legal guardian for a specific child or sibling group through a guardianship study. (4-7-11)

02. Eligibility for Guardianship Assistance. The Department will determine eligibility for guardianship assistance for each child placed in the legal custody of the Department prior to the finalization of the guardianship. The child will first be considered for eligibility for a federally-funded subsidy. Should the child be found ineligible for a federally-funded subsidy, the child will then be considered for a state-funded subsidy. (4-7-11)

03. Guardianship and Foster Care Licensure. To receive guardianship assistance, a potential legal guardian must apply for and receive a foster care license. (4-7-11)

04. Guardianship Assistance Agreements and Payments. The Department and the prospective legal guardian must enter into a written agreement prior to the finalization of the guardianship. Benefits may include both a monthly cash payment and Medicaid benefits. The cash payment may not exceed the published foster care rate a child would receive if living in family foster care in Idaho. Eligibility for guardianship assistance is based on the child's needs. No means test may be applied to the prospective legal guardian family's income or resources in a determination of eligibility. The Department will provide the prospective legal guardian with a copy of the agreement. All Guardianship Assistance Agreements must contain the following: (4-7-11)

a. The amount and manner in which the guardianship assistance payment will be provided to the prospective legal guardian; (4-7-11)

b. The manner in which the payment may be adjusted periodically in consultation with the legal guardian, based on the circumstances of the legal guardian and the needs of the child; (4-7-11)

c. Any additional services and assistance for which the child and legal guardian will be eligible under the agreement; (4-7-11)

d. The procedure by which the legal guardian may apply for additional services; (4-7-11)

e. A statement that the agreement will remain in effect without regard to the state of residency of the legal guardian; (4-7-11)

f. The procedure by which the Department will make a mandatory annual evaluation of the need for continued assistance and the amount of the assistance; and (4-7-11)

g. Guardianship assistance payments are prospective only. There will be no retroactive benefits or payments. (4-7-11)

h. In Title IV-E Relative Guardianship Assistance Agreements, the prospective relative guardian may identify a successor legal guardian to be appointed guardianship of the child due to the death or incapacitation of the relative legal guardian. (3-25-16)

05. Termination of Guardianship Assistance. Federally-funded or state-funded guardianship assistance benefits and cash payments are automatically terminated when: (4-7-11)

a. A court terminates the legal guardianship or removes the legal guardian; (4-7-11)

- b.** The child no longer resides in the home of the legal guardian, and the legal guardian no longer provides financial support for the child; (4-7-11)
- c.** The child has reached the age of eighteen (18) years, regardless of the child's educational status or physical or developmental delays; or (4-7-11)
- d.** The child marries, dies, or enters the military. (4-7-11)
- e.** Title IV-E relative guardianship assistance benefits do not end upon the death or incapacitation of the relative legal guardian if the relative legal guardian identified a successor legal guardian in the child's Title IV-E Relative Guardianship Assistance Agreement and the successor legal guardian assumes legal responsibility for the child. (3-25-16)

06. Administrative Review for Guardianship Assistance. The prospective legal guardian has twenty-eight (28) days from the date of the Department's notification of the guardianship assistance determination, to request an administrative review. The determination will be reviewed by the FACS Division Administrator, and a decision will be rendered to either affirm, reverse, or modify, the decision. The Department will notify the individual, by mail, of the FACS Division Administrator's decision, of their right to appeal, and procedures for filing an appeal according to requirements in IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." ()

703. FEDERALLY-FUNDED GUARDIANSHIP ASSISTANCE ELIGIBILITY, REQUIREMENTS, AND BENEFITS.

In addition to Section 702 of these rules, the following requirements and benefits are applicable to a federally-funded guardianship assistance for an eligible child and a relative guardian. (4-7-11)

01. Eligibility. A child is eligible for a federally-funded guardianship if the Department determines the child meets the following: (4-7-11)

- a.** Is fourteen (14) years of age, or older, sometime during the consecutive six- (6) month residence with the prospective relative legal guardian as specified in Subsection 703.01.c. of this rule; (4-7-11)
- b.** Has been removed from their home under a voluntary placement agreement, or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child; (4-7-11)
- c.** Being returned home or adopted are not appropriate permanency options for the child; (4-7-11)
- d.** Has been eligible for Title IV-E foster care maintenance payments during at least six (6) consecutive months during which the child resided in the home of the prospective relative legal guardian who was licensed or approved as meeting the licensure requirements as a foster family home. While it is not required that Title IV-E foster care maintenance payments have been paid on behalf of the child during the six-month timeframe, it is required the child meet all Title IV-E foster care maintenance payment eligibility criteria in the home of the fully licensed or approved relative foster parent for a consecutive six- (6) month period to be eligible for Title IV-E guardianship assistance payment with that prospective relative legal guardian; (4-7-11)
- e.** Has been consulted regarding the legal guardianship arrangement; and (4-7-11)
- f.** Has demonstrated a strong attachment to the prospective relative legal guardian, and the relative legal guardian has a strong commitment to caring permanently for the child. (4-7-11)
- g.** When a successor legal guardian has been named in the child's most recent Title IV-E Relative Guardianship Assistance Agreement, the child remains eligible for guardianship assistance benefits upon the death or incapacitation of the relative legal guardian with any cash assistance paid to the successor legal guardian. (3-25-16)

02. Siblings of an Eligible Child. (4-7-11)

- a.** The Department may make guardianship assistance payments in accordance with a guardianship assistance agreement on behalf of each sibling of an eligible child, under the age of eighteen (18), who is placed with

the same relative under the same legal guardianship arrangement if the Department and the relative legal guardian agree that the placement is appropriate. (4-7-11)

b. Nonrecurring expenses associated with obtaining legal guardianship of the eligible child's siblings are available to the extent the total cost does not exceed two thousand dollars (\$2,000). (4-7-11)

c. The agency is not required to place siblings with the relative legal guardian of the child at the same time with the eligible child for the siblings to qualify for a cash payment. (4-7-11)

d. A sibling of the eligible child does not have to meet the eligibility criteria for the relative legal guardian to receive a guardianship assistance payment or for the relative legal guardian to receive nonrecurring expenses. (4-7-11)

03. Medicaid. A child who is eligible for federally-funded relative guardianship assistance is eligible for Title XIX Medicaid in the state where the child resides. (4-7-11)

04. Case Plan Requirements. A child who is eligible for federally-funded relative guardianship assistance must have a case plan that includes: (4-7-11)

a. How the child meets the eligibility requirements; (4-7-11)

b. Steps the agency has taken to determine that return to the home or adoption is not appropriate; (4-7-11)

c. The efforts the agency has made to discuss adoption with the child's relative foster parent and the reason why adoption is not an option; (4-7-11)

d. The efforts the agency has made to discuss the legal guardianship and the guardianship assistance with the child's parent or parents, or the reason the efforts were not made; (4-7-11)

e. The reason why a permanent placement with a prospective relative legal guardian and receipt of a guardianship assistance payment is in the child's best interests; and (4-7-11)

f. If the child is not placed with siblings, a statement as to why the child is separated from their siblings. (4-7-11)

05. Criminal History and Background Checks. To be eligible for a federally-funded guardianship assistance payment, all prospective legal guardians and other adult members of the household must receive a criminal history and background check clearance, according to the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." As a licensed foster parent, if the prospective relative legal guardian has already received a clearance, another check is not necessary. (4-7-11)

06. Nonrecurring Expenses. The Department will reimburse the cost, up to two thousand dollars (\$2,000), of nonrecurring expenses associated with obtaining a federally-funded legal guardianship for an eligible child. (4-7-11)

704. STATE-FUNDED GUARDIANSHIP ASSISTANCE ELIGIBILITY, REQUIREMENT, AND BENEFITS.

In addition to Section 702 of these rules, the following requirements and benefits are applicable to a state-funded guardianship assistance for an eligible child and their legal guardian. (4-7-11)

01. Eligibility for State-Funded Guardianship Assistance. A child is eligible for a state-funded guardianship assistance if the Department determines the child meets the following: (4-7-11)

a. Assistance is based on the child's identified needs; (4-7-11)

b. The child's parents have had their parental rights legally terminated; and (4-7-11)

c. There is documentation of unsuccessful efforts to place the child for adoption. (4-7-11)

02. Limitations on State-Funded Guardianship Assistance. State-funded guardianship assistance is subject to state appropriations and availability of state general funds. (4-7-11)

03. Medicaid Benefits Under State-Funded Guardianship Assistance. State-funded guardianship assistance may include Medicaid benefits for the child(ren) receiving payment. These Medicaid benefits may only be used in Idaho. If the legal guardian moves to another state, they will be required to apply for Medicaid for the child(ren) in the new state of residency. (4-7-11)

04. Nonrecurring Expenses. In cases where state-funded guardianship assistance is being considered, if the potential legal guardian is not able to afford the attorney and court costs to obtain legal guardianship of a child in the legal custody of the Department of Health and Welfare, financial assistance may be available from the Department. Financial assistance for legal fees may be provided regardless of the legal guardian's state of residence. (4-7-11)

705. -- 709. (RESERVED)

710. FAMILY HISTORY.

If the family case plan is termination of parental rights and adoption is considered a part of the total planning for the child, the following information will be obtained and placed in the child's permanent adoption record: (5-8-09)

01. Informational Forms. Informational background forms regarding the birth mother, birth father, and the child. (3-18-99)

02. Hospital Records. Hospital birth records on child. (3-18-99)

03. Evaluations/Assessments. Evaluations/Assessments previously completed on child. (3-18-99)

04. Current Picture. Current picture of child. (3-18-99)

05. Narrative Social History. Child and family's narrative social history that addresses: (5-8-09)

a. Family dynamics and history; (3-18-99)

b. Child's current functioning and behaviors; (3-18-99)

c. Interests, talents, abilities, strengths; (3-18-99)

d. Child's cultural and racial identity needs. The ability to meet the cultural and racial needs of the child does not necessitate a family have the same culture or race as the child; (3-18-99)

e. Life story, moves, reasons, key people; (3-18-99)

f. Child's attachments to current caretakers, siblings and significant others; i.e., special friends, teachers, etc.; (3-18-99)

g. Medical, developmental and educational needs; (3-18-99)

h. Child's history, past experiences, and previous trauma; (3-18-99)

i. Membership or eligibility for membership in, and social and cultural contacts with parent's tribe, if any, including names and addresses of extended family; (3-29-12)

j. Indian child's Indian ancestry; (3-29-12)

k. Individualized recommendations regarding each child's need for permanency; and (3-18-99)

- I. Reasons for requesting termination of parental rights. (3-18-99)

TERMINATION OF PARENT-CHILD RELATIONSHIP
(Sections 711 - 749)

711. DECISION AND APPROVAL PROCESS FOR TERMINATION OF PARENT AND CHILD RELATIONSHIP (TPR).

Any recommendation to the Child and Family Services Program Manager regarding the termination of parental rights will be based on the outcome of a team decision-making process and must receive written approval by the program manager before a petition may be filed. (5-8-09)

712. -- 713. (RESERVED)

714. VOLUNTARY TERMINATION.

The Department becomes involved in voluntary terminations when a parent(s) requests the Department to place their special needs child or children for adoption and when voluntary termination is a goal in the family case plan. Parent(s) requesting placement of a potentially healthy unborn or healthy newborn child should be referred to the licensed private adoption agencies in Idaho. (3-20-04)

715. VOLUNTARY CONSENT.

In obtaining a parent's consent to terminate their parental rights through the Department, a Consent to Terminate Parental Rights and Waiver of Rights to Hearing must be signed before the Magistrate Judge. Once a parent's consent has been given before the court, a corresponding petition under the Termination of Parent and Child Relationship Act will be filed by legal counsel representing the Department. (5-8-09)

716. VOLUNTARY TERMINATION OF PARENTAL RIGHTS TO AN INDIAN CHILD.

Consent to voluntary termination of parental rights by the parent(s) or Indian custodian(s) of an Indian child is not valid unless executed in writing and recorded before a court of competent jurisdiction, which may be a tribal court. The written consent must be accompanied by the presiding judge's certificate that: (5-8-09)

01. Explanation of Consent. The terms and consequences of the consent were fully explained in detail and were fully understood by the parent(s) or Indian custodian(s); and (5-3-03)

02. Interpretation If Necessary. The parent(s) or Indian custodian(s) fully understood the explanation in English or it was interpreted into a language the parent(s) or Indian custodian(s) understood. (5-3-03)

717. FILING OF PETITION FOR VOLUNTARY TERMINATION.

The petition for a voluntary termination of parental rights may be filed by an authorized agency, by the guardian(s) of the person or the legal custodian of the child or the person standing in loco parentis to the child, or by any other person having a legitimate interest in the matter. (5-3-03)

718. REPORT TO COURT -- VOLUNTARY TERMINATION.

If a voluntary consent to termination has been signed by the parent(s) before the Magistrate Court, an investigation or Report to the Court under the Termination Act is at the court's discretion. If the petition has been filed by the Department of Health and Welfare, Division of Family and Community Services, a report is required to accompany the petition, under Section 16-2008(2), Idaho Code. (5-8-09)

719. INVESTIGATION.

An investigation of the allegations in the petition and a report recommending disposition of the petition under the Termination of Parent and Child Relationship Act will be completed and submitted to the court within thirty (30) days, unless an extension of time is granted by the court. The purpose of this investigation is to verify the allegations through all available sources, including the petitioner, parent(s) and possibly the extended family of the child. The Report to the Court under the Termination of Parent and Child Relationship Act, is to serve as an aid to the court in determining a disposition that complies with the Indian Child Welfare Act where applicable, or that will be in the best interest of the child. If a petition is filed by a party other than the Department, the court may order such an

investigation by the Department. The law also allows completion of an investigation by an authorized agency or a certified adoption professional, prior to adjudication and disposition. If the Department is the petitioner, the report will accompany the petition. Reports submitted under the Termination of Parent and Child Relationship Act based on a parent's voluntary consent will include: (5-8-09)

01. Description of Investigation. The circumstances of the petition and the facts determined from the investigation; and (3-18-99)

02. Child-Related Factors. Child related factors, including: (3-18-99)

a. Child's current functioning and behaviors; (3-18-99)

b. Medical, educational and developmental needs of the child; (3-18-99)

c. Child's history and past experiences; (3-18-99)

d. Child's identity needs; (3-18-99)

e. Child's interests and talents; (3-18-99)

f. Child's attachments to current caretakers and any absent parent; (3-18-99)

g. Child's current living situation; (3-18-99)

h. Indian child's membership or eligibility for membership in tribe(s); (3-18-99)

i. Indian child's contacts with tribe(s); (3-18-99)

j. The present circumstances, history, condition and desire of the parent whose rights are being terminated regarding plans for the child; (3-18-99)

k. Such other facts as may be pertinent to the parent and child relationship and this particular case; i.e., compliance with Interstate Compact Placement on Children; and (3-18-99)

l. A recommendation and reasons as to whether or not the termination of the parent and child relationship should be granted. (3-18-99)

720. FILING OF A PETITION FOR INVOLUNTARY TERMINATION OF PARENT AND CHILD RELATIONSHIP.

Unless there are compelling reasons it would not be in the interest of the child, the Department is required to file a Petition to Terminate the Parent and Child Relationship within sixty (60) days of a judicial determination that one (1) or more of the following has occurred: (5-8-09)

01. Abandonment. An infant has been abandoned; (3-30-01)

02. Reasonable Efforts to Reunify the Family Are Not Required. That reasonable efforts, as defined in Section 16-1610(2)(i)(iii), Idaho Code, are not required because the court determines the parent(s) has subjected a child or children to aggravated circumstances. (5-3-03)

721. REPORT TO THE COURT -- INVOLUNTARY TERMINATION.

If a petition for an involuntary termination of parental rights has been brought before the Magistrate Court, an investigation or report to the court under the Termination Act is required. If the petition has been filed by the Department, a report is required under Section 16-2008(2), Idaho Code. Reports submitted under the Termination Act based on an involuntary termination of parental rights must include: (5-8-09)

01. Allegations. The allegations contained in the petition. (3-30-01)

- 02. Investigation.** The process of the assessment and investigation. (3-30-01)
- 03. Family Circumstances.** The present condition of the child and parent(s), especially the circumstances of the parent(s) whose rights are being terminated and contact with the parent(s) of a minor parent, unless lack of contact is explained. (5-3-03)
- 04. Medical Information.** The information forms regarding the child, birth mother, and birth father will be submitted with the Report to the Court. Reasonably known or available medical and genetic information regarding both birth parents and source of such information, as well as reasonably known or available providers of medical care and services to the birth parents. (5-8-09)
- 05. Efforts to Maintain Family.** Other facts that pertain to the parent and child relationship including what reasonable efforts have been made to keep the child with the family, or what active efforts to prevent the breakup of the Indian family have been made. (3-29-12)
- 06. Absent Parent.** Reasonable efforts made by the petitioner to locate an absent parent(s) and provision of notification to an unmarried father of the paternity registry requirement under Section 16-1513, Idaho Code. (5-8-09)
- 07. Planning.** Proposed plans for the child consistent with: (3-30-01)
- a.** The Indian Child Welfare Act, including potential for placement with the Indian child's extended family, other members of the Indian child's tribe, or other Indian families; and (3-30-01)
- b.** The Adoption and Safe Families Act of 1997, which prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family, and requires individualized documentation regarding the child's needs in permanent placement. (4-7-11)
- 08. Compliance with the Indian Child Welfare Act.** Documentation of compliance with the Indian Child Welfare Act, including identification of whether the child is Indian and if so: (3-30-01)
- a.** Notification of the pending proceedings to the parent(s) or Indian custodian(s) and the Indian child's tribe, or to the Secretary of the Interior if their identity or location is unknown according to Section 051 of these rules; (3-29-12)
- b.** Notification of the right of the parent(s) or Indian custodian(s), and the Indian child's tribe, to intervene in the proceeding and their right to be granted up to twenty (20) additional days to prepare for the proceeding; (5-3-03)
- c.** Notification that if the court determines indigency, the parent(s) or Indian custodian(s) have the right to court-appointed counsel; (5-8-09)
- d.** Evidence, including identity and qualifications of expert witnesses, that continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child; (5-3-03)
- 09. Termination of Parent-Child Relationship.** (3-29-12)
- a.** A recommendation and the reasons whether or not termination of the parent and child relationship is in the best interest of the child; and (3-29-12)
- b.** Upon the court's written decision to terminate parental rights, two certified copies of the "Findings of Fact, Conclusions of Law and Decree" are to be placed in the child's permanent record. (3-29-12)
- 722. -- 749. (RESERVED)**

BECOMING AN ADOPTIVE PARENT
(Sections 750 - 850)

750. APPLICATION TO BE ADOPTIVE PARENT(S).

Each field office is responsible for compiling the names and addresses of adoptive applicant(s), along with the dates of inquiry and membership in an Indian tribe, if any. A database or register must be maintained in order to assure the orderly completion of home studies. (5-8-09)

01. Initial Application. Each adoptive applicant must: (3-21-12)

a. Cooperate with and allow the Department, or certified adoption professional, to determine compliance with these rules to conduct an adoption home study; (3-21-12)

b. Inform the Department, or certified adoption professional, if the applicant has previously applied to become a foster or adoptive parent, is currently licensed as a foster parent, or has been involved in the care and supervision of children or adults; (3-21-12)

c. Provide a medical statement for each applicant, signed by a qualified medical professional, within the twelve (12) months period prior to application for adoption, indicating the applicant is in such physical and mental health so as to not adversely affect either the health or quality of care of the adopted child; (3-21-12)

d. Provide the name of, and a signed release to obtain the following information about, each member of the household: (3-21-12)

i. Admission to, or release from, a facility, hospital, or institution for the treatment of an emotional, intellectual, or substance abuse issue; (3-21-12)

ii. Outpatient counseling, treatment, or therapy for an emotional, intellectual, or substance abuse issue. (3-21-12)

e. Provide three (3) satisfactory references, one (1) of which may be from a person related to the applicant. Each applicant must provide additional references upon the request of the Department or certified adoption professional; (3-21-12)

f. All applicants for adoption and other adult members of the household must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks" and IDAPA 16.06.02, "Child Care Licensing," Section 404. ()

02. Psychological Evaluation. An evaluation by a psychologist or a psychiatrist can be required by the family services worker or certified adoption professional when an applicant has received or is currently receiving treatment for psychological problems or mental illness or when the family services worker, or certified adoption professional, in consultation with their supervisor, determines that there appear to be emotional problems in the family that merit further evaluation. (3-21-12)

03. Orientation of Potential Applicants. Initial meetings with groups of applicants, or with individual families, must be scheduled promptly by the Department or the certified adoption professional, whichever received the inquiry and initial application from the family. These initial meetings must be used to explain policies and procedures regarding adoptive placement, the kinds of children available, and the nature of the home study. (3-21-12)

04. Denial of Application. Following an initial interview, an applicant who does not appear to meet the Department's requirements at the time of initial application may be denied a full home study. The family will be advised why they were ineligible for a full home study and notice provided to the applicant of their right to appeal this decision. Upon resolution of the factors leading to the denial, the applicant may again file an application and receive a home study. (3-21-12)

05. Application for Subsequent Adoptions. Following the finalization of an adoption, a family may

apply to be considered for another placement. (3-21-12)

a. Adoptive parents who have experienced a successful adoption and wish to reapply must complete an adoption application and financial statement, complete a Criminal History and Background Check, and submit medical reports and three (3) personal references. One (1) reference may be from a person related to the applicant. When requested by the Department, an applicant must provide additional references. (3-21-12)

b. The prospective adoptive family will assist in amending the original adoption study to include information concerning the acceptance and adjustment of the child previously placed in the home and their request for another placement. (3-21-12)

c. Prospective adoptive parent(s) applying for subsequent adoption with an agency with whom they have maintained a foster care license since their previous adoption may have the requirement for a new Criminal History and Background Check, medical reports and personal references waived by the agency. (3-21-12)

751. -- 761. (RESERVED)

762. COMPLETING THE ADOPTION HOME STUDY.

Upon application by a potential adoptive family, the family services worker or certified adoption professional will conduct the pre-placement adoptive home study and issue a recommendation. The home study must be completed prior to placement of any child for adoption in that home. (3-21-12)

01. Interviews. Family assessment interviews as well as individual interviews must be held with the prospective adoptive parent(s). (3-20-04)

02. Content. Adoption home studies for foster care, special needs, independent, relative, and step-parent adoptions must include an assessment of the following: (3-21-12)

a. Names, including maiden or other names used by the applicant(s); (3-21-12)

b. Legal verification that the person(s) adopting is at least fifteen (15) years older than the child, or twenty-five (25) years of age or older, except in cases where the adopting person is a spouse of the child's parent, must be accomplished by: (3-21-12)

i. Viewing a certified copy of the birth certificate filed with the Bureau of Vital Statistics; or (3-21-12)

ii. Viewing one (1) of the following documents for which a birth certificate was presumably required prior to its issuance, such as: armed services or other governmental identification, including a valid Idaho driver's license, passport, visa, alien identification cards, or naturalization papers. (3-21-12)

iii. If verifying documentation is not available, the report must indicate the date and place of birth and reason for lack of verification. (3-21-12)

c. Verification that the family has resided and maintained a dwelling within the State of Idaho for at least six (6) consecutive months prior to the filing of the petition; (3-21-12)

d. Adequacy of the family's house, property, and neighborhood for the purpose of providing adoptive care as determined by on-site observations; (3-21-12)

e. Educational background of the applicant(s); (3-21-12)

f. A statement of employment, family income, and financial resources, including access to health and life insurance and the family's management of these resources; (3-21-12)

g. Current and historical mental illness, drug or alcohol abuse, and medical conditions and how they may impact the adoptive parent(s) ability to care for an adopted child; (3-21-12)

- h.** Previous criminal convictions and history of child abuse and neglect; (3-21-12)
- i.** Family history, including childhood experience and the applicant(s) parents' methods of discipline and problem-solving; (3-21-12)
- j.** Verification of marriages and divorces; (3-21-12)
- k.** Decision-making, communication, and roles within the marital relationship, if applicable; (3-21-12)
- l.** The names, ages, and addresses of all biological and adopted children currently residing inside or outside the home. Information regarding the current adjustment and special needs of the applicant(s) children; (3-21-12)
- m.** The religious and cultural practices of the family, including their ability to nurture and validate a child's particular cultural, racial, religious, and ethnic background; (3-21-12)
- n.** For an Indian child, the study will also determine the prevailing social and cultural standards of the Indian community in which the parent(s) or extended family resides or maintains social and cultural ties. (3-21-12)
- o.** Individual and family functioning including inter-relationships with each member of the household and the family's ability to help a child integrate into the family; (3-21-12)
- p.** Activities, interests, and hobbies; (3-21-12)
- q.** Child care and parenting skills, including historical and current methods of discipline used in the home; (3-21-12)
- r.** Reasons for applying for adoption; (3-21-12)
- s.** The family's prior and current experiences with adoption, understanding of adoption, and ability to form relationships and bond with a specific child or general description of children; (3-21-12)
- t.** The attitudes toward adoption by immediate and extended members of the family and other persons who reside in the home; (3-21-12)
- u.** Specifications of the child preferred by the family that include the number of children, age, gender, race, ethnic background, social, emotional, and educational characteristics. The family's ability to accept the behavior and personality of a specific child (if known) or general description of children and their ability to meet the child's particular educational, developmental, and psychological needs; (3-21-12)
- v.** Emotional stability and maturity in dealing with the needs, challenges, and related issues associated with the placement of a child into the applicant(s) home; (3-21-12)
- w.** The family's attitude about an adopted child's birth family including: (3-21-12)

 - i.** Their ability to accept a child's background and help the child cope with their past; and (3-21-12)
 - ii.** Their willingness to work with the child's family or tribe; (3-21-12)
- x.** Training needs of the applicant(s); and (3-21-12)
- y.** A recommendation regarding the family's ability to provide adoptive care to a specific child (if known) or general description of children. (3-21-12)

763. PRE-ADOPTIVE PARENT RESPONSIBILITIES.

The pre-adoptive parent is responsible to keep the agency or Certified Adoption Professional that completed the

home study informed of any changes in the family's circumstances, or of any subsequent decision against adoption. (3-21-12)

764. ADOPTIVE HOME STUDY.

An adoption home study is valid for the purposes of new adoptive placement for a period of one (1) year following the date of completion. Upon completion of an adoptive placement agreement, an adoption home study remains valid for a period of two (2) years from the date of completion for the purpose of finalizing the adoption of the child(ren) for whom the adoptive placement agreement was written. (3-21-12)

765. -- 769. (RESERVED)

770. CLOSURE OF ADOPTIVE HOME STUDIES.

Upon pre-adoptive placement of a child or children in the home of a pre-adoptive parent, the parent's adoption home study closes for the placement of an additional child or children for the purpose of adoption until a home study update is completed. (3-21-12)

771. HOME STUDY UPDATE.

An adoptive home study must be updated on an annual basis. A current home study is defined as a home study completed within the previous twelve (12) months. Home study updates must include the following: (3-21-12)

01. Initial Adoption Home Study and Subsequent Home Study Updates. All Changes to the Information Contained in the Initial Adoption Home Study and Subsequent Home Study Updates. (3-21-12)

02. Family Functioning and Inter-Relationships. All Information on any Changes in Family Functioning and Inter-Relationships. (3-21-12)

03. Circumstances Adversely Impacting Child Placed for Adoption. Any Information Regarding Circumstances Within the Family that may Adversely Impact a Child Placed for Adoption. (3-21-12)

04. A Home Study Update Completed for the Purpose of Adoptive Placement of an Additional Child or Children in the Home. A home study update completed for the purpose of adoptive placement of an additional child or children in the home where a child or children are already placed for adoption and that adoption has not yet finalized must include agreement for the placement of the additional child or children by the individual or agency responsible for the placement of the initial child or children, and the individual or agency responsible for the additional child or children. (3-21-12)

772. -- 789. (RESERVED)

790. FOSTER PARENT ADOPTIONS.

The procedure and requirements are the same for all adoptive applicants. This includes foster parents who want to be considered as adoptive parents for a child who has a plan of adoption. These requirements include compliance with the Indian Child Welfare Act, the Multi-Ethnic Placement Act of 1994 and the Interethnic Adoption Provisions of 1996. (3-30-01)

791. -- 799. (RESERVED)

800. PLACEMENT OF THE CHILD.

Adoptive placement of a child in the custody or guardianship of the Department will be determined as follows: (3-21-12)

01. Factors to be Considered in Determining Suitability of Adoptive Placements. (3-21-12)

a. For an Indian child, absent good cause to the contrary, the following preferences for placement under the Indian Child Welfare Act must be followed: (3-21-12)

i. Extended family; (3-21-12)

- ii. Other members of the child’s tribe; or (3-21-12)
- iii. Other Indian families. (3-21-12)
- b. The primary factor in the review of a prospective adoptive family’s eligibility is the ability to protect and promote the best interests of a child to be placed in their home. (3-21-12)
- c. The Department will not delay or deny the placement of a child with an approved family that is located outside of the jurisdiction responsible for the care and planning for the child. (3-21-12)

02. Selection of Adoptive Placement. The adoptive placement of a child in the custody or legal guardianship of the Department will be selected using a committee process of no less than three (3) individuals and be approved by a field program manager as described by the practice standards of the Department. (3-21-12)

03. Disclosure. The field office must provide full confidential background information and discuss the child’s history fully with the prospective adoptive parent(s) prior to the placement. The disclosure of background information must be confirmed at the time of placement by a written statement from the family services worker to the prospective adoptive family, which they will be asked to acknowledge and sign. A copy of this statement must be provided to the adoptive family and one (1) copy will be kept in the child’s permanent record. (3-21-12)

801. -- 829. (RESERVED)

830. ADOPTION APPLICATION FEE.

The adoption application fee covers the costs of processing the adoption application and does not guarantee that the applicant family will receive a child for adoption. The application fee is non-refundable. Money collected through the Department’s adoption program may be utilized to pay state adoption assistance payments for children with special needs and pay the service fees, recruitment costs, and placement fees for private agencies serving children who have special needs. (3-30-07)

831. HOME STUDY, SUPERVISORY REPORTS, AND REPORTS OF THE COURT FEES.

A family who cares for a child, or children, with special needs who is in the custody of the Department is not required to pay the costs of the Department adoption services identified in Section 832 of these rules for the adoption of that child, or children. A relative or kin family being considered by the Department for adoption of a child from foster care who is their relative or kin, is not required to pay the costs referenced in Section 832 of these rules. If a family who did not pay the fee uses that home study to pursue adoption of a child not in the Department’s custody, the family must pay the Department for the full cost of the study and any other applicable fees identified in Section 832 of these rules. (3-29-10)

832. FEE SCHEDULE - ADOPTIONS THROUGH DEPARTMENT.

TABLE 832	
Service	Fee
General Information/Adoption Inquiries	No Charge
Health and Welfare Application:	
Couple	\$50
Single Parent	\$25
Second Placement or Reapplication	\$25
Pre-placement Home Study - Payment due at time of study or per agreement	\$450
Report to Court under the Adoption Act	\$150
Second Placement	\$150
Placement Supervision Fee - Charged at the time of placement	\$300

TABLE 832	
Service	Fee
Closed Adoption Home Study/Court Report Retrieval Fee	\$50
Report to the Court Under the Termination Act	\$40 per hour

(3-30-07)

833. PLACEMENT SUPERVISION -- TRANSFER FROM OUT OF STATE PRIVATE AGENCY.

When a prospective adoptive parent(s) moves to Idaho, with a child who has been placed with them by a private agency in their former state of residency, the sending state agency must arrange through the Interstate Compact on the Placement of Children, services through one of Idaho's private, licensed adoption agencies, or a certified adoption professional. (5-8-09)

834. -- 849. (RESERVED)

850. INDEPENDENT, RELATIVE AND STEPPARENT ADOPTIONS.

Independent adoptive placements are handled under Section 16-1506, Idaho Code. (5-8-09)

851. -- 859. (RESERVED)

THE ADOPTIVE PLACEMENT
(Sections 860 - 888)

860. PROCEDURES FOLLOWING THE ADOPTIVE PLACEMENT.

Following the adoptive placement, a period of support and supervision by the Department lasting at least six (6) months must be completed prior to the finalization of the adoption. In situations where a foster family has a significant relationship with a child and the child has been placed in their home for at least the last six (6) months, the supervisory period may be reduced to a minimum of three (3) months. The family services worker will make scheduled visits to the home at least monthly during this period to assist the child and the family in their adjustment to each other and will update the child's permanent record by means of monthly progress reports. When completion of the adoption is recommended by the field office and approved by the Permanency Program Specialist, the Department will request the prospective adoptive parent(s) contact their attorney. The regional family services worker will provide the attorney with the necessary documentation to file the petition for adoption. (3-30-07)

861. PROGRESS REPORTS.

Progress reports will be prepared regularly and will be based on the family services worker's or certified adoption professional's findings. (3-21-12)

01. Initial and Subsequent Reports. Progress reports must be made at intervals not to exceed thirty (30) days. These reports will include the family services worker's or certified adoption professional's observation of each child and the prospective adopting parent(s), with emphasis on: (3-21-12)

- a.** Special needs, special circumstances, or both, of each child at time of placement; (3-29-10)
- b.** Services provided to each child and the family during the report period; (3-29-10)
- c.** Services to be provided to each child and the family; (3-29-10)
- d.** General appearance and adjustment of each child during the report period (may include eating, sleep patterns, responsiveness, bonding); (3-29-10)
- e.** Adjustment of each child to all of the following that apply: school, daycare, and day treatment program; (3-29-10)

- f. Health and developmental progress, and medical practitioner information for each child; (3-29-10)
 - g. Whether each child has been accepted for coverage on the family's medical insurance, when coverage begins, and whether there will be any limitations, exclusions, or both; (3-29-10)
 - h. Family's adjustment to adoptive placement; (3-18-99)
 - i. Adoption assistance negotiation; (3-29-10)
 - j. Changes in family situation or circumstances; (3-18-99)
 - k. Areas of concern during the report period as addressed by each child and the adoptive parent(s); (3-29-10)
- and
- l. The date of the next required six (6) month review or twelve (12) month permanency hearing. (3-29-10)

02. Monthly Foster Care Payments -- Pre-Adoptive Placement. To receive Title IV-E monthly foster care payments during the period pending completion of adoption, the prospective adoptive parent(s) must have a foster care license. (3-20-04)

862. PETITION TO ADOPT UNDER THE ADOPTION OF CHILDREN ACT.

01. Filing a Petition. When the family and the child who was placed for adoption in that home are ready to finalize the adoption, the family's attorney files a petition to adopt with the court. A copy of that petition is served upon the director of the Department. Upon receipt of a copy of the petition to adopt, the family services worker, licensed children's adoption agency worker or certified adoption professional verifies the allegations set forth in the petition and make a thorough investigation of the matter and report the findings in writing to the court within thirty (30) days. (5-8-09)

02. Registration and Acknowledgment. Upon receipt of the petition to adopt, the field office registers the petition and acknowledge receipt to the court and to the petitioner(s) or private adoption agency. If the licensed adoption agency or certified adoption professional who completed the pre-placement home study is not identified, the information should be obtained from the petitioner(s)' attorney. The register will indicate the date the petition was received, the date the study is due in court, the date the completed study was sent to the court, whether an Indian child is involved, and other pertinent data. (5-8-09)

863. INVESTIGATION OF PETITION TO ADOPT AND REPORT TO THE COURT.

According to Section 16-1506, Idaho Code, an investigation regarding the allegations stated in the petition and subsequent written report of findings must be filed with the court unless the investigation is waived by order of the court. The prospective adoptive family's pre-placement home study will be filed at the same time as the written report of investigation. If the family services worker, licensed child placing agency staff, or certified adoption professional is unable to complete the study within thirty (30) days, an extension of time must be requested in writing of the court, stating the reasons for the request. If the worker has reason to believe that the child may be an Indian child and the child's tribe or the Secretary of the Interior has not received written Notice of Pending Proceedings, the worker must inform the court and the petitioner's attorney and the independent agency of the need to comply with the Indian Child Welfare Act. This adoption report to the court must address the following: (3-21-12)

01. Legal Availability of the Child. It is the responsibility of the petitioners, through their attorney, to present documentary evidence to the court so the judge can examine it and be satisfied that the identity, birthdate, and parentage of the child are as represented in the petition. The family services worker or certified adoption professional will interview the family and any other person(s) having knowledge in the matter, review all documentary evidence presented by the petitioner(s), record the information and source of the information, noting any discrepancies. Such documentary evidence must include the following: (3-21-12)

- a. The birth certificate of the child; (3-20-04)

b. The consent(s) of the child's parent(s) to terminate their parental rights, termination decrees for any parent(s) whose parental rights have been terminated involuntarily by the court, and documentation of marriage and divorce; (3-20-04)

c. If the child is an Indian child, a copy of the Notice of Pending Proceedings for Termination of Parental Rights, and the return receipts showing that the notice was received by the Indian child's parent(s) or Indian custodian(s), and the child's tribe; (3-21-12)

d. Consent to adoption has been secured for all persons from whom it is required, including a legal guardian(s), to make the child legally available for adoption; (3-21-12)

e. The death certificate of a deceased parent; (3-20-04)

f. Verification from the Bureau of Vital Statistics of the registry of any putative father; and (3-20-04)

g. The Interstate Compact on the Placement of Children Form 100-A, for a child born outside of the state of Idaho, to determine if required state authorizations have been given, or if the Compact does not apply. (3-20-04)

02. Needs of the Child. The report to the court must address the needs of the child, including but: (5-8-09)

a. The history of the child and the child's birth family; (3-18-99)

b. The family history for a child who has been previously adopted, should include information about the child's previous adoptive family and the circumstances of the disruption; (3-20-04)

c. A detailed description of the circumstances that brought about the placement with the prospective adoptive family; (3-20-04)

d. The state of Idaho Social, Medical, and Genetic History forms must be completed and submitted to the court, showing reasonably known or available medical and genetic information regarding both birth parents and the child, as well as reasonably known or available providers of medical care and services to birth parents and child; and (5-8-09)

e. The appropriateness of the prospective adoptive family for the particular child or children who are the subject of the petition. (3-20-04)

03. Degree of Relationship of the Child to Petitioners. In those cases where the court has ordered an investigation of petitions to adopt by relatives or step parents, the study must record such alleged relationship and specify the documentary evidence the petitioners have of that relationship. (5-8-09)

04. Evaluation and Recommendation. The family services worker or certified adoption professional must provide a brief summary of data presented in prior sections and the pre-placement home study, supporting the recommendation regarding the adoption. (3-21-12)

05. Medical Information. A copy of medical and genetic information compiled in the investigation must be made available to the prospective adoptive family by the family services worker or certified adoption professional prior to the final order of adoption. (5-8-09)

06. Confidentiality of Information. The family services worker must exercise caution in discussing identifying information and avoid revealing that information in the petition while attempting to secure the necessary facts for the study. (5-8-09)

07. Financial Accounting. A financial accounting must be approved by the court of any financial assistance given to the birth parent(s) that exceeds five hundred dollars (\$500), in accordance with Section 18-1511, Idaho Code. (5-8-09)

864. -- 869. (RESERVED)

870. REMOVAL OF A CHILD FROM A PROSPECTIVE ADOPTIVE HOME.

Despite careful assessment of the child and the family prior to placement, circumstances may arise that make it necessary to remove the child from the prospective adoptive home prior to adoption. The child may manifest problems the family is unable to accept or to handle constructively; or changed circumstances may develop that make it inadvisable for the placement to continue. The final decision to remove a child from a prospective adoptive home will be made by the Department as the legal guardian of the child. (5-8-09)

871. TEMPORARY REPLACEMENT AFTER DISRUPTION.

When a disruption occurs and it becomes necessary to remove a child from a prospective adoptive home, the field office where the child has been placed is responsible for finding a temporary arrangement for the child until another permanent placement can be arranged. In the case of the adoption of an Indian child, the consent of the parent(s) may be withdrawn for any reason at any time prior to the entry of a final decree of adoption, and the child returned to the parent(s). (5-8-09)

872. -- 880. (RESERVED)

881. CLOSURE OF CASE.

The family services worker must request from the adopting parent(s)' attorney, a certified copy of the final order of adoption, and a copy of the family service worker's executed consent to adoption taken at the time of the adoption finalization. These documents are necessary to close the adoption file and initiate the child's adoption assistance benefits. (5-8-09)

882. RECORDS OF PLACEMENT.

Upon finalization of the adoption, the complete record from the local field office, regarding the child and family will be requested by the State Adoption Program Specialist for permanent storage. Records of adoption involving Indian children must be forwarded by the State Adoption Program Specialist to the Secretary of the Interior. (5-8-09)

883. POST-LEGAL ADOPTION SERVICES.

Upon finalization of the adoption, the Department can offer post-legal adoption services upon request, including case management services, referrals for counseling or other supportive services. (5-8-09)

884. OPENING SEALED RECORDS OF ADOPTIONS.

In addition to the exceptions noted in Section 16-1511, Idaho Code, a sealed adoption proceedings may be opened in the following circumstances according to the Indian Child Welfare Act: (3-20-04)

01. Motion of an Indian Individual. Upon motion of an Indian individual who has reached the age of eighteen (18) and was the subject of an adoption, the court must provide tribal affiliation, if any, of the individual's biological parent(s) and other information necessary to protect any rights flowing from the individual's tribal relationship. (5-8-09)

02. Request From the Secretary of the Interior or the Indian Child's Tribe. Upon request of the Secretary of the Interior or the Indian child's tribe, evidence of efforts to comply with the Indian Child Welfare Act must be made available to the parties requesting such information. (5-8-09)

885. -- 888. (RESERVED)

CERTIFIED ADOPTION PROFESSIONAL
(Sections 889 - 899)

889. CERTIFIED ADOPTION PROFESSIONAL REQUIREMENTS.

An applicant requesting to become a Certified Adoption Professional must meet the following criteria: (3-20-04)

01. College Degree. A minimum of a bachelor's degree in a field deemed related to adoptions by the

Department's Child and Family Services Program, such as social work, psychology, family counseling or other related behavioral science; (5-8-09)

02. Adoption Training. Must have completed a minimum of twenty (20) hours of training in adoption services within the last four (4) years; (3-21-12)

03. Department Criminal History and Background Clearance. Must complete a Department criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks," and receive a clearance; (5-8-09)

04. License. A current license to practice social work in the state of Idaho; (3-21-12)

05. Experience. A minimum of two (2) years experience as a paid full-time employee providing adoption services with a licensed private or public children's agency; (3-21-12)

06. References. Three (3) satisfactory references, one (1) of which must be from a previous employer for whom the applicant worked providing adoption services; (3-21-12)

07. Insurance. Verification of malpractice insurance that will provide coverage for the applicant's work as a certified adoption professional; and (3-21-12)

08. Application Fee. An application fee of one hundred dollars (\$100) to be reimbursed, less a twenty-five dollar (\$25) processing fee, in the event the application is denied. (3-21-12)

890. TERMS OF CERTIFICATION FOR ADOPTION PROFESSIONALS.

01. Certification. Certification for adoption professionals will be completed through the Division of Family and Community Services and will be effective for a period of two (2) years. (3-21-12)

02. Types of Certification. Certified adoption professionals may be certified for any, some, or all of the following services: (3-21-12)

a. Adoption home studies for families seeking domestic infant adoption. (3-21-12)

b. Adoption home studies for families seeking domestic special needs adoption. (3-21-12)

c. Adoption home studies for families seeking step-parent or relative adoption. (3-21-12)

d. Court ordered investigations for termination of parental rights for domestic private or independent adoptions. (3-21-12)

e. Court reports for domestic private or independent adoptions. (3-21-12)

f. Supervision of adoptive placements for domestic private or independent adoptions. (3-21-12)

03. Limits of Certification. Certified adoption professionals may not provide the following services: (3-21-12)

a. Birth parent education or counseling. (3-21-12)

b. Services related to international adoption. (3-21-12)

04. Recertification. Certified adoption professionals must apply for renewal of their certificate every two (2) years and must provide the following: (3-21-12)

a. Documentation of ten (10) hours of adoption training taken during the previous two (2) years; (3-21-12)

- b.** Verification of malpractice insurance; (3-21-12)
- c.** A satisfactory recommendation from the Division of Family and Community Services designee responsible for the review of the certified adoption professional's work; (3-21-12)
- d.** Satisfactory recommendations from a minimum of two (2) families for whom the certified adoption professional has provided adoption services during the previous two (2) years; and (3-21-12)
- e.** A certification fee of one hundred dollars (\$100) to be reimbursed, less a twenty-five dollar (\$25) processing fee, in the event the recertification is denied. (3-21-12)

05. Lapse of Certification. If a certified adoption professional does not apply for recertification within two (2) years in accordance with Subsection 890.04 of this rule, this will result in a lapse of certification. Any lapse in certification will require completion of a new certified adoption professional application, documentation of ten (10) hours of adoption training during the two (2) years previous to this new application, and a new criminal history and background check. (3-21-12)

a. If the individual applying for certification has received a Department criminal history and background check clearance within three (3) years of the date of this application and has not lived outside the state of Idaho since their last criminal history and background check, all of the following must be conducted and no disqualifying crimes or appearance on a registry found: (5-8-09)

- i.** A name-based background check by the Idaho State Police; (5-8-09)
- ii.** A check of the Idaho Child Protection Central Registry; (5-8-09)
- iii.** A check of the Idaho Adult Protection Registry; and (5-8-09)
- iv.** A check of the Idaho Sexual Offender Registry. (5-8-09)

b. If the individual has lived outside the state of Idaho for any amount of time during the three (3) years since the previous Department criminal history and background check clearance was completed, they must get a new Department criminal history and background check clearance. (5-8-09)

06. Denial of Recertification. The Department may choose not to recertify a certified adoption professional. Notification of denial will be made by the Department by certified mail. The notice will state the specific grounds for denial of recertification. This decision may be appealed within twenty-eight (28) days of receipt of notification under the provisions in IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." Grounds for denial of recertification are one (1) or more of the following: ()

- a.** Substandard quality of work following the development of a quality improvement plan; (3-30-01)
- b.** Failure to gain ten (10) additional hours of adoption continuing education required for recertification; or (3-21-12)
- c.** A demonstrated pattern of negligence or incompetence in performing the duties of a certified adoption professional. (3-20-04)
- d.** Failure to maintain malpractice insurance; (3-21-12)
- e.** Failure to maintain a license to practice social work in the state of Idaho. This requirement does not apply to a certified adoption professional who has maintained their initial certification that occurred prior to July 1, 2012. (3-21-12)

07. Decertification. A certified adoption professional can be decertified by the Department at any time during a two (2) year period of certification. Notification of decertification will be made by the Department by

certified mail. The notice will state the specific grounds for decertification. This decision may be appealed within twenty-eight (28) days of receipt of notification under the provisions in IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." Grounds for decertification are one (1) or more of the following: ()

- a. Conviction for a felony; (3-30-01)
- b. Negligence in carrying out the duties of a certified adoption professional; (3-20-04)
- c. Misrepresentation of facts regarding their qualifications or the qualifications of a prospective adoptive family to adopt, or both; (3-21-12)
- d. Failure to obtain Departmental review and approval of pre-placement homestudies and court reports or placement supervision reports, or both, on more than one (1) occasion; (3-21-12)
- e. Failure to maintain malpractice insurance; (3-21-12)
- f. Suspension or loss of a license to practice social work in Idaho; or (3-21-12)
- g. Practice as a certified adoption professional outside the scope of the certification. (3-21-12)

891. CERTIFIED ADOPTION PROFESSIONAL'S CLIENT RELATIONSHIP.

A certified adoption professional may not assume a legal relationship with any child for whom they have been contracted to perform services and may not provide services for anyone with whom they have had a personal or professional relationship during the previous two (2) years. (3-21-12)

892. MINIMUM STANDARDS FOR SERVICE.

A certified adoption professional must meet the following service requirements: (3-21-12)

01. Description of Services Available. A written description of services will be provided to families by the certified adoption professional before any work is completed. The description of services must include information regarding Department oversight of the certified adoption professional and any limitations related to the use of the completed home study; (3-21-12)

02. Education. Provision of, or referral to, educational resources to adoptive applicants requesting non-relative adoption; (3-21-12)

03. Content. Standards for pre-placement home studies, home study updates, court reports, and supervisory reports must, at a minimum, meet the standards for adoption services established by the Department in these rules; (3-21-12)

04. Release of Information. A written release of information that gives consent to the exchange of information between the certified adoption professional and Child and Family Services must be obtained from a family that receives services from a certified adoption professional; and (3-21-12)

05. Disclosure of Non-Identifying Information. When providing adoption supervision or adoption finalization court report services, the certified adoption professional must provide disclosure of all known non-identifying information about the child, the child's birth parents, and the circumstances leading to the decision to place the child for adoption. (3-21-12)

893. RECORDS OF THE CERTIFIED ADOPTION PROFESSIONAL.

Records of the pre-placement home studies, court reports, and supervisory reports provided by the certified adoption professional must be made available to the Division of Family and Community Services designee two (2) weeks prior to the required court filing date. The designee will be responsible for monitoring of quality of the services provided. (3-21-12)

894. FEES CHARGED BY THE DEPARTMENT.

Monitoring fees will accompany the submission of each report and be paid directly to the Department through the Division of Family and Community Services as follows:

Table 894 - Qualified Individuals	
Home Study or Court Report	\$50
Supervision Report or Home Study Update	\$30

(3-21-12)

895. DEPARTMENT RESPONSIBILITY TO CERTIFIED ADOPTION PROFESSIONAL.

The Division of Family and Community Services is responsible for: (3-21-12)

- a. Reviewing and responding to submitted reports within five (5) business days; (3-21-12)
- b. Initiation of corrective action plans when the documentation of a certified adoption professional is determined to be incorrect or substandard; and (3-21-12)
- c. Dissemination of information to certified adoption professionals that may impact provided services. (3-21-12)

896. -- 899. (RESERVED)

ADOPTION ASSISTANCE
(Sections 900 - 999)

900. ADOPTION ASSISTANCE.

The purpose of the adoption assistance program is to encourage the legal adoption of children with special needs who would not be able to have the security of a permanent home without support payments. Applications are made through the Division of Family and Community Services, Resource Development Unit for a determination of eligibility. Once an application for adoption assistance is submitted to the Division of Family and Community Services, the Division will respond with a determination of the child's eligibility within forty-five (45) days. (3-30-07)

01. Determination of Eligibility for Title IV-E Adoption Assistance. Child and Family Services will determine whether a child is a child with special needs. Children applying for adoption assistance benefits must meet Idaho's definition of a child with special needs according to Section 473 (c) of P.L. 96-272 (The Adoption Assistance and Child Welfare Act of 1980). There are five (5) ways a child can be eligible for Title IV-E adoption assistance: (5-8-09)

- a. Child is Aid to Families with Dependent Children (AFDC) eligible, is in the custody or care of the public child welfare agency or an Indian tribe with whom the state has a IV-E agreement and meets the definition of a child with special needs. For children whose adoption assistance eligibility is based on the child's AFDC eligibility, the child must meet the AFDC criteria at the time of removal from their home. (5-8-09)
 - i. If the child is removed from their home in accordance with the first judicial determination, such determination must indicate that it was contrary to the welfare of the child to remain in the home. (5-8-09)
 - ii. If the child is removed from the home in accordance with a voluntary out-of-home placement agreement, the child must receive at least one (1) Title IV-E foster care payment to be eligible for Title IV-E adoption assistance. (5-8-09)
- b. Child is eligible for Supplemental Security Income (SSI) benefits and meets the definition of a

child with special needs. (5-3-03)

i. A child is eligible for adoption assistance if, at the time the adoption petition is filed, the child has met the requirements for Title XVI (SSI) benefits; (5-3-03)

ii. The circumstances of a child's removal from their home or whether the public child welfare agency has responsibility for the child's placement and care are not relevant. (4-7-11)

c. Child has been voluntarily relinquished to a private non-profit adoption agency and meets the definition of a child with special needs. (5-3-03)

i. The child must meet the requirements, or would have met the requirements, of the AFDC program as such sections were in effect on July 16, 1996, in or for the month in which the relinquishment occurred, or court proceedings were held that led to the removal of the child from their home; (4-7-11)

ii. At the time of the voluntary relinquishment, the court must make a judicial determination that it would be contrary to the welfare of the child for the child to remain in the home. (5-8-09)

d. Child is eligible for Title IV-E adoption assistance as a child of a minor parent and at the time of the adoption petition the child meets the definition of a child with special needs. (5-3-03)

i. The child's parent is in foster care and receiving Title IV-E foster care maintenance payments that cover both the minor parent and child at the time the adoption petition is filed; and (5-3-03)

ii. The child continues to reside in the foster home with their minor parent until the adoption petition has been filed. If the child and minor parent have been separated in foster care prior to the time of the adoption petition, the child's eligibility for Title IV-E adoption assistance must be determined based on the child's current and individual circumstances. (5-3-03)

e. Child is eligible due to prior Title IV-E adoption assistance eligibility and meets the definition of a child with special needs. (5-3-03)

i. A child whose adoption later dissolves or the adoptive parent(s) die, may continue to be eligible for Title IV-E adoption assistance in a subsequent adoption. (5-3-03)

ii. The subsequent adoption of a child may be arranged through an independent adoption, private agency, or state agency. (5-3-03)

iii. No needs or eligibility redetermination is to be made upon a subsequent adoption. The child's need and eligibility remain unchanged from what they were prior to the initial adoption. (5-3-03)

iv. It is the responsibility of the placing state to determine whether the child meets the definition of special needs and to pay the subsidy in a subsequent adoption. (5-3-03)

02. Special Needs Criteria. The definition of special needs includes the following factors: (3-30-07)

a. The child cannot or should not be returned to the home of the parents as evidenced by an order from a court of competent jurisdiction terminating parents rights or its equivalent; and (3-29-10)

b. The child has a physical, mental, emotional, or medical disability, or is at risk of developing such disability based on the child's experience of documented physical, emotional, or sexual abuse, or neglect; or (4-7-11)

c. The child's age makes it difficult to find an adoptive home; or (3-18-99)

d. The child is being placed for adoption with at least one (1) sibling; and (4-7-11)

e. The State must make a reasonable but unsuccessful effort to place the child with special needs

without a subsidy, except in cases where it is not in the best interests of the child due to their significant emotional ties with the foster parent(s) or relative(s) who are willing to adopt the child. (4-7-11)

03. Determination of Eligibility for State Funded Adoption Assistance. Children in state custody who meet the special needs criteria found in Subsection 900.02 of these rules and do not meet any of the criteria for Title IV-E adoption assistance found at Subsection 900.01 in these rules, may be eligible for state-funded adoption assistance benefits. If the child is determined ineligible for Title IV-E adoption assistance, the application will be evaluated for a state-funded subsidy. (3-30-07)

04. Interjurisdictional Adoptions. When a child's adoption is arranged through the care and placement of a private non-profit adoption agency in another state and the adoptive family are residents of Idaho, the state of Idaho is responsible for the eligibility determination, negotiation, and payment of any subsequent Title IV-E adoption assistance benefits. (3-30-07)

05. International Adoptions and Adoption Assistance. A child who meets the criteria for special needs under Subsection 900.02 of this rule, who is not a citizen or resident of the United States, and who was adopted outside of the United States or was brought into the United States for the purpose of being adopted, is not eligible to receive adoption assistance. This restriction does not prohibit adoption assistance payments for a child described in this Subsection who is placed in foster care subsequent to the failure, as determined by the State, of the initial adoption of the child by the adoptive parents. (3-29-10)

901. ATTEMPT TO PLACE WITHOUT ADOPTION ASSISTANCE.

The Department is required to attempt to place all children for adoption without adoption assistance. However, all adoptive families are entitled to full information and disclosure regarding the adoption assistance program. Once the most suitable family is located for the child, the family will be informed of the needs and history of the child and asked if they can adopt the child without adoption assistance. If the family indicates that they need adoption assistance, the Department will begin the process of determining the amount and type of benefits for the child. (3-18-99)

902. -- 909. (RESERVED)

910. TYPES AND AMOUNTS OF ASSISTANCE.

The needs of the child and the family, including any other children in the family, will be considered in determining the amount and type of support to be provided. Assistance may include the following: (3-30-07)

01. Nonrecurring Adoption Reimbursement. Payment for certain one-time expenses necessary to finalize the adoption may be paid when a family adopts a special needs child. The child's eligibility must be determined and the contract for reimbursement must be fully executed prior to the finalization of the adoption. The reimbursement is paid only after the adoption finalizes. ()

a. The expenses are defined as reasonable and necessary adoption fees, court costs, attorney fees, and other expenses that are directly related to the legal adoption finalization of a child with special needs and which are not incurred in violation of state or federal law. They may include mileage and lodging involved in visiting the child before placement occurs. These expenses cannot be reimbursed if they are paid for the adoptive parents by other sources such as an employer. ()

b. Documentation of expenses must be submitted. ()

c. Costs are reimbursable up to two thousand dollars (\$2,000) per child and are entered on the Adoption Assistance Program Agreement. ()

d. Children for whom the adoption has been finalized without a negotiated Nonrecurring Expenses Reimbursement Agreement are not eligible to apply for these benefits. ()

02. Monthly Cash Payment. Financial assistance in the form of a monthly cash payment may be established to assist the adoptive family in meeting the additional expenses of the child's special needs. The amount of the payment must be negotiated with the family by the adoption worker and based on the family's circumstances

and what additional resources are needed to incorporate the child into the adoptive family. ()

a. The amount must not exceed the rate for family foster care found in Subsections 483 and 484 of these rules, which would be made if the child were in a family foster home in Idaho. ()

b. Payments received for treatment foster care, gifts, clothing, and school fees are not considered part of the family foster care rate. ()

c. For children who meet the definition of special needs at Subsection 900.02 of these rules, no monthly cash payment is allowable until such time as the specific disability for which the child is known to be at risk becomes evident. ()

d. For children who are currently eligible for Personal Care Services (PCS), the treatment foster care rate of up to a maximum of one thousand dollars (\$1,000) per month may be used in negotiating the adoption assistance upon prior approval of the Department's Family and Community Services (FACS) Division Administrator. ()

e. Benefits will continue until the child reaches eighteen (18) years, based upon an annual determination of continuing need. ()

03. Title XIX -- Medicaid Coverage. Any child with special needs who has an adoption assistance agreement in effect is also eligible for medical coverage. ()

a. A Title IV-E adoption assistance agreement provides Medicaid coverage in the state of Idaho and in all other states. Under a state-funded adoption assistance agreement, a child living in Idaho is eligible for Medicaid. If the family moves to another state, Medicaid may or may not be available. If Medicaid is not available in the new state, provisions for medical coverage must be contained in the adoption assistance agreement or in an amendment to the agreement. ()

b. Families enrolled in a group health plan who plan to request to use Medicaid as the child's primary health care coverage must apply to the Idaho Health Insurance Premium Payment (HIPP) program at the time of benefit negotiation. Medicaid provides secondary coverage after the family's health insurance has reached its benefit limit. ()

c. All services reimbursed by Medicaid must be determined to be medically necessary. ()

d. Prior authorization may be required for some Medicaid reimbursable services. ()

e. Medicaid benefits are available until the child reaches the age of eighteen (18), based upon an annual determination of continuing need. ()

04. Title XX -- Social Services. Any child with special needs who has an Adoption Assistance Agreement is also eligible for state-authorized Title XX - Federal Social Services Block Grant funded services. (3-30-07)

911. ADOPTION ASSISTANCE PROGRAM AGREEMENT.

A written agreement must be negotiated and fully executed between the Department and adopting family prior to the finalization of adoption and implementation of benefits. (5-8-09)

01. Agreement Specifications. The agreement specifies the following: (5-8-09)

a. The type and amount of assistance to be provided; (5-8-09)

b. That there will be an annual review of each agreement by the Department to evaluate the need for continued subsidy and the amount of the subsidy; (5-8-09)

c. That the agreed upon type and amount of assistance may be adjusted only with the concurrence of

the adoptive parent(s) based upon changes in the needs of the child or changes in the circumstances of the adoptive family; (5-8-09)

d. That the adoptive parent(s) are required to inform the Department of any circumstances that would make them ineligible for adoption assistance payments, or eligible for adoption assistance payments in a different amount. (5-8-09)

02. Termination of Adoption Assistance. Adoption assistance will be terminated if the adoptive parent(s) no longer have legal responsibility for the child as a result of termination of parental rights, the child is no longer receiving any financial support from the parents, or the child has reached the age of eighteen (18) years regardless of the child's educational status. (4-11-06)

03. Adoption Assistance Follows the Child. If the adoptive parents are located in a state other than Idaho, or move out of Idaho with the child, the adoption assistance payments initiated by Idaho will continue for the child. If the child is IV-E or state-funded adoption assistance eligible, referral for Medicaid or other state medical insurance and social service benefits will be forwarded to the new state of residence through the Interstate Compact on Adoption and Medical Assistance. Non IV-E eligible children receiving a state adoption subsidy, may not be eligible for Medicaid in a state other than Idaho. (5-3-03)

912. -- 919. (RESERVED)

920. REQUEST FOR RECONSIDERATION FOR ADOPTION ASSISTANCE.

Families who adopted a child, or children with special needs on or after April 1, 1982, through either the Department or a licensed Idaho children's adoption agency, may be eligible for benefits through the Adoption Assistance program. Persons who adopted their relative children, may also be eligible for these adoption assistance benefits. ()

01. Adoption Assistance Agreement. Per Public Law 96-272, the adoptive family must sign an adoption assistance agreement prior to the finalization of the adoption in order for the child to receive benefits. Adoptive families who were not informed of these benefits or who were wrongly denied these benefits may submit an application to the Department prior to the eighteenth birthday of the adopted child for a determination of eligibility for these benefits. ()

02. Eligibility Determination. The Division of Family and Community Services determines eligibility based on the eligibility factors determining a special needs child that were in effect at the time of the child's adoption. ()

a. If the IV-E eligibility determination finds that a child was eligible for these benefits at the time of the child's adoption, and an agreement was not signed prior to the finalization, the Department is required to deny benefits to the child, since no contract was in effect at the time of the adoption finalization. ()

b. The adoptive family may request a fair hearing for adoption assistance IV-E eligibility determination. ()

i. The determinations to be made at this hearing are whether extenuating circumstances exist or whether the family was wrongly denied eligibility, or both. ()

ii. The Division of Family and Community Services may not change its eligibility determination for a child eligible for IV-E adoption assistance benefits and provide adoption assistance based on extenuating circumstances without obtaining a favorable ruling from a fair hearing officer. ()

921. BURDEN OF PROOF -- EXTENUATING CIRCUMSTANCES.

The family has the burden of proving extenuating circumstances at the fair hearing, although, if the state agency is in agreement that the family had erroneously been denied benefits, the agency may provide such facts to the family or present corroborating facts on behalf of the family to the fair hearing officer. Once the hearing officer rules in favor of a family that extenuating circumstance exist and that the child is eligible for IV-E adoption assistance benefits, the agency must negotiate an agreement with the adoptive family consistent with these rules. (3-18-99)

922. RETROACTIVE ADOPTION ASSISTANCE BENEFITS.

The Department of Health and Welfare, Division of Family and Community Services may negotiate retroactive adoption assistance benefits for a maximum of twenty-four (24) months from the date of adoption assistance application, identified in Section 920 of these rules. (3-20-04)

923. DISRUPTION OF INTERNATIONAL ADOPTIONS.

The Intercountry Adoption Act of 2000 (P.L. 106-279) requires that each state make an annual report of children who were adopted from other countries who enter state guardianship as a result of termination of the parental rights of the adoptive parent and the dissolution of the adoption. The report will include the name of the agency who handled the placement or the adoption, the plans for the child, and the reasons for the disruption or dissolution. Each region will collect this information and send it to the Department's Permanency Program Specialist in January of each year. (3-30-07)

924. -- 999. (RESERVED)

16.06.02 – RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING

000. LEGAL AUTHORITY.

Under Sections 39-1107, 39-1111, 39-1207, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, 56-1005(8), and 56-1007, Idaho Code, the Idaho Legislature authorizes the Department of Health and Welfare and the Board of Health and Welfare to adopt and enforce rules governing standards and procedures for licensing daycare centers, group daycare facilities, family daycare homes, foster homes, children's agencies, children's residential care facilities, children's camps, and children's therapeutic outdoor programs that are maintained or operated within Idaho. ()

001. TITLE, SCOPE, POLICY, PURPOSE, EXCEPTIONS, AND EXEMPTIONS TO LICENSING.

01. Title. These rules are titled IDAPA 16.06.02, "Child Care Licensing." ()

02. Scope. These rules establish minimum standards and procedures for licensing, maintaining, and operating the following facilities or programs within Idaho: (4-7-11)

- a. Daycare centers; (4-7-11)
- b. Group daycare facilities; (4-7-11)
- c. Family daycare homes, voluntarily; (4-7-11)
- d. Foster homes; (4-7-11)
- e. Children's agencies; (4-7-11)
- f. Children's residential care facilities, including non-accredited residential schools; (4-7-11)
- g. Children's camps providing child care for any one (1) child for more than nine (9) consecutive weeks in any one (1) year period; (4-7-11)
- h. Children's therapeutic outdoor programs; (4-7-11)
- i. Alcohol-drug abuse treatment facilities for adolescents certified according to IDAPA 16.07.17, "Substance Use Disorders Services"; and (4-7-11)
- j. Facilities specializing in maternity care for minors. (4-7-11)

03. Policy. It is the policy of the Department to assure that children of this state receive adequate substitute parental care in the event of absence, temporary or permanent inability of parents to provide care and protection for their children or the parents are seeking alternative twenty-four (24) hour long-term care for their children. This policy is based on the fact that children are vulnerable and not capable of protecting themselves. When parents, for any reason have relinquished their children's care to others, there arises the possibility of certain risks to those children's lives, health and safety which the community as a whole must protect against. This requires the offsetting statutory protection of review and, in certain instances, licensing or registration. (7-1-09)

04. Purpose. The Department issues a license to assure, as is reasonably practicable, that the care, services, and physical surroundings of each program or facility are in substantial compliance with these rules and minimum standards. (4-7-11)

a. According to Section 39-1117, Idaho Code, a daycare license does not constitute a representation affirming to any person that the program or facility is free from risk. A daycare license does not guarantee adequacy of care, services, safety, or the well-being of any child, staff, contractor, volunteer, or visitor of a daycare facility. It is the parent's primary responsibility for evaluation and selection of daycare services. (4-7-11)

b. The state, its employees or agents of the state or its political subdivisions, will not be liable for nor will a cause of action exist for any loss or damage based upon the failure of any daycare facility to meet the minimum standards contained in these rules. (4-7-11)

05. Exceptions and Exemptions to Daycare Licensing. Under Section 39-1103, Idaho Code, the minimum standards and licensing requirements in these rules do not apply to: (4-7-11)

- a.** Daycare facilities regulated, licensed, or certified by a city or county in accordance with local options under Section 39-1108, Idaho Code; (4-7-11)
- b.** The occasional or irregular care of a neighbor's, relative's, or friend's child or children by a person not ordinarily in the business of providing daycare; (4-7-11)
- c.** The operation of a private school or religious school for educational purposes for children over four (4) years of age, or a religious kindergarten; (4-7-11)
- d.** The provision of occasional care exclusively for children of parents who are simultaneously in the same building; (4-7-11)
- e.** The operation of day camps, programs and religious schools for less than twelve (12) weeks during a calendar year or not more often than once a week; or (4-7-11)
- f.** The provision of care for children of a family within the second degree of relationship as defined in Section 011 of these rules. (4-7-11)

06. Exceptions and Exemptions to Child Care Licensing. Under Sections 39-1206, 39-1213(b), and 39-1211, Idaho Code, the minimum standards and licensing requirements in these rules do not apply to: (4-7-11)

- a.** Foster homes that have been approved by a licensed children's agency provided the standards for approval by such agency are no less restrictive than the rules and standards established by the Board and that such agency is maintained, operated, and conforms with these rules and standards; (4-7-11)
- b.** The occasional or irregular care of a neighbor's, relative's, or friend's child or children by a person not ordinarily engaged in child care; or (4-7-11)
- c.** Children's camps which only provide child care for any one (1) child for less than nine (9) consecutive weeks in any one (1) year period. A children's camp which provides child care for any one (1) child for more than nine (9) consecutive weeks in any one (1) year period constitutes a children's residential care facility and is subject to the minimum standards and licensing requirements in these rules. (4-7-11)

002. INCORPORATION BY REFERENCE. The following documents are incorporated by reference in this chapter of rules. (7-1-09)

01. Occupational Safety Health Act (OSHA). A copy of OSHA may be obtained at the Idaho Industrial Commission, 317 Main Street., P.O. Box 83720, Boise, Idaho, 83720-0041. (3-30-01)

02. Crib Safety. Consumer Product Safety Commission, Crib Safety Tips can be found on the Internet at <https://www.cpsc.gov/Regulations-Laws--Standards/Rulemaking/Final-and-Proposed-Rules/Full-Size-Cribs>. (3-30-01)

003. -- 008. (RESERVED)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance with Department Criminal History and Background Check. Criminal history and background checks are required for individuals who are licensed under these rules. Individuals who are required to have a criminal history check must comply with IDAPA 16.05.06, "Criminal History and Background Checks," with the exception of those individuals described in Subsection 009.04 of this rule. (4-7-11)

02. When License is Granted. The applicant must have a completed criminal history and background check, including clearance, prior to licensure. Any other adult living in the home must complete a criminal history application, must be fingerprinted, and must not have any disqualifying crimes listed in IDAPA 16.05.06, "Criminal History and Background Checks." (4-7-11)

03. Individuals Subject to Criminal History Check Requirements. The following individuals must receive a criminal history and background check clearance prior to licensure: (4-7-11)

a. Adoptive Parents. The criminal history and background check requirements applicable to adoptive parents are found in Subsection 671.02 of these rules. (3-30-07)

b. Child Care Facility Staff. The criminal history and background check requirements applicable to a child care facility are found in Section 109 of these rules. (3-30-07)

c. Children's Agency Facility Staff. The criminal history and background check requirements for a children's agency facility are found in Section 109 of these rules and in Section 39-1210(10), Idaho Code. (3-30-07)

d. Children's Residential Care Facility and Children's Camp Staff. The criminal history and background check requirements for a children's residential care facility or children's camp are found in Section 109 of these rules and in Section 39-1210(10), Idaho Code. (4-7-11)

e. Children's Therapeutic Outdoor Program Staff. The criminal history and background check requirements for a children's therapeutic outdoor program are found in Section 810 of these rules and in Section 39-1208(8), Idaho Code. (3-30-07)

f. Daycare Center, Group Daycare Facility, and Family Day Care Home. The criminal history and background check requirements applicable to a daycare center, group daycare facility, and family daycare home are found in Section 309 of these rules and in Sections 39-1105, 39-1113, and 39-1114, Idaho Code. (4-7-11)

g. Licensed Foster Care Home. The criminal history and background check requirements applicable to licensed foster care are found in Section 404 of these rules and in Section 39-1211(4), Idaho Code. (3-30-07)

04. Exceptions to Criminal History and Background Checks for Certain Youths. Criminal history and background checks are optional for certain youth placed in licensed foster homes and licensed residential care facilities. (4-7-11)

a. Youth in foster care who reach the age of eighteen (18) and continue to reside in the same licensed foster home. (3-30-07)

b. Youth in a children's residential care facility who reach the age of eighteen (18) and continue to live in the same licensed residential facility. (3-30-07)

05. Criminal History and Background Check at Any Time. The Department can require a criminal history and background check at any time on any individual who: (4-7-11)

a. Is a resident or an adult living in a licensed foster home; (4-7-11)

b. Is a resident or adult living in, employee, contractor, volunteer, or staff member of a licensed residential facility; or (4-7-11)

c. Is an owner, operator, or staff of a daycare center, group daycare facility, family daycare home, and all other individuals who are thirteen (13) years of age or older who have unsupervised direct contact with children or who are regularly on the premises. (4-7-11)

010. DEFINITIONS A THROUGH M. For the purposes of these rules, the following terms apply. (7-1-09)

01. Accredited Residential School. A residential school for any number of children subject to the jurisdiction of the Idaho Department of Education that has been certified as accredited according to the accrediting standards promulgated by the Idaho State Board of Education or a secular or religious accrediting association recognized by the Idaho Department of Education. (3-30-01)

- 02. Alcohol-Drug Abuse Treatment Facility.** A children’s residential care facility specializing in providing programs of treatment for children whose primary problem is alcohol or drug abuse, certified according to IDAPA 16.07.17, “Substance Use Disorders Services.” (4-7-11)
- 03. Attendance.** For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, “attendance” means the number of children present at a daycare facility at any given time. (4-7-11)
- 04. Board.** The Idaho State Board of Health and Welfare. (3-30-01)
- 05. Chief Administrator.** The duly authorized representative of an organization responsible for day-to-day operations, management and compliance with these rules and Title 39, Chapter 12, Idaho Code. (7-1-09)
- 06. Child.** (4-7-11)
- a.** For requirements of Title 39, Chapter 12, Idaho Code, and Sections 400 through 999 of these rules, “child” means an individual less than eighteen (18) years of age, synonymous with juvenile or minor. (4-7-11)
- b.** For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, “child” means an individual less than thirteen (13) years of age. (4-7-11)
- 07. Child Care.** The care, control, supervision or maintenance of children for twenty-four (24) hours a day which is provided as an alternative to parental care. (3-30-01)
- 08. Child-Staff Ratio.** “Child-staff ratio” means the maximum number of children allowed under the care and supervision of one (1) staff person. (4-7-11)
- 09. Children's Agency.** A person who operates a business for the placement of children in foster homes, children's residential care facilities or for adoption in a permanent home and who does not provide child care as part of that business. A children’s agency does not include a licensed attorney or physician assisting or providing natural and adoptive parents with legal services or medical services necessary to initiate and complete adoptive placements. (3-30-01)
- 10. Children's Camp.** A program of child care at a location away from the child’s home, which is primarily recreational and includes the overnight accommodation of the child and is not intended to provide treatment, therapy or rehabilitation for the child. A children’s camp which only provides child care for any one (1) child for less than nine (9) consecutive weeks in any one (1) year period is exempt from the licensure and disclosure provisions of this chapter. A children’s camp which provides child care for any one (1) child for more than nine (9) consecutive weeks in any one (1) year period constitutes a children’s residential care facility. (7-1-09)
- 11. Children's Institution.** A person defined herein, who operates a residential facility for unrelated children, for the purpose of providing child care. Children’s institutions include foster homes, children's residential care facilities, maternity homes, or any residential facility providing treatment, therapy or rehabilitation for children, or any children's therapeutic outdoor program. (5-3-03)
- 12. Children's Residential Care Facility.** A facility that provides residential child care, excluding foster homes, residential schools, juvenile detention centers and children's camps that: (3-30-01)
- a.** Seeks, receives or enrolls children for treatment of special needs such as substance abuse, mental illness, emotional disturbance, developmental disability, mental retardation, or children who have been identified by the judicial system as requiring treatment, therapy, rehabilitation or supervision; (3-30-01)
- b.** Receives payment, including payment from health insurance carriers, for identified treatment needs such as substance abuse, mental illness, emotional disturbance, developmental disability or mental retardation; or (3-30-01)
- c.** Represents to the payor of the child care services provided by the children’s facility that such payment may qualify for health insurance reimbursement by the payor’s carrier or may qualify for tax benefits relating to medical services; and (5-3-03)

d. May include a children's therapeutic outdoor program whether or not that program operates out of a standard facility. (5-3-03)

13. Children's Therapeutic Outdoor Program. A program which is designed to provide behavioral, substance abuse, or mental health services to minors in an outdoor setting and serves either adjudicated or non-adjudicated youth. Children's Therapeutic Outdoor programs do not include outdoor programs for minors that are primarily designed to be educational or recreational that may include Boy Scouts, Girl Scouts, 4-H and other youth organizations. (5-3-03)

14. Continued Care. The ongoing placement of an individual in a foster home, children's residential care facility, children's therapeutic outdoor program, or transitional living placement who reaches the age of eighteen (18) years but is less than twenty-one (21) years of age. (7-1-09)

15. Contraband. Goods or merchandise, the possession of which is prohibited, such as weapons and drugs. (3-30-01)

16. Daycare. The care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood, marriage, adoption, or legal guardianship to the person or persons providing the care, in a place other than the child's or children's own home or homes. (4-7-11)

17. Daycare Center. A place or facility providing daycare for compensation for thirteen (13) or more children. (4-7-11)

18. Department. The Idaho Department of Health and Welfare. (4-7-11)

19. Direct Care Staff. An employee who has direct personal interaction with children in the provision of child care and is included as staff in meeting the minimum staff-child ratio requirements. (3-30-01)

20. Director. Director of the Idaho Department of Health and Welfare or designee. (3-30-01)

21. Family Daycare Home. A home, place, or facility providing daycare for six (6) or fewer children. (4-7-11)

22. Foster Care. The twenty-four (24) hour substitute parental care of children by persons who may or may not be related to a child. (7-1-09)

23. Foster Home. The private home of an individual or family licensed or approved as meeting the standards for foster care and providing twenty-four (24) hour substitute parental care to six (6) or fewer children. (7-1-09)

24. Foster Parent. A person or persons residing in a private home under their direct control to whom a foster care license has been issued. (4-7-11)

25. Group Daycare Facility. A home, place, or facility providing daycare for seven (7) to twelve (12) children. (4-7-11)

26. Inter-Country Adoption. The placement of a child from one (1) country to another for the purpose of adoption. (3-30-01)

27. International Fire Code. The International Fire Code as outlined by Section 41-253, Idaho Code. The addition for the year prior to the issuance of the license will be used. Published by the International Code Council. A copy is available at any public library in Idaho.

28. International Building Code. The International Building Codes as outlined in Section 39-4109, Idaho Code. The addition for the year prior to the issuance of the license will be used. Published by the International Code Council. A copy is available at any public library in Idaho.

29. Mechanical Restraint. Devices used to control the range and motion of an individual, including handcuffs, restraint boards, restraint chairs, and restraint jackets. (3-30-01)

30. Medical Professionals. Persons who have received a degree in nursing or medicine and licensed registered nurse, licensed nurse practitioner, physician's assistant, and medical doctor. (3-30-01)

31. Member of the Household. Any person, other than a foster child, who resides in, or on the property of, a foster home. (3-30-01)

011. DEFINITIONS N THROUGH Z.
For the purposes of these rules, the following terms apply. (7-1-09)

01. Nonaccredited Residential School. A residential school for any number of children that is not certified or accredited pursuant to Section 39-1207, Idaho Code, or has lost accreditation and is subject to the jurisdiction of the Department as a children's residential care facility pursuant to Section 39-1210, Idaho Code, unless and until accreditation is certified by the Idaho Department of Education. (3-30-01)

02. Non-Compliance. Violation of, or inability to meet the requirements of, the act or a rule promulgated under the act, or terms of licensure. (3-30-01)

03. Operator. An individual who operates or maintains within Idaho a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's residential care facility, children's agency, children's therapeutic outdoor program, or children's camp. (4-7-11)

04. Organization. A children's agency or a children's residential care facility. (3-30-01)

05. Person. Any individual, group of individuals, associations, partnerships or corporations. (3-30-01)

06. Physical Intervention. Physical restraint utilized to control the range and motion of an individual. (3-30-01)

07. Placement. The activities and arrangements related to finding a suitable licensed home or facility in which a child will reside for purposes of care, treatment, adoption, or other services. (3-30-01)

08. Plan of Correction. The detailed procedures and activities developed between the licensing authority and caregiver required to bring a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster family, children's residential care facility, children's agency, children's therapeutic outdoor program, or children's camp into conformity with these licensing rules. (4-7-11)

09. Regularly on the Premises. For the purposes of Sections 009 and 309 of these rules, regularly on the premises means twelve (12) hours or more in any one (1) month, or daily during any hours of operation. (4-7-11)

10. Relative. Under Section 39-1202, Idaho Code, "relative" means a child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first cousin, sibling, and half-sibling. (4-7-11)

11. Representative. An employee of the Department of Health and Welfare. (3-30-01)

12. Residential School. A residential facility for any number of children which: (3-30-01)

a. Provides a planned, scheduled, regular, academic or vocational program for students in the elementary, middle or secondary grades as defined in Section 33-1001, Idaho Code; and (3-30-01)

b. Provides services substantially comparable to those provided in nonresidential public schools where the primary purpose is the education and academic pursuits of the students; and (3-30-01)

- c. Does not seek, receive or enroll students for treatment of such special needs as substance abuse, mental illness, emotional disturbance, developmental disability or mental retardation; and (3-30-01)
- d. Does not receive payment, including payment from health insurance carriers, for identified treatment needs such as substance abuse, mental illness, emotional disturbance, developmental disability, or mental retardation; and (3-30-01)
- e. Does not represent to the payor of child care services provided that such payment may qualify for health insurance reimbursement by the payor's carrier or may qualify for tax benefits relating to medical services. (3-30-01)
- 13. Restraint.** Interventions to control the range and motion of a child. (3-30-01)
- 14. Seclusion.** A room within a facility designed to temporarily isolate an individual in order to gain emotional or physical control by means of structure and minimal stimulation. (3-30-01)
- 15. Second Degree of Relationship.** The second degree of relationship refers to persons related consanguineally (“blood relative”) and affinally (“relative by marriage”) and includes their spouses. The number of degrees between two (2) relatives is calculated by summing the number of ties between each relative and the common ancestor. (4-7-11)
- 16. Secure.** A physically restrictive setting, as in a locked or guarded residential facility. (3-30-01)
- 17. Security Risk.** An individual who presents the possibility by actions, behavior or emotional reaction that may result in harm to self or others, or escape from physical control. (3-30-01)
- 18. Service Worker.** An employee of an organization who has obtained at a minimum, a Bachelor’s degree in a behavioral science, including social work, sociology, psychology, criminal justice, counseling, or a related field, whose duties may include assessment, service planning, supervision and support. (7-1-09)
- 19. Shelter Care.** The temporary or emergency out-of-home care of children in a foster home or residential facility. (3-30-01)
- 20. Social Worker.** An individual licensed by the state of Idaho in compliance with Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, “Rules of the State Board of Social Work Examiners.” (7-1-09)
- 21. Soft Restraints.** Mechanical restraints made of leather, cloth or other combinations of fibers, utilized to control the range of motion of an individual. (3-30-01)
- 22. Staff.** For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, “staff” means a person who is sixteen (16) years of age or older and employed by a daycare owner or operator to provide care and supervision at a daycare facility. (4-7-11)
- 23. Supervision.** For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, supervision is defined as within sight and normal hearing range of the child or children being cared for. (4-7-11)
- 24. Time-Out.** Separation of a child from group activity as a means of behavior management. (3-30-01)
- 25. Training.** The preparation, instruction and education related to child care that increases the knowledge, skill and abilities of a foster parent, agency and residential care facility staff or volunteers. (3-30-01)
- 26. Transitional Living.** Living arrangements and aftercare services for children, or as continued care, to gain experience living on their own in a supportive and supervised environment prior to emancipation. (3-30-01)

27. Variance. The means of complying with the intent and purpose of a child care licensing rule in a manner acceptable to the Department other than that specifically prescribed in the rule. (7-1-09)

28. Waiver. The non-application of a child care licensing rule, except those related to safety, extended to a relative foster home by the licensing authority which serves to promote child health, well-being, and permanence while not compromising safety. (7-1-09)

012. -- 099. (RESERVED)

LICENSING AND CERTIFICATION
(Sections 100 - 299)

100. LICENSING.

The purpose of licensing is to set minimum standards and to monitor compliance. Persons applying for licensure need to be physically and emotionally suited to protect the health, safety and well-being of the children in their care. Physical surroundings must present no hazards to the children in care. (4-7-11)

01. Responsibilities of the Foster Parent or Operator. A foster parent or operator must conform to the terms of the license. (4-7-11)

02. Responsible for Knowledge of Standards. The foster parent or operator is responsible for knowing the standards and rules applying to the type of foster home, children's residential care facility, children's agency, children's therapeutic outdoor program, children's camp, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, covered by the license, and for conforming to them at all times. (4-7-11)

03. Responsible for Agency Staff Knowledge. The operator of a child care facility or agency is responsible for ensuring that all staff members are familiar with the applicable rules governing the children's residential care facility, children's therapeutic outdoor program, children's agency, children's camp, daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department. A copy of these rules is available from the Office of the Administrative Rules Coordinator, 650 W. State Street, Boise ID 83720, or on the Office of the Administrative Rules Coordinator's website, <http://adminrules.idaho.gov/>. (4-7-11)

04. Return of License. The foster parent or operator must immediately return their license to the Department under any of the following circumstances: (4-7-11)

- a.** Changes of management or address; (4-7-11)
- b.** Upon suspension or revocation of the license by the Department; or (4-7-11)
- c.** Upon voluntary discontinuation of service. (3-30-01)

101. APPLICATIONS FOR LICENSE.

An application for a license must be submitted to the Department. Licensing studies will follow the format of these rules and will contain a specific recommendation regarding the terms of the license. All foster homes, children's agencies, children's therapeutic outdoor programs, children's camps, daycare centers, group daycare facilities, family daycare homes voluntarily licensed by the Department, and children's residential care facilities must also comply with applicable Idaho city and county ordinances. (4-7-11)

102. DISPOSITION OF APPLICATIONS.

The Department will initiate action on each completed application within thirty (30) days after receipt that addresses each requirement for the specific type of home, facility, or agency. Upon receipt of a completed application and study, the licensing authority will review the materials for conformity with these rules. (4-7-11)

01. Approval of Application. A license will be issued to any daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential facility, children's therapeutic outdoor program, children's camp, or children's agency found to be in conformity with these rules

governing the home or facility. The license is issued according to the terms specified in the licensing study and will be mailed to the applicant. (4-7-11)

02. Regular License. A regular license will be issued to any daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency found to be in conformity with these rules governing the facility and will specify the terms of licensure, such as: (4-7-11)

- a.** Full time or daycare; (3-30-01)
- b.** The number of children who may receive care at any one (1) time; and (3-30-01)
- c.** Age range and gender, if there are conditions in the foster home or children's residential care facility making such limitations necessary; (3-30-01)
- d.** The regular license for a foster home, children's agency, children's residential care facility, children's therapeutic outdoor program, or children's camp is in effect for one (1) year from the date of issuance unless suspended or revoked earlier; (4-7-11)
- e.** A regular license for a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department is in effect for two (2) years from the date of issuance unless suspended or revoked earlier; and (4-7-11)
- f.** If the license for a foster home is for a specific child only, the name of that child will be shown on the foster home license. (3-30-01)

03. Waiver. A regular license may be issued to the foster home of a relative who has received a waiver of licensing rules provided: (4-7-11)

- a.** The waiver is considered on an individual case basis; (3-30-01)
- b.** The waiver is approved only for non-safety foster care rules; (7-1-09)
- c.** All other licensing requirements have been met; (4-7-11)
- d.** The approval of a waiver of any foster home rules requires the licensing authority to document a description of the reasons for issuing a waiver, the rules being waived, and assurance that the waiver will not compromise the child's safety; and (7-1-09)
- e.** The approved waiver must be reviewed for continued need and approval at regular intervals not to exceed six (6) months. (7-1-09)

04. Variance. A regular license will be issued to a foster home, children's residential care facility or children's agency approved for a variance of a licensing rule provided: (4-7-11)

- a.** The variance is considered on an individual case basis; (3-30-01)
- b.** The variance is approved for a non-safety licensing rules; (3-30-01)
- c.** The approval of a variance must have no adverse effect on the health, safety, and well-being of any child in care at the foster home or facility; (7-1-09)
- d.** The approval of a variance is documented by the licensing agency and includes a description of the reasons for issuing a variance and assurances that the variance will not compromise any child's health, safety, and well-being; and (7-1-09)
- e.** The approved variance must be reviewed for continued need and approval annually. (7-1-09)

05. Provisional License. A provisional license may be issued to a foster home, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency when a licensing standard cannot be met but can be expected to be corrected within six (6) months, provided this does not affect the health, safety and well-being of any child in care at the home or facility. (3-21-12)

a. A provisional license will be in effect for not more than six (6) months. (4-7-11)

b. Only one (1) provisional license will be issued to a foster home, children's residential care facility, children's agency, children's therapeutic outdoor program, or children's camp in any twelve-month period of time under Section 39-1216, Idaho Code. (3-21-12)

06. Limited License. A limited license for a foster home may be issued for the care of a specific child in a home which may not meet the requirements for a license, provided that: (3-30-01)

a. The child is already in the home and has formed strong emotional ties with the foster parents; and (3-30-01)

b. It can be shown that the child's continued placement in the home would be more conducive to their welfare than would removal to another home. (3-30-01)

07. Denial of Application. In the event that an application is denied, a signed letter will be sent directly to the applicant by registered or certified mail, advising the applicant of the denial and stating the basis for such denial. An applicant whose application has been denied may not reapply until after one (1) year has elapsed from the date on the denial of application. (4-7-11)

08. Failure to Complete Application Process. (7-1-09)

a. Failure of the applicant to complete the application process within six (6) months of the original date of application will result in a denial of the application. (7-1-09)

b. An applicant whose application has been denied for being incomplete may not reapply until after one (1) year has elapsed from the date on the denial of application. (7-1-09)

103. RESTRICTIONS ON APPLICABILITY AND NONTRANSFER.

01. Issued License. A license applies only to the foster home, child care facility, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's residential care facility, children's agency, children's therapeutic outdoor program, children's camp, or the person and premises designated. Each license is issued in the name of the individual, firm, partnership, association, corporation, or governmental unit identified on the application and only to a specified address of the facility or program stated in the application for the period and services specified. A license issued in the name of a foster parent, child care facility, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's agency applies only to the services specified in the license. Any change in management or address renders the license null and void, and the foster parent or operator must immediately return the license to the licensing agency as required in Section 100 of these rules. (4-7-11)

02. Nontransferable. A license is nontransferable or assignable from one (1) individual to another, from one (1) business entity or governmental unit to another, or from one (1) location to another. (4-7-11)

03. Change in Ownership, Operator, or Location. When there is a change in ownership, operator, or a change in location occurs, the facility or program must reapply for a license as required in Section 101 of these rules. The new owner or operator must obtain a license before starting operations. (4-7-11)

104. MANDATORY VISITATIONS.

In accordance with Section 39-1217, Idaho Code, the Department or other licensing authority must visit, and must be given access to, the premises of each licensed foster home, licensed children's agency, licensed children's therapeutic

outdoor program, and licensed children's residential care facility as often as deemed necessary or desirable by the Department to assure conformity with the requirements in this chapter of rules but, in any event, at intervals not to exceed twelve (12) months. (4-11-06)

105. REVISIT AND RELICENSE.

Revisit and relicense studies will document how the daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency continues to meet the standards for licensing. Consideration must be given to each point of the standards, including a review of the previous study and original application to determine what changes have occurred. An application for renewal of a license must be made by the operator on the form furnished by the Department, and filled out prior to the expiration date of the license currently in force. When such application for renewal has been made in the proper manner and form, the existing license will, unless officially revoked, remain in force until the Department has acted on the application for renewal. (4-7-11)

106. COMPLAINTS AGAINST DAYCARE CENTERS, GROUP DAYCARE FACILITIES, FAMILY DAYCARE HOMES, FOSTER HOMES, CHILDREN'S RESIDENTIAL CARE FACILITIES, CHILDREN'S THERAPEUTIC OUTDOOR PROGRAMS, CHILDREN'S CAMPS, AND CHILDREN'S AGENCIES.

01. Investigation. The Department will investigate complaints regarding daycare centers, group daycare facilities, family daycare homes voluntarily licensed by the Department, foster homes, children's residential care facilities, children's therapeutic outdoor programs, children's camps, or children's agencies. The investigation may include further contact with the complainant, scheduled or unannounced visits to the children's residential care facility, foster home, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's agency, collateral contacts including interviews with the victim, parents or guardian, children's residential care facility or children's agency administrator, operator, staff, consultants, children in care, other persons who may have knowledge of the complaint, and inspections by fire or health officials. (4-7-11)

02. Informed of Action. If an initial preliminary investigation indicates that a more complete investigation must be made, the foster parents, operator, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency will be informed of the investigation, and any action to be taken, including referral for civil or criminal action. (4-7-11)

107. SUSPENSION FOR CIRCUMSTANCES BEYOND CONTROL OF FOSTER PARENT OR OPERATOR.

When circumstances occur over which the foster parent or operator has no control including illness, epidemics, fire, flood, or contamination, which temporarily place the operation of the foster home, child care facility, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency out of conformity with Idaho law or with these rules, the license must be suspended until the nonconformity is remedied. (4-7-11)

108. SUSPENSION OR REVOCATION FOR INFRACTIONS.

A license may be suspended for infractions of these rules. Such suspension may lead to revocation if the foster parent or operator fails to satisfy the Director that the infractions have been corrected sufficiently to assure conformity with the rules. (4-7-11)

109. NON-RENEWAL, DENIAL, REVOCATION, OR SUSPENSION OF LICENSE.

If, upon investigation, it is found that an applicant, foster parent, or operator has failed or refused to comply with any of the provisions of the Basic Daycare License Law, Sections 39-1101 through 39-1120, Idaho Code, or the Child Care Licensing Reform Act, Sections 39-1201 through 39-1224, Idaho Code, or with these rules, or with any provision of the license, the Director may deny, suspend, revoke, or not renew a license. The Department may also deny, suspend, revoke, or deny renewal of a license for any daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, child care facility, children's residential care facility, children's agency, children's therapeutic outdoor program, children's camp, or foster home when any of the following in Subsection 109.01 and 109.02 of this rule is determined. (4-7-11)

01. Criminal Conviction or Relevant Record. Anyone providing direct care or working onsite under these rules is denied clearance or refuses to comply with the requirements in IDAPA 16.05.06, “Criminal History and Background Checks.” (4-7-11)

02. Other Misconduct. The applicant, foster parent, operator, or the person proposed as chief executive officer: (4-7-11)

a. Fails to furnish any data, statistics, records or information requested by the Department without good cause or provides false information; (3-30-01)

b. Has been found guilty of or is under investigation for fraud, deceit, misrepresentation or dishonesty associated with the operation of a children's residential care facility or children's agency; (3-30-01)

c. Has been found guilty of or is under investigation for the commission of any felony; (3-30-01)

d. Has failed to exercise fiscal accountability toward a client or the Department regarding payment for services; or (3-30-01)

e. Has knowingly permitted, aided or abetted the commission of any illegal act on the premises of the daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential care facility, children’s therapeutic outdoor program, children’s camp, or children's agency. (4-7-11)

110. ENFORCEMENT REMEDY OF BAN ON ADMISSIONS.

The Department may summarily ban admissions, in whole or in part, pending satisfactory correction of all deficiencies. Bans will remain in effect until the Department determines that the organization has achieved full compliance with all program requirements, or until a substitute remedy is imposed. (7-1-09)

111. ENFORCEMENT REMEDY OF SUMMARY SUSPENSION AND TRANSFER OF RESIDENTS OR CHILDREN.

The Department may summarily suspend a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children’s agency, children’s therapeutic outdoor program, children’s camp, or a children’s residential care facility license and require the program to transfer residents or children when the Department has determined a resident’s or child’s health and safety are in immediate jeopardy. Children in a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, will not be transported from the facility, instead the parent or legal guardian will be contacted. (4-7-11)

112. ENFORCEMENT REMEDY REVOCATION OF LICENSE AND TRANSFER OF RESIDENTS OR CHILDREN.

The Department may revoke the license of a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children’s agency, children’s therapeutic outdoor program, or children’s residential care facility when the Department determines the operator is not in compliance with these rules. Children in a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, will not be transported from the facility, instead the parent or legal guardian will be contacted. Revocation and transfer of residents or children may occur under the following circumstances: (4-7-11)

01. Endangers Health or Safety. Any condition that endangers the health or safety of any resident or child. (4-7-11)

02. Not in Substantial Compliance. A foster home, children’s agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children’s therapeutic outdoor program, children’s camp, or children’s residential care facility is not in substantial compliance with these rules. (4-7-11)

03. No Progress to Meet Plan of Correction. A foster home, children’s agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children’s therapeutic outdoor program, children’s camp, or children’s residential care facility has made little or no progress in correcting deficiencies within thirty (30) days from the date the Department accepted a plan of correction. (4-7-11)

04. Repeat Violations. Repeat violations of any requirement of these rules or provisions of Title 39, Chapters 11 and 12, Idaho Code. (4-7-11)

05. Misrepresented or Omitted Information. A foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility has knowingly misrepresented or omitted information on the application or other documents pertinent to obtaining a license. (4-7-11)

06. Refusal to Allow Access. Refusal to allow Department representatives full access to the foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility and its grounds facilities and records. (4-7-11)

07. Violation of Terms of Provisional License. A children's agency, foster home, children's therapeutic outdoor program, children's camp, or children's residential care facility that has violated any of the terms or conditions of a provisional license. (3-21-12)

113. EFFECT OF PREVIOUS REVOCATION OR DENIAL OF A LICENSE.

An organization cannot apply and the licensing authority will not accept an application from any person, corporation, or partnership, including any owner with a ten percent (10%) or more interest, who has had a license denied or revoked, until five (5) years has elapsed from the date of denial, revocation, or conclusion of a final appeal, whichever occurred last. (7-1-09)

114. -- 299. (RESERVED)

STANDARDS FOR DAYCARE
(Sections 300 - 399)

300. STANDARDS FOR DAYCARE.

01. Daycare Standards. In addition to meeting the rules and minimum standards required in Sections 000 through 199 of these rules, each owner, operator, or applicant seeking licensure from the Department as a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must also meet the requirements under Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules. (4-7-11)

02. Minimum Age of Applicant. An individual, submitting an application to the Department to be licensed for a daycare center, group daycare facility, or family daycare home, must be a minimum of eighteen (18) years of age. (4-7-11)

301. TYPES OF DAYCARE LICENSES.

Subject to meeting all requirements under Title 39, Chapter 11, Idaho Code, and the rules and minimum standards in this chapter, the Department will determine the type of daycare license required by an owner or operator providing daycare by counting each child in attendance, regardless of relationship to the person or persons providing the care. The following types of daycare licenses may be issued by the Department. (4-7-11)

01. Daycare Center License. A daycare center license is issued for a place or facility providing daycare, where thirteen (13) or more children, regardless of relationship to the person or persons providing the care, are in attendance. (4-7-11)

02. Group Daycare Facility. A group daycare facility license is issued for a place or facility providing daycare, where seven (7) to twelve (12) children, regardless of relationship to the person or persons providing the care, are in attendance. (4-7-11)

03. Family Daycare Home. A family daycare home is not required to be licensed. However, a family daycare home may voluntarily elect to be licensed by the Department. (4-7-11)

302. -- 308. (RESERVED)

309. CRIMINAL HISTORY AND BACKGROUND CHECK FOR DAYCARE STANDARDS.

01. Criminal History and Background Check for Daycare Centers and Group Daycare Facilities.

Each owner, operator, or applicant seeking licensure for a daycare center, group daycare facility, or a family daycare home must submit evidence that is satisfactory to the Department that the following individuals have successfully completed and received a clearance for a Department criminal history and background check under the provisions of Sections 39-1105 and 39-1113, Idaho Code: (4-7-11)

- a. Owners, operators, and staff; (4-7-11)
- b. All other individuals thirteen (13) years of age or older who have unsupervised direct contact with children; or (4-7-11)
- c. All other individuals thirteen (13) years of age or older who are regularly on the premises. (4-7-11)

02. Juvenile Justice Records. The criminal history and background check for any individual under eighteen (18) years of age, must include a check of the juvenile justice records, as authorized by the minor and their parent or guardian. Records must be checked for each jurisdiction in which the individual has resided since becoming thirteen (13) years of age through eighteen (18) years of age. Each owner, operator, or applicant is responsible for requesting a check of the juvenile justice record, paying for the costs of a check of the juvenile justice records, and submitting them to the Department for review. A check of the juvenile justice records must include the following: (4-7-11)

- a. Juvenile justice records of adjudication of the magistrate division of the district court; (4-7-11)
- b. County probation services; and (4-7-11)
- c. Department records. (4-7-11)

03. Criminal History and Background Check for Family Daycare Homes. Under Section 39-1114, Idaho Code, any person providing daycare for four (4) or more children in a family daycare home is required to comply with the requirements of Sections 39-1105 and 39-1113, Idaho Code. (4-7-11)

04. Criminal History and Background Check for Private Schools and Private Kindergartens. Under Section 39-1105, Idaho Code, any person who owns, operates, or is employed by a private school for educational purposes for children four (4) through six (6) years of age or a private kindergarten is required to comply with the requirements of Sections 39-1105 and 39-1113, Idaho Code. (4-7-11)

05. Cost of Criminal History and Background Check and Juvenile Justice Records. Each individual who requests and obtains a Department criminal history and background check is responsible for the cost of the criminal history and background check and check of juvenile justice records. (4-7-11)

06. On-going Duty to Report Convictions. Following completion of a criminal history and juvenile justice background check and clearance, additional criminal convictions and juvenile justice adjudications for disqualifying crimes under Section 39-1113, Idaho Code, must be self-disclosed by the individual to the owner or operator of a daycare center, group daycare facility, or family daycare home. The owner or operator must report these additional convictions and adjudications to the Department within five (5) days of learning of the conviction or adjudication. (4-7-11)

310. -- 319. (RESERVED)

320. DAYCARE LICENSING MAXIMUM TOTAL FEES.

A nonrefundable licensing fee must be paid to the Department prior to the issuance or renewal of a daycare license. (3-21-12)

01. Daycare Licensing Maximum Total Fee Amounts. The maximum total fee for initial licensure or renewal of a daycare center, group daycare facility, or family daycare home voluntarily licensed must not exceed the following amounts: (3-21-12)

a. For a daycare center with more than twenty-five (25) children in attendance at any given time - three hundred twenty-five dollars(\$325). (3-21-12)

b. For a daycare center with thirteen (13) to twenty-five (25) children in attendance at any given time - two hundred fifty dollars (\$250). (3-21-12)

c. For a group daycare facility - one hundred dollars (\$100). (3-21-12)

d. For a family daycare home voluntary license - one hundred dollars (\$100). (3-21-12)

02. Daycare Fire Inspection Fee. Daycare fire inspection fees are payable to the local fire department or fire district official. (3-21-12)

321. APPLICATION FOR DAYCARE LICENSE OR RENEWAL.

Any individual applying for licensure as a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must be at least eighteen (18) years of age. The applicant must apply on forms provided by the Department and must provide information required by the Department set forth in the following Subsections 321.01 through 321.10. (4-7-11)

01. Completed and Signed Application. A completed application form signed and dated by the applicant. (4-7-11)

02. Licensing Fee. The applicant must pay the appropriate licensing fee prior to the issuance of a daycare license by the Department. (4-7-11)

03. Inspection Reports. The following reports must be submitted to the Department with the application: (4-7-11)

a. Proof that the proposed facility meets local building code, where required; (4-7-11)

b. Proof that the proposed facility meets local electrical code, where required; (4-7-11)

c. Proof that the proposed facility meets fire code, where required; and (4-7-11)

d. Proof that the facility meets local planning and zoning requirements. (4-7-11)

04. Proof of Insurance. The applicant must provide proof of current fire and liability insurance coverage for the daycare facility. (4-7-11)

05. Criminal History and Background Clearance. Evidence that the applicant and all individuals required to have a criminal history and background check have received a clearance from the Department required in Section 309 of these rules. (4-7-11)

06. Statement to Comply. The applicant must provide a written statement that these rules have been thoroughly read and reviewed and the applicant is prepared to comply with all of its provisions. (4-7-11)

07. 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 daycare provider in Idaho or any other jurisdiction, or a statement from the applicant stating he has never been involved in any such action. (4-7-11)

08. Other Information as Requested. The applicant must provide other information that may be

requested by the Department for the proper administration and enforcement of the provisions of this chapter. (4-7-11)

09. Additional Requirements for License Renewal. A daycare license must be renewed every two (2) years. The daycare operator must submit to the Department the renewal application, fee, and all required documentation in this section of rule at least forty-five (45) days prior to the expiration of the current daycare license. (4-7-11)

10. Termination of Application Process. Failure of the applicant to cooperate with the Department in the application process may result in the termination of the application process. Failure to cooperate means that the information requested is not provided within ninety (90) days, or not provided in the form requested by the Department, or both. (4-7-11)

322. -- 324. (RESERVED)

325. ISSUANCE OF LICENSE.

01. Department Action. The Department will order a health and safety inspection of the daycare facility once the application for licensure is complete and the licensing fee has been paid. (4-7-11)

02. Issuance of a Regular License. If the Department determines the applicant is in compliance with the rules and minimum standards set forth in these rules, the Department will, within sixty (60) days from the date the completed application is submitted, issue one (1) of the following licenses: (4-7-11)

a. Daycare Center License, stating the type of facility, the number of children who may be in attendance, and the length of time the license is in effect; (4-7-11)

b. Group Daycare Facility License, stating the type of facility, the number of children who may be in attendance, and the length of time the license is in effect; or (4-7-11)

c. Family Daycare Home License, stating the type of facility, the number of children who may be in attendance, and the length of time the license is in effect. (4-7-11)

03. Denial of Licensure. If the Department determines the applicant is not in compliance with the rules and minimum standards set forth in this chapter and further determines not to issue a regular license or provisional license, the Department will, within thirty (30) days from the date the completed application is submitted, issue a letter of denial of licensure stating the basis for the denial. (4-7-11)

04. Incomplete Application. The Department is not required to take any action on an application until the application is complete. (4-7-11)

05. Notification of License Renewal. The Department will notify the licensed daycare operator at least ninety (90) days prior to expiration of the license. (4-7-11)

06. List of Licensed Daycare Facilities. The Department will maintain a list of all licensed daycare facilities for public use. (4-7-11)

326. -- 329. (RESERVED)

330. STAFF AND OTHER INDIVIDUAL RECORD REQUIREMENTS.

Each owner or operator of a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must maintain a current list covering the previous twelve-month period of all staff and other individuals thirteen (13) years of age or older who have unsupervised direct contact with children, or are regularly on the premises. The list must specify, at a minimum, the following: (4-7-11)

01. Legal Name. (4-7-11)

- 02. Proof of Age.** (4-7-11)
- 03. Phone Number.** (4-7-11)
- 04. Record of Training.** (4-7-11)
- 05. Verification of Criminal History and Background Check Clearance.** (4-7-11)
- 06. Results of Juvenile Justice Records.** The results of juvenile justice records, when applicable. (4-7-11)
- 07. Certification.** Verification of Pediatric Rescue Breathing, Infant-Child CPR, and First Aid Treatment certification from a certified instructor, when applicable. (4-7-11)
- 08. Record of Hours.** The times, dates, and records of hours on the premises each day. (4-7-11)

331. CHILD RECORD CONTENT REQUIREMENTS.

Each owner or operator of a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must maintain a record for each child in attendance covering the previous twelve-month period. The record must contain, at a minimum, the following: (4-7-11)

- 01. Child's Full Name.** (4-7-11)
- 02. Date of Birth.** (4-7-11)
- 03. Parent or Guardian's Name, Address, and Contact Information.** (4-7-11)
- 04. Emergency Contact Information.** (4-7-11)
- 05. Child's Health Information.** (4-7-11)
 - a.** Immunization record or waiver of exemption form or statement; (4-7-11)
 - b.** Any medical conditions that could affect the care of the child; (4-7-11)
 - c.** Medications the child is taking or may be allergic to. (4-7-11)
- 06. Record of Attendance.** The times, dates, and record of attendance each day. (4-7-11)

332. -- 334. (RESERVED)

335. CHILD-STAFF RATIO.

Under Section 39-1109, Idaho Code, the Department determines the maximum allowable child-staff ratio based on a point system. (3-21-12)

01. Daycare Child-Staff Ratio Point System.

The maximum allowable points for each staff member is twelve (12), using the following point system which is based on the age of each child in attendance: (3-21-12)

- a.** Under the age of twenty-four (24) months, each child equals two (2) points. (3-21-12)
- b.** From the age of twenty-four (24) months to under the age of thirty-six (36) months, each child equals one and one-half (1 1/2) points. (3-21-12)
- c.** From the age of thirty-six (36) months to under the age of five (5) years, each child equals one (1) point. (3-21-12)
- d.** From the age of five (5) years to under the age of thirteen (13) years, each child equals one-half (1/2) point. (3-21-12)

02. Compliance with Child-Staff Ratios. Child-staff ratios must be maintained at all times during all hours of operation when children are in attendance and when transporting children. (3-21-12)

a. Each child in attendance is counted by the Department for the purposes of calculating maximum allowable points, counting the number of children in attendance, and for determining compliance with child-staff ratios; (3-21-12)

b. Each adult staff member who is providing direct care for a child or children is counted by the Department as one (1) staff member for the purposes of counting the number of staff on-duty and determining compliance with child-staff ratios; and (4-7-11)

c. Each staff member sixteen (16) and seventeen (17) years of age under the supervision of an adult staff member, when providing direct care for a child or children, may be counted by the Department as one (1) staff member for the purposes of counting the number of staff on-duty and determining compliance with child-staff ratios. (4-7-11)

03. Supervision of Children. The owner or operator and all staff are responsible for the direct care, protection, supervision, and guidance of children through active involvement or direct observation. In addition to meeting all of the minimum requirements of child-staff ratio, the owner or operator of a daycare center, group daycare facility, or family daycare home licensed by the Department must ensure that at least one (1) adult staff member is: (3-21-12)

a. Awake and on duty on the premises at all times during regular business hours or when children are in attendance, and (4-7-11)

b. Currently certified in pediatric rescue breathing, infant-child CPR, and first-aid treatment. (4-7-11)

04. Napping Children. Napping children who are not within sight of a staff member must be within easy hearing distance at all times. (4-7-11)

05. Overnight Daycare. For daycare operators providing overnight care of children, the following must apply: (4-7-11)

a. A sleeping child must sleep on the same level as the staff member who must be able to hear the child; and (4-7-11)

b. A staff member must be awake and on duty to release and receive a child. (4-7-11)

336. -- 339. (RESERVED)

340. DAYCARE CENTER TRAINING REQUIREMENTS.

Each owner or operator of a daycare center licensed by the Department must receive and ensure that each staff member receives and completes four (4) hours of ongoing training every twelve (12) months after the staff member's date of hire. (4-7-11)

01. Child Development Training. Training must be related to continuing education in child development. (4-7-11)

02. Documented Training. It is the responsibility of the owner or operator of the daycare center to ensure that each staff member has completed four (4) hours of training each year. The training must be documented in the staff member's record. (4-7-11)

03. Pediatric Rescue Breathing, Infant-Child CPR and First Aid Treatment Training. Pediatric rescue breathing, infant-child CPR, and first aid treatment training will not count towards the required four (4) hours of annual training. (4-7-11)

04. Staff Training Records. Each owner or operator of the daycare center is responsible for

maintaining documentation of staff's training and may be asked to produce documentation at the time of license renewal. (4-7-11)

341. -- 344. (RESERVED)

345. MANDATORY REPORTING OF ABUSE, ABANDONMENT, OR NEGLECT.

Under Section 16-1605, Idaho Code, daycare personnel, including the owners, operators, staff, and any other person who has reason to believe that a child has been abused, abandoned, or neglected or is being subjected to conditions or circumstances which would reasonably result in abuse, abandonment, or neglect, must report or cause to be reported within twenty-four (24) hours, such conditions or circumstances to the Department or the proper law enforcement agency. (4-7-11)

346. VISITATION AND ACCESS.

01. Visitation Rights. Parents and guardians have the absolute right to enter the daycare premises when their child is in the care of the daycare operator. Failure or refusal to allow parental or guardian entry to the daycare premises or access to their child may result in the suspension or revocation of a daycare license. (4-7-11)

02. Denied or Limited Visitation Rights by Court Order. If a parent or guardian has been granted limited or has been denied visitation rights by a court of competent jurisdiction, and the daycare operator has written documentation from the court, Subsection 346.01 of this rule does not confer a right to visitation upon the parent or guardian. (4-7-11)

03. Department Access. The owner or operator of a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must allow the Department access to the premises for re-inspection at any time during the licensing period. (4-7-11)

347. -- 349. (RESERVED)

350. FIRE SAFETY STANDARDS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must comply with the fire safety standards outlined in Subsections 350.01 and 350.02 of this rule. (4-7-11)

01. Inspections. Inspections must be completed by the local fire official or designee. For a daycare located outside of the area of authority outlined in Section 39-1109, Idaho Code, the Department can designate an approved inspector for daycare licensing purposes only. (4-7-11)

02. Unobstructed Exits. Required exits must be located in such a way that an unobstructed path outside the building is provided to a public way or area of refuge. (4-7-11)

a. Exit doors must open from the inside without the use of a key or any special knowledge or effort. (4-7-11)

b. There must be at least two (2) exits located a distance apart of not less than one-half (1/2) the diagonal dimension of the building or portion used for daycare, but not to exceed seventy-five (75) feet. An exception may be made for the following: (4-7-11)

i. The distance between exits may be extended to ninety (90) feet if the building is totally protected throughout with smoke detectors; or (4-7-11)

ii. The distance between exits may be increased to one hundred ten (110) feet if the building is equipped with an automatic fire sprinkler system. (4-7-11)

c. The required dimensions of exits must not be less than thirty-two (32) inches of clear exit width and not be less than six (6) feet, eight (8) inches in height. An exception for sliding patio doors will be accepted as a required second exit in a family daycare home and group daycare facilities only. (4-7-11)

d. Sleeping room exits must be provided with at least one (1) emergency egress window having at least a minimum single net clear opening of five point seven (5.7) square feet, minimum height twenty-four (24) inches, minimum width twenty (20) inches, and maximum finished sill height not over forty-four (44) inches. (4-7-11)

i. Approved egress windows from sleeping areas must be operable from the inside without the use of separate tools. (4-7-11)

ii. In lieu of egress windows, an approved exit door is acceptable. (4-7-11)

iii. An approved piece of furniture or platform, if anchored in place, may be approved to sit in front of a window if the sill height is over forty-four (44) inches. (4-7-11)

e. Where children are located on a story below the level of exit discharge (basement), there must be at least two (2) exits, one (1) of which must open directly to the outside. More than one (1) exit from the basement opening directly to the outside may be required, depending on the structure of the building, in order to ensure the safety of the occupants. (4-7-11)

f. Where children are located on a story above the level of exit discharge, there must be two (2) exits, one (1) of which must open directly to the outside and be in compliance with building codes. (4-7-11)

351. FACILITY CAPACITY AND DETERMINING OCCUPANT LOAD.

Occupant load is determined by the local fire official or designee. (4-7-11)

01. Area for Daycare Use Only. The local fire official or designee will only use those areas used for daycare purposes when determining the occupant load. (4-7-11)

02. Facilities with an Occupancy Load of Fifty or More. Facilities with an occupancy load of fifty (50) or more occupants must meet the requirements in Section 350 of these rules in addition to Subsections 351.01 through 351.03 of this rule. (4-7-11)

a. Exit doors must swing in the direction of egress. (4-7-11)

b. Exit doors from rooms, if provided with a latch, must have panic hardware installed. (4-7-11)

03. Exit Signs. Exit signs must be installed at required exit doorways and wherever else necessary to clearly indicate the direction of egress. (4-7-11)

352. FIRE EXTINGUISHERS AND SAFETY REQUIREMENTS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must comply with the fire extinguisher and safety requirements in this section of rule as applicable for size and type of facility. (4-7-11)

01. Portable Fire Extinguisher. There must be an approved portable fire extinguisher (minimum 2A-10BC) mounted securely in a visible location not to exceed five (5) feet from the floor to the top of the extinguisher and not more than seventy five (75) feet travel distance to an extinguisher and maintained properly. (4-7-11)

02. Kitchen Area. An approved fire extinguisher must be present or a hood-type fire suppression system must be installed in the kitchen area. (4-7-11)

03. Fire Extinguishers. Approved fire extinguishers must be maintained properly. (4-7-11)

04. Facilities Over Three Thousand Square Feet. Each daycare facility over three thousand (3,000) square feet is required to have additional fire extinguishers as approved by the local fire official or designee. (4-7-11)

05. Fire Alarm System. Each daycare facility with over fifty (50) children, must have an approved fire

alarm system installed. (4-7-11)

06. Smoke Detectors. Smoke detectors must be installed and maintained in the following locations: (4-7-11)

a. On the ceiling or wall outside or each separate sleeping area in the immediate vicinity of bedrooms; (4-7-11)

b. In each room used for sleeping purposes; and (4-7-11)

c. In each story within a facility including basements. (4-7-11)

d. If there is a basement, there must be a smoke detector installed in the basement having a stairway which opens from the basement into the facility. Such detector must be connected to a sounding device or other detector to provide an alarm which is audible in the sleeping area. (4-7-11)

07. Automatic Sprinkler Systems. An automatic sprinkler system must be provided in all daycare facilities greater than twenty thousand (20,000) square feet in area or when the number of children under the age of eighteen (18) months exceeds one hundred (100). (4-7-11)

353. FIRE SAFETY AND EVACUATION PLANS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must have an approved fire safety and evacuation plan prepared. Fire evacuation and safety plans must include the following: (4-7-11)

01. Evacuation. Procedures and policies for accounting for staff and children after an evacuation is completed. (4-7-11)

02. Assembly Point. Evacuation plan and assembly point for children and staff. (4-7-11)

03. Locations of Facility Exits. (4-7-11)

04. Evacuation Routes. (4-7-11)

05. Location of Fire Alarms. (4-7-11)

06. Location of Fire Extinguishers. (4-7-11)

07. Annual Review. Fire safety and evacuation plans must be reviewed or updated annually and available in the facility for reference and review. (4-7-11)

08. Frequency of Fire and Emergency Evacuation Drills. Fire and evacuation drills must be conducted on a routine schedule and all staff and children must participate. (4-7-11)

354. -- 359. (RESERVED)

360. HEALTH STANDARDS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must comply with the health standards in Subsections 360.01 through 360.19 of this rule. Health inspections will be completed by a qualified inspector designated by the Department. (4-7-11)

01. Food Source. Food must be from an approved source as defined in IDAPA 16.02.19, "The Idaho Food Code." Food must not be served past expiration or "use by date." (4-7-11)

02. Food Preparation. Food for use in daycare facilities must be prepared and served in a sanitary manner with sanitized utensils and on surfaces that have been cleaned, rinsed, and sanitized prior to use to prevent cross-contamination. (4-7-11)

- a.** Frozen food must be thawed in the refrigerator, under cold running water, or as part of the cooking process. Food must be cooked to proper temperatures according to IDAPA 16.02.19, "The Idaho Food Code." (4-7-11)
- b.** Individuals preparing food must use proper hand-washing techniques, minimize bare hand contact with food, and wear clean clothes. (4-7-11)
- 03. Food Temperatures.** Potentially hazardous foods must be kept refrigerated at forty-one degrees Fahrenheit (41°F) or below, held hot at one hundred thirty-five degrees Fahrenheit (135°F) or more, and reheated or cooled at safe temperatures according to IDAPA 16.02.19, "The Idaho Food Code." Refrigerators must be equipped with an accurate thermometer. (4-7-11)
- 04. Food Storage.** All food that is served in daycare facilities must be stored in such a manner that protects it from potential contamination. There must be no evidence of pests present in the daycare facility. (4-7-11)
- 05. Food Contact Surfaces.** Food contact surfaces must be kept clean and sanitized, including counters, serving tables, high chair trays, and cutting boards. (4-7-11)
- 06. Dishwashing Sanitizing.** Dishes, glasses, utensils, silverware and all other objects used for food preparation and eating must be sanitized using appropriate sanitizing procedures. (4-7-11)
- 07. Utensil Storage.** Clean utensils must be stored on clean shelves or drawers and not subject to recontamination. Sharp knives and other sharp objects must be kept out of reach of children. (4-7-11)
- 08. Garbage.** Garbage must be kept covered or inaccessible to children. (4-7-11)
- 09. Hand Washing.** Children and facility staff must be provided with individual or disposable towels for hand drying. The hand washing area must be equipped with soap and warm and cold running water. (4-7-11)
- 10. Diaper Changing.** Diaper changing must be conducted in such a manner as to prevent the spread of communicable diseases. A diaper-changing area must be separate from food preparation and serving areas and have easy access to a hand-washing sink. (4-7-11)
- 11. Sleeping Areas.** Children sleeping at the facility must have separate cots, mats, or beds and blankets. (4-7-11)
- 12. Restrooms, Water Supply, and Sewage.** All daycare facilities must have restrooms. (4-7-11)
- a.** Each facility must have at least one (1) flushable toilet and at least one (1) hand washing sink with warm and cold water per restroom. (4-7-11)
- b.** Plumbing and bathroom fixtures must be in good condition. (4-7-11)
- c.** In addition, daycare centers must comply with requirements of the state-adopted International Building Code. (4-7-11)
- 13. Water Supply.** The facility's water supply must meet one (1) of the following requirements: (4-7-11)
- a.** Be from a public water system which is maintained according to IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," at the time of initial application and application for license renewal; or (4-7-11)
- b.** Be from a private source, such as well or spring, and must be tested annually for bacteria and nitrate, and approved by the Department. (4-7-11)
- c.** Water used for consumption at a daycare facility must be from an acceptable source,. Temporary

use of bottled water or boiled water may be allowed for a period specified by the by the Department. (4-7-11)

14. Sewage Disposal. Facility sewage must be disposed of through a public system, or in the absence of a public system, in a manner approved by the local health authority, according to IDAPA 58.01.03 “Individual/Subsurface Sewage Disposal Rules.” (4-7-11)

15. Use of Alcohol and Illegal Drugs. Alcohol and illegal drugs must not be used by operators, children, staff, volunteers, or visitors at daycare facilities or in the presence of children during hours of operation or in vehicles while transporting children. (4-7-11)

a. Any individual under the influence of alcohol or drugs must not be permitted at or in the daycare facility. (4-7-11)

b. Illegal drugs are prohibited by law and therefore must not be allowed on the premises of a licensed daycare facility at anytime whether the facility is open or closed. (4-7-11)

16. Smoke Free Environment. Children must be afforded a smoke-free environment during all daycare hours, whether indoors or outdoors. While children are in care, the operator and all staff must ensure that no smoking or other tobacco use occurs within the facility, in outdoor areas, or in vehicles when children are present. (4-7-11)

17. Medication. No person can administer any medication to a child without it first being authorized by a parent or caretaker. All medications, refrigerated or unrefrigerated, must be in a locked box or otherwise inaccessible to children. (4-7-11)

18. Adequate Heat, Light and Ventilation. A daycare facility must have adequate heat, light and ventilation. Window and doors must be screened if used for ventilation. (4-7-11)

19. Immunizations. Daycare operators must comply with the immunizations requirements provided in IDAPA 16.02.11, “Immunization Requirements for Children Attending Licensed Day Care Facilities in Idaho.” (4-7-11)

361. MISCELLANEOUS SAFETY REQUIREMENTS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must comply with the miscellaneous safety standards in Subsections 361.01 through 361.07 of this rule. (4-7-11)

01. Telephone. An operable telephone or cell phone must be available on the facility at all times and the following conditions must apply: (4-7-11)

a. The telephone number used to meet this standard must be made available to parents and guardians. (4-7-11)

b. Emergency phone numbers to include 911, an adult emergency substitute operator, as well as the address and phone number of the facility, must be posted by the telephone or in a location that is immediately visible at all times. (4-7-11)

02. Heat Producing Equipment. A furnace, fireplace, wood-burning stove, water heater and other flame or heat-producing equipment must be installed and maintained as recommended by the manufacturer and protected on all surfaces by screens or other means. ()

03. Portable Heating Devices. Portable heating devices must be limited and approved for use and location by the Fire Inspector prior to use within a facility. (4-7-11)

04. Storage of Weapons, Firearms, and Ammunition. Firearms or other weapons which are stored at a daycare facility must be kept in a locked cabinet or other container that is inaccessible to children, including a locked gun safe, while children are in attendance. (4-7-11)

- a. Ammunition must be stored in a locked container separate from firearms. (4-7-11)
- b. Matches, lighters, and any other means of starting fires must be kept away from and out of the reach of children. (4-7-11)
- c. Other weapons that could cause harm to children must be stored out of reach of children. (4-7-11)

05. Animals and Pets. Any pet or animal present at the facility, indoors or outdoors, must be in good health, show no evidence of carrying disease, and be a friendly companion of the children. The operator must maintain the animal's vaccinations and vaccination records. These records must be made available to the Department upon request. (4-7-11)

06. Storage of Hazardous Materials. Cleaning materials, flammable liquids, detergents, aerosol cans, pesticides, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to children. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas or constitute a hazard to the children. (4-7-11)

362. -- 364. (RESERVED)

365. BUILDINGS, GROUNDS, FURNISHINGS, AND EQUIPMENT.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must comply with these minimum standards in Subsections 365.01 through 365.08 of this rule. (4-7-11)

01. Appliances and Electrical Cords. All appliances, lamp cords, exposed light sockets and electrical outlets must be protected to prevent electrocution. (4-7-11)

02. Balconies and Stairways. Balconies and stairways accessible to children must have substantial railings as required by the state-adopted International Building Code. (4-7-11)

03. Stairway Protection. Where an operator cares for children less than three (3) years of age, stairways must be protected to prevent child access to stairs. (4-7-11)

04. Hazard Areas Restrictions. Based on the age and functioning level of children in care and the type of hazard, any outdoor hazard area must be restricted to prevent easy access to the hazard. (4-7-11)

05. Fueled Equipment. Fueled equipment including, but not limited to, motorcycles, mopeds, lawn-care equipment and portable cooking equipment may not be stored or repaired in areas where children are present. (4-7-11)

06. Water Hazards. Above and below ground pools, hot tubs, ponds, and other bodies of water that are on the daycare facility premises must provide the following safeguards: (4-7-11)

a. The area surrounding the body of water must be fenced and locked in a manner that prevents access by children and meets the following requirements: (4-7-11)

i. The fence must be at least four (4) feet high with no vertical opening more than four (4) inches wide and be designed so that a young child cannot climb or squeeze under or through the fence. The fence must surround all sides of the pool and have a self-closing gate that has a self latching mechanism in proper working order that is out of the reach of young children. (4-7-11)

ii. If the house forms one (1) side of the barrier for the pool, all doors that provide unrestricted access to the pool must have alarms that produce an audible sound when the door is opened. (4-7-11)

b. Furniture or other large objects must not be left near the fence in a manner that would enable a child to climb on the furniture or other large object and gain access to the pool. If the area surrounding a pool, hot tub, pond or other body of water is not fenced and locked, there must be a secured protective covering that will prevent access by a child. (4-7-11)

- c. Wading pools and buckets must be empty when not in use. (4-7-11)
- d. Children must be under direct supervision of an adult staff member who is certified in pediatric rescue breathing, infant-child CPR, and first aid treatment while using a bath tub, pool, hot tub, pond, or other body of water. (4-7-11)
- e. A minimum of a four (4) foot high fence must be present that prevents access from the daycare facility premises, if the daycare premises are adjacent to a body of water. (4-7-11)
- 07. Indoor Play Areas and Toys.** The indoor play areas must be clean, reasonably neat and free from accumulation of dirt, rubbish or other health hazards. (4-7-11)
- 08. Outdoor Play Areas and Toys.** Any outdoor play area must be maintained free from hazards such as wells, machinery and animal waste. (4-7-11)

 - a. If any part of the play area is adjacent to a busy roadway, drainage or irrigation ditch, stream, large holes, or other hazardous areas, the play area must be enclosed with a fence in good repair that is at least four (4) feet high without any holes or spaces greater than four (4) inches in diameter. (4-7-11)
 - b. Outdoor equipment, such as climbing apparatus, slides and swings, must be anchored firmly and placed in a safe location and in accordance with the manufacturer's instructions. (4-7-11)
 - c. Outdoor play areas must be designed so that all parts are always visible and are easily supervised by a staff member. (4-7-11)
 - d. Toys, play equipment, and any other equipment used by the children must be of substantial construction and free from rough edges and sharp corners. Unguarded ladders on slides must be kept in good repair and well maintained. (4-7-11)
 - e. Toys and objects with a diameter of less than one (1) inch (two point five (2.5) centimeters), objects with removable parts that have a diameter of less than one (1) inch (two point five (2.5) centimeters), plastic bags, styrofoam objects and balloons must not be accessible to children ages three (3) and under or children who are known to place such objects in their mouths. (4-7-11)

366. -- 389. (RESERVED)

390. CONTINUED COMPLIANCE, REPORTING CHANGES, AND CRITICAL INCIDENTS.

Each daycare owner or operator must remain in compliance at all times with fire, safety, and health requirements as required in this chapter of rules. (4-7-11)

- 01. Posting of License and Other Information.** (4-7-11)

 - a. A daycare license issued by the Department to operators meeting the standards in these rules must be posted in plain view where it can be seen by parents and the public upon entering the facility. (4-7-11)
 - b. A daycare must post contact information of the Department and the statewide number to file daycare complaints. (4-7-11)
- 02. Reporting Changes.** The Department must be notified of any changes that would affect the terms of licensure or could affect the health, well-being, or safety of children. (4-7-11)
- 03. Critical Incidents.** A daycare operator must report any of the following to the Department within twenty-four (24) hours: (4-7-11)

 - a. Serious injury or death of a child at the facility; (4-7-11)
 - b. Any arrests, citations, withheld judgments, or criminal convictions of disqualifying crimes

associated with Section 39-1113, Idaho Code, of an operator or any other individual regularly on the premises of the facility and provide documentation that the individual is not working with children or is not on the premises. (4-7-11)

391. -- 394. (RESERVED)

395. FAILURE TO COMPLY.

01. Misdemeanors to Operate Without a License. It is a misdemeanor to operate a daycare center or group daycare facility within this state without first obtaining a daycare license from the Department or to operate a daycare center or group daycare facility without posting the license in a place easily seen by a parent or the general public. (4-7-11)

a. The Department may grant a grace period of no more than sixty (60) days to allow the daycare facility to come into compliance with the minimum standards in this chapter and with Title 39, Chapter 11, Idaho Code. (4-7-11)

b. The operator or owner must agree to begin the application process as described in Section 321 of these rules within one (1) business day of identification by the Department that a daycare owner or operator is not in compliance with Title 39, Chapter 11, Idaho Code or this chapter of rules. (4-7-11)

02. Misdemeanor to Operate a Family Daycare Home for Four or More Children Without Obtaining a Criminal History Check. It is a misdemeanor to operate a family daycare home caring for four (4) or more children without obtaining the required criminal history check in Section 39-1105, Idaho Code. In the event of an initial citation for violation of the provisions of Section 39-1115, if a person makes the applications required within twenty (20) days, the complaint will be dismissed. Operating a family daycare home for four (4) or more children after failure to pass the required criminal history check is a misdemeanor. (4-7-11)

03. Misdemeanor to Provide Daycare if Guilty of Certain Offenses. It is a misdemeanor to provide daycare services if found guilty of any offenses listed in Section 39-1113, Idaho Code. (4-7-11)

396. -- 399. (RESERVED)

STANDARDS FOR FOSTER HOMES
(Sections 400 - 499)

400. STANDARDS FOR FOSTER HOMES.

The standards for licensing foster homes are intended to insure that children of the state who must live away from their parents receive adequate substitute parental care to address their need for safety, health, and well being, that the persons providing this care are capable and suitable to meet the protection needs of children living in foster homes, and the physical environment in which these children reside is a safe setting. (3-30-01)

401. LICENSING PROVISIONS RELATED TO THE INDIAN CHILD WELFARE ACT.

These rules do not supercede the licensing authority of Indian tribes pursuant to the Indian Child Welfare Act, P.L. 95-608, 25 USC, Sections 1901 – 1963. (3-30-01)

402. FOSTER PARENT QUALIFICATIONS AND SUITABILITY.

Foster parents must be physically and emotionally suited to care for children and to deal with the problems presented by children placed away from their own parents, family and homes. An applicant for licensure as a foster parent must meet all of the following qualifications: (3-30-01)

01. Minimum Age. Be twenty-one (21) years of age or older. (3-30-01)

02. Character. Be of good character. (3-30-01)

03. Personal Attributes and Experiences. Have the maturity, interpersonal qualities, temperament and life experiences that prepare the foster parent to provide foster care. (3-30-01)

04. Availability for Child Placement. Express a willingness to provide care for the kind of children the children's agency has available for placement. (3-30-01)

05. Knowledge and Skill. Demonstrate an understanding of the care that must be provided to the children served by the children's agency or express a willingness to learn how to provide that care. (3-30-01)

06. Child Care and Supervision. Have adequate time to provide care and supervision for children. (3-30-01)

07. Income and Resources. Have a defined and sufficient source of income and be capable of managing that income to meet the needs of the foster family without relying on the payment made for the care of a foster child. (3-30-01)

08. Health. Have the physical, intellectual, and emotional health to assure appropriate care of children. (3-30-01)

09. Harmonious Home Life. Establish and maintain a harmonious home life to give children the emotional stability they need. No marital or personal problems may exist within the family that would result in undue emotional strain in the home or be harmful to the interest of children placed in the home. (3-30-01)

10. Acceptance of Foster Children. Express a willingness and demonstrate the ability to accept a child into the home as a member of the family. (3-30-01)

11. Family Supports. Express a willingness, and demonstrate the ability, to work with a foster child's legal family, future family, or Indian tribe. (3-30-01)

12. Compliance with Licensing Rules. Demonstrate a willingness and ability to comply with the licensing rules for foster homes. (3-30-01)

403. MEMBER OF HOUSEHOLD QUALIFICATIONS AND SUITABILITY.

To assure the safety and well-being of children, a member of the household must be in compliance with the requirements specified in these rules. (4-7-11)

404. CRIMINAL HISTORY AND BACKGROUND CHECKS FOR FOSTER CARE LICENSE.

All applicants for a foster care license and other adult members of the household must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks," and the following requirements: (3-30-07)

01. Required Procedures. Each applicant for a foster home license, and any other adult member of the household, must participate in a criminal history and background check as required by Section 39-1211(4), Idaho Code. (3-30-07)

02. Change in Household Membership. By the next working day after another adult begins residing in a licensed foster home, a foster parent must notify the children's agency of the change in household membership and assure that the new adult member of the household will participate in a criminal history and background check as required by Section 39-1211(4), Idaho Code. (3-30-07)

03. Foster Parent's Child Turns Eighteen. A foster parent's child who turns eighteen (18) and lives continuously in the home is not required to have a criminal history and background check except as specified in Subsection 404.03.c. of this rule. (4-7-11)

a. After turning eighteen (18) years of age, if the foster parent's adult child no longer lives in the foster parent's home and subsequently resumes living in the licensed foster home, he will be considered an adult member of the household and must complete a criminal history and background check within fifteen (15) days from the date he became an adult member of the household. (4-7-11)

b. If the adult child leaves the foster home for the purpose of higher education or military service, and periodically returns to the home for less than ninety (90) days, he is not considered to be an adult member of the

household and is not required to complete a criminal history and background check. While in the home, he cannot have any unsupervised direct care responsibilities for any foster children in the home. Should he remain in the foster home for more than ninety (90) days, he will immediately be considered an adult member of the household and must complete a criminal history and background check within fifteen (15) days from the date he became an adult member of the household. (4-7-11)

c. If the adult child continues to live in their parent's licensed foster home or on the same property, he must complete a criminal history and background check within fifteen (15) days of turning twenty-one (21). This requirement is not necessary if the adult child has completed a criminal history and background check between the ages of eighteen (18) and twenty-one (21). (3-30-07)

04. Criminal History and Background Check at Any Time. The Department retains the authority to require a criminal history and background check at any time on individuals who are residing in a licensed foster home or on the foster parent's property. (4-7-11)

405. INITIAL EVALUATION.

An applicant must participate in the process and tasks to complete an initial evaluation for foster care licensure. (3-30-01)

01. Applicant Participation. The applicant must do all of the following: (3-30-01)

a. Cooperate with and allow the children's agency to determine compliance with these rules to conduct an initial foster home study; (3-30-01)

b. Inform the children's agency if the applicant is currently licensed or has been previously licensed as a foster parent or the applicant has been involved in the care and supervision of children or adults; (3-30-01)

c. Provide a medical statement for each applicant, signed by a qualified medical professional, within the twelve (12) month period prior to initial licensure for family foster care, indicating the applicant is in such physical and mental health so as to not adversely affect either the health or quality of care for children placed in the home; (3-30-01)

d. Provide the name of, and a signed release to obtain the following information about, each member of the household: (3-30-01)

i. Admission to or release from a facility, hospital, or institution for the treatment of an emotional, intellectual, or substance abuse issue; (3-30-01)

ii. Outpatient counseling, treatment, or therapy for an emotional, intellectual, or substance abuse issue; and (3-30-01)

e. Provide three (3) satisfactory references, one (1) of which may be from a person related to the applicant(s). An applicant will provide additional references upon the request of the children's agency. (3-30-01)

02. Members of the Household Physical and Mental Health. All members of the household must be in such physical and mental health that the health, safety, or well-being of a foster child will not be adversely affected. A report of the member of the household's physical and mental health status may be required from a qualified medical professional if this appears advisable to the children's agency. (3-30-01)

03. Disclosure of Information. An applicant must provide the children's agency with the following information and any other information the children's agency deems necessary to complete the initial family home study: (3-30-01)

a. The names, including maiden or other names used, and ages of the applicant(s); (3-30-01)

b. Social security number; (3-30-01)

c. Education; (3-30-01)

- d.** Verification of marriages and divorces; (3-30-01)
- e.** Religious and cultural practices of the applicant including their willingness and ability to accommodate or provide care to a foster child of a different race, religion, or culture; (3-30-01)
- f.** A statement of income and financial resources and the family's management of these resources; (3-30-01)
- g.** Marital relationship, if applicable, including decision making, communication, and roles within the family; (3-30-01)
- h.** Individual and family functioning and inter-relationships with each member of the household; (3-30-01)
- i.** Any current family problems, including mental illness, drug and alcohol abuse, and medical conditions; (3-30-01)
- j.** Previous criminal convictions and valid incidents of child abuse and neglect; (3-30-01)
- k.** Family history, including childhood experiences and the applicant's parents' methods of discipline and problem solving; (3-30-01)
- l.** Child care and parenting skills; (3-30-01)
- m.** Current methods of discipline; (3-30-01)
- n.** The names, ages, and addresses of all biological and adopted children currently residing in or outside the home; (3-30-01)
- o.** Adjustment and special needs of the applicant's children; (3-30-01)
- p.** Interests and hobbies; (3-30-01)
- q.** Reasons for applying to be a foster parent; (3-30-01)
- r.** Understanding of the purpose and goals of foster care; (3-30-01)
- s.** Prior and current experiences with foster care; (3-30-01)
- t.** Emotional stability and maturity in dealing with the needs, challenges, and related issues associated with the placement of a child into applicant(s) home; (3-30-01)
- u.** The attitudes toward foster care by immediate and extended members of the family and other persons who reside in the home; (3-30-01)
- v.** The applicant's attitudes about a foster child's family and the applicant's willingness to work with the child's family and tribe; (3-30-01)
- w.** Specifications of the children preferred by the family that include the number of children, age, gender, race, ethnic background, social, emotional and educational characteristics of children preferred; (3-30-01)
- x.** Adequacy of the applicant's house, property, and neighborhood for the purpose of providing foster care as determined by on-site observations; (3-30-01)
- y.** The applicant(s) willingness to abide by the children's agency policies and procedures for discipline; (3-30-01)

z. Three (3) personal references, at least two (2) that are from persons not related to the applicants, reflecting the applicants to be of good character and habits; (3-30-01)

aa. Training needs of the applicant(s); and (3-30-01)

bb. The capacity and willingness to transport a foster child in a motor vehicle. (3-30-01)

406. SUBSEQUENT EVALUATIONS.

A foster parent must comply with the following requirements for the subsequent evaluation required for a foster care license: (3-30-01)

01. Reasonable Access. A foster parent will allow the children's agency reasonable access to the foster home, including interviewing each foster parent, each foster child and any member of the household to determine continued compliance with licensing standards, for child supervision purposes, and to conduct a re-certification study. (3-30-01)

02. Update Information. Provide all changes to the information contained in the initial evaluation and subsequent evaluations. (3-30-01)

03. Family Functioning. Provide information on any changes in family functioning and inter-relationships. (3-30-01)

04. Other Circumstances. Provide the children's agency with any information regarding circumstances within the family that may adversely impact the foster child. (3-30-01)

05. Written Plan of Correction. Cooperate with the children's agency in developing and carrying out a written plan required to correct any rule non-compliance identified by any evaluation conducted by the children's agency. (3-30-01)

407. FOSTER PARENT DUTIES.

A foster parent must carry out the following functions: (3-30-01)

01. Service Plan Implementation. Cooperate with, and assist the children's agency in, the implementation of the service plan for children and their families. (3-30-01)

02. Reporting Progress and Problems. Promptly and fully disclose to the children's agency information concerning a child's progress and problems. (3-30-01)

03. Termination of Placement by the Foster Family. Provide notification to the children's agency of the need for a child to be moved from the foster home not less than fourteen (14) calendar days before the move, except when a delay would jeopardize the child's care or safety or the safety of members of the foster family. (3-30-01)

04. Written Policies and Procedures for Foster Families. Maintain a copy of, be familiar with, and follow these rules and any other rules, policies, or procedures which an agency may require for foster parents and foster care. (3-30-01)

408. FOSTER PARENT TRAINING.

Each foster parent must comply with the following training requirements: (3-30-01)

01. Orientation. Each applicant for a foster home license will receive an orientation related to the children's agency foster care program and services. (3-30-01)

02. Initial Training. Complete not less than ten (10) hours of training no later than one (1) year following the issuance of an initial foster care license. (3-30-01)

03. Annual Training. Complete not less than ten (10) hours of training on an annual basis following

the initial training specified in these rules. (3-30-01)

04. Individualized Training. Complete training identified by the children's agency as meeting the individual needs of the foster parent(s). (3-30-01)

05. Required Training. Complete any additional training as required by the children's agency foster parent training plan. (3-30-01)

409. -- 429. (RESERVED)

430. CHILD CARE AND SAFETY REQUIREMENTS.

The property, structure, premises, and furnishings of a foster home must be constructed and maintained in good repair, in a clean condition, free from safety hazards and dangerous machinery and equipment. Areas and equipment that present a hazard to children must not be accessible by children. (3-30-07)

01. Pools, Hot Tubs, Ponds, and Other Bodies of Water. Any licensed foster home with a body of water on or adjacent to their property must provide the following safeguards: (3-30-07)

a. Around any body of water, a foster child must have appropriate adult supervision consistent with the child's age, physical ability, and developmental level; (3-30-07)

b. The area surrounding a body of water must be fenced and locked in a manner that prevents access by children; or (3-30-07)

c. If the area surrounding a body of water is not fenced and locked, there must be a secured protective covering that will not allow access by a child; (3-30-07)

i. Pool or hot tub covers must be completely removed when in use; (3-30-07)

ii. When the pool or hot tub cover is in place, the cover must be free from standing water; (3-30-07)

iii. Covers must be kept locked at all times when the pool or hot tub is not in use; and (3-30-07)

iv. Exterior ladders on above ground pools must be removed when the pool is not in use. (3-30-07)

02. Access by Children Five Years of Age and Under. Any licensed foster home that cares for children five (5) years of age and under and chooses to prevent access to a body of water by fencing must provide a fence that meets the following requirements: (3-30-07)

a. The fence must be at least four (4) feet high with no vertical opening more than four (4) inches wide, be designed so that a young child cannot climb or squeeze under or through the fence, and surround all sides of the pool or pond; (3-30-07)

b. The gate must be self-closing and have a self-latching mechanism in proper working order out of the reach of young children; (3-30-07)

c. If the house forms one (1) side of the barrier for the pool, doors that provide unrestricted access to the pool must have alarms that produce an audible sound when the doors are opened; and (3-30-07)

d. Furniture or other large objects must not be left near the fence that would enable a child to climb on the furniture and gain access to the pool. (3-30-07)

03. Irrigation Canals or Similar Body of Water. A licensed foster home caring for a child five (5) years of age and under or a child who is physically or developmentally vulnerable, whose property adjoins an irrigation canal or similar body of water, must have fencing that prevents access to the canal or similar body of water by the child. (3-30-07)

04. Other Safety Water Precautions. (3-30-07)

- a. Wading pools must be empty when not being used; (3-30-07)
- b. Children must be under direct supervision of an adult while using a wading pool; (3-30-07)
- c. Toys that attract young children to the pool area must be kept picked up and away for the pool area when not in use; and (3-30-07)
- d. A child who does not know how to swim must use an approved lifesaving personal flotation device. (3-30-07)

431. INSTALLATION, MAINTENANCE AND INSPECTION OF FLAME AND HEAT PRODUCING EQUIPMENT.

A foster parent must assure: (3-30-01)

01. Installation and Maintenance of Flame and Heat-Producing Equipment. That a furnace, fireplace, wood-burning stove, water heater and other flame or heat-producing equipment is installed and maintained as recommended by the manufacturer, and fireplaces are protected by screens or other means. (3-30-01)

02. Portable Heating Devices. That portable heating devices will not be used during sleeping hours. (3-30-01)

03. Fire Inspections. An inspection by a certified fire inspector may be required at the discretion of the children's agency. (3-30-01)

432. SMOKE AND CARBON MONOXIDE DETECTING DEVICES.

Each foster home must meet the following standards: (3-30-01)

01. Smoke Detecting Devices. That there will be at least one (1) single-station smoke detector (approved by a nationally recognized testing laboratory) that is installed and maintained as recommended by the manufacturer and as follows: (3-30-01)

- a. One (1) smoke detector on each floor of the home, including the basement; (3-30-01)
- b. One (1) smoke detector in each bedroom used by a foster child; and (3-30-01)
- c. One (1) smoke detector in areas of the home that contain flame or heat-producing equipment other than domestic stoves and clothes dryers. (3-30-01)

02. Carbon Monoxide Detecting Devices. That there will be at least one (1) carbon monoxide detecting device (approved by a nationally recognized testing laboratory) that is installed and maintained as recommended by the manufacturer. A house that does not have equipment which produces carbon monoxide or does not have an attached garage is exempt from this requirement. (3-30-01)

433. EXITS.

There must be at least two (2) exits from each floor level used by a family member that are remote from each other, one (1) of which provides a direct safe means of unobstructed travel to the outside at street or ground level. A window may be used as a second exit if it is in compliance with these rules. (3-30-01)

434. DANGEROUS AND HAZARDOUS MATERIALS.

Dangerous and hazardous materials, objects or equipment, including but not limited to poisonous, explosive or flammable substances that could present a risk to a child placed in a foster home, must be stored securely and out of reach of a child, as appropriate for the age and functioning level of the child. (3-30-01)

435. FIREARMS AND AMMUNITION.

Firearms at a foster home must be stored: (3-30-01)

- 01. Trigger Locks.** Unloaded and equipped with a trigger lock; (3-30-01)
- 02. Unassembled and Inoperable.** Unloaded, fully inoperable and incapable of being assembled and fired; (3-30-01)
- 03. Locked Cabinet or Container.** Unloaded and locked in a cabinet or storage container that is inaccessible to children; or (3-30-01)
- 04. Gun Safe.** Locked in a gun safe that is inaccessible to children. (3-30-01)
- 436. PETS AND DOMESTIC ANIMALS.**
Any pet or domestic animal that is suspected or known to be dangerous must be kept in an area inaccessible to children. (3-30-01)
- 437. ADEQUATE HEAT, LIGHT, AND VENTILATION.**
A foster home must have adequate heat, light, and ventilation and windows and doors will be screened if used for ventilation. (3-30-01)
- 438. BATHROOMS, WATER SUPPLY, AND SEWAGE DISPOSAL.**
A foster home must meet the following standards: (3-30-01)
- 01. Toilet Facilities.** A foster home will have a minimum of one (1) flush toilet, one (1) washbasin that has warm and cold running water, and one (1) bathtub or shower that has warm and cold running water, all of which are in good working order. (3-30-01)
- 02. Water Supply.** The water supply will meet one (1) of the following requirements: (3-30-01)
- a.** That it is from a source approved for a private home by the health authority according to IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," at the time of application and for annual renewal of such licenses; or (3-30-01)
- b.** Water used for consumption at a foster home is from an acceptable source, bottled water from an acceptable source, or boiled for a period specified by the local health authority according to IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." (3-30-01)
- 03. Sewage Disposal.** Sewage will be disposed of through a public system, or in the absence of a public system, in a manner approved by the local health authority, according to IDAPA 58.01.03 "Individual/Subsurface Sewage Disposal Rules." (3-30-01)
- 439. TRANSPORTATION.**
A foster parent must comply with the requirements related to child transportation that include: (3-30-01)
- 01. Legal Requirements for Transporting Children.** A foster parent, or any person acting on behalf of a foster parent, that transports a child, will possess a valid Idaho driver's license, be insured in accordance with Idaho Law, and abide by all traffic laws including the requirement that all children are in proper safety restraints while being transported. (3-30-01)
- 02. Reliable Transportation.** A foster parent will arrange for safe, reliable transportation of any foster child in their care to assure the child has access to school, community services, and the children's agency. (3-30-01)
- 03. Prohibitions of Foster Child Transportation.** A foster parent will not transport a foster child while impaired by any substance including alcohol, prescription medication, or any illegal substances. (3-30-01)
- 440. TELEPHONE.**
Unless previously approved by the licensing agency, there must be an operating telephone in a foster home. (3-30-01)
- 441. WHEELCHAIR ACCESS.**

A foster home that provides care to a child who regularly requires the use of a wheelchair, must be wheelchair accessible. (3-30-01)

442. CHILD PLACEMENT REQUIREMENTS.

A foster family must accept the placement of children into the home within the terms of the foster home license or certification and the children's agency placement agreement. The following provisions will be considered for determining placement: ()

01. Determining Factors. The number and the age group of children placed in a foster home will be determined by all of the following: (3-30-01)

- a. The accommodations and the space in the home; (3-30-01)
- b. The interest of the foster family; and (3-30-01)
- c. The experience or skill of the foster family. (3-30-01)

02. Maximum Number of Children. Except as specified, the maximum number of children in care at any time, including the foster family's own children, or daycare children, will be limited to not more than six (6) children. ()

03. Children Under Two Years of Age. Except as specified in Subsection 442.04 of these rules, the maximum number of children under two (2) years of age, including those of the foster family, will be limited to not more than two (2) children. (3-30-01)

04. Special Circumstances Regarding Maximum Numbers of Children. The maximum number of children in care at any time may be increased to not more than two (2) additional children, based on any of the following: (3-30-01)

- a. The increased capacity would allow for siblings to remain together; or (3-30-01)
- b. The increased capacity would allow a family to provide care to a child who has an established, meaningful relationship with the family; or (3-30-01)
- c. The foster home offers unusual space, skill, or experience. (3-30-01)

05. Continued Care. A foster child who reaches the age of eighteen (18) years may continue in foster care placement until the age of twenty-one (21) years if the safety, health and well-being of other foster children residing in the home is not jeopardized. Not more than two (2) such individuals receiving continued care may reside in the foster home at the same time. (3-30-01)

443. INTERAGENCY PLACEMENT OF CHILDREN.

A foster family must only accept for placement children referred from the children's agency that licenses or certifies the foster home. A foster family may accept for placement a foster child from another children's agency only if that children's agency and the foster family have received prior approval for the placement of a child from the children's agency that licensed or certified the home. ()

444. SUBSTITUTE CARE PLACEMENT AND CHILDREN'S AGENCY NOTIFICATION.

A foster parent must: (3-30-01)

01. Substitute Care. Place a child in substitute care only with the prior knowledge and consent of the children's agency. (3-30-01)

02. Notification to Agency. Notify the children's agency before the beginning of any planned absence that requires substitute care of a child for a period of twenty-four (24) hours or more. (3-30-01)

445. BEDROOMS.

- A foster parent must comply with the following rules: (3-30-01)
- 01. Sleeping Arrangements.** A bedroom occupied by a foster child will: (3-30-01)
 - a.** Provide an adequate opportunity for both rest and privacy for each child; (3-30-01)
 - b.** Be readily accessible to adult supervision as appropriate for the age and functioning level of each child; (3-30-01)
 - c.** Have sufficient floor space to provide two (2) feet of space between beds; (3-30-01)
 - d.** Have sufficient space for the storage of clothing and personal belongings; (3-30-01)
 - e.** Have a finished ceiling, permanently affixed floor-to-ceiling walls, and finished flooring; (3-30-01)
 - f.** Have a latchable door that leads to an exit from the foster home; (3-30-01)
 - g.** Have at least one (1) outside window that complies with the following: (3-30-01)
 - i.** Is readily accessible to children and the foster parent; (3-30-01)
 - ii.** Is readily opened from the inside of the room; and (3-30-01)
 - iii.** Is of sufficient size and design to allow for the evacuation of children and caregivers. (3-30-01)
 - h.** Is free of all of the following: (3-30-01)
 - i.** Household heating equipment excluding baseboard heating systems; (3-30-01)
 - ii.** Water heater; and (3-30-01)
 - iii.** Clothes washer and dryer. (3-30-01)
 - 02. Non-Ambulatory Child.** A child who is non-ambulatory and cannot readily be carried by one (1) member of the household will sleep in a bedroom located at ground level. (3-30-01)
 - 03. Sharing Bedroom with a Non-Parent Adult.** A child will not share a bedroom with a non-parent adult unless the child and adult are of the same gender and there is not more than four (4) years difference in age between the adult and the youngest child in the bedroom. (3-30-01)
 - 04. Sharing a Bedroom with a Foster Parent.** A child three (3) years of age or older will not routinely share the bedroom with a foster parent unless the child has special health or emotional needs that require the attention of the foster parent(s) during sleeping hours. (3-30-01)
 - 05. Maximum Number of Children in a Bedroom.** No more than four (4) children will occupy a bedroom. The placement of more than any one (1) child in a bedroom will be based on the age, behavior, functioning, individual needs of each child, and sufficient available space. (3-30-01)
 - 06. Children of the Opposite Gender.** Children of the opposite gender, any of whom are more than five (5) years of age, will not share the same bedroom. (3-30-01)
 - 07. Number of Children in a Bed.** Each child will have an individual bed, except that two (2) brothers or two (2) sisters of comparable age may share a bed if they have previously shared a bed or when there are no health, behavioral or other factors indicating this is undesirable. (3-30-01)
 - 08. Restrictions on Sleeping Arrangements.** The following must not be used for sleeping purposes: (3-30-01)

- a. A room or area of the foster home that is primarily used for purposes other than sleeping;(3-30-01)
- b. A room or space, including an attic, that is accessible only by a ladder, folding stairway, or through a trapdoor; or (3-30-01)
- c. A detached building, except in the case of an older child preparing for emancipation when it can be documented that the child's needs can best be met by that arrangement. (3-30-01)

09. Appropriate Bedding. A child will have a bed that is appropriate for the age and development of the child. Beds will be equipped with a clean and comfortable mattress, pillow, linens, and blankets appropriate for the weather. (3-30-01)

446. BEHAVIOR MANAGEMENT AND DISCIPLINE.

Methods of behavior management and discipline for children must be positive and consistent. These methods must be based on each child's needs, stage of development, and behavior. Discipline is to promote self-control, self-esteem, and independence. (3-30-01)

- 01. Prohibitions.** All of the following types of punishment of a foster child are prohibited: (3-30-01)
 - a. Physical force or any kind of punishment inflicted on the body, including spanking; (3-30-01)
 - b. Cruel and unusual physical exercise or forcing a child to take an uncomfortable position; (3-30-01)
 - c. Use of excessive physical labor with no benefit other than for punishment; (3-30-01)
 - d. Mechanical, medical, or chemical restraint; (3-30-01)
 - e. Locking a child in a room or area of the home; (3-30-01)
 - f. Denying necessary food, clothing, bedding, rest, toilet use, bathing facilities, or entrance to the foster home; (3-30-01)
 - g. Mental or emotional cruelty; (3-30-01)
 - h. Verbal abuse, ridicule, humiliation, profanity, threats or other forms of degradation directed at a child or a child's family; (3-30-01)
 - i. Threats of removal from the foster home; (3-30-01)
 - j. Denial of visits or communication with a child's family unless authorized by a children's agency in its service plan for the child and family; and (3-30-01)
 - k. Denial of necessary educational, medical, counseling, or social services. (3-30-01)
- 02. Restraint.** A foster parent who has received specific training in the use of child restraint may use reasonable restraint methods, approved by the children's agency, to prevent a child from harming himself, other persons or property, or to allow a child to gain control of himself. (3-30-01)
- 03. Authority.** The authority for the discipline of a foster child must not be delegated by a foster parent to other members of the household. (3-30-01)
- 04. Agency Consultation.** A foster parent must consult with the children's agency prior to using any behavior management or discipline technique that exceeds the scope of these rules. (3-30-01)

447. MEDICAL AND DENTAL CARE.

01. Health Care Services. A foster parent must follow and carry out the health or dental care plan for a child as directed by a qualified medical professional. (3-30-01)

02. Child Injury and Illness. Follow the children's agency approved policies for medical care of a child who is injured or ill. (3-30-01)

03. Dispensing of Medications. Provide prescription medication as directed by a qualified medical professional. A foster parent must not discontinue or in any way change the medication provided to a child unless directed to do so by a qualified medical professional. (3-30-01)

04. Storage of Medication. A foster parent must store medications in an area that is inaccessible to a child. (3-30-01)

448. PERSONAL CARE AND HYGIENE.

A foster parent must instruct the child in personal care, hygiene and grooming and provide the child with necessary personal care, hygiene and grooming products appropriate to the age, gender, and needs of the child. The foster parents will seek approval from the children's agency before altering a child's physical appearance including haircuts, body piercing and tattooing. ()

449. FOOD AND NUTRITION.

A foster parent must provide a foster child with meals that are nutritious, well-balanced, of sufficient quantity and serve the foster child the same meals as other members of the household unless a special diet has been prescribed by a medical professional, or unless otherwise dictated by differing needs based on a child's age, medical condition, or cultural or religious beliefs. A foster child is required to eat with other members of the family, unless the child's medical condition dictates a different arrangement. Perishable foods must be refrigerated. Milk provided to foster children must be pasteurized, from a licensed dairy or come from an animal that is documented to be free from tuberculosis, brucellosis, or other conditions that could be injurious to a child's health. ()

450. NECESSARY CLOTHING.

A foster parent must provide a child with sufficient, clean, properly fitting clothing appropriate for the child's age, gender, individual needs, and season with clothing reflecting cultural and community standards. (3-30-01)

451. PERSONAL POSSESSIONS, ALLOWANCES, AND MONEY.

A foster parent must follow the children's agency policy regarding a child's personal possessions, allowance, and money and when a child moves from a foster home, the foster parent will provide the child or the children's agency with all of the child's possessions, including money. (3-30-01)

452. CHILD TASKS.

A parent must permit a child to perform only those routine tasks that are within the child's ability, are reasonable, and are similar to the routine tasks expected of other members of the household of similar age and ability. (3-30-01)

453. EDUCATION.

A foster parent must cooperate with the children's agency and applicable educational organizations to implement the education and training plan for each child. (3-30-01)

454. RELIGIOUS AND CULTURAL PRACTICES.

A foster parent must provide a child in care with opportunity for spiritual development and cultural practices in accordance with the wishes of the child and the child's parent or tribe. (3-30-01)

455. RECREATION.

A foster parent must provide or arrange access to a variety of indoor and outdoor recreational activities and encourage a child to participate in recreational activities that are appropriate for the child's age, interests, and ability. (3-30-01)

456. MAIL.

A foster parent must permit a child to send and receive mail in accordance with the mail policy of the children's agency. (3-30-01)

457. REASONABLE AND PRUDENT PARENT STANDARD.

A caregiver must follow the reasonable and prudent parent standard. (7-1-16)

01. Reasonable and Prudent Parent Standard Defined. The reasonable and prudent parent standard means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child that a caregiver must use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural, or social activities. (7-1-16)

a. “Caregiver” means a foster parent with whom a child in foster care has been placed or a designated official for a child care institution in which a child in foster care has been placed. (7-1-16)

b. “Age or developmentally appropriate” means: (7-1-16)

i. Activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and (7-1-16)

ii. In the case of specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child. (7-1-16)

02. Training. Each caregiver will complete training to include knowledge and skills relating to the reasonable and prudent parent standard for the participation of the child in age or developmentally appropriate activities, including knowledge and skills relating to the developmental stages of the cognitive, emotional, physical, and behavioral capacities of a child, and applying the standard to decisions such as whether to allow the child to engage in social, extracurricular, enrichment, cultural, and social activities, including sports, field trips, and overnight activities lasting one (1) or more days, and involving the signing of permission slips and arranging transportation for the child to and from extracurricular enrichment and social activities. (7-1-16)

458. -- 469. (RESERVED)

470. RECORD MANAGEMENT AND REPORTING REQUIREMENTS.

A foster parent must maintain a record for each child in the home that will include all written material provided to the foster home by the children's agency and additional information gathered by the foster parent that includes the following: (3-30-01)

01. Personal Data. The child's name, gender, date of birth, religion, race and tribe, if applicable; (3-30-01)

02. History of Abuse and Neglect. Any known history of abuse or neglect of the child; (3-30-01)

03. Emotional and Psychological Needs. Any known emotional and psychological needs of the child; (3-30-01)

04. Health. Any information known about the child's health; and (3-30-01)

05. Behavioral Problems. Any known behavioral problems of the child; (3-30-01)

471. REPORTING FOSTER HOME CHANGES.

A foster parent must report to the children's agency any significant change in the foster home by the next working day from the time a foster parent becomes aware of a change, including the following: (3-30-01)

01. Illness, Injury, or Death. Serious illness, injury, or death of a foster parent or a member of the household. (3-30-01)

02. Arrests, Citations, Withheld Judgments, or Criminal Convictions. Any arrests, citations, withheld judgments, or criminal convictions of a foster parent or member of the household. (3-30-01)

03. Parole and Probation. Initiation of court-ordered parole or probation of a foster parent or member of the household. (3-30-01)

04. Admission or Release From Facilities. Admission to, or release from, a correctional facility, a hospital, or an institution for the treatment of an emotional, mental health, or substance abuse issue of a foster parent or member of the household. (3-30-01)

05. Employment. A change of employment status of a foster parent. (3-30-01)

06. Counseling, Treatment or Therapy. Counseling or other methods of therapeutic treatment on an outpatient basis for an emotional, mental, or substance abuse issue of a foster parent or member of the household. (3-30-01)

07. Change of Residence. A foster parent will inform the children's agency of any planned change in residence and submit an application for licensure at the new address not less than two (2) weeks prior to a change in residence. (3-30-01)

08. Additional Licensing Application. A foster parent will notify the children's agency within five (5) calendar days after filing an application for a certified family home, daycare, or group daycare license. (3-30-01)

472. CONFIDENTIALITY.

A foster parent must maintain the confidentiality of any information and records regarding a foster child and the child's parents and relatives, and a foster parent will release information about the foster child only to persons authorized by the children's agency responsible for the foster child. (3-30-01)

473. UNUSUAL INCIDENT NOTIFICATION.

The foster parent must immediately notify the responsible children's agency of any of the following incidents: (3-30-01)

01. Death. Death of a child in care. (3-30-01)

02. Suicide. Suicidal ideation, threats, or attempts to commit suicide by the foster child. (3-30-01)

03. Missing. When a foster child is missing from a foster home. (3-30-01)

04. Illness. Any illness or injury that requires hospitalization of a foster child. (3-30-01)

05. Law Enforcement Authorities. A foster child's detainment, arrest, or other involvement with law enforcement authorities. (3-30-01)

06. Removal of Child. Attempted removal or removal of a foster child from the foster home by any person who is not authorized by the children's agency. (3-30-01)

474. -- 499. (RESERVED)

CHILDREN'S AGENCIES AND CHILDREN'S RESIDENTIAL CARE FACILITIES
(Sections 500 - 599)

500. GENERAL STANDARDS FOR ORGANIZATIONS KNOWN AS CHILDREN'S AGENCIES AND CHILDREN'S RESIDENTIAL CARE FACILITIES.
(Sections 500 through 599, see also Sections 000 through 299) (3-30-01)

501. ACCESS BY DEPARTMENT AUTHORIZED AGENTS.

The Department's representatives must be provided access to the children's agency, children's therapeutic outdoor program, or children's residential care facility and its grounds, facilities, and records for determining compliance with applicable rules and investigation of complaints against the organization. (7-1-09)

502. COMPLIANCE REQUIRED.

Before being licensed as an organization, the applicant must comply with all applicable rules where compliance can be achieved prior to being licensed and must demonstrate intent to comply with the applicable rules where compliance can only be achieved once the program has become fully operational. (7-1-09)

503. NOTIFICATION TO THE LICENSING AUTHORITY.

An organization must notify the licensing authority a minimum of thirty (30) days prior to a change in the name of the organization, type of service, type of children being served, an increase in licensed capacity of a child care facility or children's residential care facility, or the organization closes, moves or changes ownership. ()

504. NOTIFICATION TO THE LICENSING AUTHORITY NO LATER THAN ONE WORKING DAY.

An organization must notify the licensing authority no later than one (1) working day of any circumstance in Subsections 504.01 through 504.04 of this rule: ()

- 01. Fire.** There is a fire in a structure housing residents that requires the services of a fire company. (7-1-09)
- 02. Injured Child.** A child is injured and requires in-patient hospital treatment. (7-1-09)
- 03. Change in Administrator.** There is a change in chief administrator for the organization. (7-1-09)
- 04. Employee Investigated.** An employee is the subject of an investigation for child abuse or neglect. (7-1-09)

505. UNAUTHORIZED ABSENCES.

Upon an unauthorized absence of a child in care, an organization must immediately notify the parent, guardian or placing children's agency and law enforcement. Clothing and other personal belongings must be secured immediately until the child returns or other arrangements are made, according to organization standards. (7-1-09)

506. DEATH OF A CHILD IN CARE NOTIFICATION.

An organization must immediately notify the parent, guardian or placing children's agency and the licensing authority upon the death of a child in care. In the event of a sudden death, or if the death occurs as a result of a crime or accident, the appropriate law enforcement agency must be contacted immediately by the organization. (7-1-09)

507. -- 519. (RESERVED)

520. WRITTEN BYLAWS.

Except for an organization operated by a governmental entity, an organization must have written bylaws defining the board structure, philosophy and program. (7-1-09)

521. GOVERNING BODY REQUIRED.

An organization must have an identifiable functioning governing body. The governing body must designate a person to function as the chief administrator of the organization, who is competent to administer the organization and delegate the overall day to day responsibility for the administration and operation of the organization. There must be a written plan for the delegation of authority in the absence of the chief administrator. (7-1-09)

522. DELINEATION OF JOB RESPONSIBILITIES.

An organization must delineate, in writing, the job responsibilities and functions of the chief administrator. The chief administrator must adopt and implement lines of responsibility that ensure the proper and effective supervision and monitoring of employees and volunteers. (7-1-09)

523. ORGANIZATIONAL CHART, POLICIES AND PROCEDURES.

An organization must have an organizational chart identifying the job positions, individuals in each position, and the lines of authority within the organization. (7-1-09)

524. INSURANCE COVERAGE.

An organization must secure and maintain on file copies of current motor vehicle, fire, comprehensive general liability, and professional liability insurance. (7-1-09)

525. QUALITY OF SERVICES ENVIRONMENT.

An organization must carry out its licensed programs in an environment that is safe, accessible, and appropriate for the needs of those served and with due regard for the rights and protections of those persons receiving services. (7-1-09)

01. Assess Compliance. The organization's administration must assess compliance with the applicable rules annually. (7-1-09)

02. Corrective Action for Non-Compliance. For each item of non-compliance, within thirty (30) days of notification by the licensing authority, the organization must have developed and implemented a plan approved by the licensing authority to correct each item within six (6) months. (7-1-09)

03. Expeditious Correction. The licensing authority may require a more expeditious correction when it determines there is a health and safety risk to children. Imminent risk to a child requires the corrective action be completed within twenty-four (24) hours of discovery of the non-compliance by the licensing authority. (7-1-09)

04. Assess Disrupted Placement. The organization must also assess all disrupted placements and unplanned removals of children from foster homes, transitional living, adoptive homes, children's therapeutic outdoor program, and children's residential care facilities. Corrective action must be implemented to correct causes of disrupted and unplanned removals. (7-1-09)

526. RESEARCH PROTECTIONS FOR PERSONS SERVED.

An organization must have a mechanism for reviewing and recommending approval and denial of research proposals involving past or present persons served. When an organization or another acting on its behalf participates in research involving its clients, the organization must maintain the privacy and right of refusal of any person to participate. (7-1-09)

527. CONFIDENTIALITY AND PRIVACY PROTECTIONS OF PERSONS SERVED.

An organization must have and follow written policies and procedures governing access to, use of, and release of information about a person served. The privacy of a child and their family must be protected. The identity of a child used in any form of publicity must be given only when written consent of the child's parent or guardian has been obtained prior to using or allowing to be used a child, picture of a child, or a child's name. Written consent is not required for publicity specifically used to locate an adoptive placement for a child. (7-1-09)

528. DESCRIPTION OF SERVICES.

An organization must have and follow a written description of the services and fees the organization charges including those provided by the licensee or arranged through other sources. This information must be factual and available to the public. The description must include policies governing eligibility for service, age, specific characteristics, and treatment needs of children served, accommodation of cultural sensitivity, and the geographic area served. (7-1-09)

529. INTAKE POLICY.

An organization must have and follow a written intake policy that sets forth the criteria for admitting children for care or services. The policy must be in keeping with the organization's purpose and services provided. Except for an emergency placement, the intake policy must include a requirement that sufficient information on each child admitted for care or services is obtained to determine that the child can be appropriately served by the organization. For an emergency placement the policy must require that the information needed to determine the appropriateness of continuing the placement or services is obtained within seven (7) days of the child's admission or placement. (7-1-09)

530. CONTINUED CARE.

Continued care is permitted as defined and authorized in the Idaho Child Care Licensing Reform Act Sections 39-1202 and 39-1213, Idaho Code, and Section 531 of these rules for individuals eighteen (18) to twenty-one (21) years of age. (7-1-09)

01. Department or Department of Juvenile Corrections (DJC) Placed Individuals. Continued care is permitted for individuals receiving services by, through, or with the authorization of the Department or the Department of Juvenile Corrections (DJC) prior to their eighteenth birthday. (7-1-09)

02. Individuals Not Placed by Department or DJC. Individuals who are in the care of a licensed child care program prior to turning eighteen (18) years of age may remain in the program for up to ninety (90) days after their eighteenth birthday, or, until the close of the current school year for individuals attending school. (7-1-09)

531. DOCUMENTATION REQUIREMENTS FOR CONTINUED CARE.
Prior to accepting an individual into continued care the following requirements must be met: (7-1-09)

01. Voluntary Agreement. A signed voluntary agreement to remain in the program, or a copy of a court order authorizing continued placement after the individual's eighteenth birthday. (7-1-09)

02. Assessment for Others Safety. An assessment to assure that an individual in continued care does not jeopardize the health, safety and well being of the children in care of the organization. (7-1-09)

03. Additional Continued Care Plans. A plan that prohibits individuals in continued care from sharing a bedroom or other sleeping quarters with a child as defined in Section 010 of these rules. (7-1-09)

04. Documentation of Care Prior to Eighteenth Birthday. Documentation verifying the individual in continued care was in the care of the organization prior to eighteenth birthday. (7-1-09)

05. Documentation of Need for Continued Care. Documentation verifying the individual in continued care needs to remain in order to complete treatment, education, or other similar needs. (7-1-09)

532. -- 534. (RESERVED)

535. SUFFICIENT FINANCIAL RESOURCES.
An organization must have sufficient financial resources to implement and deliver its programs. It must initially and annually develop and implement a plan of financing to carry out its programs, to ensure that children receive safe and appropriate care and needed services, and to ensure applicable licensing requirements are met. The plan of financing must include realistic projected income and expenditures. (7-1-09)

536. ANNUAL AUDIT.
An organization must provide the licensing authority a copy of an annual audit, an auditor's report, or a current federal tax return. (7-1-09)

537. -- 543. (RESERVED)

544. HUMAN RESOURCES NEEDED.
An organization must determine, organize and deploy the human resources needed to provide services subject to applicable rules and to promote optimum outcomes for persons served. An organization must have an adequate number of qualified administrative, supervisory, social service, direct care staff and other staff to perform the prescribed functions required by applicable rules to provide for the needs, safety, protection and supervision of children served. (7-1-09)

545. SERVICE WORKER OR SOCIAL WORKER.
An organization must employ, at a minimum, one (1) service or social worker, as defined in Section 011 of these rules, for a minimum of thirty-two (32) hours per week. (7-1-09)

546. STAFF RECRUITMENT, HIRING, SUPERVISION, TRAINING, EVALUATION, PROMOTION AND DISCIPLINE.
An organization must have and follow written policies and procedures governing recruitment, screening, hiring, supervision, training, evaluation, promotion, and discipline of employees and volunteers. An organization must

employ persons and use volunteers who have an understanding and respect for children and their needs, the child's family and culture; are physically and emotionally suited to provide, services to unrelated children and the problems they present; and are capable of performing activities related to their job. (7-1-09)

01. Job Descriptions. An organization must have and follow written job descriptions for every position identifying necessary qualifications, including education, experience, training, duties, and lines of authority. (7-1-09)

02. Personnel Records. An organization must have a personnel record for every employee and volunteer. The record must contain the following: (7-1-09)

- a. Employment application; (3-30-01)
- b. Name, date of birth, current address and home phone number; (3-30-01)
- c. Documents verifying education, certification, and license when the person fills a position requiring a minimum level of education, applicable certification or license; (3-30-01)
- d. Verification of child care work history; (7-1-09)
- e. Three (3) references from persons who are unrelated to the employee or volunteer. For a job applicant who has worked for an organization which provides care or services to children, one (1) of the references must be from a prior child care provider for whom the employee or volunteer worked; (7-1-09)
- f. Verified documentation of a complete criminal history record check as required by Section 39-1210, Idaho Code; (3-30-01)
- g. Verification by the employee or volunteer of receipt of the organization's behavior management policy; (3-30-01)
- h. Copy of the current job description and verification that the employee has been provided a copy of their current job description; (3-30-01)
- i. The date the person was employed and the date they began their current job; (3-30-01)
- j. For staff and volunteers who transport children, a copy of a valid driver's license for the type of vehicle used while transporting children. If they use their own vehicle to transport children, the record must include proof that the vehicle is properly insured. (7-1-09)
- k. A performance evaluation within a probationary period and annual performance evaluations thereafter; and (3-30-01)
- l. Documentation of any disciplinary actions. (3-30-01)

547. PERSON FILLING MORE THAN ONE POSITION.
A person filling more than one (1) position must meet the requirements for each position. (7-1-09)

548. (RESERVED)

549. TUBERCULOSIS SCREENING.
Staff and volunteers who have contact with children for four (4) or more hours per week for two (2) or more consecutive weeks must have documentation in their personnel file that they are free from communicable tuberculosis. The screening and documentation must be updated every three (3) years. (7-1-09)

550. VOLUNTEER SUPERVISION.
A designated employee of the organization must supervise a volunteer. (7-1-09)

551. EMPLOYEE AND VOLUNTEER ORIENTATION.

An organization must document that each new employee, contractor, and volunteer participates in an orientation that includes the information described as follows in Subsections 551.01 through 551.04 of this rule: (7-1-09)

01. Organization. The purpose of the organization. (3-30-01)

02. Job Function. The policies and procedures of the organization as they relate to their job function. (3-30-01)

03. Job Responsibilities. The employee's, contractor's, or volunteer's role and responsibilities. (7-1-09)

04. Child Abuse, Neglect, and Abandonment Reporting. The requirement to report suspected incidents of child abuse, neglect, and abandonment. (7-1-09)

552. EMPLOYEE AND VOLUNTEER TRAINING.

Except for a licensed professional under contract with the organization, an organization must document that each new employee and volunteer, and current employee and volunteer whose job function significantly changes, and whose primary role requires interaction with children, receive at least twenty-five (25) hours of planned training before working independently. Orientation cannot be counted toward the required training hours. The training must include specific instruction in job responsibilities, policies and procedures, emergency procedures, child safety, child abuse, neglect, or abandonment, and the applicable licensing requirements. (7-1-09)

553. -- 559. (RESERVED)

560. PERMANENT REGISTER.

Child agencies and child residential care facilities must maintain a permanent register of all children admitted into care. The permanent register must include each child's full name, gender, date and place of birth, parents or guardian, and address of the parent or guardian, who placed the child, the date of placement, date of discharge, and to whom the child was discharged. (7-1-09)

561. CONTENT OF CHILD'S RECORD.

At the time of a child's placement, the person admitting the child must document in the child's record the child's physical and emotional state at the time of placement. In addition, at the time of placement and if not available at the time of an emergency placement, then within seven (7) days, an organization must document complete biographical and identifying information on each child admitted into care. (7-1-09)

01. Minimum Information. The record must contain at a minimum the following: (7-1-09)

a. Child's full name; (3-30-01)

b. Date and place of birth; (3-30-01)

c. Gender; (3-30-01)

d. Height, weight, hair color, eye color, race, and identifying marks; (3-30-01)

e. Last known address and with whom the child lived; (3-30-01)

f. Last school attended including previous grade level, current grade level and scholastic performance; (7-1-09)

g. Parents' full names, marital status, and addresses and if known to be separated or divorced, proof of custody; (7-1-09)

h. Guardian's name and address; (3-30-01)

- i.** Date of admission; (3-30-01)
 - j.** Name of the person who placed the child in care; (3-30-01)
 - k.** For children's residential care facilities which provide treatment, the child's primary diagnosis; (3-30-01)
 - l.** The nature of the child's problems or the reason for being served; (3-30-01)
 - m.** Documentation of authority to accept and care for the child; (3-30-01)
 - n.** Child's and parent's religious preference; (3-30-01)
 - o.** Where it has been determined that a child is of applicable Indian heritage, compliance with the Indian Child Welfare Act; (3-30-01)
 - p.** Evaluation of the child's physical, social and emotional development and any special problems and needs he has, including medical, surgical and dental care needs; (3-30-01)
 - q.** Reports of psychological tests and psychiatric examinations and follow-up treatment if obtained; (3-30-01)
 - r.** Record of the child's contacts with their family; (3-30-01)
 - s.** Projected discharge date; (3-30-01)
 - t.** Discharge date and after care plan summary; and (3-30-01)
 - u.** The assigned social worker or service worker. (7-1-09)
- 02. Child's Health Record.** There must be a health record for each child, available to appropriate staff for emergency use and to provide for the child's routine care. The record must contain at a minimum the following: (7-1-09)
- a.** The child's health history and initial health screening, including known allergies; (3-30-01)
 - b.** A list of all medications the child is taking at the time of admission and any medication prescribed for the child while in care including the date prescribed and the prescribing physician; and (7-1-09)
 - c.** A copy of the child's medical provider's name, address and telephone number. (7-1-09)

562. AUTHORIZATIONS REQUIRED.

Written authorization must be obtained from the parent, guardian or court of jurisdiction to obtain and provide routine medical care, emergency medical and surgical care, and mental health care for the child. (7-1-09)

563. SERVICE PLANS.

An organization must develop and follow a written service plan for a child admitted into care unless otherwise provided for in Sections 564, and 790 through 794 of these rules. (7-1-09)

01. Initial Service Plan. The initial service plan must be developed and recorded in the child's record within thirty (30) days after admission and must: (7-1-09)

- a.** Identify the needs of the child and family and provide goals and a time frame to achieve the goals; (7-1-09)
- b.** Document services the organization will provide to assure the safety, health, permanency, and well-being of the child; (7-1-09)

- c. Establish and document criteria for discharge; (7-1-09)
- d. Demonstrate the service plan was developed in a process that included participation of the child's parent, guardian, or legal custodian, and the child. A child may be excluded from participation in development of the service plan if he is under nine (9) years of age or not capable of understanding the purpose of the planned services; and (7-1-09)
- e. Identify the persons responsible for coordinating and implementing the child's and family's treatment goals. (7-1-09)
- 02. Updated Service Plan.** A service plan must be updated every ninety (90) days and must: (7-1-09)
 - a. Assess the appropriateness of continuing the current placement; (7-1-09)
 - b. Document services the organization will provide to assure the safety, health, permanency, and well-being of the child; (7-1-09)
 - c. Document progress towards achieving the goals in the service plan; (7-1-09)
 - d. Demonstrate the service plan was developed in a process that included participation of the child's parent, guardian, or legal custodian, and the child. A child may be excluded from participation in development of the service plan if he is under nine (9) years of age or not capable of understanding the purpose of the planned services. (7-1-09)

564. SHELTER CARE ADMISSION AND PLANS.

The organization must develop and follow a written plan within seven (7) days of admission to shelter care. The plan must assess the child's immediate and specific needs and identify the specific services to be provided by the organization and other resources to meet the needs. (7-1-09)

- 01. Shelter Care in Excess of Thirty Days.** The organization must re-assess and update the written plan for each child remaining in shelter care for thirty (30) days and at forty-five (45) days. The plan must include: (7-1-09)
 - a. The reason for continued care; (3-30-01)
 - b. Plans for other placement; and (3-30-01)
 - c. Barriers to other placement and the plans to eliminate the barriers. (3-30-01)
- 02. Shelter Care More Than Sixty Days.** The organization must develop and follow service plans that comply with these rules, except the initial service plan must be developed after sixty (60) days of admission. The service plan must be updated every ninety (90) days thereafter. (7-1-09)

565. MAINTENANCE OF RECORDS.

An organization must have and follow written policies and procedures for the maintenance and security of records. The policy and procedures must: (7-1-09)

- 01. Record Storage.** Ensure that the records are stored in a secure manner. (3-30-01)
- 02. Record Confidentiality.** Ensure confidentiality of and prevent unauthorized access to the records. (3-30-01)
- 03. Organization of Record.** Require that similar type records be maintained in a uniform and organized manner. (3-30-01)

04. Record Storage for Closed Organizations. Before an organization ceases operations, it must arrange with the Department for the storage of all child and adoptive family records required to be maintained by rules. (3-30-01)

566. RECORD RETENTION.

Except for an adoptive record, records must be maintained for at least seven (7) years after the child has been released from the organization's care or until the child reaches the age of twenty-five (25), which ever is longer. A record for an adopted child and adoptive parent must be kept forever. The record for each applicant for a foster care license or certification or an application to adopt where there was no adoptive placement must be maintained for at least seven (7) years after provision of services has ended. (7-1-09)

567. -- 569. (RESERVED)

570. REPORTING OF CHILD ABUSE, NEGLECT, AND ABANDONMENT.

All suspected incidents of child abuse, neglect, or abandonment must be reported immediately to law enforcement or the Department as required by Section 16-1605, Idaho Code. The chief administrator or designee of the children's agency or facility must ensure the safety and protection of children when the allegation is against an organization's staff or volunteer and must initiate a thorough investigation and administer appropriate disciplinary action, when indicated. (7-1-09)

571. HEALTH SERVICES.

The organization must provide a physical exam within the last year by a licensed physician when the child has been in continuous care. If a child has not been in continuous care, a physical must be done within thirty (30) days of admission by a licensed physician. Annual physical exams must be provided for a child two (2) years of age and older, and on a schedule determined by a pediatrician for a child under two (2) years of age. Documentation must be maintained of current immunizations or provisions for immunizations as required by Section 39-4801, Idaho Code, within thirty (30) days of admission. The organization must provide documentation of medical care for the treatment of illnesses, carrying out corrective measures and treatment, and for the administration of medication as ordered by the physician. (7-1-09)

572. DENTAL SERVICES.

For children three (3) years of age and older, the organization must ensure and document the child has had a dental exam within the last nine (9) months or a dental exam within three (3) months of admission, a yearly dental exam and necessary dental treatment, including prophylaxis, extraction, repair and restoration. The organization must make provisions for appropriate dental care for a child under the age of three (3) when the child's dental needs indicate. Documentation of all medical treatment provided while the child is in care and documentation of applicable medical insurance provider, policy numbers and who holds the policy must be maintained. (7-1-09)

573. NON-VIOLENT PHYSICAL INTERVENTION.

An organization must have written policies and procedures governing the appropriate use of non-violent physical restraint intervention strategies. The policies and procedures must be according to non-violent physical restraint intervention strategies of a nationally recognized program. Non-violent physical restraint intervention strategies must include the following: (7-1-09)

01. Protection from Harm to Self or Others. Be used only when a child's behavior is out of control and could physically harm himself or others, or to prevent the destruction of property when the child fails to respond to non-physical behavior management interventions. (3-30-01)

02. Intervention Time Guidelines. Be used only until the child has regained control and must not exceed fifteen (15) consecutive minutes, include written documentation of attempts made to release the child from the restraint if more than fifteen (15) minutes is required. (7-1-09)

03. Intervention Training Requirements. Be used only by employees or volunteers documented to have been specifically trained in its use and authorized to apply such strategies. (3-30-01)

04. Conditions Limiting Restraint Use. Prohibit the application of a non-violent physical restraint intervention if a child has a documented physical condition that would contraindicate its use, unless a qualified

medical professional has previously and specifically authorized its use in writing. Documentation must be maintained in the child's record. (7-1-09)

05. Prohibition of Prone Restraints. Prohibit the use of prone restraints. (7-1-09)

06. Intervention Documentation. Require documentation of the behavior which required the non-violent physical restraint intervention strategy, the specific attempts to de-escalate the situation before using physical restraint, the length of time of the non-violent physical restraint intervention strategy was applied which includes documentation of the time started and completed, and the debriefing completed with the staff and child involved in the non-violent physical restraint intervention strategy. (7-1-09)

07. Subsequent Review. Require that whenever the non-violent physical intervention policy and procedures have been used on a child more than two (2) times in one (1) week, there is a review by the chief administrator or their designee. Appropriate action must be taken based on the findings of the review. (7-1-09)

574. CLIENT GRIEVANCE POLICY.

An organization must develop and follow a written grievance policy for clients that is written in simple and clear language, requires prompt investigation of the grievance by a person who can be objective, and provides at least one (1) level of appeal. Clients must be made aware of the grievance policy and this must be documented. The policy must be shared in a manner appropriate to the child's age and their ability to understand. The policy must require monitoring to ensure there is no retaliation against the child or the person who files a grievance. (7-1-09)

575. SUICIDE PREVENTION PLAN.

An organization must develop and follow a written suicide prevention plan that addresses the needs of the population the organization serves. (7-1-09)

576. CLOTHING.

An organization must ensure that each child in care has sufficient clean, properly fitting clothing, appropriate for the child's age, gender, individual needs, program and season. (7-1-09)

577. VISITATION POLICY.

An organization must have and follow a written visitation policy. The policy will encourage visits between a child in care and family members and others significant to the child except when visitation is contraindicated and is documented in the child's record or a court order. The policy must require the maintenance of a log of visitation for each child in residential care which includes the name of the person visiting and the date and time of the visit. (7-1-09)

578. CORRESPONDENCE POLICY.

An organization must have and follow a written correspondence policy that specifies the conditions under which the organization restricts the receipt of correspondence to or from a child. The conditions must require that the child and parent or guardian be informed of the restriction, the reason for the restriction, and that the restriction be documented in the child's record. The policy must prohibit staff and foster parents from reading children's correspondence except where there is a legitimate documented reason to do so. When staff or foster parents read a child's correspondence, the child must be present. Packages may be exempt from the prohibition against inspection. (7-1-09)

579. RELIGIOUS AND CULTURE POLICY.

An organization must have and follow a written policy regarding religious participation, religious training, cultural heritage, and cultural practices of children in its care. Before placement of any child with the organization, the child's parents or guardians must receive a copy of the religious and cultural policy and acknowledge receipt of the policy with their signature and date. (7-1-09)

01. Organizations That Accept State Placements. An organization providing services to a child placed by the state must include in its policy a requirement to provide reasonable attempts to accommodate the religious and cultural preferences of the child and the child's parents. The organization will also commit in policy to assurances of respect for the religious and cultural beliefs and practices of all children placed in their program. (7-1-09)

02. Organizations That Accept Only Private Placements. An organization that accepts only private placements and requires each child to participate in specific religious practices must include this requirement in their written religious and cultural policy signed by the child's parents or guardians. (7-1-09)

580. EDUCATION POLICY.

An organization must have and follow an education policy. The policy will require that within five (5) school days after a child's placement, each child of school age, as defined by state law, be enrolled in an appropriate school program or document why the child was unable to enroll. (3-1-09)

581. PERSONAL POSSESSIONS, ALLOWANCE, AND MONEY POLICY.

An organization must have and follow a personal possessions, allowance and money policy. The policy will include: (7-1-09)

01. Financial Accounting. Payment of, and accounting for any allowance, social security benefits, and other financial benefits to a child in care. (3-30-01)

02. Child's Personal Possessions. Documented accounting for a child's personal possessions, including clothing with which the child came into care and items which were obtained while he is in care and documented return of all inventoried items, to the child, parent, or guardian at discharge from care, except illegal contraband and contraband prohibited by the organization in its policy which may be exempt from return. (3-30-01)

03. Signature Required. The organization must obtain the signature of the parent, guardian or child over eight (8) years of age who is capable of understanding the purpose of the inventory at the time of inventory and when the items are returned. (7-1-09)

582. EMERGENCY POLICIES.

An organization must have and follow an emergency policy and procedures. The policy must contain provisions for ensuring that a caregiver has and follows the organization's approved written procedures for the following emergencies: (7-1-09)

- 01. Fire.** (7-1-09)
- 02. Natural Disasters.** (7-1-09)
- 03. Serious Accident or Injury.** (7-1-09)
- 04. Medical.** (7-1-09)
- 05. Missing Child.** (7-1-09)
- 06. Power Outage.** (7-1-09)
- 07. Bomb Threat.** (7-1-09)
- 08. Severe Weather.** (7-1-09)
- 09. Hostage Taking.** (7-1-09)
- 10. Other Dangers Unique to the Location of an Organization.** (7-1-09)

583. REASONABLE AND PRUDENT PARENT STANDARD FOR AN ORGANIZATION PROVIDING SERVICES TO CHILDREN PLACED BY THE DEPARTMENT.

An organization providing services to children placed by the Department's Child and Family Service Program must designate at least one (1) on-site official who is authorized to apply the reasonable and prudent parent standard as described in Section 457 of these rules. (7-1-16)

584. -- 599. (RESERVED)

ADDITIONAL STANDARDS FOR CHILDREN'S AGENCIES
(Sections 600 - 699)

600. ADDITIONAL STANDARDS FOR CHILDREN'S AGENCIES.
(Sections 600 through 699, see also Sections 500 through 599.) (3-30-01)

601. CHIEF ADMINISTRATOR POSITION AND QUALIFICATIONS.
The children's agency must employ or contract for a chief administrator who has at the time of appointment, at a minimum: (7-1-09)

01. Master's Degree. A Master's degree from an accredited college or university in a field related to behavioral science, two (2) years of experience working with families or children in a social services setting, and three (3) years of experience in staff supervision and administration; or (7-1-09)

02. Bachelor's Degree. A Bachelor's degree from an accredited college or university in a field related to behavioral science, five (5) years of experience working with families or children in a social services setting and three (3) years of experience in staff supervision and administration. (7-1-09)

602. SERVICE WORKER SUPERVISOR POSITION.
The children's agency may employ a service worker supervisor who possesses either: (7-1-09)

01. Master's Degree Provision. A Service Worker Supervisor must be a certified social worker or a person who possesses a Master's degree from an accredited college or university in a related field with appropriate licensure as required by state law, and have demonstrated experience of not less than five (5) years in adoptions or foster care; or (7-1-09)

02. Bachelor's Degree Provision. A Bachelor's degree from an accredited college or university in a behavioral science, or in another major where twenty-five percent (25%) of the course credits earned toward the degree are in behavioral sciences, and five (5) years of experience working with families or children in a social service setting and three (3) years in staff supervision and administration. (7-1-09)

603. (RESERVED)

604. SOCIAL WORKER POSITION AND QUALIFICATIONS.
A children's agency may employ or contract for a licensed social worker who possesses at least a bachelor's degree from an accredited college or university with a major in a social work. (7-1-09)

605. SERVICE WORKER POSITION AND QUALIFICATIONS.
A children's agency that does not employ or contract for a social worker must employ or contract for a service worker. (7-1-09)

01. Qualification. Qualifications of the service worker must be verified through written documentation of work experience and education. The service worker will have at a minimum: (7-1-09)

a. Twenty (20) hours of completed training in adoption or foster care services specific to the assigned duties; or (3-15-02)

b. One (1) year of full-time paid experience in adoption or foster care services specific to assigned duties. (3-15-02)

02. Training. Service Workers must document twenty (20) hours of completed training every four (4) years in adoption or foster care services specific to the assigned duties. (3-15-02)

606. SOCIAL WORKER OR SERVICE WORKER RESPONSIBILITIES.

The responsibilities of a social worker or service worker employed or contracted by a children's agency will include child assessment, service plan development, child placement, foster or adoptive home assessment, supportive services for children and families, and transitional living services. (7-1-09)

607. SELF-SUPERVISION PROHIBITED.

Neither a service worker supervisor nor a social worker is allowed to supervise their own work. (7-1-09)

608. STAFF WORKLOADS.

A children's agency must have identified workload standards for each staff member. (7-1-09)

01. Supervisor to Staff Ratio. Service Worker Supervisors must not supervise more than eight (8) workers made up of the following: social workers, service workers, and social service aides. (7-1-09)

02. Caseload Limitations. At the discretion of the supervisor, a social worker or service worker may be assigned a caseload of twenty (20) families with an adoption placement, active child foster care, or transitional living cases; or forty (40) adoptive families being studied or awaiting an adoptive placement or foster home certification cases, or a proportionate combination of these functions. (3-30-01)

609. -- 614. (RESERVED)

615. ADDITIONAL PROVISIONS FOR FOSTER HOME CERTIFICATION.

A children's agency that licenses or certifies foster homes must have policies to comply with foster care rules, Sections 400 through 499 of these rules and may require that additional foster care standards be met if the agency deems appropriate. (7-1-09)

616. PROGRAM DESCRIPTION.

A children's agency providing foster care must include information in their brochure and their licensing application of the types of foster care provided, the type and number of homes needed, and the type of support services provided to foster parents. (7-1-09)

617. LICENSING AND CERTIFICATION AGENCY POLICIES AND PROCEDURES FOR FOSTER HOMES.

In addition to meeting the general requirements for policies in Sections 500 through 616 of these rules, a children's agency which licenses or certifies foster homes must have policies and procedures for Sections 618 through 649 of these rules. (7-1-09)

618. APPLICATION REQUEST PROCESS.

A children's agency that licenses or certifies foster homes must document that a person who has requested an application has been given a copy of the foster care rules found in Sections 400 through 499 of these rules and has been provided a copy of the foster parent training requirements for children's agencies. (7-1-09)

619. (RESERVED)

620. INITIAL AND SUBSEQUENT FAMILY FOSTER HOME EVALUATION STUDY PROCESS AND CONTENTS.

The children's agency must conduct an appropriate home study based on the foster care Sections 400 through 499 of these rules, to determine if the family meets required licensing standards to be issued a foster care license, and must maintain a copy of the study on file. (7-1-09)

621. TRAINING.

The children's agency must have and follow a training policy that includes meeting the orientation and ongoing training requirements of Sections 400 through 499 of these rules, and must include additional information on the requirements unique to the particular agency program. All foster care training must be documented in the foster parents case file record. (7-1-09)

622. PLACEMENT AGREEMENT REQUIRED CONTENTS.

The children's agency must use a placement agreement that is signed by the foster parents and the children's agency

before placing a child in a foster home. The placement agreement must identify the responsibilities of the children's agency including supervision and support services for the foster family and the responsibilities of the foster family. The foster family must be informed and agree to follow the children's agency policies and procedures. A children's agency must review the agreement with the foster family at least annually and, when needed, develop a new agreement. The children's agency must provide the foster family with a copy of the signed current placement agreement and maintain a copy in the foster home record. (7-1-09)

623. COMPLAINT INVESTIGATION, BASIS, TIME REQUIREMENTS, NOTIFYING FOSTER PARENTS, CONTENTS, AND PROCESS.

When a complaint is received that relates to possible foster parent noncompliance with any provisions in Sections 400 through 499 of these rules, a children's agency must initiate a complaint investigation as soon as is indicated, based on seriousness of the allegation received, no later than seven (7) calendar days after receipt of the allegation. A children's agency must inform a foster parent that a complaint has been received, provide a clear description of the allegations, and allow a representative of the foster parent in interviews regarding the complaint before they are questioned or interviewed. (7-1-09)

01. Investigation Timeline and Extension. A children's agency must complete a complaint investigation within forty-five (45) calendar days after receipt of the allegation. If additional time is required, the children's agency must inform the foster parent, in writing, of the basis for the extension. (7-1-09)

02. Summary of Findings. Before completion of a written report, a children's agency must provide a verbal summary of the preliminary findings with the foster parent. (7-1-09)

03. Agency Written Report. Upon completion of the investigation, a children's agency must prepare a written report that includes date and report source, identification of the source of the allegation, unless anonymous or confidential, as specified in the Child Protective Act, Title 16, Chapter 16, Idaho Code. The report must also include: (7-1-09)

- a.** The specific allegations; (3-30-01)
- b.** Dates and places of contacts, names of persons interviewed, and names of the interviewers. If children are interviewed, their names must be coded in the report; (7-1-09)
- c.** Findings of fact, based on the investigation; (3-30-01)
- d.** Conclusions regarding compliance or noncompliance with Sections 400 through 499 of these rules, based on the findings of the investigation summarized in the report; (3-30-01)
- e.** Any changes in the children's agency decision regarding placement specifications that are based on the findings of the investigation summarized in the report; and (3-30-01)
- f.** Recommendations regarding licensing or certification action and any required corrective action. (3-30-01)

04. Conclusion of Investigation. A children's agency must provide a copy of the complaint investigation report, excluding the source of the allegation to the foster parent, within ten (10) calendar days of its completion. The foster parent must be allowed to attach their written response to the report. The children's agency must document any identified corrective action required of the foster family. (7-1-09)

624. RECORDS MANAGEMENT, MAINTENANCE, AVAILABILITY TO FOSTER PARENT, AND CONTENTS.

A children's agency must maintain a foster home record for each foster home and may make copies of a record available to the applicant or licensed or certified foster parent upon request except for medical documents specifically identified as confidential, pending complaint investigation reports and documents, records of privileged communications and criminal records, police reports, and child protective service information. Social security numbers from any source cannot be provided, except a social security number needed by a foster parent to provide needed services for a foster child. (7-1-09)

01. Record Contents. The record must contain all documents pertaining to licensing or certification of the home, any complaint investigation reports, and placement agreements between a foster parent and the children's agency. (7-1-09)

02. Placement Record. A complete record identifying all children placed in the foster home and removed from the home, including: full name, age, gender, and race of the child; date of the placement; date and reasons for a foster child's departure from the foster home; any written response from a foster parent to a complaint investigation or response to a cited rule compliance; and any corrective action plans. (3-30-01)

625. -- 629. (RESERVED)

630. ADDITIONAL PLACEMENT CONSIDERATIONS.

A children's agency must follow the provisions of Sections 400 through 499 of these rules and have a policy on the following placement considerations. (7-1-09)

01. Child Placement Preparation. Before the placement of a child, the children's agency must prepare the child for the placement consistent with the child's age, individual needs, the circumstances necessitating placement, and identified special problems presented. (7-1-09)

02. Placement Emergency Change. If an emergency change in placement is necessary, within fourteen (14) days of the placement change, documentation must be included in the child's record. (7-1-09)

03. Placement Service Termination. If a children's agency is no longer providing services to the child in a foster home, the following information must be documented within fourteen (14) days of the service termination that includes a summary of the services provided, the needs that remain, and provision for any continuing services with another children's agency. (7-1-09)

631. EMERGENCY EVACUATION PLAN.

A children's agency must have a policy to require and approve a written evacuation plan for a foster home. (7-1-09)

632. UNUSUAL INCIDENT POLICY.

The children's agency must have a policy to notify the state licensing authority within one (1) working day of the occurrence of an incident as outlined in Section 473 of these rules. The policy must require the children's agency to notify the Department immediately, the foster child's parents, and the responsible children's agency of the death of a foster child. (7-1-09)

633. SERVICE PLANS AND PARTICIPANTS.

A children's agency must develop initial and updated service plans on behalf of the child through a team approach which includes the child, the child's parents or legal guardian, the foster parents, the referring children's agency, others identified in providing needed placement services and the assigned social worker or service worker, as appropriate. A service plan must include behavioral management procedures with the placing agency, if appropriate, and with the foster parents and a copy must be maintained in the child's file. (7-1-09)

634. CHILDREN'S AGENCY SUPERVISION OF CHILD.

A children's agency must develop a plan of supervisory visits with a child in foster care consistent with the child's service plan, as required by these rules. The child's record must contain documentation that the assigned social worker or service worker personally visited the foster child at least once each month. A children's agency may reduce the number of social worker or service worker visits with a child to once every ninety (90) days if there is documentation and justification in the service plan that a child's placement in a foster home is a long-term planned placement. At least one-half (1/2) of the visits must occur in the foster home. (7-1-09)

635. -- 649. (RESERVED)

ADDITIONAL PROVISIONS FOR TRANSITIONAL LIVING SERVICES
(Sections 650 - 659)

650. ADDITIONAL PROVISIONS FOR TRANSITIONAL LIVING SERVICES. (3-30-01)
(Sections 650 through 659, see also Sections 500 through 599)

651. PROGRAM STATEMENT FOR TRANSITIONAL LIVING SERVICES.
A children's agency which provides transitional living services must develop a program statement describing the specific services it will provide to youth. Services are limited to those identified youth who are at least sixteen (16) years of age and for whom family reunification, placement with previous care givers or extended family, and adoption have been found and documented to be inappropriate. (3-30-01)

652. POLICIES AND PROCEDURES FOR TRANSITIONAL LIVING SERVICES.
In addition to the requirements for policies in Sections 500 through 651 of these rules. The children's agency must have policies and procedures for selecting youth for placement, orientation of youth before placement, approval and oversight of living arrangements, provision of support services or arranging for these services, and termination of services. (3-30-01)

653. RECORD MANAGEMENT.
In addition to the general record requirements in Section 561 of these rules, an agency record must be updated annually and include the youth's social security number, current address, telephone number, a photograph, and the names and addresses of known offspring. (3-30-01)

654. SERVICE COMPONENTS.
An agency licensed to provide transitional living services must provide or arrange for the following service components as appropriate to the youth's needs: (3-30-01)

- 01. Planning.** Individualized, youth-centered placement planning. (3-30-01)
- 02. Counseling.** Counseling and support groups as appropriate to individual needs. (3-30-01)
- 03. Skills.** Life skills, self-care, daily living skills, money management, and housing. (3-30-01)
- 04. Training.** Education, vocational, or technical training. (3-30-01)
- 05. Medical Care.** Health and medical care. (3-30-01)
- 06. Legal.** Legal services. (3-30-01)
- 07. Activities.** Socialization, cultural, religious, and recreational activities. (3-30-01)
- 08. Aftercare.** Aftercare following termination of transitional services. (3-30-01)

655. TRANSITIONAL LIVING PLACEMENT.
Before a youth is placed in a transitional living program, a children's agency must document in the youth's record: (3-30-01)

- 01. Basis.** The basis for determining this is an appropriate program for the youth; (3-30-01)
- 02. Self-Care.** That a youth exhibits self-care potential: (3-30-01)
- 03. Youths Need for Supervision.** An evaluation of and a plan for a youth's need for supervision and support services; (3-30-01)
- 04. Living Arrangements.** The assigned social worker or service worker has personally observed the living arrangement and determined it is safe and appropriate; and (3-30-01)
- 05. Essential Services.** There are specific and essential services to provide for suitable social, physical, vocational and emotional needs of the youth as appropriate. (3-30-01)

656. SUPERVISION AND SUPPORT.

A children's agency must develop and follow a plan of supervision and support services for a youth in transitional living consistent with the youth's needs as follows: (3-30-01)

01. Plan of Supervision. The plan will include: (3-30-01)

a. Current documentation of financial support sufficient to meet the youth's housing, clothing, food, and miscellaneous expenses; and (3-30-01)

b. The date, location, documented purpose, and a summary of the findings of each contact between social worker or service worker and the youth describing the youth's adjustment, relationship with family members, and the children's agency efforts to resolve any conflicts. (3-30-01)

02. Written Contract and Reviews. A children's agency will have a mutually agreed upon contract between the youth and the children's agency that specifies the responsibilities of the children's agency and the youth, which is signed and dated by the youth and the assigned social worker. The contract will be reviewed and updated at least once every ninety (90) calendar days. A copy of the contract and any amendments to the contract will be maintained in the case record. (3-30-01)

03. Monthly Contact. There will be face-to-face contact at least monthly with the youth by the assigned social worker or service worker to assess that the youth is functioning at an acceptable level, is carrying out prescribed expectations, is managing their money, and is residing in a safe and acceptable environment. (3-30-01)

04. Contact Documentation. At least once every two (2) months there will be documentation of an on-site contact with the youth at their place of residence by the assigned social worker or service worker. (3-30-01)

05. Twenty-Four Hour Agency Telephone Access. Youth will have twenty-four (24) hour, seven (7) days-a-week telephone access to contact the children's agency. (3-30-01)

657. TERMINATION OF TRANSITIONAL LIVING SERVICES.

When a children's agency terminates its transitional living services for a youth, the reason for the termination, the youth's new location, a summary of the needs that have been addressed and remain to be met, and identified referral services must be documented in the youth's case record within thirty (30) days after the youth leaves the program. (3-30-01)

658. REQUIRED INFORMATION FOR YOUTH AT SERVICE TERMINATION.

A children's agency must document that each youth who ends transitional living services is provided with basic information on health care, housing, counseling services, and emergency resources, and will be provided their birth certificate, Social Security card, funds, and personal property held by the children's agency. (3-30-01)

659. (RESERVED)

ADDITIONAL PROVISIONS FOR ADOPTION SERVICES
(Sections 660 - 679)

660. ADDITIONAL PROVISIONS FOR ADOPTION SERVICES.

(Sections 600 through 679, see also Sections 500 through 599) (3-30-01)

661. ADOPTION SERVICES - NONPROFIT STATUS.

A children's agency which provides adoptions services must provide documentation that it is incorporated as a non-profit corporation. (3-30-01)

662. PROGRAM STATEMENT.

A children's agency that provides adoption services must include in its program statement the following: (3-30-01)

01. Description of Services Available. A written description of services provided directly by the

children's agency or through another organization for a child, a birth parent, an adoptive applicant and an adoptive family. (3-30-01)

02. Eligibility. The general criteria by which the children's agency determines eligibility for adoptive parenthood. (3-30-01)

03. Delineation of Expenses. A clear delineation of fees, charges, and other consideration for adoption services. The delineation will include: (3-30-01)

a. Specific charges for expenses and services provided within the children's agency; (3-30-01)

b. Chronological itemization of fees for expenses and services provided by other identified sources; (3-30-01)

c. Identification of the charges that are refundable and the charges that are not refundable; and (3-30-01)

d. The manner and timing of payments. (3-30-01)

663. WRITTEN POLICIES AND PROCEDURES - ADOPTION.

A children's agency must have and follow written policies and procedures for the adoption services it provides or facilitates and that these cover services for children, birth parents, adoptive applicants and parents, post placement services, and post-finalization services. ()

664. SERVICES FOR CHILDREN AS THE PRIMARY CONSIDERATION.

A child in need of adoption must be the primary consideration of adoption services provided by a children's agency. The choice of adoptive placement will be in the best interest of the child and include consideration of previous caretakers. This will include the foster parents where a child has established a bonded relationship. For children under the supervision of the children's agency and are awaiting adoptive placement, there must be a review by the agency administrator, or their designee, every month for an infant one (1) year of age or younger, and every three (3) months for a child over one (1) year of age, to determine what needs to be done to locate an adoptive placement for the child. (3-30-01)

665. SERVICES FOR CHILD'S BIRTH PARENTS.

A children's agency that accepts custody of a child from a birth parent or parents must provide services for the parent or parents either directly or through cooperative arrangements. The children's agency must ensure that the legal rights of the birth parents are protected throughout the decision-making about release of records, as required by statutes governing Termination of Parental Rights and Adoptions (see Title 16, Chapter 15, Idaho Code, and Title 16, Chapter 20, Idaho Code). The children's agency will respect the expressed desires of either or both birth parents to provide for continuity of identity of the child's religious, cultural, racial, linguistic, and ethnic background, provided the desired request does not deny or delay placement of the child for adoption in accordance with the Multi-ethnic Placement Act (MEPA), P.L. 103-382 and P.L. 104-188, 42 USC, Section 622, and such considerations are legal. (3-30-07)

666. SERVICES FOR ADOPTIVE APPLICANTS.

A children's agency must provide the following services to its adoptive applicant clients: (3-30-01)

01. Orientation. Orientation to adoption, its meaning, the children's agency adoption process and procedures, and the availability of children for adoption; (3-30-01)

02. Suitability Criteria. Information about the specific criteria by which the children's agency determines suitability as adoptive parents and the areas the children's agency assesses to determine the ability of the adoptive applicants to meet the needs of an adopted child; (3-30-01)

03. Termination of Services. The children's agency procedures for termination of services for an applicant found to be unsuited for adoptive parenthood or for an applicant found suited to adopt but for whom a child cannot be found; (3-30-01)

04. Selections and Services for a Specific Child. The children's agency procedures for selection of adoptive applicants to meet the needs of a specific child and, where indicated, assistance in obtaining resources and services to meet the continuing needs of the child; (3-30-01)

05. Legal Assessment. The children's agency procedures for assuring that a child placed is legally free for adoption or an explanation that the placement is a legal-risk placement of the child and what efforts are made to free the child; (3-30-01)

06. Preparation for Placement. The children's agency procedures for preparing an applicant for parenting and placement of a child; and (3-30-01)

07. Counseling. The children's agency may provide or arrange counseling for prospective adoptive parents including assistance in understanding a child's religion, culture, ethnic, or linguistic background and the impact of leaving familiar ties and surroundings, including attachment issues and living in an institution, as appropriate to the age of the child. (3-30-01)

667. RECRUITMENT OF ADOPTIVE APPLICANTS.

A children's agency must recruit adoptive applicants at a level that ensures the availability of a sufficient number and diversity of adoptive families to meet the needs of children available for adoption under the care of the children's agency. (3-30-01)

668. PAYMENT LIMITATIONS IN ADOPTION.

A children's agency must prohibit the actual or promised payment or other material consideration to any party directly or indirectly involved in the administration of an adoption service, whether acting as an employee or independent contractor, except for the performance of routine professional duties necessary to complete the adoption process. (3-30-01)

669. PROHIBITION OF CONTRIBUTIONS IN ADOPTIONS.

A children's agency must not accept contributions from adoptive applicants or from persons acting on the applicant's behalf during the period of application or before an adoption has been finalized, nor accept a commitment to make a contribution after an adoptive placement. (3-30-01)

670. PROHIBITION OF STAFF ADOPTIONS.

A children's agency must not do an adoption study or placement for its own staff, board member, or person with whom the children's agency contracts to provide services for the agency. (3-30-01)

672. SERVICES FOR ADOPTIVE PARENTS.

A children's agency must provide or arrange for the following services to adoptive parents served by the children's agency: (3-30-01)

01. Specific Training. The children's agency will provide or arrange specific training related to the culture and race of the child who is of a different culture or race from the adoptive parents. (3-30-01)

02. Disclosure of Non-Identifying Child Information. Disclosure of all non-identifying information known to the children's agency about the child, the child's birth parents, and the circumstances leading to the decision to place for adoption. (3-30-01)

03. Post-Placement Services. Post-placement services related to support to the family and supervision of the placement. (3-30-01)

04. Provision of Resources. Provision of resources or arranging for the provision of resources to effect a safe, stable and suitable placement for the child and the family, including information regarding the federal adoption assistance program. (3-30-01)

05. Adoption Finalization Assistance. Help in finalizing the legal adoption of the child. (3-30-01)

06. Post-Finalization Services. Upon request, the children's agency, either directly or by referral to a resource, will assist the family with any identified problems associated with the adoption. (3-30-01)

673. SELECTION OF AN ADOPTIVE PLACEMENT.

The factors listed are in random order and are not intended to reflect relative priority. A children's agency must consider the following factors in selecting suitable adoptive parents for a child: (3-30-07)

01. Child's Needs. The physical, emotional, medical, and educational needs of the child. (3-30-01)

02. Continued Contact. The child's needs for continued contact with the birth parent(s), siblings, relatives, foster parents, and other persons significant to the child. (3-30-01)

03. Racial, Ethnic, and Cultural Considerations. In accordance with the Multiethnic Placement Act (MEPA), P.L. 103-382 and P.L. 104-188, 42 USC, Section 622, the child's racial, ethnic, cultural identity, heritage, and background may only be considered if a written assessment of the child indicates that such consideration is in the best interest of the child. (3-30-07)

04. Authorized Placement on Approved Recommendations. The children's agency must require authorization by a chief administrator after the recommendations of approval are given by a service worker supervisor. The approval or denial must be documented in the case record. (3-30-07)

05. Placement. A children's agency will place a child with children's agency-approved adoptive parents consistent with the recommendations specified in the adoptive family study and the needs of the child identified in these rules. (3-30-07)

674. CONDITIONS FOR PLACEMENT IN AN ADOPTIVE HOME.

A children's agency may place a child in a home for the purposes of adoption if the adoptive parents have received orientation in accordance with the requirements of Sections 660 through 699 of these rules, an adoptive family study has been completed, supervisory approval of the placement has been obtained, and all applicable parties have signed the adoptive placement agreement. (3-30-01)

675. ADOPTIVE PARENT INFORMATION.

A children's agency must provide adoptive parents with the following information before the placement of a child: (3-30-01)

01. Name. Child's name as permitted by law or disclosure agreement. (3-30-01)

02. Date, Time, and Location of Birth. Date, time and place of birth, including hospital, city, state, and country. (3-30-01)

03. Racial, Ethnic, and Religious Considerations. Child's racial, ethnic, and religious background. (3-30-01)

04. Medical Records. Child's physical and mental health records and where applicable, special needs. (3-30-01)

05. Family of Origin. Description of the child's family of origin, including age and gender of each family member, their relationship to the child, and medical and mental health history, social, and education history of each member of the family. (3-30-01)

06. Circumstances of the Placement. Description of the circumstances necessitating placement of the child. (3-30-01)

07. Preparation for Placement. Child's preparation for placement and attitude towards adoption. (3-30-01)

08. Other Information. Any other information to enable the adoptive parent to provide a stable, safe, and healthy environment for the child. (3-30-01)

676. SUPERVISION.

A children's agency social worker or service worker must provide post placement supervision to the adoptive family at the family's home at least once every three (3) months after the placement of a child and before the final order of adoption. These supervisory contacts will include: (3-30-01)

01. Documentation of Adjustment. Assessment and documentation of the child's and adoptive family's adjustment and, where indicated, plans to assist the child and adoptive family. (3-30-01)

02. Results of Assessment. Keeping the adoptive parents informed of the results of the children's agency's continuing assessment of the placement at the conclusion of each supervisory contact. (3-30-01)

03. Special Needs Adoption. Supervision by the children's agency for at least six (6) month duration and as frequently as needed before finalization for special needs adoptions. (3-30-01)

677. -- 679. (RESERVED)

ADDITIONAL PROVISIONS FOR INTER-COUNTRY ADOPTION SERVICES
(Sections 680 - 699)

680. ADDITIONAL PROVISIONS FOR INTER-COUNTRY ADOPTION SERVICES. (3-30-01)
(Sections 680 through 699, see also Sections 000 through 299)

681. INTER-COUNTRY ADOPTION SERVICES.
A children's agency that provides inter-country adoption services must include in its program statement a description of inter-country adoptive placement services it provides either directly or through collaboration with other agencies or individuals with proper credentials. (3-30-01)

682. LEGAL REQUIREMENTS FOR INTER-COUNTRY ADOPTION SERVICES.
A children's agency that arranges or engages in inter-country adoption must provide the following: (3-30-01)

01. Legal Rights Protection. Provide protection of the legal rights for the child, the child's birth parents, adoptive applicants, and adoptive parents. (3-30-01)

02. Licensing Standard Compliance Requirement. Collaborate with and accept adoptive family studies and post-placement services only from other providers who comply with applicable state licensing standards and the laws from the child's country of origin. (3-30-01)

03. Children's Agency, Foreign Government Agreement Review. Maintain a file and provide for review to prospective adoptive families an English-translated copy of any agreement that exists between a foreign government and the children's agency. (3-30-01)

04. Adoptive Home Standards. Conduct adoptive family studies in accordance with these rules and the minimum standards established for international adoption studies by the United States Immigration and Naturalization Service. (3-30-01)

05. Citizenship. Inform families about how to obtain citizenship for a foreign born adopted child. (3-30-01)

683. FINANCIAL.
A children's agency must establish and follow a written schedule of fees, estimated or actual expenses of what a family will be charged for services, fees, and costs in the child's country of origin. (3-30-01)

684. INTER-COUNTRY ADOPTION SERVICES TO ADOPTIVE PARENTS. (3-30-01)
A children's agency that provides or arranges for inter-country adoption services must:

01. Inter-Country Adoption Orientation. Provide orientation to prospective adoptive families regarding inter-country adoption, its meaning, the adoption process, children's agency procedures, and the characteristics of children needing adoption. (3-30-01)

02. Eligibility Criteria Disclosure. Disclose the general criteria by which the children's agency determines eligibility for applicants for inter-country adoption. (3-30-01)

03. Determination of Adoptive Applicant's Ability. Determine the ability of adoptive applicants to meet the needs of an internationally adopted child and prepare an adoptive family study report. (3-30-01)

04. Documenting Child's Legal Status. Acquire documentation that, at placement, the child is legally free for inter-country adoption. (3-30-01)

05. Procedures for United States Placement. Follow Immigration and Naturalization procedures to ensure that the child is or will be authorized to enter and reside permanently in the United States. (3-30-01)

06. Information Disclosure. Fully disclose all information available to the children's agency, based on a diligent effort to obtain pertinent information regarding the child's medical and social history as part of the referral information. (3-30-01)

07. Post-Placement Supervision. Provide post-placement supervision as required by the adoptive child's country of origin. (3-30-01)

08. Adoption Finalization. Ensure that the adoption of the child is finalized. (3-30-01)

685. COLLECTING AND EXCHANGING INFORMATION ABOUT A CHILD.

A children's agency must collect and exchange information about the child's background with the prospective adoptive parents and ensure that information held by the children's agency regarding the child's origin, the identity of their birth parents, and medical history is retained. (3-30-01)

686. POST-PLACEMENT AND POST-FINALIZATION ADOPTION SERVICES.

A children's agency must provide or arrange for the following post-placement and post-finalization adoption services by persons with prior experience in post finalization services and who are knowledgeable about the legal, social, cultural, and emotional issues pertinent to adoption. (3-30-01)

01. Post-Placement Reports. Provide post-placement and post-finalization reports on the progress of a child when requested by the country of origin when not in conflict with laws or public policies of the United States or Idaho. (3-30-01)

02. Crisis Counseling. Counseling or referral for counseling for the adoptive parents and the adoptee, when a placement or an adoption is in crisis. (3-30-01)

03. Adoption Disruption Re-Placement. Re-placement of the child if the adoptive placement is disrupted before finalization. (3-30-01)

04. Child Origin Information Access. Procedures as permitted by law to ensure access by the child or their representative to information regarding the child's origins that is held by the children's agency. (3-30-01)

05. Post-Finalization Counseling. Post-finalization counseling when requested by the family. (3-30-01)

687. -- 699. (RESERVED)

ADDITIONAL STANDARDS FOR CHILDREN'S RESIDENTIAL CARE FACILITIES
(Sections 700 - 769)

700. ADDITIONAL STANDARDS FOR CHILDREN'S RESIDENTIAL CARE FACILITIES.
(Sections 700 through 769, see also Sections 500 through 599.) (3-30-01)

701. -- 704. (RESERVED)

705. CHIEF ADMINISTRATOR QUALIFICATIONS.

A children's residential treatment care facility must employ or contract with a full time chief administrator. At the time of appointment, the chief administrator must, at a minimum, possess at least one (1) of the following in Subsection 705.01 or 705.02 of this rule. (7-1-09)

01. Bachelor's Degree. A Bachelor's degree in a relevant discipline, two (2) years of experience working with children, and three (3) years experience in staff supervision and administration. (7-1-09)

02. Career Development Program. Completed a career development program which includes work-related experience, training or college credits, or a combination of these, that provide a level of achievement equivalent to the Bachelor's degree. Work experience must include two (2) years of experience working with children, and three (3) years of experience in staff supervision and administration. (7-1-09)

706. SERVICE WORKER SUPERVISOR QUALIFICATIONS.

A service worker supervisor, at the time of appointment, must possess at least one (1) of the following in Subsection 706.01 or 706.02 of this rule. (7-1-09)

01. Master's Degree. A Master's degree from an accredited college or university in a behavioral science and one (1) year of experience as a service worker. (7-1-09)

02. Bachelor's Degree. Bachelor's degree from an accredited college or university in a behavioral science, including social work, sociology, psychology, criminal justice, counseling, or a related field, and four (4) years of experience working with children, of which two (2) years must have been as a service worker. (7-1-09)

707. DIRECT CARE STAFF SUPERVISOR QUALIFICATIONS.

A direct care staff supervisor, at the time of appointment, must possess at least one (1) of the following in Subsection 707.01 through 707.03 of this rule. (7-1-09)

01. Bachelor's Degree. A Bachelor's degree from an accredited college and one (1) year of full-time experience in a children's residential care facility. (7-1-09)

02. Associate's Degree. An Associate's degree or a minimum of forty-eight (48) credit hours from an accredited college and two (2) years of full-time experience in a children's residential care facility. (7-1-09)

03. Experience. A high school diploma or equivalent and three (3) years of full-time experience in a children's residential care facility. (3-30-01)

708. (RESERVED)

709. DIRECT CARE STAFF QUALIFICATIONS.

Direct care staff must be at least nineteen (19) years of age at the time of appointment and possess a high school diploma or equivalent. (7-1-09)

710. REQUIRED STAFF RATIOS.

There must be written staff ratios for direct care staff to children and service workers to children. Unless otherwise specified in these rules, staff ratios must be as described in Subsections 710.01 through 710.06 of this rule. (7-1-09)

01. Supervisor-Staff Ratio. At least one (1) staff supervisor for every twenty (20) direct care staff or fraction thereof. (3-30-01)

02. Staff-Child Ratio-Daytime. At least one (1) direct care staff to every eight (8) children when

children are awake and present, unless the presenting problems of the children in care are such that a ratio of one (1) to eight (8) is not sufficient to provide for the safety and treatment needs of the children. In that case, the ratio of direct care staff to children ratio must be increased to ensure the safety and treatment needs of the children are met. (7-1-09)

03. Staff-Child Ratio-Sleeping Hours. At least one (1) awake direct care staff to twenty (20) children or fraction thereof during the children's normal sleeping hours in buildings housing children's sleeping quarters. If the presenting problems of the children in care are such that a ratio of one (1) to twenty (20) is not sufficient to provide for the safety and treatment needs of the children, then the ratio of direct care staff to children ratio must be increased to ensure the safety and treatment needs of the children are met. (7-1-09)

04. Medical Emergency. At least one (1) staff on duty in a children's residential care facility who is certified to provide cardiopulmonary resuscitation (CPR) and first aid for the age of the children in care. (3-30-01)

05. Emergency Staff Access. When only one (1) direct care worker is on duty, an additional staff person must be available within ten (10) minutes or if assistance from law enforcement is available within ten (10) minutes an additional staff person must be available within thirty (30) minutes to assist with an emergency. (7-1-09)

06. Service Worker or Social Worker Ratios. Except for non-accredited children's residential schools, at least one (1) service worker or social worker as defined in Section 011 of these rules needs to be available for every twenty (20) children in care or fraction thereof. (7-1-09)

711. HOUSE PARENT RELIEF STAFF.

Where house parents are used to provide direct care staff functions, they must be provided time off in accordance with the Idaho Department of Commerce and Labor requirements in Section 44-1202, Idaho Code. (7-1-09)

712. STAFF TRAINING.

Unless otherwise specified in these rules, an employee or volunteer whose primary job function requires interaction with children and who works twenty-four (24) or more hours a week must receive at least twenty (20) hours of training annually. An employee or volunteer whose primary job function requires interaction with children and who works less than twenty-four (24) hours a week must receive at least ten (10) hours of training annually. The training must include cultural sensitivity and diversity, behavior management, and child development issues appropriate to the population served. Training must also include instruction in administering cardiopulmonary resuscitation (CPR) and administering first aid appropriate to the age of the children in care within ninety (90) days after employment. (7-1-09)

713. -- 714. (RESERVED)

715. COMPLIANCE WITH APPLICABLE LAWS.

Children's residential care facilities must comply with the applicable Idaho state and local zoning, fire, health, construction laws, ordinances and regulations. (7-1-09)

01. Sanitation Inspection. The applicant must request and obtain a sanitation inspection and written report from the applicable Idaho Public Health District. (7-1-09)

02. Fire Inspection. The applicant must request and obtain a fire safety inspection and written report from the office of the Idaho State Fire Marshall, or local fire department. (7-1-09)

03. Corrective Action and Fees. The applicant must correct all deficiencies noted in the sanitation and fire reports (in order to provide documentation that the applicant has passed the inspections) and is responsible to pay any fees charged. (7-1-09)

04. Planning and Zoning. The applicant must provide documentation demonstrating it meets planning and zoning requirements of the applicable Idaho city or county. (7-1-09)

716. CHILDREN'S RESIDENTIAL CARE FACILITY BUILDING REQUIREMENTS.

A children's residential care facility building must meet the requirements in Subsection 716.01 through 716.03 of this rule: (7-1-09)

01. Access to Community Resources. The facility must have access to school facilities, hospitals, churches, recreational and other community resources. (7-1-09)

02. Occupancy Restrictions. The facility must house only the number of persons for which it is rated, given its type of construction and size. (7-1-09)

03. Location Restrictions. The facility must not be located within three hundred (300) feet of an aboveground storage tank containing flammable liquids or gases used in connection with a bulk plant, marine terminal, aircraft refueling or bottling plant of a liquefied gas installation, or similar hazard. (7-1-09)

717. NATIONAL ELECTRICAL CODE COMPLIANCE.

A building used to house children must comply with the National Electrical Code adopted by the Department of Building Safety in Section 54-1001, Idaho Code, or authorized local jurisdiction. (7-1-09)

718. FIRE SAFETY REQUIREMENTS.

A building that houses children must be inspected by a state certified fire inspector before being occupied and on an annual basis thereafter for compliance with the applicable International Fire Code. A copy of the inspection must be maintained at the facility. (7-1-09)

01. Fire Extinguishers. Each building used to house children must have a minimum of one (1) 2-A-10BC type per floor, and if there is a kitchen on the floor, a fire extinguisher must be in or immediately adjacent to the kitchen. Each fire extinguisher must be inspected annually by a fire extinguisher service agency. (7-1-09)

02. Smoke Detecting Devices. There must be at least one (1) smoke detector on each floor of the facility, approved by a nationally recognized testing laboratory, installed and maintained as recommended by the manufacturer. (7-1-09)

03. Carbon Monoxide Detecting Devices. There must be at least one (1) carbon monoxide detecting device that is approved by a nationally recognized testing laboratory that is installed and maintained as recommended by the manufacturer. A facility that does not have equipment which produces carbon monoxide or does not have an attached garage is exempt from this requirement. (7-1-09)

719. EMERGENCY PROCEDURES.

A children's residential care facility must have and follow written policies and procedures governing the handling of emergencies which include emergency evacuation plans, telephone numbers for contacting ambulances, emergency medical personnel, fire departments, hospitals, poison control centers, police, location and use of first aid kits, and roster and telephone numbers of staff to be contacted during an emergency, and other emergency services as appropriate. (7-1-09)

720. EMERGENCY DRILLS.

01. Fire Drills. Fire drills must be conducted and recorded monthly, with each work shift participating in a drill a minimum of once every three (3) months. Emergency evacuation routes must be posted in conspicuous locations on each floor of a building housing children. (7-1-09)

02. Disaster Drill. A disaster drills must be conducted and recorded annually. The annual disaster drill cannot be a fire drill. (7-1-09)

721. PUBLIC HEALTH DISTRICT INSPECTION.

The facility must provide documentation of an initial and annual inspection and approval by the applicable Idaho Public Health District addressing the following health and safety standards before a license for a facility used to house children will be issued. A copy of the inspection must be maintained at the children's residential care facility. (7-1-09)

01. Food Safety and Sanitation Standards. The facility must comply with IDAPA 16.02.19, “Food Safety and Sanitation Standards for Food Establishments.” (7-1-09)

02. Drinking Water Systems. The facility must comply with IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems.” (7-1-09)

722. BUILDINGS, GROUNDS, FURNISHINGS AND EQUIPMENT.

Buildings used to house children must be furnished with comfortable furniture, in good repair and appropriate to the age, size and capabilities of the children. (7-1-09)

723. MAINTENANCE.

Buildings, grounds, furnishings and equipment must be kept clean, free of clutter, and in good repair in a scheduled or routine manner. (7-1-09)

724. EQUIPMENT STORAGE.

All facility cleaning equipment must be stored separate from the kitchen, food preparation, serving, and storage areas. Kitchen and bathroom sinks must not be used for cleaning mops, emptying mop buckets, or for any other purpose not connected with food preparation, or personal hygiene. (7-1-09)

725. SERVICE SINK.

A building housing more than twelve (12) persons must have a service sink used for general maintenance purposes such as floor mopping and not used for food preparation or dish washing. (7-1-09)

726. HAZARDOUS MATERIALS OR TOXINS.

Buildings used to house children must be free from hazardous materials and toxins. An organization must provide documentation of testing for radon gas, materials containing asbestos, and lead paint. Documentation must be maintained at the facility confirming any hazardous material or toxins have been removed or do not pose a threat to the children served. Hazardous materials or toxins are not limited to lead paint, asbestos, and radon. (7-1-09)

727. LIGHTING.

All rooms used by children must be appropriately lighted for safety and comfort. (7-1-09)

728. HEATING.

Heating and ventilation equipment must be properly installed, inspected annually, and kept in good repair. Portable fuel burning and wood burning heating appliances are prohibited. Portable electric heaters must not be used in children’s residential sleeping quarters. Local fire officials must approve portable heaters used in other areas. (7-1-09)

729. BATHROOM FACILITIES.

A building used to house children must have adequate, clean and easily accessible bathroom facilities. The number of toilets is one (1) per eight (8) females and one (1) per ten (10) males; bathtubs or showers is one (1) for each ten (10) individuals; washstands is one (1) for every five (5) individuals according to the International Building Code applicable for the type of building and its use. There must be separate use of bathroom facilities for boys and girls over six (6) years of age. There must be separate bathroom facilities for staff. (7-1-09)

730. SLEEPING ROOMS.

Sleeping rooms in a building used to house children must meet the requirements in Subsections 730.01 through 730.03 of this rule. (7-1-09)

01. Size. At least seventy (70) square feet, exclusive of closet space, in a single occupancy room. In a multiple occupancy room, there must be at least forty-five (45) square feet per occupant, exclusive of closet space. Existing multiple occupancy sleeping rooms, may be approved relative to square feet per occupant until the room is remodeled or the building is extensively remodeled. There must be a minimum of three (3) feet between the sides of beds and two (2) feet at the end of the beds. (7-1-09)

02. Window Space. There must be sufficient window space for adequate natural light and ventilation. Emergency egress or rescue windows must comply with the State-adopted International Building Code. (7-1-09)

03. Restrictions. A child and an adult cannot share a sleeping room except that a child under one (1) year of age may sleep in a room with an adult. A sleeping room must not be in a stairway, hallway, unfinished attic, unfinished basement, or in a separate building apart from staff supervision. There must be separate rooms for male and female residents. Sleeping rooms must be in close proximity to adult supervision. (7-1-09)

731. BEDS.

Each child must have their own bed that has substantial support, a comfortable non-neoprene mattress and seasonally appropriate non-neoprene bedding. The bed must be equipped with railings when used for children under two (2) years of age. Over-and-under bunk beds must not be used for children under eight (8) years of age. Cribs must meet Consumer Product Safety Commission, Crib Safety Tips available at: <https://www.cpsc.gov/Regulations-Laws--Standards/Rulemaking/Final-and-Proposed-Rules/Full-Size-Cribs>. (7-1-09)

732. STORAGE OF POISONOUS AND TOXIC MATERIALS.

Poisonous and toxic materials must be stored under lock and key and distinctly labeled as poisonous, toxic and stored so as not to contaminate food and not to be a hazard to children. (7-1-09)

733. FLAMMABLE LIQUIDS.

Flammable liquids, including gasoline and kerosene, must be stored only in appropriate containers and kept separate from any building housing children. (7-1-09)

734. FIREARMS.

Firearms are not allowed in a children's residential care facility. (7-1-09)

735. SUFFICIENT RECREATIONAL SPACE.

Sufficient indoor and outdoor recreational space is needed so the number of children in care can participate in a wide range of physical and individual activities. (3-30-01)

736. GENERAL SAFETY PROVISIONS.

01. Reasonable Precaution. Reasonable precautions must be taken to prevent children from having unauthorized access to machinery, tools, irrigation ditches, and hazardous materials. (7-1-09)

02. Balconies and Stairways. Balconies and stairways accessible to children must have substantial railings as required by the State-adopted International Building Code. (7-1-09)

03. Stairway Protection. Where a children's residential care facility provides care to children under three (3) years of age, stairways must be protected to prevent children from falling down the stairs. (7-1-09)

04. Hazard Areas Restrictions. Based on the age and functioning level of children in care and the type of hazard, an outdoor hazard area must be restricted to prevent easy access to the hazard. (7-1-09)

737. DIAPERING AND SANITATION.

A diaper-changing area must be separate from food preparation and serving areas and be easily accessible to a hand-washing sink. The area must have non-absorbent and washable surfaces, and must be disinfected between uses by different children or protected by a disposable covering discarded after each use. (7-1-09)

738. -- 744. (RESERVED)

745. EDUCATION PROGRAM.

Each child of school age must attend either an on-grounds or community-based education program that is approved by the Idaho Department of Education, excluding children in a non-accredited children's residential school. When the education program is provided directly by the children's residential care facility, the education program must meet the requirements in Subsections 745.01 through 745.08 of this rule. (7-1-09)

01. Teacher Ratio. At least one (1) Idaho certified teacher for every twenty (20) children or fraction thereof. (7-1-09)

- 02. Teacher Qualifications.** Teachers must possess a current Idaho certification. (7-1-09)
- 03. Minimum Hours.** Operate for at least as many school days and clock hours as are required by Section 33-512, Idaho Code. (3-30-01)
- 04. Core Curriculum.** Provide core curriculum appropriate to the population served. (7-1-09)
- 05. Special Education.** Provide special education services to a child in care who requires special education. (3-30-01)
- 06. Written Transcripts and an Individual Education Plan (IEP).** Maintain transcripts and IEP's for each child as appropriate. (3-30-01)
- 07. Grading System.** Use a uniform grading system. (3-30-01)
- 08. Release of Records.** Process for transfer and release of education records to and from other schools and children's residential care facilities. (3-30-01)
- 746. WORK.**
Children may be given a non-vocational work assignment as a constructive experience in compliance with child labor laws, which are age appropriate and within the child's capabilities. The primary purpose of work must not be to substitute for paid labor. (7-1-09)
- 747. RECREATION, PHYSICAL EXERCISE, AND LEISURE TIME ACTIVITIES.**
An organization must have a policy requiring children have the opportunity for daily participation in recreation, physical exercise and leisure time activities. The organization must document both individual and group activities, including one (1) hour of large muscle activity each day. Participation must be encouraged but not forced. (7-1-09)
- 748. SLEEP.**
A children's residential care facility must have and follow policies and procedures governing time to be set aside so that each child is given the opportunity for at least eight (8) hours of uninterrupted rest at night and more time if the service plan or health needs of the child require. (7-1-09)
- 749. SWIMMING POOL, POND, OR OTHER BODY OF WATER.**
An above-ground or in-ground swimming pool, pond, or other body of water on the premises of a children's residential care facility for use by children must comply with Section 56-1003(3)(d), Idaho Code, and applicable swimming pool construction, sanitation, water quality standards, water temperature, recreational bathing and life saving provisions of federal, state, county and municipal laws, regulations and ordinances. (3-30-07)
- 01. Staff Person with Lifesaving or Lifeguard Certificate.** The facility must maintain at least one (1) staff person who has a valid lifesaving or lifeguard certificate issued by a nationally recognized organization. This certified staff person must be on duty at all times when children are in the water. (3-30-07)
- 02. Pools, Hot Tubs, Ponds, and Other Bodies of Water.** The facility must maintain the pools, hot tubs, ponds, and other bodies of water on its property in good repair, in a clean condition, and free from safety hazards and dangerous machinery and equipment. Areas and equipment that present a hazard to children must not be accessible by children. The following safeguards must be provided: (3-30-07)
- a.** The area surrounding a body of water must be fenced and locked in a manner that prevents access by children; or (3-30-07)
- b.** If the area surrounding a body of water is not fenced and locked, there must be a secured protective covering that will not allow access by a child; (3-30-07)
- i.** Pool or hot tub covers must be completely removed when in use; (3-30-07)

- ii. When the pool or hot tub cover is in place, the cover must be free from standing water; (3-30-07)
- iii. Covers must be kept locked at all times when the pool or hot tub is not in use; and (3-30-07)
- c. A reaching pole with a hook and a ring buoy must be accessible; and (3-30-07)
- d. Exterior ladders on above ground pools must be removed when the pool is not in use. (3-30-07)

03. Access by Children Five Years of Age and Under. Any children's residential care facility that cares for children five (5) years of age and under, and chooses to prevent access to a body of water by fencing must provide a fence that meets the following requirements: (3-30-07)

a. The fence must be at least four (4) feet high with no vertical opening more than four (4) inches wide, be designed so that a young child cannot climb or squeeze under or through the fence, and surround all sides of the pool or pond; (3-30-07)

b. The gate must be self-closing and have a self-latching mechanism in proper working order out of the reach of young children; (3-30-07)

c. If a building forms one (1) side of the barrier for the pool, doors that provide unrestricted access to the pool must have alarms that produce an audible sound when the doors are opened; and (3-30-07)

d. Furniture or other large objects must not be left near the fence that would enable a child to climb on the furniture and gain access to the pool. (3-30-07)

04. Irrigation Canals or Similar Body of Water. A children's residential care facility caring for a child five (5) years of age and under or a child who is physically or developmentally vulnerable whose property adjoins an irrigation canal must have fencing that prevents access to the canal or similar body of water by the child. (3-30-07)

05. Other Water Safety Precautions. (3-30-07)

a. Wading pools must be empty when not being used; (3-30-07)

b. Children must be under the direct supervision of an adult while using a wading pool; (3-30-07)

c. Toys that attract young children to the pool area must be kept picked up and away from the pool area when not in use; and (3-30-07)

d. A child who does not know how to swim must use an approved lifesaving personal flotation device. (3-30-07)

750. WATER FRONT.

At a waterfront used for swimming, there must be available a whistle, an assist pole or other appropriate reaching device, a rope attached to a ring buoy or other appropriate throwing assist device, a backboard that has appropriate rigid cervical collars and a minimum of six (6) straps, a first aid kit and a rescue tube. (7-1-09)

751. SUPERVISION OF RECREATIONAL ACTIVITY.

Staff conducting or supervising a recreational activity must have knowledge of and enforce appropriate safety techniques for the activity as described in Subsections 751.01 through 751.05 of this rule. (7-1-09)

01. Instruction. Instruct each participant in the appropriate safety procedures. (3-30-01)

02. Safety Equipment. Ensure that each participant uses adequate and appropriate safety equipment for the activity and the child's ability. (3-30-01)

03. Rescue Equipment. Ensure that there is proper rescue equipment available and easily accessible. (3-30-01)

04. Cardiopulmonary Resuscitation (CPR) and First Aid. Ensure that at least one (1) staff has current cardiopulmonary resuscitation (CPR) and first aid certification appropriate to the age of the children in the facility. (3-30-01)

05. Staff Coverage. Ensure that there are adequate members of staff for the activity and children involved. (3-30-01)

752. MEDICATION STORAGE AND ADMINISTRATION.

A children's residential care facility must have and follow policies and procedures on the storage and administration of prescription and non-prescription medication. The policy must address the requirements in Subsections 752.01 through 752.06 of this rule. (7-1-09)

01. Medication Storage and Administration. Require prescription and over-the-counter medication be stored under lock and key and the keys safe guarded from children. For medications taken on field outings, storage of medication must be in the possession of a staff member qualified to administer medications. (7-1-09)

02. Trained Staff. Require that staff who administer and assist with self-administration of medications be trained by a qualified medical professional. (3-30-01)

03. Psychotropic Medication: (3-30-01)

a. Prohibit the administration of psychotropic medication unless a qualified medical professional determines that the medication is clinically indicated; and (3-30-01)

b. Prohibit the administration of psychotropic medications for disciplinary purposes, for the convenience of staff, or as a substitute for appropriate treatment services; (3-30-01)

04. Documentation. Required documentation for all prescription medication issued by a qualified medical professional's valid order that includes the dosage to be given, and documentation of each dose given, including: (3-30-01)

a. The child's name; (3-30-01)

b. The date and time; (3-30-01)

c. The amount of dosage given and whether the child did not take the medication; and (3-30-01)

d. The person who administered or assisted in self-administration of the medication. (3-30-01)

05. Medication Changes. Require that prescribed medication not be stopped or changed in dosage or administration without consulting with a qualified medical professional and documenting the consultation and the change. (3-30-01)

06. Disposal of Unused Medication. Require that all unused and expired medication be disposed of so they are not available to children. (3-30-01)

753. UNIVERSAL PRECAUTIONS.

Universal precautions must be taken for spills of body fluids such as blood, blood containing body fluids, eye discharge, feces, body tissue discharge, nasal discharge, saliva, urine, vomit, contaminated material and diapers, which must be disposed of in a plastic bag that is secured with a tie. The disinfectant solution used to clean up body fluids must be a commercially prepared spill kit or a disinfectant solution made from one-fourth (1/4) cup of household bleach to one (1) gallon of water. A person doing the cleaning and disinfecting must wear non-porous disposable gloves. Mops and other cleaning devices and fluids used to clean up body fluid spills must be disinfected, properly dried and stored. Syringes must be disposed of in accordance with Occupational Safety and Health Act (OSHA) standards and not to be accessible to children. A copy of OSHA may be obtained at the Idaho Industrial Commission, 317 Main Street., P.O. Box 83720, Boise, Idaho, 83720-0041. (7-1-09)

754. FIRST AID KIT.

A first aid kit which is approved by a physician or nationally recognized accrediting body, must be readily available at all times, containing materials to sufficiently meet the needs of a child's medical needs until other medical treatment is obtained, if needed. The contents, location and use of first aid kits must be reviewed annually with all staff. The content of the kits must be inventoried monthly and restocked as needed. (7-1-09)

755. NUTRITION.

Children must be provided three (3) nutritionally balanced meals in appropriate intervals and in amounts appropriate to their size and age, and that are in accordance with the Dietary Reference Intakes (DRIs) of the National Research Council [Dietary Reference Intakes Essential Guide Nutrient Requirements](#) or its equivalent. A child must be provided a qualified medical professional prescribed diet or special diet based on religious beliefs. A nutritional or dietitian professional must approve menus annually. The current menu must be readily available and any change or substitution noted on the menu. Menus must be maintained on file for at least six (6) months. (7-1-09)

756. ANIMALS AND PETS.

Animals and household pets must be free from disease and cared for in a safe and clean manner. All domestic animals and pets must be vaccinated against rabies. Documentation of the vaccination against rabies must be kept on file at the children's residential care facility. (7-1-09)

757. USE OF TOBACCO PRODUCTS, ALCOHOL, AND ILLEGAL DRUGS PROHIBITED.

Tobacco products, alcohol and illegal drugs must not be used by children, staff, volunteers, or visitors in any building used to house children or in the presence of children or in vehicles used to transport children. (7-1-09)

758. TRANSPORTING CHILDREN.

01. Vehicle. Transportation of children in a children's residential care facility vehicle must be in a vehicle that is: (7-1-09)

- a. Properly registered; (3-30-01)
- b. Covered by insurance for personal injury and liability; (3-30-01)
- c. Driven by a person with a valid driver's license for the type of vehicle who complies with all applicable traffic laws while transporting children; (3-30-01)
- d. Maintained in a clean and safe condition; (3-30-01)
- e. Equipped with a red triangular reflector device for use in emergency; (3-30-01)
- f. Equipped with a first aid kit; and (3-30-01)
- g. Equipped with a fire extinguisher that is properly secured and not readily available to children. (3-30-01)

02. Proper Seating of Children and Adults: (3-30-01)

- a. A child must ride in an age appropriate vehicle restraint seat, properly secured, or if the child is large enough, in a vehicle manufactured seat and properly use the passenger restraint device; and (7-1-09)
- b. Adults riding in the vehicle must occupy a manufactured seat and use the passenger restraint device. (7-1-09)

759. CONTRABAND.

A children's residential care facility must define prohibited contraband in a written policy. Contraband found in the possession of children or staff must be confiscated by staff and secured in a location inaccessible to children. Local law enforcement must be notified in the event that illegal contraband is confiscated. It is the responsibility of the

administrator or designee to dispose of all contraband not confiscated by law enforcement, in accordance with the children's residential care facility contraband policy. (7-1-09)

760. SEARCHES.

If a children's residential care facility conducts searches of children, the children's residential care facility, staff or visitors, it must have and follow written policies and procedures. Searches must be completed in the least intrusive manner possible for the type of search being conducted. All contraband will be disposed of in accordance with these rules. The policies and procedures at a minimum require the following procedures. (7-1-09)

01. Pat Down Searches. Pat down searches of children may only be conducted when the children's residential care facility feels it is necessary to discourage the introduction of contraband into the children's residential care facility, or to promote the safety of staff and other children. Pat down searches are conducted as follows: (3-30-01)

- a.** By staff trained in proper search techniques; (3-30-01)
- b.** By a staff member of the same sex as the child being searched, and must be in the presence of another staff member; (7-1-09)
- c.** The child is told he is about to be searched; (3-30-01)
- d.** The child should remove all outer clothing (gloves, coat, hat and shoes) and empty all pockets; (3-30-01)
- e.** The staff person must then pat the clothing of the child using only enough contact to conduct an appropriate search; (7-1-09)
- f.** If the staff detects anything unusual, the child must be asked to identify the item and appropriate steps taken to remove the item for inspection; (7-1-09)
- g.** If the child refuses to comply, the administrator or designee will be notified immediately and be responsible to resolve the matter; and (3-30-01)
- h.** All searches must be documented in writing. (7-1-09)

02. Strip Searches are Prohibited. (7-1-09)

03. Body Cavity Searches are Prohibited. (7-1-09)

761. BEHAVIOR MANAGEMENT AND DISCIPLINE POLICY.

01. Behavior Management. A children's residential care facility must have and follow a behavior management and discipline policy for children which identifies appropriate and specific methods of behavior management and discipline, and ensures that the methods of behavior management and discipline are positive and consistent. Individualized behavior management must be based on an assessment of the child's needs, stage of development and behavior to promote self control, self direction, self esteem, and an acceptable pattern of social behavior appropriate to the age and development level of the child. The policy must include the concept and application of least restrictive effective treatment and positive reinforcements and prohibits the following: (7-1-09)

- a.** Physical force, except as permitted under the restraint Sections 766 and 767 of these rules; (3-30-01)
- b.** Any kind of punishment inflicted on the body, including spanking, hitting, slapping, spitting, kicking, shaking, pulling hair, pinching skin, twisting of an arm or leg in a way that would cause pain or injury to the child, kneeling and sitting on the chest of a child, placing a choke hold on a child, bending back a finger, and shoving or pushing a child into the wall, floor or other stationary object; (3-30-01)

- c.** Cruel and unusual physical exercise, including forcing the child to take an uncomfortable position; (3-30-01)
- d.** Verbal abuse, ridicule, humiliation, profanity and other forms of degradation directed at a child or a child's family; (3-30-01)
- e.** Locked confinement in an area except an area approved by the Department for confinement of a child as provided in these rules; (3-30-01)
- f.** Withholding of necessary food, clothing, bedding, rest, toilet use, bathing facilities, and entrance to a children's residential care facility housing a child; (3-30-01)
- g.** Denial of visits or communication with the child's family except as specified in the child's service plan or court order; (3-30-01)
- h.** Denial of necessary educational, medical, counseling, and social services; (3-30-01)
- i.** Disciplining a child or group of children for the actions of one (1) child, unless the organization's policies and procedures for group behavior management and discipline are based on a nationally recognized peer group treatment model and clearly prescribe the circumstances and safeguards under which disciplining the group is allowed and is supervised directly by staff; (3-30-01)
- j.** The placing of anything in or on a child's mouth; and (3-30-01)
- k.** A physical work assignment that produces unreasonable discomfort. (3-30-01)

02. Documentation. An organization must document that the policy has been provided to a resident capable of reading it or is explained to the resident appropriate to their age and level of understanding and is made available to parents, guardians, and referral sources. (7-1-09)

762. TIME-OUT.

A children's residential care facility must have and follow written policy and procedures governing the appropriate use of time-out, as required in Subsections 762.01 through 762.08 of this rule. (7-1-09)

01. Use. Time-out is only used when a child's behavior is disruptive to the child's ability to learn, to participate appropriately, or to function appropriately with other children or the activity. (3-30-01)

02. Children Under Six Years of Age. For children under six (6) years of age, the period of time for time-out is not to exceed one (1) minute for each year of the child's age and is used as a supplement to, but not a substitute for other developmentally appropriate positive methods of behavior management. (3-30-01)

03. Children Six Years of Age or Older. For children six (6) years of age and older the time duration cannot exceed sixty (60) consecutive minutes. (7-1-09)

04. Prohibited Locations. The time-out cannot be in a closet, bathroom, unfinished basement, or attic and cannot be in a locked area or box. (7-1-09)

05. Documentation. A description in sufficient detail to provide a clear understanding of the incident which resulted in the child being placed in time-out, and the staff's attempts to help the child avoid time-out. (3-30-01)

06. Observations. A staff person is designated to be responsible for visually observing the child at random intervals not to exceed fifteen (15) minutes. (7-1-09)

07. Re-Introduction to the Group. The child is re-introduced to the group in a sensitive and non-punitive manner as soon as control is regained. (3-30-01)

08. Review. If there are more than ten (10) time-outs for a child in a twenty-four (24) hour period, a review is conducted by the chief administrator or designee, to determine the suitability of the child remaining in the children's residential care facility, whether modifications to the child's service plan are warranted, or whether staff need additional training in alternative therapeutic behavior management techniques and appropriate action taken is based on the findings of the review. (3-30-01)

763. UNLOCKED SECLUSION.

If a children's residential care facility uses seclusion there must be written policies and procedures, which at a minimum requires: (7-1-09)

01. Use of Unlocked Seclusion. Unlocked seclusion must not be used as punishment or to substitute for other developmentally appropriate positive methods of behavior management. Seclusion may only be used as a means of intervention when the child's behavior is so violent or disruptive that it presents a high risk of physical or emotional harm to self or others, and less restrictive and less punitive interventions have been applied without success. (7-1-09)

02. Time Needed. Seclusion must be used only for the time needed to change the behavior compelling it. (7-1-09)

03. Children Under Six Years of Age. For children under six (6) years of age, the period of time is not to exceed one (1) minute for each year of the child's age and is used as a supplement to, not a substitute for, other developmentally appropriate positive methods of behavior management. For children six (6) years of age and older the time duration cannot exceed sixty (60) consecutive minutes. (7-1-09)

04. Restrictions on Seclusion. The seclusion must not be in a box, closet, bathroom, unfinished basement or attic. (7-1-09)

05. Staff Supervision. A staff person is designated to be responsible for visually observing the child at random intervals, which are not to exceed fifteen (15) minutes throughout the period of seclusion, and must be recorded in a log. (7-1-09)

06. Supervisory Approval. Supervisory approval is required for a period of seclusion of one (1) child that exceeds two (2) hours, or the total seclusion time exceeds three (3) hours in a twenty-four (24) hour period, or more than four (4) separate seclusion incidents in a twenty-four (24) hour period. (3-30-01)

07. Documentation. Each seclusion must be documented in writing and include the child's name, reason for the seclusion, date and start and end time of the seclusion and the staff assigning the seclusion. (7-1-09)

08. Re-Introduction. The child is re-introduced to the group in a sensitive and non-punitive manner as soon as he can participate appropriately. (3-30-01)

09. Review. If there are more than ten (10) seclusion's for a child in a twenty-four (24) hour period, there must be a review by the chief administrator or their designee. The review is to determine whether modifications to the child's service plan are warranted and whether staff needs additional training in alternative therapeutic behavior management techniques or disciplinary action. Appropriate action must be taken based on the findings of the review. (7-1-09)

764. LOCKED SECLUSION.

Locked seclusion is used only when a child's behavior is so violent or disruptive that it presents a high risk of physical or emotional harm to the child or others and other less restrictive and less punitive interventions have been applied without success. Locked seclusion is prohibited for: non-violent and non-assaultive offenses and behaviors; practices designed to prevent children from running away; secluding a child who is ill; as a punishment; and facilitating supervision for the convenience of staff. No more than one (1) child can be in a locked seclusion room at a time. Supervisory staff must be notified at the time the locked seclusion begins. (7-1-09)

01. Duration. Locked seclusion must be used only for the time needed to change the behavior

compelling its use. Locked seclusion cannot exceed two (2) consecutive hours or a total of four (4) non-consecutive hours within any twenty-four (24) hour period, unless approved by a qualified medical professional. (7-1-09)

02. Potentially Harmful Objects. A child placed in locked seclusion must not be in possession of belts, matches, weapons or any other potentially harmful objects or materials that could present a risk of harm to the child. (7-1-09)

03. Observation. A child in locked seclusion must be observed by staff at random intervals, not to exceed every ten (10) minutes to assure that the child is safe. (7-1-09)

04. Locked Seclusion Log. A locked seclusion room log must be maintained and at a minimum includes: (7-1-09)

- a. The child's name; (3-30-01)
- b. The date and time of placement in locked seclusion; (3-30-01)
- c. The name of the staff who requested the child's locked seclusion; (3-30-01)
- d. The name of the supervisory staff notified and the time and date notified. (3-30-01)
- e. A description in sufficient details, to provide a clear understanding, of the incident which resulted in the child being placed in locked seclusion and the staff's attempts to help the child avoid locked seclusion; (3-30-01)
- f. A record of observations; and (3-30-01)
- g. The date and time of removal from locked seclusion. (3-30-01)

05. Re-Introduction. The child must be re-introduced to the group in a sensitive and non-punitive manner as soon as he has re-gained control. (7-1-09)

06. Review. When a child is in locked seclusion for a total of two (2) cumulative hours or four (4) non-cumulative hours within a twenty-four (24) hour period, there must be a review by the chief administrator or their designee within one (1) working day. The review is to determine whether modifications to the child's service plan is warranted, and whether staff need additional training in alternative therapeutic behavior management techniques or disciplinary action. Appropriate action must be taken based on the findings of the review. (7-1-09)

765. LOCKED SECLUSION ROOM REQUIREMENTS.

Rooms used for locked seclusion must measure at least seventy-five (75) square feet with a ceiling height of at least seven (7) feet. They must have either natural or mechanical ventilation and be equipped with a break resistant window, or a mirror or camera that allows for full observation of the room. Locked seclusion rooms must have no hardware, equipment or furnishings that obstruct observing the child or that present a physical hazard or a suicide risk. Rooms used for locked seclusion must be inspected and approved by a fire inspector and the Department. (7-1-09)

766. MECHANICAL RESTRAINT.

If a children's residential care facility uses mechanical restraint, it must have and follow written mechanical restraint policies and procedures. The policies must at a minimum require those described in Subsections 766.01 through 766.13 of this rule. (7-1-09)

01. Mechanical Restraint Use as a Last Resort. Mechanical restraint must only be used as a last resort when other therapeutic techniques have not worked and less restrictive interventions have been tried and have been found to be ineffective, and only after at least one (1) of the following has been determined: (7-1-09)

- a. The child is emotionally or physically uncontrollable and constitutes a serious and evident danger to self or others; (3-30-01)

- b.** The child is causing serious property damage; or (3-30-01)
- c.** An attempted escape is imminent and the child is out of control and poses a danger to self or others. (3-30-01)
- 02. Staff Training.** All staff who apply mechanical restraints must be trained in the proper and safe use of the mechanical restraint device used and training must be current and documented. (7-1-09)
- 03. Intervention.** Staff must inform the child that if their behavior continues, staff will have to intervene by placing them in mechanical restraint to help them regain control. (7-1-09)
- 04. Administrator Approval.** The administrator or designee must approve the use of mechanical restraint for the specific child for the specific behavior before each application of mechanical restraint. (7-1-09)
- 05. Restraint Type.** Restraints must be of a soft type when used to restrain the child's wrists to their side, secure the child's ankles together, or both; or be in or on a mechanical restraint device specifically designed for restraint which is recognized as safe and is made by a nationally recognized restraint device manufacturer. A restraint device must be used only in accordance with the manufacturer's written instructions for the device, except that handcuffs may not be used for more than five (5) minutes when it has been determined that the child may harm himself or others while the mechanical restraint is being applied. Handcuffs may only be used for the time needed to apply the mechanical restraints. (7-1-09)
- 06. Used Only Until Child Has Regained Control.** A mechanical restraint is used only until the child has regained control. (7-1-09)
- 07. Prohibitions on Mechanical Restraints.** Mechanical restraints are prohibited when there are specified medical reasons pursuant to a qualified medical professional's order. A child must not be mechanically restrained to a fixed object except one that was specifically designed for the purpose, meets nationally recognized standards and has been approved by the Department. Mechanical restraints must not be used for non-violent and non-assaultive offenses and behaviors as punishment to facilitate supervision for the convenience of staff or as a substitute for a treatment program. (7-1-09)
- 08. Monitoring.** A staff assigned to monitor a child placed in mechanical restraint must have no other immediate responsibility and must be in visual and auditory contact with the child at all times to ensure that all personal needs of the child are met, including access to toilet facilities as needed. (7-1-09)
- 09. Professional Opinion.** After one (1) hour has elapsed with the child in mechanical restraint, or if the child is released from mechanical restraint and has to be placed back in mechanical restraint, the supervisor must obtain a qualified medical or mental health professional's opinion regarding continuation of the restraint. The professional giving the opinion must be thoroughly familiar with the proper use of the mechanical restraint device being used. It is the qualified medical or mental health professional's responsibility to assess the problem requiring the use of restraint and amass any resources necessary to eliminate the problem. (7-1-09)
- 10. Mechanical Restraint Log.** There must be a mechanical restraint log documenting each use of mechanical restraint that includes: (7-1-09)

 - a.** The child's name; (3-30-01)
 - b.** The date and time of placement in mechanical restraint; (3-30-01)
 - c.** The name of the staff who requested the mechanical restraint of the child; (3-30-01)
 - d.** The name of the administrator or designee who approved the use of mechanical restraint of the child; (3-30-01)
 - e.** A description in sufficient details to provide a clear understanding of the incident which resulted in the child being placed in mechanical restraint and the staff's attempts to help the child avoid mechanical restraint; (3-30-01)

- f. Detailed observation notes by the person assigned to monitor the child while in mechanical restraint; (3-30-01)
- g. Documentation of the professional opinion required if a restraint lasts for more than one (1) hour or is returned to mechanical restraint; and (3-30-01)
- h. The date and time of removal from mechanical restraint. (3-30-01)
- 11. **Counsel.** When the child has been released from mechanical restraint, staff must counsel with the child about the behavior and problems experienced that resulted in the mechanical restraint. (7-1-09)
- 12. **Re-Introduction.** The child must be re-introduced to the group in a sensitive and non-punitive manner as soon as he has regained control. (7-1-09)
- 13. **Review.** When the child is in mechanical restraint there must be a review by the chief administrator or designee within twenty-four (24) hours. The review is to determine the suitability of the child remaining in the children's residential care facility, whether modifications to the child's service plan is warranted and if staff need further training or disciplinary action. Appropriate action must be taken based on the findings of the review. The person doing the review must be knowledgeable about the proper use of the mechanical restraint device and its impact on the child. (7-1-09)

767. ALTERNATIVE FORMS OF RESTRAINT.

A children's residential facility must have and follow written policies and procedures governing the appropriate use of alternative forms of restraint. The policies and procedures must be in accordance with the restraint intervention strategies of a nationally recognized program and approved by the Department. The policies must at a minimum require those described in Subsections 767.01 through 767.11 of this rule. (7-1-09)

- 01. **Restraint Used as a Last Resort.** Restraint is only to be used as a last resort when other therapeutic techniques have not worked and less restrictive interventions have been tried and have been found not to be effective and only after one (1) of the following has been determined: (7-1-09)
 - a. The child is emotionally or physically uncontrollable and constitutes a serious and evident danger to self or others; (3-30-01)
 - b. The child is causing serious property damage; or (3-30-01)
 - c. An attempted escape is imminent and poses a serious and evident danger to self or to the community. (3-30-01)
- 02. **Staff Training.** All staff who apply restraints are trained in the proper and safe use of the restraint device used and the training is current and documented, including any special certification required to apply the restraint. (3-30-01)
- 03. **Intervention.** Staff informs the child that if their behavior continues, staff will have to intervene by use of restraint to help them gain control. (3-30-01)
- 04. **Restraint Approval.** Administrative or designee approves the restraint for the specific child for the specific behavior before each application of restraint. (3-30-01)
- 05. **Used Only Until the Child Has Regained Control.** Restraint must only be used until the child has regained control. (7-1-09)
- 06. **Restraint Is Prohibited:** (3-30-01)
 - a. When there are specific medical reasons pursuant to a medical professional's order; (3-30-01)

- b. For non-violent and non-assaultive behaviors; (3-30-01)
 - c. As punishment; (3-30-01)
 - d. To facilitate supervision for the convenience of staff; and (3-30-01)
 - e. As a substitute for other more effective treatment methods. (3-30-01)
- 07. Monitoring.** A staff assigned to monitor a child in restraint must have no other immediate responsibility and must be in visual and auditory contact with the child at all times to ensure that all personal needs of the child are met, including access to toilet facilities as needed. (7-1-09)
- 08. Restraint Log.** A restraint log documenting each use of restraint which includes: (3-30-01)
- a. The child's name; (3-30-01)
 - b. The time and date of initiation of the restraint; (3-30-01)
 - c. The name of the staff who requested the restraint of the child; (3-30-01)
 - d. The name of the administrator or designee who approved the use of the restraint of the child; (3-30-01)
 - e. A description in sufficient details to provide a clear understanding of the incident which resulted in the child being restrained and the staff's attempts to help avoid the restraint; (3-30-01)
 - f. Detailed observation notes by the person assigned to monitor the child while in restraint; and (3-30-01)
 - g. The time and date of termination of the restraint. (3-30-01)
- 09. Counsel.** When a child has been released from restraint, staff must counsel with the child about behavior and problems experienced which resulted in the restraint use. (7-1-09)
- 10. Re-Introduction.** The child is re-introduced to the group in a sensitive and non-punitive manner as soon as he has regained control. (3-30-01)
- 11. Review.** When a child has been in restraint, there must be within twenty-four (24) hours a review by the chief administrator or their designee. The review is to determine the suitability of the child remaining in the children's residential care facility and whether modifications to the child's service plan is warranted and if staff need further training or disciplinary action. Appropriate action must be taken based on the findings of the review. The person doing the review must be knowledgeable about the proper use of the restraint device and its impact on the child. (7-1-09)

768. TRANSPORTATION OF CHILDREN IN RESTRAINTS PROHIBITED.
A children's residential facility or its agents are prohibited from transporting children in restraints. (7-1-09)

769. (RESERVED)

ADDITIONAL PROVISIONS FOR CHILDREN'S RESIDENTIAL MATERNITY CARE
(Sections 770 - 779)

770. ADDITIONAL PROVISIONS FOR CHILDREN'S RESIDENTIAL MATERNITY CARE.
(Sections 770 through 779, see also Sections 500 through 599 and 700 through 769.) (3-30-01)

771. SERVICE WORKER AVAILABLE.

A service worker must be available to each pregnant minor and minor mother to provide information on options open to her and to assist her in making decisions that are in her best interest and her child. The decision for final plans for the minor mother's child rests with the minor parent. A pregnant minor is prohibited from signing a statement committing to any definitive plan prior to the birth of her child and must not be subject to coercion to release her child before or after the birth of her child. (3-30-01)

772. PRENATAL AND POSTPARTUM CARE.

Prenatal and postpartum care for residents and newborns must be performed only by a physician licensed to practice medicine in Idaho and include: (3-30-01)

- 01. Obstetric History.** The obtaining of an obstetric history; (3-30-01)
- 02. Obstetrical Exam.** Within ten (10) days of entering care, a complete obstetrical exam; (3-30-01)
- 03. Ongoing Medical Care.** Ongoing medical care with examinations as prescribed by the physician; (3-30-01)
- 04. Infant Medical Care Plan.** A planned program of medical and nursing care of all infants in care, approved by the physician; (3-30-01)
- 05. Hospital Delivery Required.** Infants must only be delivered in a hospital licensed by the state of Idaho; and (3-30-01)
- 06. Prenatal and Postnatal Education.** A pregnant resident must be provided educational information on prenatal and postnatal care as appropriate. (3-30-01)

773. DISCHARGE PLANS.

Discharge plans must be developed in a timely manner with the service worker and the new parent to ensure an infant does not remain in a children's residential maternity care facility apart from parental care and supervision. (3-30-01)

774. -- 779. (RESERVED)

**ADDITIONAL PROVISIONS FOR CHILDREN'S ALCOHOL-DRUG
ABUSE RESIDENTIAL CARE FACILITIES
(Sections 780 - 789)**

780. ADDITIONAL PROVISIONS FOR CHILDREN'S ALCOHOL-DRUG ABUSE RESIDENTIAL CARE FACILITIES.

In addition to complying with Sections 500 through 599, 700 through 769, and 800 through 899 of these rules, children's alcohol and drug abuse residential care facilities must be approved under IDAPA 16.07.17, "Substance Use Disorders Services"; and IDAPA 16.07.15, "Behavioral Health Programs." (7-1-09)

781. --789. (RESERVED)

**ADDITIONAL PROVISIONS FOR NON-ACCREDITED CHILDREN'S RESIDENTIAL SCHOOLS
(Sections 790 - 793)**

790. ADDITIONAL PROVISIONS FOR NON-ACCREDITED CHILDREN'S RESIDENTIAL SCHOOLS.

(Sections 790 through 793, see also Sections 500 through 599 and 700 through 769.) (3-30-01)

791. APPLICATION PROCESS.

A non-accredited children's residential school must file with the Division of Family and Community Services of the Department, an affidavit addressing the following elements and the listed attachments: (3-30-01)

- 01. Affidavit Statement.** Affiant will make this affidavit based upon their own personal knowledge and belief. (3-30-01)

02. Affiant Administrative Employees. Affiants state that they are the administrative employees responsible for operation of the school and the head of the governing body of the named school. (3-30-01)

03. School Administrative Description. The school is a non-accredited children's residential school as defined in this Chapter and as demonstrated by the attached by-laws or an attached organizational statement of purpose detailing organizational structure, philosophy, program, intake and enrollment policy, services, geographic area served, and children served according to their legal status, physical, intellectual, and behavioral characteristics. (3-30-01)

792. STAFF RATIOS REQUIRED.

Non-accredited children's residential schools must have at least one (1) staff member on duty and one (1) on call and available within (10) minutes for each twenty-five (25) children or fraction thereof, when children are awake and present. During normal sleeping hours, children in each sleeping quarters will be under close supervision and within easy call of a staff member, with one (1) on-call staff available within ten (10) minutes. The facility must at all times have a staff coverage plan to ensure the safety and needs of the children that is approved by the Department. (3-30-01)

793. CHILD'S RECORD.

The school must maintain a record on each child with the following: (3-30-01)

- 01. Content.** The child's record will contain the following information: (3-30-01)
 - a.** Child's full name; (3-30-01)
 - b.** Birth date; (3-30-01)
 - c.** Gender; (3-30-01)
 - d.** Height, weight, hair color, eye color, race, and identifying marks; (3-30-01)
 - e.** Name, address and telephone number of responsible parent, guardian or legal custodian of the child; (3-30-01)
 - f.** Documentation of authority to accept and care for the child; (3-30-01)
 - g.** Medical care authorizations; (3-30-01)
 - h.** School reports including grades and adjustment; (3-30-01)
 - i.** Reason for referral or placement; and (3-30-01)
 - j.** Special problems and needs. (3-30-01)

02. Record Entries. For record entries by professional and clinical staff, the entries will be signed and dated by the person providing the service. (3-30-01)

794. -- 799. (RESERVED)

ADDITIONAL STANDARDS FOR CHILDREN'S THERAPEUTIC OUTDOOR PROGRAMS
(Sections 800 - 899)

800. ADDITIONAL STANDARDS FOR CHILDREN'S THERAPEUTIC OUTDOOR PROGRAMS.
(See sections 800 through 899, also see Sections 500 through 599.) (5-3-03)

801. (RESERVED)

802. POLICIES AND PROCEDURES.

In addition to the requirements for policies in Sections 500 through 599 of these rules, a children's therapeutic outdoors program must have policies and procedures in place addressing the licensing standards required in Sections 800 through 899 of these rules. (7-1-09)

803. -- 804. (RESERVED)

805. BASE CAMP REQUIREMENTS.

01. Base Camp. A children's therapeutic outdoor program must have a base camp or field office in Idaho, here after referred to as a base camp. Base camp at a minimum must: (7-1-09)

- a. Be staffed and monitored twenty-four (24) hours a day when there are children in care in the base camp or on expeditions; (5-3-03)
- b. Have current staff personnel files; (5-3-03)
- c. Have a current list of the names of staff and children in each field group; (5-3-03)
- d. Have a master map of all activity areas used by the program; (5-3-03)
- e. Have copies of each group's expeditionary route with its schedule and itinerary, copies of which must be provided to the Department and local law enforcement when requested; (7-1-09)
- f. Maintain current logs of all communications with each field group away from the base camp; and (5-3-03)
- g. Have an emergency response plan that is developed by the organization and updated annually. (7-1-09)

02. Proof of Compliance. A children's therapeutic outdoor program which operates in Idaho must comply with federal, state, and local regulations and must maintain proof of compliance at the base camp. (7-1-09)

806. HIGH ADVENTURE REQUIREMENTS.

- 01. High Adventure Activities.** High adventure activities may include the following: (5-3-03)
 - a. Target sports; (5-3-03)
 - b. Aquatics; (5-3-03)
 - c. Hiking; (5-3-03)
 - d. Adventure challenge courses; (5-3-03)
 - e. Climbing and rappelling; (5-3-03)
 - f. Winter camping; (5-3-03)
 - g. Soloing; (5-3-03)
 - h. Spelunking; (5-3-03)
 - i. Expeditioning; (5-3-03)
 - j. Swimming in a river, stream, lake, or pond; (5-3-03)

k. White water activities; and (5-3-03)

l. Animal related activities. (5-3-03)

02. High Adventure Activity Policy and Procedures. For the high adventure activities identified in Subsection 806.01 of this rule and for any activity identified by the children’s therapeutic outdoor program or the Department as a high adventure activity, there must be a written policy and procedure to be followed which include: (7-1-09)

a. Training, experience, and qualifications for leader and staff; (5-3-03)

b. Specific staff-to-participant ratios appropriate to the activity; (5-3-03)

c. Classification and limitations for each child’s participation; (5-3-03)

d. Arrangement, maintenance, and inspection of the activity area; (5-3-03)

e. Appropriate equipment and the inspection and maintenance of the equipment; and (5-3-03)

f. Safety precautions to reduce the possibility of an accident or injury. (5-3-03)

03. High Adventure Activities Leader. An activity leader who is at least twenty-one (21) years of age and who has documented training and experience in conducting the activity must conduct high adventure activities. (7-1-09)

807. -- 809. (RESERVED)

810. STAFF QUALIFICATIONS FOR CHILDREN’S THERAPEUTIC OUTDOOR PROGRAMS. Qualifications of staff, interns, and volunteers must be verified through written verification of a completed criminal history and background check as required by IDAPA 16.05.06, “Criminal History and Background Checks,” work experience, education, and classroom instruction. A program which provides children’s therapeutic outdoor programs must have the following staff: (7-1-09)

01. Chief Administrator. A children’s therapeutic outdoor program must have a chief administrator who is primarily responsible for ensuring that the program is at all times in compliance with applicable licensing rules and that staff are familiar with all program policies and procedures. The chief administrator may also function as the field director. The chief administrator must: (7-1-09)

a. Be at least twenty-five (25) years of age; (5-3-03)

b. Have two (2) years experience working with children and three (3) years experience in staff supervision and administration; and either; (5-3-03)

i. At the time of appointment, at a minimum, have a Bachelor's degree in a relevant discipline; or (5-3-03)

ii. Have completed a career development program which includes work related experience, training, or college credits that provide a level of achievement equivalent to the Bachelor's degree; and (5-3-03)

c. Have a minimum of thirty (30) semester hours or forty-five (45) quarter hours in recreational therapy or related experience, or one (1) year of outdoor youth program field experience; and (5-3-03)

d. Demonstrate or obtain proficiency in the required training criteria described in Subsection 812.02 of this rule. (7-1-09)

02. Field Director. A children’s therapeutic outdoor program must have a field director who is

primarily responsible for the quality of the field activities, coordinates field operation, supervises direct care staff, and manages the field office. The field director is responsible for compliance with applicable licensing rules and ensure that staff are familiar with all program policies and procedures. The field director must: (7-1-09)

- a. Be at least twenty-five (25) years of age; (5-3-03)
- b. Have a minimum of thirty (30) semester hours or forty-five (45) quarter hours in recreational therapy or related experience, or one (1) year of outdoor youth program field experience; (5-3-03)
- c. Have a minimum of forty (40) twenty-four (24) hour field days of program experience or equivalent experience in outdoor programs documented in their personnel file; and (5-3-03)
- d. Demonstrate or obtain proficiency in the required training criteria described in Subsection 812.02 of these rules within ninety (90) days of assuming administrative responsibilities and prior to any provision of direct care to children; and (7-1-09)
- e. Be certified to provide cardiopulmonary resuscitation (CPR) and first aid. (5-3-03)

03. Senior Field Staff. A children's therapeutic outdoor program must have a senior field staff working directly with each group of program participants. Each senior field staff must: (7-1-09)

- a. Be at least twenty-one (21) years of age; (5-3-03)
- b. Have an associate degree or high school diploma or equivalent with thirty (30) semester hours or forty-five (45) quarter hours of education and training or comparable experience and training in a field related to recreation and adventure activities; (5-3-03)
- c. Have a minimum of forty (40) twenty-four (24) hour field days of program experience or equivalent experience in outdoor programs documented in their personnel file; (5-3-03)
- d. Demonstrate or obtain proficiency in the required training criteria described in Subsection 812.02 of these rules prior to assuming direct care responsibilities; and (7-1-09)
- e. Be Certified to provide cardiopulmonary resuscitation (CPR) and first aid. (5-3-03)

04. Field Staff. Each field staff must: (7-1-09)

- a. Be at least twenty-one (21) years of age; (5-3-03)
- b. Have a high school diploma or equivalent; (5-3-03)
- c. Have completed staff training and field course work as required by Subsection 812.02 of these rules prior to assuming direct care responsibilities; and (7-1-09)
- d. Be certified to provide cardiopulmonary resuscitation (CPR) and first aid. (5-3-03)

05. Program Consultants. A children's therapeutic outdoor program must have a multidisciplinary staff or program consultants that have knowledge of the physical and emotional demands of the program and be available to program participants upon the recommendation of the field director or senior field staff. At a minimum the team must consist of: (7-1-09)

- a. A licensed physician; and (5-3-03)
- b. A licensed treatment professional including either a licensed psychologist, certified social worker, marriage and family counselor, or professional counselor. (5-3-03)

06. Intern. Each intern must: (7-1-09)

- a. Be in a learning program to meet personal educational goals; (5-3-03)
 - b. Be at least nineteen (19) years of age; (5-3-03)
 - c. Have at least a high school diploma or its equivalent; (5-3-03)
 - d. Have completed staff training and field course work as required by Subsection 812.02 of these rules prior to assuming direct care responsibilities; and (5-3-03)
 - e. Be under the supervision of a licensed therapist if they are in a clinical internship pursuing a professional degree or license. (5-3-03)
- 07. Volunteers.** Each volunteer must: (7-1-09)
- a. Be at least eighteen (18) years of age; (5-3-03)
 - b. Be under the direct, constant supervision of qualified staff; and (5-3-03)
 - c. Have completed the staff training and course work required by Subsection 812.02 of these rules prior to assuming direct care responsibilities. (5-3-03)

811. STAFF HEALTH REQUIREMENTS.

Prior to engaging in any field activities with children, staff, interns, and volunteers must have a written statement from a licensed physician, physician's assistant or nurse practitioner verifying they are physically fit to perform the duties of the job. A new written physician's statement must be obtained at least every three (3) years. The medical professional who provides the written statement must be given a form to use which clearly describes the physical demands for the job and the environmental conditions the person being evaluated is required to work in. The administrator or designee must review the form and maintain it in the individual's personnel file. (7-1-09)

812. SKILLS AND TRAINING.

Skills and training for each staff, intern, and volunteer must be documented and kept on file at the base camp. (7-1-09)

- 01. Skills.** Each staff must demonstrate specific skills to the administrator or designee, prior to assuming field supervision. The skill assessment procedures must be approved by the agency and results of the assessment must be documented and kept on file at the base camp. (7-1-09)
- 02. Training.** Training must supplement any deficiencies. The curriculum will include at a minimum: (7-1-09)
- a. Four (4) days of practicum field training; (5-3-03)
 - b. Supervision of program participants; (5-3-03)
 - c. Water, food, and shelter procurement, preparation and conservation; (5-3-03)
 - d. Low impact wilderness expedition and environmental conservation skills and procedures; (5-3-03)
 - e. Child management including containment control, safety, conflict resolution, and behavior management; (5-3-03)
 - f. Instruction in safety procedures and safe equipment use of fuel, fire, and life protection; (5-3-03)
 - g. Sanitation procedures related to food, water, and waste; (5-3-03)

- h.** Special instruction for staff who conduct and staff who supervise high adventure activities; (5-3-03)
- i.** Wilderness medicine, including health issues related to acclimation, exposure to the environment, and environmental elements; (5-3-03)
- j.** First aid kit contents and use; (5-3-03)
- k.** Navigation skills including map and compass use, contour and celestial navigation, and Global Positioning System (GPS); (5-3-03)
- l.** Local environmental precautions, including terrain, weather, insects, poisonous plants, wildlife, and proper response to adverse situations; (5-3-03)
- m.** Report writing, including development and maintenance of logs and journals; (5-3-03)
- n.** Federal, state, and local regulations including Idaho State Department of Health and Welfare, Idaho State Department of Fish and Game, Idaho Outfitters and Guides, and State and Federal land use agencies; and (5-3-03)
- o.** Ongoing training for direct care staff to upgrade their skills, including mandatory training to maintain skills, certifications and licenses. (5-3-03)

813. STAFF RATIOS AND GROUP SIZE.

- 01. Staffing Ratio.** Each group of children must be staffed as follows: (7-1-09)

 - a.** One (1) staff for every four (4) children or fraction thereof, but where there are less than four (4) children there must be at least two (2) staff; and (7-1-09)
 - b.** Where the gender of a group is mixed, there must be at least one (1) female staff and one (1) male staff member. (7-1-09)
- 02. Interns and Volunteers.** Interns and volunteers must never be counted in the staff ratio and never have sole responsibility to supervise the youth. (7-1-09)

814. STAFF USE OF ALCOHOL OR CONTROLLED SUBSTANCES PROHIBITED.

Staff engaging in field activities, whether on or off duty, are prohibited from using alcohol or controlled substances, or any other substance that impairs their ability to function and ensure the health and safety of the children in the program. (7-1-09)

815. -- 820. (RESERVED)

821. ASSESSMENTS.

Preadmission and subsequent assessments must be performed for each child. (7-1-09)

01. Preadmission Assessment. Admission assessments must be done for each child by a qualified treatment professional familiar with the children's therapeutic outdoor program prior to enrollment. This must include a review of the child's social and psychological history. (7-1-09)

02. Subsequent Assessments. Subsequent assessments must be done at least one (1) week before the child leaves for the field portion of the program away from the main base of operations. The assessment must include: (7-1-09)

a. An interview with the child by the senior field staff assigned to the child's field experience prior to entrance into the field; and (5-3-03)

b. A review of the child's health history and physical examination by a medically trained field staff assigned to the child's field experience. (5-3-03)

03. Psychological Problems. For a child with a history of psychological problems, a psychological evaluation must be obtained and reviewed by the multidisciplinary team prior to the child's entrance into the field portion of the program. (7-1-09)

822. PHYSICAL EXAMINATION.

A child must have a physical examination within thirty (30) days prior to entrance into the children's therapeutic outdoor program. (7-1-09)

01. Standard Physical Examination Requirements. The result of the physical exam must be recorded on a standard form provided by the program. The form must clearly document the type and extent of physical activity in which the child will be engaged. The exam must be completed by a licensed physician, physician's assistant, or nurse practitioner, who signs the form, and includes: (7-1-09)

- a.** A urinalysis; (5-3-03)
- b.** A pregnancy test for each female participant; (5-3-03)
- c.** A physical assessment to determine fitness given the climate and temperature in which the child will be participating, and the child's age, weight, and physical condition; and (5-3-03)
- d.** A determination whether detoxification is indicated for the child prior to entrance into the field portion of the program. (5-3-03)

02. Prior Physical Examination. A physical examination of a child who is coming into a children's therapeutic outdoor program directly from a children's residential care facility, must be acceptable provided the physical examination is current as required by Section 571 of these rules, meets the criteria provided in Subsection 822.01 of this rule, and occurred prior to entrance into the field. (7-1-09)

03. Medical Special Needs. If a child is currently taking or has been taking prescribed medication within the past six (6) months prior to placement in the children's therapeutic outdoor program, a specific notation must be made on the physical examination form by the medical professional. The medical professional must also include approval for the child's participation in an outdoor, high impact environment and a description of any possible special needs due to the use of medication in said environment. (5-3-03)

04. Physical Examination Availability. The physical examination form must be copied and the original maintained at the base camp and a copy carried by staff in a waterproof container when the child is away from the base camp. The physical examination form must be maintained in a manner that assures the confidentiality of all medical and identifying information. (7-1-09)

823. GROUPING BY AGE.

Children must be assigned to groups according to age and ability. (7-1-09)

01. Age. A child must be at least eleven (11) years of age and less than eighteen (18) years of age unless the individual meets the definition of continued care as provided in Sections 010, 530, and 531 of these rules. (7-1-09)

02. Placement. A licensed treatment professional familiar with the children's therapeutic outdoor program must determine whether children eleven (11) years of age through thirteen (13) years of age are to be placed in a younger program group or in an older program group. The decision must be based upon the child's needs and level of maturity, both physical and mental. The basis for the decision must be documented in the child's record. (7-1-09)

824. EXPEDITIONS.

Expeditions include any excursion that will take the children away from the base camp. (5-3-03)

- 01. Written Description.** There must be a written description of expedition programming, approved by the organization's governing body and signed by the Chief Administrator. The expedition must not expose children to unreasonable risk. (7-1-09)
- 02. Group Size.** For an expedition group, the number of participants must not exceed fifteen (15) children. (7-1-09)
- 03. Wilderness First Responder (WFR).** At least one (1) staff member per expedition group must have a current WFR Certificate. (7-1-09)
- 04. Global Positioning System (GPS).** Each group must be equipped with a GPS system for use on all expeditions. (7-1-09)
- 05. Staff Briefing.** Staff must be briefed prior to any expedition. The briefing at a minimum must include: (7-1-09)
- a.** The expedition route, terrain, time schedule, weather forecast and any potential hazards; (5-3-03)
 - b.** Any procedures unique to that expedition; and (5-3-03)
 - c.** Participant backgrounds and any potential problems. (5-3-03)
- 06. Expedition Evaluations.** Each expedition must be evaluated at least every seven (7) days, either in person by a field director or as detailed in the organization's approved policies and procedures. If the expedition is longer in duration than three (3) weeks, on-site visits by a field director must occur at minimum increments of three (3) weeks. (7-1-09)
- 07. Staff De-Briefing.** Staff must be de-briefed after returning from any expedition. (7-1-09)
- 08. Participant De-Briefing.** Children must be de-briefed after returning from any expedition. The de-briefing must include a written summary of the child's participation and progress achieved and be retained in the child's record. (7-1-09)
- 09. Expedition Summary.** Results of the evaluation of the conditions of the children, interactions of children and staff, briefings, de-briefings, and compliance with program policies and procedures must be summarized, documented, and records retained for seven (7) years. (7-1-09)

825. SAFETY.

Each children's therapeutic outdoor program must have appropriate safety procedures and equipment. (7-1-09)

01. Environmental Hazards. Each program participant must have instruction on environmental hazards and precautions. (7-1-09)

02. First Aid Kit. There must be a first aid kit with sufficient supplies available at all times. The first aid kit must at a minimum: (7-1-09)

- a.** Meet the standards of an appropriate national organization for the activity being conducted and the location and environment being used; (5-3-03)
- b.** Be reviewed with new staff for contents and use; (5-3-03)
- c.** Be reviewed at least annually with all staff for contents and use; and (5-3-03)
- d.** Be inventoried after each expedition and restocked as needed. (5-3-03)

826. COMMUNICATIONS.

01. Communication Support System. There must be a communication system that includes: (7-1-09)

a. A reliable two (2) way radio communication with extra charged battery packs for each group away from the base camp; and (5-3-03)

b. A back up plan for re-establishing communication to be implemented in the event regular communication fails. (5-3-03)

02. Communication Requirements. There must be daily verbal communication between each field group and the base camp unless alternative arrangements have been made and documented in a communications log maintained at the base camp and must never exceed seventy-two (72) hours. (7-1-09)

03. Emergencies. The base camp support personnel must have immediate access to emergency telephone numbers, contact personnel and procedures for an emergency evacuation or field incident requiring emergency medical support. (7-1-09)

827. EMERGENCY PLAN.

A children's therapeutic outdoor program must have and follow a written emergency plan and specific procedures for evacuations, disasters, medical emergencies, hostage situations, casualties, and missing children. (7-1-09)

01. Written Plan. The plan must at a minimum include: (7-1-09)

a. Designation of authority and staff assignments; (5-3-03)

b. Transportation and relocation of program participants when necessary; (5-3-03)

c. Instruction to all participants on how to respond in the event of an emergency; (5-3-03)

d. Notification to the base camp of the nature of the emergency and an accounting of each participant's location and status; (5-3-03)

e. Supervision of program participants after an evacuation or a relocation; and (5-3-03)

f. Arrangements for medical care and notification of a child's physician and identified parent or guardian. (5-3-03)

02. Emergency Drills. Emergency plan drills must be conducted and recorded at least annually. (5-3-03)

828. EXPEDITION AND HIKING LIMIT REQUIREMENTS.

01. Physical Capability. Hiking must not exceed the physical capability of the weakest member of the group. (7-1-09)

02. Maximum Temperature. There must be no hiking when the temperature is above ninety-five (95) degrees Fahrenheit. (7-1-09)

03. Inability or Refusal to Hike. When a child cannot or refuses to hike, the group cannot continue hiking unless it is necessary for obvious safety reasons, and a contingency plan, based on preapproved policies and procedures, must be used. The contingency plan must ensure there is staff coverage for each group, if the group is split, and that communication between the groups is maintained. (7-1-09)

04. Maps and Itinerary. Copies of map routes, anticipated schedules including arrival and departure times must be maintained by the field staff and base camp when a group is on an outing away from the base camp. (7-1-09)

05. Acclimation to Environment. Staff must closely monitor children for acclimation to the temperature, climate, altitude, environment and situation. (7-1-09)

06. Log. There must be a common written log that is signed and dated by the participating staff immediately following the termination of an outing away from the base camp. The log must contain information on health problems, accidents, injuries, medications used, behavioral problems, and unusual occurrences. The log must be recorded in permanent ink with any corrections initialed and dated. (7-1-09)

829. WATER REQUIREMENTS.

01. Water. Children must have access to potable water while hiking. At a minimum the program must: (7-1-09)

a. Provide each child with six (6) quarts of potable water a day, unless a child's weight exceeds one hundred fifty (150) pounds, then one (1) additional quart of potable water will be provided for every twenty-five (25) pounds of body weight over one hundred fifty (150) pounds; and (5-3-03)

b. Encourage each child to consume at least three (3) quarts of potable water per day. (5-3-03)

02. Water for Cooling. When the temperature is eighty (80) degrees Fahrenheit or higher, adequate water must be available for coating each child's body for the purpose of cooling when needed. (7-1-09)

03. Water Caches. When water caches are used, each water cache must be placed at predetermined sites prior to the day the group leaves the camp. Field staff must verify the water cache locations before the group leaves the base camp each day. (7-1-09)

04. Aerial Water Drops. An expedition group must not depend on aerial drops for its water supply. Aerial water drops must be used only in the event of an emergency. (7-1-09)

05. Water From a Natural Source. Water from a natural source used for drinking or cooking must be treated to eliminate health hazards. (7-1-09)

06. Electrolyte Replacement. Each group must have a supply of electrolyte replacement, quantities to be determined by group size and environment conditions. (7-1-09)

830. NUTRITIONAL AND SANITARY REQUIREMENTS.

01. Menu. There must be a written menu approved annually by a professional nutritionist or dietitian with knowledge of program activity levels and environmental factors. The menu will list the necessary or recommended food supplies and caloric intake for each group. The current menu must be readily available and any change or substitution noted on the menu. Menus must be maintained on file for six (6) months. (7-1-09)

02. Food. Each child must be provided a sufficient amount of food and calories based on the approved menu. The food provided must include fresh fruit and vegetables at least twice a week. (7-1-09)

03. Special Needs. The menu must take into consideration a child's special nutritional needs, including food allergies or religious restrictions. (7-1-09)

04. Fasting. There must be no imposed food fasting. (7-1-09)

05. Cleansing of Hands. Cleansing of hands is required after each latrine use and prior to food preparation and food consumption. (7-1-09)

831. -- 834. (RESERVED)

835. HEALTH CARE.

01. First Aid. First aid treatment must be provided in as prompt a manner as the location and circumstances allow. (7-1-09)

02. Field Treatment. A child with an illness or physical complaint needing care or treatment beyond what can be provided in the field must be immediately transported to appropriate medical care. (7-1-09)

03. Documentation. Complaints or reports by a child of illness and injuries must be recorded in the daily log along with any treatment provided. (7-1-09)

04. Negative Consequences. There must be no negative consequences imposed on a child for reporting an injury or illness or for requesting to see a health care professional. (7-1-09)

05. Daily Physical Assessment. Children's hydration, skin condition, extremities, and general physical condition must be evaluated and recorded by field staff in the daily log on a daily basis. (7-1-09)

06. Weekly Physical Assessment. At least every seven (7) days, each child's physical condition must be assessed by a Wilderness First Responder (WFR), an Emergency Medical Technician (EMT), or a qualified medical professional. The results of the assessment must be recorded in the daily log and at a minimum includes: (7-1-09)

- a. Blood pressure; (5-3-03)
- b. Heart rate; (5-3-03)
- c. Condition of extremities; (5-3-03)
- d. Condition of skin; (5-3-03)
- e. Hydration level; (5-3-03)
- f. Allergies, if any; (5-3-03)
- g. General physical condition; and (5-3-03)
- h. Provision of appropriate medical treatment if needed. (5-3-03)

836. MEDICATION STORAGE AND ADMINISTRATION.

A children's therapeutic outdoor program must have and follow policies and procedures on the storage, administration, and disposal of prescription and nonprescription medication. (7-1-09)

01. Medication Storage and Administration. Prescription and over-the-counter medication must be stored under lock and key safeguarded from children. For medications taken on field outings, all medication must be in the possession of a staff member qualified to administer medications. (7-1-09)

02. Trained Staff. Staff who administer and assist with self-administration of medications must be trained by a qualified medical professional. (7-1-09)

03. Prescription Medication. All prescription medications must be issued by a qualified medical professional's valid order that includes the dosage to be given. (7-1-09)

04. Psychotropic Medication. The administration of psychotropic medication is prohibited unless a qualified medical professional determines that the medication is clinically indicated. Under no circumstances will psychotropic medication be administered for disciplinary purposes, for the convenience of staff, or as a substitute for appropriate treatment services. (7-1-09)

05. Documentation. There must be a written record of all medications given to the child. The record must include: (7-1-09)

- a. The child's name; (5-3-03)
- b. The name of the medication; (5-3-03)
- c. The date and time the medication was given; (5-3-03)
- d. The dosage given and whether the child did or did not take the medication; and (5-3-03)
- e. The person who administered or assisted in self-administration of the medication. (5-3-03)

06. Medication Changes. Prescribed medication must not be stopped or changed in dosage or administration without consulting with the prescribing physician. If the prescribing physician is not available, a qualified medical professional must be consulted. Results of the consultation and any resulting medication changes must be recorded in the child's record. (7-1-09)

07. Disposal of Unused Medication. All unused and expired medication must be disposed of so it is not available to anyone. When medication is disposed of, this must be witnessed by at least one (1) other staff member and the disposal documented in the child's record. (5-3-03)

837. -- 839. (RESERVED)

840. PARTICIPANT CLOTHING, EQUIPMENT AND SUPPLIES.

Each program participant must have appropriate clothing, equipment and supplies appropriate for the types of activities and for the weather conditions likely to be encountered. (7-1-09)

01. Clothing, Equipment, and Supplies Requirements. Clothing, equipment and supplies include at a minimum: (7-1-09)

- a. Sunscreen; (5-3-03)
- b. Insect repellent; (5-3-03)
- c. A commercially available backpack or the materials to construct a safe backpack or bedroll; (5-3-03)
- d. Personal hygiene items necessary for cleansing; (5-3-03)
- e. Appropriate feminine hygiene supplies; (5-3-03)
- f. Wool blankets or an appropriate sleeping bag and a tarp or poncho when the average nighttime temperature is expected to be forty (40) degrees Fahrenheit or higher; (7-1-09)
- g. Shelter, appropriate sleeping bag and ground pad when the average night time temperature is expected to be thirty-nine (39) degrees Fahrenheit or lower; (5-3-03)
- h. Clothing appropriate for temperature changes generally expected for the area; (5-3-03)
- i. Each child must be provided a clean change of clothing at least once a week or an opportunity to wash their clothes at least once a week; and (7-1-09)
- j. Each child must be provided clean undergarments and a means to clean their body at least twice a week. Additional clean undergarments must be provided to a child as may be needed for health or sanitary reasons. (7-1-09)

02. Denial of Clothing, Equipment, and Supplies. Appropriate clothing, equipment, and supplies must not be removed, denied, or made unavailable for any reason. (7-1-09)

841. CONTRABAND.

A children's therapeutic outdoor program must define prohibited contraband in a written policy. (7-1-09)

01. Confiscation. Contraband found in the possession of children or staff must be confiscated by staff and secured in a location inaccessible to children. (7-1-09)

02. Law Enforcement Notification. Local law enforcement must be notified when illegal contraband is confiscated. (7-1-09)

03. Disposal. It is the responsibility of the administrator or designee to dispose of all contraband not confiscated by law enforcement, in accordance with the program's contraband policy. When contraband is disposed of, this must be witnessed by at least one (1) other staff member and the disposal documented in the child's record. (7-1-09)

842. SEARCHES.

If a children's therapeutic outdoor program conducts searches of children, staff or visitors, it must have and follow written policies and procedures. Searches must be completed in the least intrusive manner possible for the type of search being conducted. All contraband will be disposed of in accordance with Section 841 of these rules. All searches must be documented, including the reasons for the search, the persons conducting the search, and any results. The policies and procedures at a minimum must include those in Subsections 842.01 and 842.02 of this rule. (7-1-09)

01. Pat Down Searches. Pat down searches of children may only be conducted when the therapeutic outdoor program feels it is necessary to discourage the introduction of contraband or to promote the safety of staff and other children. Pat down searches must be conducted as follows: (7-1-09)

a. Staff must be trained in proper search techniques; (7-1-09)

b. There must be a staff member of the same sex as the child being searched and the presence of another staff member; (7-1-09)

c. The child must be told he is about to be searched; (7-1-09)

d. The child must remove all outer clothing (gloves, coat, hat, and shoes) and empty all pockets; (7-1-09)

e. The staff person must pat the clothing of the child using only enough contact to conduct an appropriate search; (7-1-09)

f. If the staff detects anything unusual, the child will be asked to identify the item and appropriate steps taken to remove the item for inspection; (7-1-09)

g. If the child refuses to comply, the administrator or designee must be notified immediately and is responsible for resolving the matter; and (7-1-09)

h. All searches must be documented in writing. (7-1-09)

02. Strip Searches are Prohibited. (7-1-09)

03. Body Cavity Searches are Prohibited. (7-1-09)

843. BEHAVIOR MANAGEMENT AND DISCIPLINE POLICY.

01. Behavior Management. A children's therapeutic outdoor program must have and follow a behavioral management and discipline policy which identifies appropriate methods of behavioral management and ensures that any discipline is positive and consistent. Individual behavioral management must be based on an assessment of the child's needs, behavior, and stage of development with the goal of promoting self-control, self-

direction, self-esteem, and an acceptable pattern of social behavior appropriate to the age and development level of the child. The policy must include the concept and application of least restrictive effective treatment and positive reinforcement and prohibit the following: (7-1-09)

- a. Physical force, except as permitted under Section 573 of these rules; (5-3-03)
- b. Any kind of punishment inflicted on the body, including spanking, hitting, slapping, spitting, kicking, shaking, pulling hair, pinching skin, twisting of an arm or leg in a way that would cause pain or injury to the child, kneeling and sitting on the chest of a child, placing a choke hold on a child, bending back a finger, and shoving or pushing a child into a stationary object; (5-3-03)
- c. The placing of anything in or over a child's mouth; (5-3-03)
- d. Cruel or excessive physical exercise, prolonged positions, or work assignments that produce unreasonable discomfort; (5-3-03)
- e. Verbal abuse, ridicule, humiliation, profanity, and other forms of degradation directed at a child or a child's family; (5-3-03)
- f. Locked seclusion as described under Section 764 of these rules; (5-3-03)
- g. Mechanical restraint as described under Section 766 of these rules; (5-3-03)
- h. Alternative forms of restraint as described in Section 767 of these rules; (5-3-03)
- i. Withholding of necessary food, clothing, shelter, bedding, rest, medical care, and toilet use; (5-3-03)
- j. Denial of visits or communication with the child's family except as specified in the child's plan or court order; and (5-3-03)
- k. Disciplining a child or group of children for actions of one (1) child, unless the organization's policies and procedures for group behavior management and discipline are based on a nationally recognized peer group treatment model and clearly prescribe the circumstances and safeguards under which disciplining the group is allowed and is supervised by staff. (5-3-03)

02. Documentation. An organization must document that the policy has been provided to a child and is made available to parents, guardians, and referral sources. (7-1-09)

844. TIME-OUT.

A children's therapeutic outdoor program must have and follow written policy and procedures governing the appropriate use of time-out as required in Subsections 844.01 through 844.06 of this rule. (7-1-09)

01. Use. Time-out is only used when a child's behavior is disruptive to the child's ability to learn, to participate appropriately, or to function appropriately with other children or the activity. (5-3-03)

02. Duration. Time duration cannot exceed sixty (60) consecutive minutes. (7-1-09)

03. Observation. A staff person is designated to be responsible for visually observing the child at random intervals at least every fifteen (15) minutes. (7-1-09)

04. Documentation. A written description in sufficient detail to provide a clear understanding of the incident or behavior which resulted in the child being placed in time-out, and staff's attempts to help the child avoid time-out, and observations by staff maintained in the child's file. (5-3-03)

05. Reintroduction to the Group. The child is reintroduced to the group in a sensitive and nonpunitive manner as soon as control is regained. (5-3-03)

06. Review. If there are more than ten (10) time-outs for a child in a twenty-four (24) hour period, a

review is conducted by the chief administrator or designee to determine the suitability of the child remaining in the program, whether modification to the child's plan is warranted, whether staff need additional training in alternative therapeutic behavior management techniques, and to ensure that appropriate action is taken as a result of the review. (5-3-03)

845. WORK.

Children may be given a non-vocational work assignment as a constructive experience in compliance with child labor laws, which are age appropriate and within the child's capabilities. The primary purpose of work cannot be used as a substitute for paid labor. (7-1-09)

846. ANIMALS AND PETS.

Animals, including pets, must be free from disease and cared for in a safe and clean manner. All domestic animals and pets must be vaccinated against rabies. Documentation of the vaccination against rabies will be kept on file at the base camp. (7-1-09)

847. TRANSPORTING CHILDREN.

- 01. Vehicle.** Transportation of children in a therapeutic outdoor program must be in a vehicle that is: (7-1-09)
 - a.** Properly registered; (5-3-03)
 - b.** Covered by insurance for personal injury and liability; (5-3-03)
 - c.** Driven by a person with a valid driver's license for the type of vehicle and who complies with all applicable traffic laws while transporting children; (5-3-03)
 - d.** Maintained in a safe condition; (5-3-03)
 - e.** Equipped with a red triangle reflector device for use in an emergency; (5-3-03)
 - f.** Equipped with a first aid kit; and (5-3-03)
 - g.** Equipped with a fire extinguisher that is properly secured and not readily available to children. (5-3-03)
- 02. Proper Seating of Children and Adults.** The driver and all passengers must ride in a vehicle manufactured seat and properly use a passenger restraint device. (7-1-09)

848. FIREARMS.

Firearms are not allowed in children's therapeutic outdoor programs. (7-1-09)

849. (RESERVED)

850. PROGRAM SUMMARY.

The organization must provide the child's parent or guardian a written summary of the child's participation and progress upon completion of the therapeutic outdoor program. The parents or guardian and child must be given the opportunity and encouraged to submit a written evaluation of the therapeutic outdoor experience. (7-1-09)

851. -- 859. (RESERVED)

**ADDITIONAL STANDARDS FOR SOLO EXPERIENCES IN
CHILDREN'S THERAPEUTIC OUTDOOR PROGRAMS**
(See also Sections 500 - 599, Rules Governing General Standards for Organizations Known
as Children's Agencies and Children's Residential Care Facilities, and Sections 800 - 859,
Rules Governing Standards for Children's Therapeutic Outdoor Programs)

860. STANDARDS FOR SOLO EXPERIENCES IN CHILDREN'S THERAPEUTIC OUTDOOR PROGRAMS.

If a children's therapeutic outdoor program conducts a solo component for children as part of the therapeutic process during expeditions, they must have and follow written policies and procedures. Every children's therapeutic outdoor program that includes a solo component will include a written description of the solo component as required in Section 528 of these rules. (5-3-03)

861. PLAN.

For a children's therapeutic outdoor program that conducts a solo component as part of the therapeutic process there must be a plan for the solo component, as well as an individual solo plan for each child. The plans will be documented and approved by the senior field staff to ensure that the children are not exposed to unreasonable risks. The plans must include the following: (5-3-03)

01. Individual Solo Plan. The goals, methods, techniques to be used, and time frames will be listed for each participant and each individual plan will be reviewed with the child and signed and dated by the child and the designated staff member. (5-3-03)

02. Ability. There will be consideration of the maturity level, health, physical ability, and emotional state of the child. (5-3-03)

03. Preparation. The child will be instructed on the solo experience, including expectations, restrictions, communication, environment, and emergency procedures. (5-3-03)

04. Back Up Plan. There will be documented instructions for a back up plan in case the child's plan does not work. (5-3-03)

05. Responsible Staff. A designated staff member will be responsible for coordination and implementation of the plan. (5-3-03)

862. SOLO SITES.

Staff must be familiar with the site chosen to conduct solos. The following requirements apply: (5-3-03)

01. Pre-Site Investigation. A pre-site investigation will be conducted and mapped prior to the solo. The site will be checked at the time the child is placed to assure that no changes in the environment have taken place since the pre-site investigation that may put the child at risk. (5-3-03)

02. Hazardous Conditions. Any hazardous conditions, including terrain, are to be considered prior to the selection of a solo site, taking into account the age, physical, developmental and psychological issues of the children served in the solo experience. (5-3-03)

03. Mapping and Site Coordinates. The site selected for the solo will be mapped and the site coordinates will be recorded. The map and the site coordinates will be maintained at the solo site and communicated to the base camp prior to leaving for the solo component. (5-3-03)

04. Supplies. Arrangements will be made prior to the solo for medication, food, and water drop offs if needed. (5-3-03)

863. SUPERVISION.

Plans for supervision must be in place during the solo, and at a minimum require the following: (5-3-03)

01. Assigned Staff. The assignment of a specific staff member to be responsible for the supervision of each solo participant. (5-3-03)

02. Observation. A predetermined procedure for observation, that ensures the health, safety, and well being of the child at all times, that includes: (5-3-03)

- a. Placing children at a distance from each other and the central staff site to allow for appropriate supervision and emergency communication; (5-3-03)
- b. Placing children requiring special attention closer to the central staff site; (5-3-03)
- c. Clearly defining physical boundaries and any other restrictions; (5-3-03)
- d. Instructing children to not participate in potentially dangerous activities; (5-3-03)
- e. Notification and check in systems; (5-3-03)
- f. Visual checks; and (5-3-03)
- g. Checking the participant's emotional and physical condition daily. (5-3-03)

864. EMERGENCY PROCEDURES.

In addition to the requirements of Section 827 of these rules, solo emergency plans must include: (5-3-03)

01. Instruction. Instructing the participant on the safety and emergency procedures, including evacuation routes. (5-3-03)

02. Communication. Providing each participant with signaling capabilities, including a whistle, for emergency notification. (5-3-03)

03. Participant Response. Instruction to all participants on how to respond if the emergency notification system is put into use, including each participants requirement to check in to the central staff site. (5-3-03)

04. Check In. Provide a check-in system should an emergency occur, which includes notification to the base camp and an accounting of each participant's whereabouts and safety. (5-3-03)

865. -- 869. (RESERVED)

**ADDITIONAL STANDARDS FOR STATIONARY
CHILDREN'S THERAPEUTIC OUTDOOR PROGRAMS
(Sections 870 - 872, see also Sections 500 - 599 and 800 - 869.)**

870. ADDITIONAL PROVISIONS FOR STATIONARY CHILDREN'S THERAPEUTIC OUTDOOR PROGRAMS.

A children's therapeutic outdoor program that maintains a designated location for the housing of children is considered stationary and must be subject to additional fire, health, and safety standards. (5-3-03)

871. FIRE SAFETY REQUIREMENTS.

A stationary children's therapeutic outdoor camp must be inspected by a state certified fire inspector before being occupied and on an annual basis thereafter, and a copy of the inspection will be maintained at the children's therapeutic outdoor camp. The inspection requires: (5-3-03)

01. Fire Extinguishers. One (1) 2-A-10BC type fire extinguisher must, at minimum, be in each of the following locations: (5-3-03)

- a. On each floor in any building that houses children; (5-3-03)
- b. In any room where cooking or heating takes place; (5-3-03)
- c. In a group of tents within a seventy-five (75) foot travel distance; and (5-3-03)

- d.** Each fire extinguisher will be inspected annually by a fire extinguisher service agency. (5-3-03)
 - 02. Smoke Detectors.** A smoke detector will be in buildings where children sleep. (5-3-03)
 - 03. Escape Routes.** A minimum of two (2) escape routes from buildings where children sleep. (5-3-03)
 - 04. Flammable Liquids.** Flammable liquids will not be used to start fires, be stored in structures that house children, or be stored near ignition sources. If generators are used, they will only be refueled by staff when the generator is not running and cool to the touch. (5-3-03)
 - 05. Electrical.** Wiring will be properly attached and fused to prevent overloads. (5-3-03)
- 872. HEALTH SAFETY REQUIREMENTS.**
A stationary children’s therapeutic outdoor camp must be inspected by the District Health Department before being occupied and on an annual basis, and a copy of the inspection maintained at the site of the camp. The inspection requires the following: (5-3-03)
- 01. Food.** Food be stored, prepared, and served in a manner that is protected from contamination. (5-3-03)
 - 02. Water Supply.** The water supply will be from a source that is accepted by the local health authority according to IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” at the time of application and for annual renewal of such licenses. (5-3-03)
 - 03. Sewage Disposal.** Sewage will be disposed of through a public system, or in absence of a public system, in a manner approved by the local health authority, according to IDAPA 58.01.03, “Individual/Subsurface Sewage Disposal Rules.” (5-3-03)
- 873. -- 999. (RESERVED)**

16.07.01 – BEHAVIORAL HEALTH SLIDING FEE SCHEDULES

000. LEGAL AUTHORITY.

Under Sections 16-2433, 19-2524, 20-511A, and 39-3137, Idaho Code, the Director is authorized to promulgate, adopt, and enforce rules for the charging of fees for services provided by mental health and substance use disorders providers. Under Section 39-309, Idaho Code, the Board of Health and Welfare is authorized to promulgate, adopt, and enforce rules for the charging of fees for services provided by mental health and substance use disorders providers. (7-1-16)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 16.07.01, “Behavioral Health Sliding Fee Schedules.” (4-9-09)

02. Scope. These rules provide the sliding fee schedules, based on federal poverty guidelines, and fee determination process for the adult mental health, children’s mental health, and substance use disorders programs within the Department. This chapter of rules applies both to voluntary and court-ordered recipients. (4-9-09)

002. -- 009. (RESERVED)

010. DEFINITIONS.

For the purposes of this chapter, the following definitions apply. (4-9-09)

01. Ability to Pay. The financial capacity that is available to pay for the program services after allowable deductions in relation to gross income and family size exclusive of any liability of third party payor sources. (4-9-09)

02. Adjusted Gross Income. Total family annual income less allowable annual deductions. (4-9-09)

03. Adult. An individual eighteen (18) years of age or older. (4-9-09)

04. Adult Mental Health Program. A program administered by the Idaho Department of Health and Welfare to serve seriously mentally ill and severely and persistently mentally ill adults. (7-1-16)

05. Allowable Annual Deductions. In determining the family's ability to pay for behavioral health services, the following are allowable annual deductions: (4-9-09)

a. Court-ordered obligations; (4-9-09)

b. Dependent support; (4-9-09)

c. Child care payments necessary for parental employment; (4-9-09)

d. Medical expenses; (4-9-09)

e. Transportation; (4-9-09)

f. Extraordinary rehabilitative expenses; and (4-9-09)

g. State and federal tax payments, including FICA taxes. (4-9-09)

06. Behavioral Health Services. Services offered by the Department to improve mental health and substance use disorders issues. (7-1-16)

07. Child. An individual who is under the age of eighteen (18) years. (4-9-09)

08. Children’s Mental Health Program. A program as defined in IDAPA 16.07.37, “Children’s Mental Health Services,” administered by the Idaho Department of Health and Welfare. (4-9-09)

09. Court-Ordered Obligations. Financial payments which have been ordered by a court of law. (4-9-09)

10. Court-Ordered Recipient. A person receiving behavioral health services under Sections 19-2524, 20-520(i), and 20-511A, Idaho Code. (4-9-09)

- 11. Department.** The Idaho Department of Health and Welfare. (4-9-09)
- 12. Dependent Support.** An individual that is dependent on their family's income for over fifty percent (50%) of his financial support. (4-9-09)
- 13. Extraordinary Rehabilitative Expenses.** Those payments incurred as a result of the disability needs of the person receiving services. They include annual costs for items including wheelchairs, adaptive equipment, medication, treatment, or therapy which were not included in the medical payments deduction and the annual estimate of the cost of services received. ()
- 14. Family.** A family is an adult, or married adults, or adult(s) with children, living in a common residence. (4-9-09)
- 15. Family Household.** Persons in a family related by blood, marriage, or adoption. Adult siblings who are not claimed as dependents and individuals receiving Supplemental Security Income (SSI) or Supplemental Security Disability Income (SSDI) are excluded from consideration as a member of the household for income and counting purposes. Income from minor siblings is excluded from household income. The term "family household" is synonymous with the term "family unit." (3-29-10)
- 16. Federal Poverty Guidelines.** Guidelines issued annually by the Federal Department of Health and Human Services establishing the poverty income limits. The federal poverty guidelines for the current year may be found online at <http://aspe.hhs.gov/poverty>. (4-9-09)
- 17. Management Service Contractor (MSC).** An independent contractor with whom the Department contracts to manage a statewide network of Department-approved facilities and programs to deliver substance use disorders treatment and recovery support services. (7-1-13)
- 18. Parent.** The person who, by birth or through adoption, is legally responsible for a child. (4-9-09)
- 19. Recipient.** The person receiving services. The term "recipient" is synonymous with the terms: "patient," "participant," "resident," "consumer," or "client." (4-9-09)
- 20. Sliding Fee Scale.** A scale used to determine an individual's financial obligation for services based on Federal Poverty Guidelines and the number of persons in the family household. (4-9-09)
- 21. Substance Use Disorders Program.** A program administered by the Idaho Department of Health and Welfare to serve adolescents and adults with alcohol or substance use disorders. (4-9-09)
- 22. Third-Party Payor.** A payor other than a person receiving services or a responsible party who is legally liable for all or part of the person's care. (7-1-16)

011. -- 099. (RESERVED)

100. FINANCIAL RESPONSIBILITY OF PARENTS FOR CHILDREN'S MENTAL HEALTH SERVICES.

Parents of children eligible for services under IDAPA 16.07.37, "Children's Mental Health Services," Section 407 who receive services either directly from the Department's Children's Mental Health program or through Department contracts with private providers are responsible for paying for services provided to their child and to their family. Financial responsibility of the child's parent(s) for each service not covered by third party liable resources or payments, including private insurance and Medicaid will be established in accordance with the child's parent(s) ability to pay as determined by the sliding fee scale in Section 300 of these rules. (4-9-09)

101. -- 199. (RESERVED)

200. FINANCIAL RESPONSIBILITY FOR ADULT MENTAL HEALTH SERVICES.

Adults receiving services either directly from the Department's Adult Mental Health program or through Department contracts with private providers are responsible for paying for services they receive. Financial responsibility for each

service not covered by third party liable resources or payments, including private insurance and Medicaid will be established in accordance with the individual's ability to pay as determined by the sliding fee scale in Section 300 of these rules. (4-9-09)

201. -- 299. (RESERVED)

300. SLIDING FEE SCHEDULE FOR CHILDREN'S MENTAL HEALTH, ADULT MENTAL HEALTH, AND SUBSTANCE USE DISORDERS SERVICES.

Following is the sliding fee schedule for children's mental health, adult mental health, and substance use disorders services:

TABLE 300 - SLIDING FEE SCHEDULE FOR CHILDREN'S MENTAL HEALTH, ADULT MENTAL HEALTH, AND SUBSTANCE USE DISORDERS SERVICES.	
Percent Federal of Poverty Guidelines	Percentage of Cost Sharing Responsibility of a Parent, or Adult Services Recipient
0% - 99%	0%
100%-109%	5%
110%-119%	10%
120%-129%	15%
130%-139%	20%
140%-149%	25%
150%-159%	30%
160%-169%	35%
170%-179%	40%
180%-189%	45%
190%-199%	50%
200% - 209%	55%
210% - 219%	60%
220% - 229%	65%
230% - 239%	70%
240% - 249%	75%
250% - 259%	80%
260% - 269%	85%
270% - 279%	90%
280% - 289%	95%
290% - and above	100%

(7-1-16)

301. -- 399. (RESERVED)

400. CALCULATING INCOME TO APPLY THE SLIDING FEE SCHEDULE FOR CHILDREN'S MENTAL HEALTH AND ADULT MENTAL HEALTH SERVICES.

The fee determination process includes consideration of the following subsections in this rule. (7-1-16)

01. Application and Fee Determination Form. Prior to the delivery of behavioral health services, an application for services and a "Fee Determination" form must be completed. (7-1-16)

a. A child's parent(s) must complete the application and fee determination form when requesting Children's Mental Health services. (7-1-16)

b. An adult requesting Adult Mental Health services must complete the application and fee determination form. (7-1-16)

02. Ability to Pay. Financial obligations are based upon the number of persons in the family household and the adjusted gross income of those persons as determined using the following: (4-9-09)

a. An ability to pay determination will be made at the time of the voluntary request for services or as soon as possible, thereafter. (4-9-09)

b. Redetermination of ability to pay will be made at least annually or upon request or at any time changes occur in family size, income, or allowable deductions. (7-1-16)

c. In determining the family's ability to pay for services, the Department will deduct annualized amounts for the following: (4-9-09)

i. Court-ordered obligations; (4-9-09)

ii. Dependent support; (4-9-09)

iii. Child care expenses necessary for parental employment; (4-9-09)

iv. Medical expenses; (4-9-09)

v. Transportation; (4-9-09)

vi. Extraordinary rehabilitative expenses; and (4-9-09)

vii. State and federal tax payments, including FICA taxes. (4-9-09)

03. Required Information. Information regarding third-party payors and other resources, including Medicaid or private insurance, must be identified and developed in order to fully determine the child's parent(s) or adult individual's ability to pay and to maximize reimbursement for the cost of services provided. It is the responsibility of the parents, legal guardian, or adult individual to obtain and provide information not available at the time of the initial financial interview whenever that information becomes available. (7-1-16)

04. Time of Payment. Payment for services will be due upon delivery of services unless other arrangements are made. (4-9-09)

05. Financial Obligation. A financial obligation for each service not covered by third party liable resources or payments, including private insurance and Medicaid, will be established in accordance with Section 300 and Subsection 400.01 of these rules but in no case will the amount owed exceed the cost of the service. In no case will the annual financial obligation exceed five percent (5%) of adjusted gross income of the family household. (4-9-09)

06. Fees Established by the Department. The maximum hourly fees or flat fees charged for Behavioral Health services are established by the Department of Health and Welfare. (7-1-16)

a. The fees for Children's Mental Health Services and Adult Mental Health Services are based on the cost for services set in Department contracts with service providers. Current information regarding services and fee charges can be obtained from regional Children's Mental Health and Adult Mental Health offices specified online.

(7-1-16)

b. The fees for Substance Use Disorders Services are based on the cost for services set in Department contracts with the Management Services Contractor. Current information regarding services and fee charges can be obtained from the Department office described in Section 005 of these rules.

(7-1-16)

401. -- 999. (RESERVED)

IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY

DOCKET NO. 19-0101-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-912, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter promulgated as proposed rules under this docket number under IDAPA 19, rules of the Idaho State Board of Dentistry:

IDAPA 19

- 19.01.01, *Rules of the Idaho State Board of Dentistry*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 4,077 to 4,099](#).

The Board of Dentistry held a public comment hearing on the proposed rule and considered broad comments from affected parties prior to the adoption of this pending rule.

Changes between the text of the proposed rule and text of the pending rule include the following:

1. In the telehealth services rule, the Board eliminated the seventy-five mile radius requirement between the dentist and the patient. Having weighed comments on both sides of the issue, the Board concluded the requirement was likely too restrictive given the fact that no other state dental board, or Idaho medical board has a similar requirement. The Board further concluded that the delivery of dental healthcare through the telehealth model has sufficient safeguards in place without imposing a radius requirement. Those safeguards include the requirement that the dentist be licensed in Idaho, the dentist must practice to the standard of care, and the dentist must disclose to the patient their identity, and obtain appropriate consents from the patient.
2. The Board modified the rule for dental assistant practice by placing the professional responsibility on the dentist to ensure the dental assistant is adequately trained to perform assigned duties. As is currently required, the dentist is responsible to supervise the dental assistant's work. The Board eliminated the dental assistant expanded function education requirement, and dental assistant program curriculum review. The Board does not license, certify, or register dental assistants.
3. The pending rule contains additional nonsubstantive edits under the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. The rule sets the application and license fee for dentists, dental specialists, dental hygienists, and sedation permits. This fee or charge is being imposed pursuant to Sections 54-916 and 54-920, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to

have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Susan Miller, Executive Director, (208) 334-2369.

Dated this 8th day of October, 2019.

Susan Miller, Executive Director
Idaho State Board of Dentistry
350 N. 9th Street, Suite M100
P.O. Box 83720
Boise, ID 83720-0021
Phone: (208) 334-2369
Fax: (208) 334-3247

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 54-912 (2)(3)(4)(10), Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 19, rules of the Idaho State Board of Dentistry:

IDAPA 19

- 19.01.01, *Rules of the Idaho State Board of Dentistry*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The Board of Dentistry agrees with the Governor's finding that temporary adoption of the rule is appropriate for the reasons stated. The Board of Dentistry further finds that temporary adoption of the rule

is necessary for continuing its mission of public protection by the licensure of dental health professionals and enforcement of the dental practice act.

The fee imposed by the rule is necessary to avoid immediate danger. The fees reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. The fees are necessary for continued agency operation in FY2020.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. The rule sets the application and license fee for dentists, dental specialists, dental hygienists, and sedation permits.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Susan Miller, Executive Director, (208) 334-2369.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 19-0101-1900F

IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY

19.01.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authority of Chapter 9, Title 54, Idaho Code. ()

001. TITLE AND SCOPE.

These rules are titled IDAPA 19.01.01, “Rules of the Idaho State Board of Dentistry.” These rules constitute the minimum requirements for licensure and regulation of dentists and dental hygienists. ()

002. INCORPORATION BY REFERENCE.

Pursuant to Section 67-5229, Idaho Code, this chapter incorporates by reference the following documents: ()

01. Professional Standards. ()

a. AAOMS, Office Anesthesia Evaluation Manual, 8th Edition, 2012. ()

b. CDC, Guidelines for Infection Control in Dental Health-Care Settings, 2003. ()

c. ADA, Principles of Ethics, Code of Professional Conduct and Advisory Opinions, January 2009. ()

d. ADHA Hygienists’ Association, Standards for Clinical Dental Hygiene Practice, 2016. ()

003. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

01. ACLS. Advanced Cardiovascular Life Support or Pediatric Advanced Life Support. ()

02. ADA. American Dental Association. ()

03. ADHA. American Dental Hygienists Association. ()

04. AAOMS. American Association of Oral and Maxillofacial Surgeons. ()

05. Analgesia. The diminution or elimination of pain. ()

06. BLS. Basic Life Support. ()

07. CDC. Centers for Disease Control and Prevention. ()

08. CE. Continuing Education: one (1) hour of instruction equals one (1) CE credit. ()

09. CODA. Commission on Dental Accreditation. ()

10. CRNA. Certified Registered Nurse Anesthetist. ()

11. **Deep Sedation.** A drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilator function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. ()

12. **Enteral.** Administration of a drug in which the agent is absorbed through the GI or mucosa. ()

13. **EPA.** United States Environmental Protection Agency. ()

14. **General Anesthesia.** A drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired.

Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired. ()

15. **GI.** Gastrointestinal tract. ()

16. **Inhalation.** Administration of a gaseous or volatile agent introduced into the lungs and whose primary effect is due to absorption through the gas/blood interface. ()

17. **Local Anesthesia.** The elimination of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug. ()

18. **Minimal Sedation.** A minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilator and cardiovascular functions are unaffected. In accord with this particular definition, the drugs and/or techniques used should carry a margin of safety wide enough never to render unintended loss of consciousness. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of minimal sedation. ()

19. **Moderate Sedation.** A drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. ()

20. **Monitor or Monitoring.** The direct clinical observation of a patient during the administration of sedation by a person trained to observe the physical condition of the patient and capable of assisting with emergency or other procedures. ()

21. **MRD.** Maximum FDA-recommended dose of a drug, as printed in FDA-approved labeling for unmonitored home use. ()

22. **NBDE.** National Board Dental Examination. ()

23. **NBDHE.** National Board Dental Hygiene Examination. ()

24. **Operator.** The supervising dentist or another person who is authorized by these rules to induce and administer sedation. ()

25. **Parenteral.** Administration of a drug which bypasses the GI tract [i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, intraosseous]. ()

26. **PMP.** Idaho Prescription Monitoring Program. ()

27. **Sedation.** The administration of minimal, moderate, and deep sedation and general anesthesia. ()

011. APPLICATION AND LICENSE FEES.

Application fees are not refunded. A license shall not be issued or renewed unless fees have been paid. License fees shall be prorated from date of initial licensure to the next successive license renewal date. The application fees and license fees shall be as follows:

License/Permit Type	Application Fee	License/Permit Fee
Dentist/Dental Specialist	\$300	Active Status: \$375 Inactive Status: \$160

License/Permit Type	Application Fee	License/Permit Fee
Dental Hygienist	\$150	Active Status: \$175 Inactive Status: \$85
Sedation Permit	\$300	\$300

()

012. EXAMINATIONS FOR LICENSURE.

01. Dentist and Dental Specialist Written Examination. Evidence of passing the NBDE may be required of all applicants for a license to practice dentistry or a dental specialty. Any other written examination will be specified by the Board. ()

02. Dentist Clinical Examination. All applicants for a license to practice general dentistry must pass a Board-approved clinical examination upon such subjects as specified by the Board. Clinical examination results will be valid for licensure by examination for a period of (5) five years from the date of successful completion of the examination. ()

03. Dental Hygienist Written Examination. Evidence of passing the NBDHE may be required of all applicants applying for a license to practice dental hygiene. Any other written examination will be specified by the Board. ()

04. Dental Hygienist Clinical Examination. All applicants for a license to practice dental hygiene must pass a Board-approved clinical dental hygiene examination upon such subjects as specified by the Board. In addition, all applicants must pass a Board-approved clinical local anesthesia examination. Clinical examination results will be valid for licensure by examination for a period of (5) five years from the date of successful completion of the examination. ()

013. REQUIREMENTS FOR LICENSURE.

Applicants for licensure to practice dentistry must furnish proof of graduation from a school of dentistry accredited by CODA at the time of applicant's graduation. Applicants for licensure to practice dental hygiene must furnish proof of graduation from a dental hygiene program accredited by CODA at the time of applicant's graduation. ()

014. REQUIREMENT FOR BLS.

Applicants for initial licensure as a dentist, dental specialist, or dental hygienist must provide proof of current BLS certification. All practicing dentists, dental specialists, and dental hygienists must maintain current BLS certification. ()

015. CONTINUING EDUCATION REQUIREMENTS.

A licensee renewing an active status license must report to the Board completion of CE or volunteer practice which meets the following requirements: ()

01. Number of Credits. ()

a. Dentists and dental specialists must complete thirty (30) credits of verifiable CE in each biennial renewal period. One (1) of the credits must be related to using the PMP. ()

b. Dental hygienists must complete twenty-four (24) credits of verifiable CE in each biennial renewal period. ()

c. A dental hygienist holding an extended access license endorsement must complete an additional four (4) credits of verifiable CE in each biennial renewal period in the specific practice areas of medical emergencies, local anesthesia, oral pathology, care and treatment of geriatric, medically compromised or disabled patients and treatment of children. ()

02. Nature of Education. CE must be oral health/health-related for the licensee's professional development. ()

03. Volunteer Practice. Licensees are allowed one (1) credit of CE for every two (2) hours of verified volunteer practice performed during the biennial renewal period up to a maximum of ten (10) credits. ()

04. Prorated Credits. Any person who is granted a license with active status during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of CE credits as specified by the Board. ()

05. Documentation. In conjunction with license renewal, the licensee shall provide a list of CE credits obtained and verification of hours of volunteer practice performed and attest that the minimum requirements were completed in the biennial renewal period. ()

016. – 020. (RESERVED)

021. PROVISIONAL LICENSURE.

This type of license may be granted at the Board's discretion to applicants who meet the following requirements:

01. Active Practice. Active practice within the previous two (2) years. ()

02. Current Licensure. Current licensure in good standing in another state. ()

03. Evidence. Evidence that the applicant has not failed an exam given by the Board or its agent. ()

04. Provisional License. The provisional license will be valid for the period of time specified on the provisional license which may not exceed one (1) year from the date of issuance. ()

022. VOLUNTEER DENTAL HYGIENE SERVICES.

A person holding an unrestricted active status dental hygiene license issued by the Board may provide dental hygiene services in an extended access oral health care setting without being issued an extended access license endorsement under the following circumstances: ()

01. Extended Access Oral Health Care Setting. The dental hygiene services must be performed in an extended access oral health care setting under the supervision of a dentist who has issued written orders to the dental hygienist; ()

02. Dental Hygiene Services Performed. The dental hygiene services performed are 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; ()

03. Volunteers. The dental hygienist must perform the dental hygiene services on a volunteer basis and may not accept any form of remuneration for providing the services; and ()

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. ()

023. DENTAL HYGIENISTS – LICENSE ENDORSEMENTS.

The Board may grant license endorsements to qualified dental hygienists as follows: ()

01. Extended Access Endorsement. Upon application, the Board may grant an extended access 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: ()

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 endorsement; ()

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; ()

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 setting; and ()

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 setting in this state may be granted an extended access endorsement without being required to satisfy the experience requirements specified in this rule. ()

02. Extended Access Restorative Endorsement. Notwithstanding any other provision of these rules, a qualified dental hygienist holding an extended access restorative endorsement may perform specified restorative functions under the direct supervision of a dentist in an extended access oral health care setting. Permissible restorative functions under this endorsement are 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 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: ()

a. The person has successfully completed the Western Regional Examining Board's restorative examination or an equivalent restorative examination approved by the Board; and ()

b. 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 setting. ()

03. Renewal. Upon payment of the appropriate license fee and completion of required CE credits specified for a license endorsement, a person meeting all other requirements for renewal of a license to practice dental hygiene is also entitled to renewal of a license endorsement for the effective period of the license. An endorsement immediately expires and is 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 CE. ()

024. LICENSURE OF DENTAL SPECIALISTS.

01. Requirements for Specialty Licensure. Each applicant for specialty licensure must have graduated from a CODA accredited dental school and hold a license to practice general dentistry in the state of Idaho or another state. The Board may grant licensure in specialty areas of dentistry for which a dentist has completed a CODA accredited postdoctoral advanced dental education program of at least two full-time academic years. ()

02. Examination. Specialty licensure in those specialties recognized may be granted solely at the discretion of the Board. An examination covering the applicant's chosen field may be required and, if so, will be conducted by the Board or a testing agent. Applicants who have met the requirements for licensure as a specialist may be required to pass an examination as follows: ()

a. Applicants who have passed a general licensure examination acceptable to the Board may be granted specialty licensure by Board approval. ()

b. Applicants who have passed a general licensure examination not acceptable to the Board may be required to pass a specialty examination. ()

c. Applicants who are certified by the American Board of that particular specialty as of the date of application for specialty licensure may be granted specialty licensure by Board approval. ()

03. Limitation of Practice. No dentist may announce or otherwise hold himself out to the public as a specialist unless he has first complied with the requirements established by the Board for such specialty and has been issued a specialty license authorizing him to do so. Any individual granted a specialty license must limit his practice to the specialty(s) in which he is licensed. ()

025. SPECIALTY ADVERTISING.

The specialty advertising rules are intended to allow the public to be informed about dental specialties and to require appropriate disclosures to avoid misperceptions on the part of the public. ()

01. Recognized Specialty License. An advertisement may not state that a licensee is a specialist unless the licensee has been granted a license in that specialty area of dental practice by the Board. Use of words or terms in advertisements such as “Specialist,” “Board Certified,” “Diplomate,” “Practice Limited To,” and “Limited To Specialty Of” shall be prima facie evidence that the licensee is holding himself out to the public as a licensed specialist in a specialty area of dental practice. ()

02. Disclaimer. A licensee who has not been granted a specialty license by the Board may advertise as being qualified in a recognized specialty area of dental practice so long as each such advertisement, regardless of form, contains a prominent, clearly worded disclaimer that the licensee is “licensed as a general dentist” or that the specialty services “will be provided by a general dentist.” Any disclaimer in a written advertisement must be in the same font style and size as that in the listing of the specialty area. ()

03. Unrecognized Specialty. A licensee may not advertise as being a specialist in or as specializing in any area of dental practice which is not a Board recognized and licensed specialty area unless the advertisement, regardless of form, contains a prominent, clearly worded disclaimer that the advertised area of dental practice is not recognized as a specialty area of dental practice by the Idaho Board of Dentistry. Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. ()

026. PATIENT RECORDS.

01. Individual Records. Each licensee must prepare and maintain a record for each person receiving dental services, regardless of whether any fee is charged. The record shall contain the name of the licensee rendering the service and include: ()

a. Name and address of patient and, if a minor, name of guardian; ()

b. Date and description of examination and diagnosis; ()

c. An entry that informed consent has been obtained and the date the informed consent was obtained. Documentation may be in the form of an acronym such as “PARQ” (Procedure, Alternatives, Risks and Questions) or “SOAP” (Subjective Objective Assessment Plan) or their equivalent. ()

d. Date and description of treatment or services rendered; ()

e. Date and description of treatment complications; ()

f. Date and description of all radiographs, study models, and periodontal charting; ()

g. Health history; and ()

h. Date, name of, quantity of, and strength of all drugs dispensed, administered, or prescribed. ()

02. Charges and Payments. Each dentist must prepare and maintain a record of all charges and payments for services including source of payments. ()

03. Record Retention. Each dentist must maintain patient records for no less than seven (7) years from

the date of last entry unless: ()

- a. The patient requests the records be transferred to another dentist who will maintain the records. ()
- b. The dentist gives the records to the patient; or ()
- c. The dentist transfers the dentist's practice to another dentist who will maintain the records. ()

027. – 030. (RESERVED)

031. INFECTION CONTROL.

In determining what constitutes unacceptable patient care with respect to infection control, the Board may consider current infection control guidelines such as those of the CDC. Additionally, dentists, dental hygienists and dental assistants must comply with the following requirements: ()

01. Gloves, Masks, and Eyewear. Disposable gloves must be worn whenever placing fingers into the mouth of a patient or when handling blood or saliva contaminated instruments or equipment. Appropriate hand hygiene must be performed prior to gloving. Masks and protective eyewear or chin-length shields must be worn when spattering of blood or other body fluids is likely. ()

02. Instrument Sterilization. Between each patient use, instruments and other equipment that come in contact with body fluids must be sterilized. ()

03. Sterilizing Devices Testing. Heat sterilizing devices must be tested for proper function by means of a biological monitoring system that indicates micro-organisms kill. Devices must be tested each calendar week in which scheduled patients are treated. Testing results must be retained by the licensee for the current calendar year and the two (2) preceding calendar years. ()

04. Non-Critical Surfaces. Environmental surfaces that are contaminated by blood or saliva must be disinfected with an EPA registered hospital disinfectant. ()

05. Clinical Contact Surfaces. Impervious backed paper, aluminum foil, or plastic wrap should be used to cover surfaces that may be contaminated by blood or saliva. The cover must be replaced between patients. If barriers are not used, surfaces must be cleaned and disinfected between patients by using an EPA registered hospital disinfectant. ()

06. Disposal. All contaminated wastes and sharps must be disposed of according to any governmental requirements. ()

032. EMERGENCY MEDICATIONS OR DRUGS.

The following emergency medications or drugs are required in all sites where anesthetic agents of any kind are administered: anti-anaphylactic agent, antihistaminic, aspirin, bronchodilator, coronary artery vasodilator, and glucose. ()

033. DENTAL HYGIENISTS – PRACTICE.

Dental hygienists are hereby authorized to perform the activities specified below: ()

01. General Supervision. A dental hygienist may perform specified duties under general supervision as follows: ()

- a. Oral prophylaxis (removal of stains and plaque biofilm and if present, supragingival and/or subgingival calculus); ()
- b. Medical history assessments and intra-oral and extra-oral assessments (including charting of the oral cavity and surrounding structures, taking case histories and periodontal assessment); ()
- c. Developing patient care plans for prophylaxis, non-surgical periodontal therapy and supportive and

- evaluative care in accordance with the treatment parameters set by supervising dentist; ()
- d. Root planing; ()
 - e. Non-surgical periodontal therapy; ()
 - f. Closed subgingival curettage; ()
 - g. Administration of local anesthesia; ()
 - h. Removal of marginal overhangs (use of high speed handpieces or surgical instruments is prohibited); ()
 - i. Application of topical antibiotics or antimicrobials (used in non-surgical periodontal therapy); ()
 - j. Provide patient education and instruction in oral health education and preventive techniques; ()
 - k. Placement of antibiotic treated materials pursuant to dentist authorization; ()
 - l. Administration and monitoring of nitrous oxide/oxygen; and ()
 - m. All duties which may be performed by a dental assistant. ()
02. **Direct Supervision.** A dental hygienist may perform specified duties under direct supervision as follows: ()
- a. Use of a laser restricted to gingival curettage and bleaching. ()

034. DENTAL HYGIENISTS – PROHIBITED PRACTICE.

- 01. **Diagnosis and Treatment.** Definitive diagnosis and dental treatment planning. ()
- 02. **Operative Preparation.** The operative preparation of teeth for the placement of restorative materials. ()
- 03. **Intraoral Placement or Carving.** The intraoral placement or carving of restorative materials unless authorized by issuance of an extended access restorative endorsement. ()
- 04. **Anesthesia.** Administration of any general anesthesia or moderate sedation. ()
- 05. **Final Placement.** Final placement of any fixed or removable appliances. ()
- 06. **Final Removal.** Final removal of any fixed appliance. ()
- 07. **Cutting Procedures.** Cutting procedures utilized in the preparation of the coronal or root portion of the tooth, or cutting procedures involving the supportive structures of the tooth. ()
- 08. **Root Canal.** Placement of the final root canal filling. ()
- 09. **Occlusal Equilibration Procedures.** Occlusal equilibration procedures for any prosthetic restoration, whether fixed or removable. ()
- 10. **Other Final Placement.** Final placement of prefabricated or cast restorations or crowns. ()

035. DENTAL ASSISTANTS – PRACTICE.

Pursuant to Section 54-903(4), Idaho Code, and these rules, dental assistants are authorized to perform dental services

for which they are trained unless prohibited by these rules. Dental assistants must be directly supervised by a dentist when performing intraoral procedures except when providing palliative care as directed by the supervising dentist. ()

- 01. Prohibited Duties.** A dental assistant is prohibited from performing the following duties: ()
 - a.** The intraoral placement or carving of permanent restorative materials. ()
 - b.** Any irreversible procedure. ()
 - c.** The administration of any sedation or local injectable anesthetic. ()
 - d.** Removal of calculus. ()
 - e.** Use of an air polisher. ()
 - f.** Any intra-oral procedure using a high-speed handpiece, except for the removal of orthodontic cement or resin. ()
 - g.** Any dental hygiene prohibited duty. ()

036. – 040. (RESERVED)

041. LOCAL ANESTHESIA.

Persons licensed to practice dentistry and dental hygiene in accordance with the Idaho Dental Practice Act and these rules are not required to obtain a permit to administer local anesthesia to patients. Dental offices in which local anesthesia is administered to patients must have and maintain suction equipment capable of aspirating gastric contents from the mouth and pharynx, a portable oxygen delivery system including full face masks and a bag-valve mask combination capable of delivering positive pressure, oxygen-enriched ventilation to the patient, a blood pressure cuff of appropriate size and a stethoscope. ()

042. NITROUS OXIDE/OXYGEN.

Persons licensed to practice and dental assistants trained in accordance with these rules may administer nitrous oxide/oxygen to patients. ()

01. Patient Safety. A dentist must evaluate the patient to ensure the patient is an appropriate candidate for nitrous oxide/oxygen; ensure that any patient under nitrous oxide/oxygen is continually monitored; and ensure that a second person is in the practice setting who can immediately respond to any request from the person administering the nitrous oxide/oxygen. ()

02. Required Facilities and Equipment. Dental offices where nitrous oxide/oxygen is administered to patients must have the following: a fail-safe nitrous oxide delivery system that is maintained in working order; a scavenging system; and a positive-pressure oxygen delivery system suitable for the patient being treated. ()

03. Personnel. For nitrous oxide/oxygen administration, personnel shall include an operator and an assistant currently certified in BLS. ()

043. MINIMAL SEDATION.

Persons licensed to practice dentistry in accordance with the Idaho Dental Practice Act and these rules may administer minimal sedation to patients of sixteen (16) years of age or older. When the intent is minimal sedation, the appropriate dosing of a single enteral drug is no more than the MRD. In cases where the patient weighs less than one hundred (100) pounds, or is under the age of sixteen (16) years, minimal sedation may be administered without a permit by use of nitrous oxide, or with a single enteral dose of a sedative agent administered in the dental office. ()

01. Patient Safety. The administration of minimal sedation is permissible so long as it does not produce an alteration of the state of consciousness in a patient to the level of moderate sedation, general anesthesia, or

deep sedation. A dentist must qualify for and obtain a permit from the Board to be authorized to sedate patients to the level of moderate sedation, general anesthesia, or general anesthesia. Nitrous oxide/oxygen may be used in combination with a single enteral drug in minimal sedation, except as described in Section 043 of these rules. Notwithstanding any other provision in these rules, a dentist must initiate and regulate the administration of nitrous oxide/oxygen when used in combination with minimal sedation. ()

02. Personnel. At least one (1) additional person currently certified in BLS must be present in addition to the dentist. ()

044. MODERATE SEDATION, GENERAL ANESTHESIA AND DEEP SEDATION.

Dentists licensed in the state of Idaho cannot administer moderate sedation, general anesthesia, or deep sedation in the practice of dentistry unless they have obtained a permit from the Board. A moderate sedation permit may be either enteral or parenteral. A dentist may 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. A moderate enteral sedation permit authorizes dentists to administer sedation by either enteral or combination inhalation-enteral routes of administration. A moderate parenteral, general anesthesia, or deep sedation permit authorizes a dentist to administer sedation by any route of administration. To qualify for a moderate, general anesthesia, or deep sedation permit, a dentist must provide proof of the following: ()

01. Training Requirements. ()

a. For Moderate Sedation Permits, completion of training in the administration of moderate sedation to a level consistent with requirements established 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 is not 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. Qualifying training courses must be sponsored by or affiliated with a dental school accredited by CODA, or be approved by the Board. ()

i. For a moderate enteral sedation permit, the applicant must provide proof 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. ()

ii. For a moderate parenteral sedation permit, the applicant must provide proof of a minimum of sixty (60) hours of instruction, plus management of at least twenty (20) patients by the intravenous route. ()

b. For General Anesthesia and Deep Sedation Permits, completion of an advanced education program accredited by CODA that affords comprehensive training necessary to administer and manage deep sedation or general anesthesia within the five (5) year period immediately preceding the date of application. The five (5) year requirement is not 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. ()

02. ACLS. Verification of current certification in ACLS or PALS, whichever is appropriate for the patient being sedated. ()

03. General Requirements 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, general anesthesia, or deep sedation and providing the equipment, drugs and protocol for patient rescue. Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the sedation team. For general anesthesia and deep sedation, the Board adopts the standards incorporated by reference in these rules, as set forth by the AAOMS in their office anesthesia evaluation manual. ()

a. Facility, Equipment and Drug Requirements. The following facilities, equipment and drugs must be available for immediate use during the sedation and recovery phase: ()

- i. An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two (2) individuals to freely move about the patient; ()
- ii. An operating table or chair 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; ()
- 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; ()
- 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; ()
- v. An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system; ()
- vi. A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room ()
- vii. A sphygmomanometer, pulse oximeter, oral and nasopharyngeal airways, supraglottic airway devices, and automated external defibrillator (AED); and ()
- viii. Emergency drugs including, but not limited to, pharmacologic antagonists appropriate to the drugs used, bronchodilators, and antihistamines. ()
- ix. Additional emergency equipment and drugs required for moderate parenteral sedation permits include precordial/pretracheal stethoscope or end-tidal carbon dioxide monitor, intravenous fluid administration equipment, vasopressors, and anticonvulsants. ()
- x. Additional emergency equipment and drugs required for general anesthesia and deep sedation permits include precordial/pretracheal stethoscope and end-tidal carbon dioxide monitor, intravenous fluid administration equipment, vasopressors, and anticonvulsants. ()
- b. Personnel** ()
 - i. For moderate sedation, the minimum number of personnel is two (2) including: the operator and one (1) additional individual currently certified in BLS. ()
 - ii. For general anesthesia or deep sedation, the minimum number of personnel is three (3) including: the operator and two (2) additional individuals currently certified in BLS. When the same individual administering the general anesthesia or deep sedation is performing the dental procedure one (1) of the additional individuals must be designated for patient monitoring. ()
 - iii. Auxiliary personnel must have documented training in BLS, will 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. ()
- c. Pre-sedation Requirements.** Before inducing moderate sedation, general anesthesia, or deep sedation a dentist must: ()
 - 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, general anesthesia, or deep sedation; ()

- ii. Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; ()
- iii. Obtain written informed consent from the patient or patient's guardian for the sedation; and ()
- iv. Maintain a sedation record and enter the individual patient's sedation into a case/drug log. ()
- d. Patient Monitoring.** Patients must be monitored as follows: ()
 - i. For moderate sedation the patient must be continuously monitored using pulse oximetry. For general anesthesia or deep sedation, the patient must be continuously monitored using pulse oximetry and end-tidal carbon dioxide monitors. ()
 - ii. The patient's blood pressure, heart rate, and respiration must 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 must 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 must be documented in the patient's record. ()
 - iii. During the recovery phase, the patient shall be monitored by an individual trained to monitor patients recovering from sedation; ()
 - iv. A dentist will not release a patient who has undergone sedation except to the care of a responsible third party; ()
 - v. The dentist will 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 ()
 - vi. A discharge entry will be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged. ()
- e. Sedation of Other Patients.** The permit holder must 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. ()

045. SEDATION PERMIT RENEWAL.

01. Permit Renewal. Before the expiration date of a permit, the board will provide notice of renewal to the licensee. Failure to timely submit a renewal application and permit fee shall result in expiration of the permit and termination of the licensee's right to administer 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. Renewal of the permit will be required every five (5) years. Proof of a minimum of twenty-five (25) continuing education credit hours in sedation which may include training in medical/office emergencies will be required to renew a permit. In addition to the continuing education credit hours, a dentist must: ()

- a.** For a moderate enteral sedation permit, maintain current certification in BLS or ACLS. ()
- b.** For a moderate parenteral, general anesthesia, or deep sedation permit, maintain current certification in ACLS. ()

02. Reinstatement. A dentist may apply for reinstatement of a canceled or surrendered permit issued by the Board within five (5) years of the date of the permit's cancellation or surrender. Applicants for reinstatement of a sedation permit must satisfy the facility and personnel requirements and verify they have obtained an average of five (5) continuing education credit hours in sedation for each year subsequent to the date upon which the permit was canceled or surrendered. A fee for reinstatement will be assessed. ()

046. SUSPENSION, REVOCATION OR RESTRICTION OF SEDATION PERMIT.

The Board may, at any time and for just cause, institute proceedings to revoke, suspend, or otherwise restrict a sedation permit issued pursuant to Section 045 of these rules. If the Board determines that emergency action is necessary to protect the public, summary suspension may be ordered pending further proceedings. Proceedings to suspend, revoke or restrict a permit shall be subject to applicable statutes and rules governing administrative procedures before the Board. ()

047. DETERMINATION OF DEGREE OF SEDATION BY THE BOARD.

In any matter under review or in any proceeding being conducted in which the Board must determine the degree of central nervous system depression, the Board may base its findings or conclusions on, among other matters, the type, and dosages, and routes of administration of drugs administered to the patient and what result can reasonably be expected from those drugs in those dosages and routes administered in a patient of that physical and psychological status. ()

048. USE OF OTHER ANESTHESIA PERSONNEL.

A dentist who does not hold a sedation permit may perform dental procedures in a dental office on a patient who receives sedation induced by an anesthesiologist, a CRNA, or another dentist with a sedation permit as follows: ()

01. Facility, Equipment, Drugs, and Personnel Requirements. The dentist will have the same facility, equipment, drugs, and personnel available during the procedure and during recovery as required of a dentist who has a permit for the level of sedation being provided. ()

02. Patient's Condition Monitored Until Discharge. The qualified sedation provider who induces sedation will monitor the patient's condition until the patient is discharged and record the patient's condition at discharge in the patient's dental record as required by the rules applicable to the level of sedation being induced. The sedation record must be maintained in the patient's dental record and is the responsibility of the dentist who is performing the dental procedures. ()

03. Use of Services of a Qualified Sedation Provider. A dentist who intends to use the services of a qualified sedation provider must notify the Board in writing of his intent. Such notification need only be submitted once every licensing period. ()

04. Advertising. A dentist who intends to use the services of a qualified sedation provider may advertise the service provided so long as each such advertisement contains a prominent disclaimer that the service "will be provided by a qualified sedation provider." ()

049. INCIDENT REPORTING.

Dentists must report to the Board, in writing, within seven (7) days after the death or transport to a hospital or emergency center for medical treatment for a period exceeding twenty-four (24) hours of any patient to whom sedation was administered. ()

050. – 054. (RESERVED)

055. TELEHEALTH SERVICES.

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 who provides any telehealth services to patients located in Idaho must hold an active Idaho license. ()

02. Additional Requirements. In addition to the requirements set forth in Section 54-5705, Idaho Code, during the first contact with the patient, a dentist licensed by the Board who is providing telehealth services must: ()

a. Verify the location and identity of the patient; ()

b. Disclose to the patient the dentist's identity, their current location, telephone number, and Idaho license number; and ()

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. ()

03. Standard of Care. A dentist providing telehealth services to patients located in Idaho must comply 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 dentist may 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 dentist, and the dentist'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. ()

056. UNPROFESSIONAL CONDUCT.

A licensee 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: ()

01. Fraud. Obtaining fees by fraud or misrepresentation, or over-treatment either directly or through an insurance carrier. ()

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. ()

03. Unlawful Practice. Aiding or abetting licensed persons to practice dental hygiene or dentistry unlawfully. ()

04. Dividing Fees. A dentist may 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: ()

a. The patient consents to employment of the other party after a full disclosure that a division of fees will be made; ()

b. The division is made in proportion to the services performed and responsibility assumed by each dentist or party. ()

05. Prescription Drugs. Prescribing or administering prescription drugs not reasonably necessary for, or within the scope of, providing dental services for a patient. A dentist may not prescribe or administer 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. ()

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. ()

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. ()

08. Altering Records. Alter a patient's record with intent to deceive. ()

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 CDC guidelines as incorporated by reference in these rules. ()

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. ()

11. Use of Intoxicants. Practicing dentistry or dental hygiene while under the influence of an intoxicant or controlled substance where the same impairs the licensee's ability to practice with reasonable and ordinary care. ()

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: ()

a. Mental illness; ()

b. Physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill. ()

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. ()

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. ()

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. ()

16. Unauthorized Treatment. Performing professional services that have not been authorized by the patient or his legal representative. ()

17. Supervision. Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of a licensed professional. ()

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. ()

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. ()

20. **Misrepresentation.** Willful misrepresentation of the benefits or effectiveness of dental services. ()
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. ()
22. **Sexual Misconduct.** Making suggestive, sexual or improper advances toward a patient or committing any lewd or lascivious act upon or with a patient. ()
23. **Patient Management.** Use of unreasonable and/or damaging force to manage patients, including but not limited to hitting, slapping or physical restraints. ()
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. ()
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. ()
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 with records within five (5) business days. 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. ()
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. ()
28. **Advertising.** Advertise in a way that is false, deceptive, misleading or not readily subject to verification. ()
057. – 999. **(RESERVED)**

IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY
19.01.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY
DOCKET NO. 19-0101-1901
NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

Upon legislative approval of this pending rule the amendments made in this docket will overwrite those sections of the reauthorized rule promulgated under docket no. 19-0101-1900F, which will also be filed for review for final approval during the upcoming legislative session.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-912, Idaho Code.

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

Legislation enacted on July 1, 2019 authorized the practice of dental therapy under Title 54, Chapter 9, Idaho Code. The Board of Dentistry is mandated to promulgate rules for the licensure and regulation of dental therapists. The Board of Dentistry conducted two negotiated rulemaking meetings, held a public comment hearing on the temporary and proposed rule, and considered broad comments/materials from affected parties prior to the adoption of this pending rule.

Changes between the text of the proposed rule and text of the pending rule include a requirement for the supervising dentist and the dental therapist to submit to the board an attestation upon entering into a collaborative practice agreement, and the addition of three procedures under prohibited practice. These changes are a result of the board's discussions around the comments received during the proposed rulemaking.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. The text of the pending rule is being published in its entirety following this notice. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages 306-316](#).

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

Sections 54-916, 54-916B, and 54-920, Idaho Code, impose fees for application and licensure of dental therapists. This rule sets the one-time application fee at \$200, and the biennial license fee at \$250.

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 no fiscal impact on the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending fee rule, contact Susan Miller (208) 334-2369.

Dated this 31th day of October, 2019.

Susan Miller
Executive Director Idaho State Board of Dentistry
350 N. 9th Street, Suite M100
P.O. Box 83720, Boise, ID 83720-0021
Phone: (208) 334-2369 / Fax: (208) 334-3247

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is July 27, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 54-912(2)(3)(4)(10), Idaho Code.

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

PUBLIC HEARING

Friday September 20, 2019 – 1:00 p.m. (MDT)

**Idaho State Capitol
Room W433
700 W. Jefferson Street
Boise, ID 83702**

Contact the undersigned by September 18, 2019 to make arrangements for telephone participation.

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 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:

Legislation enacted on July 1, 2019 authorized the practice of dental therapy under Title 54, Chapter 9, Idaho Code. The Board of Dentistry is mandated to promulgate rules for the licensure and regulation of dental therapists. The Board of Dentistry conducted two negotiated rulemaking meetings and considered broad comments/materials from affected parties prior to the adoption of this temporary rule.

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

This rule implements amendments to Title 54, Chapter 9, Idaho Code as it relates to licensure of dental therapists. This rule is necessary to protect the public health, safety and welfare of Idaho's citizens.

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

Sections 54-916, 54-916B, and 54-920, Idaho Code, impose fees for application and licensure of dental therapists. This rule sets the one-time application fee at \$200, and the biennial license fee at \$250.

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 no fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 3, 2019, Idaho Administrative Bulletin, **Vol. 19-7, page 241**.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Susan Miller (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 25, 2019.

Dated this 2nd day of August, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 19-0101-1901

001. TITLE AND SCOPE.

These rules are titled IDAPA 19.01.01, “Rules of the Idaho State Board of Dentistry.” These rules constitute the minimum requirements for licensure and regulation of dentists, dental hygienists, and dental therapists. ()

(BREAK IN CONTINUITY OF SECTIONS)

011. APPLICATION AND LICENSE FEES.

Application fees are not refunded. A license shall not be issued or renewed unless fees have been paid. License fees are prorated from date of initial licensure to the next successive license renewal date. The application fees and license fees are as follows:

License/Permit Type	Application Fee	License/Permit Fee
Dentist/Dental Specialist	\$300	Active Status: \$375 Inactive Status: \$160
Dental Hygienist	\$150	Active Status: \$175 Inactive Status: \$85
Dental Therapist	\$200	Active Status: \$250 Inactive Status: \$125
Sedation Permit	\$300	\$300

()

012. EXAMINATIONS FOR LICENSURE.

01. Written Examination. Successful completion of the NBDE may be required of all applicants for a license to practice dentistry or a dental specialty. Successful completion of the NBDHE may be required of all

applicants for a license to practice dental hygiene. Dental therapists must successfully complete a board-approved written examination. Any other written examination will be specified by the Board. ()

02. Clinical Examination. All applicants for a license to practice general dentistry, dental hygiene or dental therapy are required to pass a Board-approved clinical examination upon such subjects as specified by the Board. Applicants for dental hygiene and dental therapy licensure must pass a clinical local anesthesia examination. Clinical examination results will be valid for licensure by examination for a period of (5) five years from the date of successful completion of the examination. ()

013. REQUIREMENTS FOR LICENSURE.

Applicants for licensure to practice dentistry must furnish proof of graduation from a school of dentistry accredited by CODA at the time of applicant's graduation. Applicants for licensure to practice dental hygiene must furnish proof of graduation from a dental hygiene program accredited by CODA at the time of applicant's graduation. Applicants for licensure to practice dental therapy must furnish proof of graduation from a dental therapy program accredited by CODA at the time of applicant's graduation. ()

014. REQUIREMENT FOR BLS.

Applicants for initial licensure will provide proof of current BLS certification. Practicing licensees must maintain current BLS certification. ()

015. CONTINUING EDUCATION REQUIREMENTS.

A licensee renewing an active status license shall report to the Board completion of verifiable CE or volunteer practice which meets the following requirements: ()

01. Number of Credits.

License/Endorsement Type	Requirements
Dentist/Dental Specialist	30 credits - one of the credits must be related to opioid prescribing
Dental Hygienist	24 credits
Dental Hygienist with Extended Access License Endorsement	28 credits - four of the credits must be in the specific practice areas of medical emergencies, local anesthesia, oral pathology, care and treatment of geriatric, medically compromised or disabled patients and treatment of children.
Dental Therapist	30 credits

()

02. Nature of Education. Continuing education must be oral health/health-related for the licensee's professional development. ()

03. Volunteer Practice. Licensees are allowed one (1) credit of continuing education for every two (2) hours of verified volunteer practice performed during the biennial renewal period up to a maximum of ten (10) credits. ()

04. Prorated Credits. Any person who is granted a license with active during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of continuing education credits as specified by the Board. ()

05. Documentation. In conjunction with license renewal, the licensee shall provide a list of continuing education credits obtained and verification of hours of volunteer practice performed and certify that the minimum requirements were completed in the biennial renewal period. ()

(BREAK IN CONTINUITY OF SECTIONS)

031. INFECTION CONTROL.

In determining what constitutes unacceptable patient care with respect to infection control, the Board may consider current infection control guidelines such as those of the Centers for Disease Control and Prevention. Additionally, licensees and dental assistants must comply with the following requirements: ()

01. Gloves. Disposable gloves shall be worn whenever placing fingers into the mouth of a patient or when handling blood or saliva contaminated instruments or equipment. Appropriate hand hygiene shall be performed prior to gloving. ()

02. Masks and Eyewear. Masks and protective eyewear or chin-length shields shall be worn when spattering of blood or other body fluids is likely. ()

03. Instrument Sterilization. Between each patient use, instruments and other equipment that come in contact with body fluids shall be sterilized. ()

04. Sterilizing Devices Testing. Heat sterilizing devices shall be tested for proper function by means of a biological monitoring system that indicates micro-organisms kill. Devices shall be tested each calendar week in which scheduled patients are treated. Testing results shall be retained by the licensee for the current calendar year and the two (2) preceding calendar years. ()

05. Non-Critical Surfaces. Environmental surfaces that are contaminated by blood or saliva shall be disinfected with an EPA registered hospital disinfectant. ()

06. Clinical Contact Surfaces. Impervious backed paper, aluminum foil, or plastic wrap should be used to cover surfaces that may be contaminated by blood or saliva. The cover shall be replaced between patients. If barriers are not used, surfaces shall be cleaned and disinfected between patients by using an EPA registered hospital disinfectant. ()

07. Disposal. All contaminated wastes and sharps shall be disposed of according to any governmental requirements. ()

(BREAK IN CONTINUITY OF SECTIONS)

035. DENTAL THERAPISTS – PRACTICE.

Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, dental therapists are hereby authorized to perform activities specified by the supervising dentist *who practices in the same practice setting in conformity with a written collaborative practice agreement at the supervision levels set forth in the agreement. The dental therapist and the supervising dentist must sign and maintain a copy of the agreement and provide attestation to the board in writing when entering into a written collaborative practice agreement. Such attestation need only be submitted once each renewal period thereafter.* ()

036. DENTAL THERAPISTS – PROHIBITED PRACTICE.

01. Sedation. Administration of minimal, moderate or deep sedation or general anesthesia except as otherwise allowed by these rules; ()

02. Cutting Procedures. Cutting procedures involving the supportive structures of the tooth including both the soft and hard tissues. ()

03. Periodontal Therapy. Periodontal scaling and root planing, including the removal of subgingival calculus. ()

04. All Extractions with Exception. All extractions except: ()

a. Under direct supervision. ()

- i. Non-surgical extractions. ()
 - b. Under general supervision or as specified in Section 035. ()
 - i. Removal of periodontally diseased teeth with class III mobility. ()
 - ii. Removal of coronal remnants of deciduous teeth. ()
 - 05. *Root Canal Therapy.* ()
 - 06. *All Fixed and Removable Prosthodontics (except stainless steel crowns).* ()
 - 07. *Orthodontics.* ()
- 037. DENTAL ASSISTANTS – PRACTICE.**
- 01. Direct Supervision.** A dental assistant may perform specified duties under direct supervision as follows: ()
- a. Recording the oral cavity (existing restorations, missing and decayed teeth); ()
 - b. Placement of topical anesthetic agents (prior to administration of a local anesthetic by a dentist or dental hygienist); ()
 - 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); ()
 - d. Expose and process radiographs; ()
 - e. Make impressions for preparation of diagnostic models, bleach trays, fabrication of night guards, temporary appliances, temporary crowns or bridges; ()
 - f. Record diagnostic bite registration; ()
 - g. Record bite registration for fabrication of restorations; ()
 - h. Provide patient education and instruction in oral hygiene and preventive services; ()
 - i. Placement of cotton pellets and temporary restorative materials into endodontic access openings; ()
 - j. Placement and removal of arch wire; ()
 - k. Placement and removal of orthodontic separators; ()
 - l. Placement and removal of ligature ties; ()
 - m. Cutting arch wires; ()
 - n. Removal of loose orthodontic brackets and bands to provide palliative treatment; ()
 - o. Adjust arch wires; ()
 - p. Etching of teeth prior to placement of restorative materials; ()
 - q. Etching of enamel prior to placement of orthodontic brackets or appliances by a Dentist; ()

- r. Placement and removal of dental dam; ()
- s. Placement and removal of matrices; ()
- t. Placement and removal of periodontal pack; ()
- u. Removal of sutures; ()
- v. Application of cavity liners and bases; ()
- w. Placement and removal of gingival retraction cord; and ()
- x. Application of topical fluoride agents. ()
- 02. Prohibited Duties.** A dental assistant is prohibited from performing the following duties: ()
 - a. Definitive diagnosis and treatment planning. ()
 - b. The intraoral placement or carving of permanent restorative materials. ()
 - c. Any irreversible procedure using lasers. ()
 - d. The administration of any sedation or local injectable anesthetic. ()
 - e. Any oral prophylaxis (removal of stains and plaque biofilm and if present, supragingival and/or subgingival calculus). ()
 - f. Use of an air polisher. ()
 - 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. ()
 - h. Any dental hygiene prohibited duty. ()
 - i. 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: ()
 - i. Fabrication and placement of temporary crowns; ()
 - ii. Perform the mechanical polishing of restorations; ()
 - iii. Initiating, regulating and monitoring the administration of nitrous oxide/oxygen to a patient; ()
 - iv. Application of pit and fissure sealants; ()
 - v. Coronal polishing (removal of plaque biofilm and stains from the teeth using an abrasive agent with a rubber cup or brush). ()
 - vi. Use of a high-speed handpiece only for the removal of orthodontic cement or resin. ()
- 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: ()
 - 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: ()

- i. Current certification by the Dental Assisting National Board; or ()
 - ii. Successful completion of Board-approved curriculum in the fundamentals of dental assisting; or ()
 - iii. Successfully challenging the fundamentals course. ()
- b. Successful completion of a Board-approved competency examination in each of the expanded functions. There are no challenges for expanded functions. ()

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. ()

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). ()

038. – 040. (RESERVED)

041. LOCAL ANESTHESIA.

Dental offices in which local anesthesia is administered to patients shall, at a minimum, have and maintain suction equipment capable of aspirating gastric contents from the mouth and pharynx, a portable oxygen delivery system including full face masks and a bag-valve mask combination capable of delivering positive pressure, oxygen-enriched ventilation to the patient, a blood pressure cuff of appropriate size and a stethoscope. ()

042. NITROUS OXIDE/OXYGEN.

Persons licensed to practice and dental assistants certified in accordance with these rules **may** administer nitrous oxide/oxygen to patients. Nitrous oxide/oxygen when used in combination with other sedative agents may produce an alteration of the state of consciousness in a patient to the level of moderate sedation, general anesthesia, or deep sedation. A dentist must first qualify for and obtain the appropriate permit from the Board of Dentistry to be authorized to sedate patients to the level of moderate sedation, general anesthesia, or deep sedation. ()

- 01. Patient Safety.** In connection with the administration of nitrous oxide/oxygen, a dentist shall: ()
- a. Evaluate the patient to insure that the patient is an appropriate candidate for nitrous/oxygen; and ()
 - b. Insure that any patient under nitrous/oxygen be continually monitored; and ()
 - c. Insure that a second person be **in the practice setting** who can immediately respond to any request from the person administering the nitrous/oxygen. ()

02. Required Facilities and Equipment. Dental offices in which nitrous oxide/oxygen is administered to patients shall, at a minimum and in addition to emergency medications, maintain appropriate facilities and have equipment on site for immediate use as follows: ()

- a. A nitrous oxide delivery system with a fail-safe system that is maintained in working order: ()
 - i. A functioning device that prohibits the delivery of less than thirty percent (30%) oxygen; or ()

- ii. An appropriately calibrated and functioning in-line oxygen analyzer with audible alarm; and ()
- b. An appropriate scavenging system must be available; and ()
- c. A positive-pressure oxygen delivery system suitable for the patient being treated. ()
- 03. Personnel.** For nitrous oxide/oxygen administration, personnel shall include: ()
 - a. An operator; and ()
 - b. An assistant currently certified in BLS. ()
 - c. Auxiliary personnel must have documented training in BLS, have specific assignments, and have current knowledge of the emergency cart inventory. The dentist and all office personnel must participate in periodic reviews of office emergency protocol. ()

(BREAK IN CONTINUITY OF SECTIONS)

056. UNPROFESSIONAL CONDUCT.

A licensee 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: ()

- 01. Fraud.** Obtaining fees by fraud or misrepresentation, or over-treatment either directly or through an insurance carrier. ()
- 02. Unlicensed Practice.** Employing directly or indirectly any suspended or unlicensed **individual** as defined in Title 54, Chapter 9, Idaho Code. ()
- 03. Unlawful Practice.** Aiding or abetting licensed persons to practice unlawfully. ()
- 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: ()
 - a. The patient consents to employment of the other party after a full disclosure that a division of fees will be made; ()
 - b. The division is made in proportion to the services performed and responsibility assumed by each dentist or party. ()
- 05. Prescription Drugs.** Prescribing or administering prescription drugs not reasonably necessary for, or within the scope of, providing dental services for a patient. A dentist may not prescribe or administer 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. ()
- 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. ()
- 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. ()
- 08. Altering Records.** Alter a patient's record with intent to deceive. ()

- 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. ()
- 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. ()
- 11. Use of Intoxicants.** Practicing while under the influence of an intoxicant or controlled substance where the same impairs the licensee's ability to practice with reasonable and ordinary care. ()
- 12. Mental or Physical Condition.** The inability to practice with reasonable skill and safety to patients by reason of age, illness, or as a result of any mental or physical condition. ()
- 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. ()
- 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. ()
- 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. ()
- 16. Unauthorized Treatment.** Performing professional services that have not been authorized by the patient or his legal representative. ()
- 17. Supervision.** Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of a licensed professional. ()
- 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. ()
- 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. ()
- 20. Misrepresentation.** Willful misrepresentation of the benefits or effectiveness of dental services. ()
- 21. Disclosure.** Failure to advise patients or their representatives in understandable terms of the treatment to be rendered, alternatives, *the name and professional designation of the provider rendering treatment*, and disclosure of reasonably anticipated fees relative to the treatment proposed. ()
- 22. Sexual Misconduct.** Making suggestive, sexual or improper advances toward a patient or committing any lewd or lascivious act upon or with a patient. ()
- 23. Patient Management.** Use of unreasonable and/or damaging force to manage patients, including but not limited to hitting, slapping or physical restraints. ()
- 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. ()
- 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. ()

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. ()

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. ()

28. Advertising. Advertise in a way that is false, deceptive, misleading or not readily subject to verification. ()

IDAPA 22 – BOARD OF MEDICINE

DOCKET NO. 22-0000-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 54-1806(2), 54-1806(4), 54-1806(11), 54-1806A, 52-1807, 54-1812, 54-1813, 54-1814 and 54-1841, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapters promulgated as proposed rules under this docket number under IDAPA 22, rules of the Board of Medicine:

IDAPA 22

- 22.01.01, *Rules of the Board of Medicine for the Licensure to Practice Medicine and Osteopathic Medicine in Idaho*
- 22.01.03, *Rules for the Licensure of Physician Assistants*
- 22.01.10, *Rules for the Licensure of Athletic Trainers to Practice in Idaho*
- 22.01.11, *Rules for Licensure of Respiratory Therapists and Permitting of Polysomnographers in Idaho*
- 22.01.13, *Rules for the Licensure of Dietitians*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of these proposed rules was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 4424–4488](#). Changes that took place to these sets of rules after publication in the June 19, 2019 Bulletin include removal of unnecessary, redundant, and duplicative language throughout, including language that is already present in the relevant practice acts in Idaho Code, Title 54, Chapters 18, 35, 39, and 43. In addition, all provisions of these rules that apply to all Boards and Committees under the Board of Medicine were moved to the General Provisions at IDAPA 22.01.05.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. The fees included in each rule chapter relate to licensure and renewal of licensure for each profession described in each rule chapter. This fee or charge is being imposed pursuant to Sections 54-1808, 54-3509, 54-3907, and 54-4311, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Anne Lawler, (208) 327-7000.

Dated this 15th day of October, 2019.

Anne K. Lawler, JD, RN, Executive Director
Phone: (208) 327-7000 / Fax: (208) 327-7005
E-mail: anne.lawler@bom.idaho.gov

Idaho State Board of Medicine
345 W. Bobwhite Court, Suite 150
Boise, Idaho 83706

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-1806(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 22, rules of the Board of Medicine:

IDAPA 22

- 22.01.01, *Rules of the Board of Medicine for the Licensure to Practice Medicine and Osteopathic Medicine in Idaho*
- 22.01.03, *Rules for the Licensure of Physician Assistants*
- 22.01.10, *Rules for the Licensure of Athletic Trainers to Practice in Idaho*
- 22.01.11, *Rules for Licensure of Respiratory Therapists and Permitting of Polysomnographers in Idaho*
- 22.01.13, *Rules for the Licensure of Dietitians*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The Board of Medicine regulates medical professionals, including physicians, osteopathic physicians, physician assistants, dietitians, athletic trainers and respiratory therapists, all of whom have direct contact with the citizens of Idaho. These professional licensees under the Board of Medicine are all charged with providing safe health care that conforms to the community standard of care. These previously approved and codified rules set forth the detailed requirements for licensure and practice of these medical professionals to the standards necessary to maintain the health, safety, and welfare of the citizens of Idaho.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. The Board of Medicine and its Allied Health Boards charge licensure and renewal fees to offset the costs of administering each Board. These costs include processing each

licensure or renewal application, managing disciplinary cases, managing pre-litigation panels as required by Title 6, Chapter 10 Idaho Code, public outreach, and all other Board functions.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. The Board of Medicine charges the following fees:

Physician applicants pay a fee not to exceed \$600 for initial licensure and a license renewal fee not to exceed \$300; Physician Assistant applicants pay a fee not to exceed \$250 and a license renewal fee not to exceed \$150; Dietitian applicants pay a fee not to exceed \$150 and a license renewal fee not to exceed \$100; Athletic Trainers applicants pay a fee not to exceed \$240 and a license renewal fee not to exceed \$160; and Respiratory Therapist applicants pay a fee not to exceed \$180 and a license renewal fee not to exceed \$140.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rules, contact Anne K. Lawler, Executive Director, at (208) 327-7000.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 22-0000-1900F

**22.01.01 – RULES OF THE BOARD OF MEDICINE FOR THE LICENSURE TO PRACTICE
MEDICINE AND OSTEOPATHIC MEDICINE IN IDAHO**

000. LEGAL AUTHORITY.

Pursuant to Sections 54-1806(2), 54-1806(4), 54-1806(11), 54-1806A, 52-1807, 54-1812, 54-1813, 54-1814 and 54-1841, Idaho Code, the Idaho State Board of Medicine is authorized to promulgate rules to govern the practice of Medicine in Idaho. (4-11-19)

001. TITLE AND SCOPE.

These rules are titled IDAPA 22.01.01, “Rules of the Board of Medicine for the Licensure to Practice Medicine and Osteopathic Medicine in Idaho.” (4-11-19)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Acceptable International School of Medicine. An international medical school located outside the United States or Canada that meets the standards for medical educational facilities set forth in Subsection 051.02, is accredited by the Educational Commission for Foreign Medical Graduates (ECFMG) and provides the scope and content of the education and coursework that are equivalent to acceptable schools of medicine located within the United States or Canada. (3-26-08)

02. Educational Commission for Foreign Medical Graduates (ECFMG). A nationally recognized non-profit organization that certifies international medical graduates who seek to enter United States residency and fellowship programs. (4-11-19)

03. Federation of State Medical Boards of the United States (FSMB). A nationally recognized non-profit organization representing the seventy (70) medical and osteopathic boards of the United States and its territories. (4-11-19)

04. Medical Practice Act. Title 54, Chapter 18, Idaho Code. (3-30-06)

011. ABBREVIATIONS.

01. AAMC. Association of American Medical Colleges. (3-26-08)

02. ACGME. Accreditation Council for Graduate Medical Education. (3-26-08)

03. AMA. American Medical Association. (3-26-08)

04. AOA. American Osteopathic Association. (3-26-08)

05. CACMS. Committee on Accreditation of Canadian Medical Schools. (4-11-19)

06. COCA. Commission on Osteopathic College Accreditation. (4-11-19)

07. ECFMG. Educational Commission for Foreign Medical Graduates. (3-26-08)

08. FAIMER. Foundation for Advancement of International Medical Education. (4-11-19)

09. FSMB. Federation of State Medical Boards. (3-26-08)

10. LCME. Liaison Committee on Medical Education. (3-26-08)

11. USMLE. United States Medical Licensing Exam. (3-26-08)

12. WFME. World Federation for Medical Education. (4-11-19)

012. -- 049. (RESERVED)

050. GENERAL QUALIFICATIONS FOR LICENSURE AND RENEWAL.

Requirements for licensure and renewal are found in Title 54, Chapter 18, Idaho Code, IDAPA 22.01.05, and on

Board approved forms. ()

01. Special Purpose Examination. Upon inquiry, if further examination is required, the Board may require passage of the Special Purpose Examination (SPEX) administered by the FSMB, a post licensure assessment conducted by the FSMB, or an evaluation by an independent agency accepted by the Board to evaluate physician competence. ()

02. Additional Circumstances. The Board may require further inquiry when in its judgment the need is apparent, including, but not limited to, the following circumstances: ()

i. Graduate of an international medical school located outside the United States and Canada and not accredited by the LCME; (3-8-09)

ii. Applicant whose background investigation reveals evidence of impairment, competency deficit, or disciplinary action by any licensing or regulatory agency; (3-26-08)

iii. An applicant has not been in active medical practice for a period exceeding one (1) year, or when practice has been significantly interrupted; (3-30-06)

iv. An applicant has not written a recognized examination intended to determine ability to practice medicine within a period of five (5) years preceding application; (3-30-06)

v. An applicant whose initial licensure was issued on the basis of an examination not recognized by the Board; or (3-30-06)

vi. When there is any reason whatsoever to question the identity of the applicant. (3-30-06)

c. Recommendations of the assessment and or evaluation acceptable to the Board related to the ability of the applicant to practice medicine and surgery will be considered by the Board in its decision whether to issue a license and the Board may limit, condition, or restrict a license based on the Board's determination and the recommendation of the assessment or evaluation. (3-30-06)

051. LICENSURE FOR GRADUATES OF INTERNATIONAL MEDICAL SCHOOLS LOCATED OUTSIDE OF THE UNITED STATES AND CANADA.

01. International Medical Graduate. In addition to meeting the requirements of Section 050, graduates of international medical schools located outside of the United States and Canada must submit to the Board: (3-26-08)

a. Original certificate from the ECFMG or original documentation that the applicant has passed the examination either administered or recognized by the ECFMG and passed an examination acceptable to the Board that demonstrates qualification for licensure or successfully completed the United States Medical Licensing Exam (USMLE). (5-8-09)

b. Original documentation directly from the international medical school that establishes to the satisfaction of the Board that the international medical school meets the standards for medical educational facilities set forth in Subsection 051.02; ()

c. Original documentation directly from the international medical school that it has not been disapproved or has its authorization, accreditation, certification or approval denied or removed by any state, country or territorial jurisdiction and that to its knowledge no state of the United States or any country or territorial jurisdiction has refused to license its graduates on the grounds that the school fails to meet reasonable standards for medical education facilities; (3-26-08)

d. A transcript from the international medical school showing successful completion of all the courses taken and grades received and original documentation of successful completion of all clinical coursework; and (4-11-19)

e. Original documentation of successful completion of three (3) years of progressive postgraduate training at one (1) training program accredited for internship, residency, or fellowship training by the ACGME, AOA or the Royal College of Physicians and Surgeons of Canada or its successor organization, provided however, a resident who is attending an Idaho based residency program may be licensed after successful completion of two (2) years of progressive post graduate training, if the following conditions are met: (4-11-19)

i. The resident must have the written approval of the residency program director; (3-25-16)

ii. The resident must have a signed written contract with the Idaho residency program to complete the entire residency program; (3-25-16)

iii. The resident must remain in good standing at the Idaho-based residency program; (3-25-16)

iv. The residency program must notify the Board within thirty (30) days if there is a change in circumstances or affiliation with the program (for example, if the resident resigns or does not demonstrate continued satisfactory clinical progress); and (3-25-16)

v. The Idaho residency program and the Idaho Board have prescreened the applicant to ensure that the applicant has received an MD or DO degree from an approved school that is eligible for Idaho licensure after graduation. (3-25-16)

02. International Medical School Requirements. An international medical school must be listed in the World Directory of Medical Schools, a joint venture of World Federation for Medical Education (WFME) and the Foundation for Advancement of International Medical Education and Research (FAIMER). (4-11-19)

052. GRADUATES OF UNAPPROVED INTERNATIONAL MEDICAL SCHOOLS LOCATED OUTSIDE OF THE UNITED STATES OR CANADA.

In addition to meeting the requirements of Section 050 of these rules, graduates of unapproved international medical schools located outside the United States or Canada that do not meet the requirements of Section 051.02 of these rules, shall submit to the Board an original certificate or document of three (3) of the four (4) following requirements. (4-11-19)

01. Valid ECFMG Certificate. Hold a valid certificate issued by ECFMG. (3-26-08)

02. Three Years of Completed Post Graduate Training. Successful completion of three (3) years of progressive post graduate training at one (1) training program accredited for internship, residency or fellowship training in an ACGME or AOA or Royal College of Physicians and Surgeons of Canada or its successor organization's approved program. (4-11-19)

03. Board Certification. Hold current board certification by a specialty board approved by the American Board of Medical Specialties or the AOA. (3-26-08)

04. Five Years Unrestricted Practice. Evidence of five (5) years of unrestricted practice as a licensee of any United States or Canadian jurisdiction. (3-26-08)

053. -- 078. (RESERVED)

079. CONTINUING MEDICAL EDUCATION (CME) REQUIRED.

01. Purpose. The purpose of practice relevant CME is to enhance competence, performance, understanding of current standards of care, and patient outcomes. (5-3-03)

02. Renewal. Each person licensed to practice medicine and surgery or osteopathic medicine or surgery in Idaho shall complete no less than forty (40) hours of practice relevant, Category 1, CME every two (2) years. (5-3-03)

03. Verification of Compliance. Licensees will, at license renewal, provide an attestation to the Board indicating compliance. The Board, in its discretion, may require such additional evidence as is necessary to verify compliance. ()

04. Alternate Compliance. The Board may accept certification or recertification by a member of the American Board of Medical Specialties, the American Osteopathic Association, or the Royal College of Physicians and Surgeons of Canada or its successor organization in lieu of compliance with continuing education requirements during the cycle in which the certification or recertification is granted. The Board may also grant an exemption for full time participation in a residency or fellowship training at a professionally accredited institution. (4-11-19)

05. Penalties for Noncompliance. The Board may condition, limit, suspend, or refuse to renew the license of any person whom the Board determines has failed to comply with the continuing education requirements of this chapter. (5-3-03)

080. PHYSICIAN PANELIST FOR PRELITIGATION CONSIDERATION OF MEDICAL MALPRACTICE CLAIMS.

01. Purpose. The purpose of serving as a physician panelist for prelitigation consideration of medical malpractice claims against physicians and surgeons practicing in the state of Idaho or against licensed acute care general hospitals operating in the state of Idaho is to: (4-4-13)

a. Cooperate in the prelitigation consideration of personal injury and wrongful death claims for damages arising out of the provision of or alleged failure to provide hospital or medical care in Idaho; and (4-4-13)

b. Accept and hear complaints of such negligence and damages, made by or on behalf of any patient who is an alleged victim of such negligence. (4-4-13)

02. Eligibility. A physician licensed to practice medicine and surgery or osteopathic medicine or surgery in Idaho must be available to serve in any two (2) year period, or a longer period not to exceed five (5) years, as determined by the panel chairman, as a physician panelist for prelitigation consideration of a medical malpractice claim. (5-8-09)

03. Excusing Physicians from Serving. A physician panelist so selected must serve unless he had served on a prelitigation panel during any previous two (2) year period, or a longer period not to exceed five (5) years, as determined by the panel chairman or for good cause shown, is excused by the panel chairman. To show good cause for relief from serving, the selected physician panelist must present an affidavit to the panel chairman which shall set out the facts showing that service would constitute an unreasonable burden or undue hardship. The panel chairman has the sole authority to excuse a selected physician from serving on a prelitigation panel. (5-8-09)

04. Penalties for Noncompliance. The Board may condition, limit, suspend, or refuse to renew the license of any physician whom the Board determines has failed to serve as a physician panelist for the prelitigation consideration of a medical malpractice claim. (5-8-09)

081. -- 099. (RESERVED)

100. FEES -- TABLE.

01. Fees -- Table. Nonrefundable fees are as follows:

Fees -- Table	
Licensure Fee	- Not more than \$600
Temporary License	- Not more than \$300
Reinstatement License Fee plus total of renewal fees not paid by applicant	- Not more than \$300

Fees -- Table		
Inactive License Renewal Fee	-	Not more than \$100
Renewal of License to Practice Medicine Fee	-	Not more than \$300
Duplicate Wallet License	-	Not more than \$20
Duplicate Wall Certificate	-	Not more than \$50
Volunteer License Application Fee	-	\$0
Volunteer License Renewal Fee	-	\$0

()

02. Administrative Fees for Services. Administrative fees for services shall be billed on the basis of time and cost. (7-11-93)

101. -- 150. (RESERVED)

151. DEFINITIONS RELATING TO SUPERVISING AND DIRECTING PHYSICIANS.

01. Alternate Directing Physician. A designated Idaho licensed physician, registered with the Board pursuant to this chapter and Title 54, Chapter 39, Idaho Code, who oversees the practice of athletic training and is responsible for the athletic training services provided by the athletic trainer in the temporary absence of the directing physician. (4-11-19)

02. Alternate Supervising Physician for Interns and Residents. A physician licensed to practice medicine or licensed to practice osteopathic medicine in Idaho who has been designated by the supervising physician and approved by and registered by the Board to supervise the intern or resident in the temporary absence of the supervising physician. (4-11-19)

03. Alternate Supervising Physician of Medical Personnel. An Idaho licensed physician who is registered with the Board pursuant to this chapter, who supervises and has full responsibility for cosmetic treatments using prescriptive medical/cosmetic devices and/or products provided by medical personnel in the temporary absence of the supervising physician. (4-11-19)

04. Athletic Trainer. A person who has met the qualifications for licensure as set forth in Title 54, Chapter 39, Idaho Code, is licensed under that chapter, and carries out the practice of athletic training under the direction of a designated Idaho licensed physician, registered with the Board. (4-11-19)

05. Directing Physician. A designated Idaho licensed physician, registered with the Board pursuant to this chapter and Title 54, Chapter 39, Idaho Code, who oversees the practice of athletic training and is responsible for the athletic training services provided by the athletic trainer. This chapter does not authorize the practice of medicine or any of its branches by a person not so licensed by the Board. (4-11-19)

06. Medical Personnel. An individual who provides cosmetic treatments using prescriptive medical/cosmetic devices and products that are exclusively non-incisive or non-ablative under the direction and supervision of a supervising physician registered with the Board, pursuant to the applicable Idaho statutes and the applicable rules promulgated by the Board. (4-11-19)

07. Supervising Physician of Interns or Residents. Any person approved by and registered with the Board who is licensed to practice medicine and surgery or osteopathic medicine and surgery in Idaho, who signs the application for registration of an intern or resident, and who is responsible for the direction and supervision of their activities. (4-11-19)

08. Supervising Physician of Medical Personnel. An Idaho licensed physician who is registered with the Board pursuant to this chapter, who supervises and has full responsibility for cosmetic treatments using

prescriptive medical/cosmetic devices and products provided by medical personnel. (4-11-19)

152. – 160. (RESERVED)

161. DUTIES OF DIRECTING PHYSICIANS.

01. Responsibilities. The directing physician accepts full responsibility for the acts and athletic training services provided by the athletic trainer and oversees the practice of athletic training of the athletic trainer, and for the supervision of such acts which include, but are not limited to: (4-11-19)

a. An on-site visit at least semiannually to personally observe the quality of athletic training services provided; and (4-11-19)

b. Recording of a periodic review of a representative sample of the records, including, but not limited to, records made from the past six (6) months of the review to evaluate the athletic training services that were provided. (4-11-19)

02. Scope of Practice. The directing physician must ensure the scope of practice of the athletic trainer, as set forth in IDAPA 22.01.10, “Rules for the Licensure of Athletic Trainers to Practice in Idaho,” and Section 54-3903, Idaho Code, will be limited to and consistent with the scope of practice of the directing physician and exclude any independent practice of athletic training by an athletic trainer. (4-11-19)

03. Directing Responsibility. The responsibilities and duties of a directing physician may not be transferred to a business entity, professional corporation, or partnership, nor may they be assigned to another physician without prior notification and Board approval. (4-11-19)

04. Available Supervision. The directing physician will oversee the activities of the athletic trainer and must be available either in person or by telephone to supervise, direct, and counsel the athletic trainer. The scope and nature of the direction of the athletic trainer will be outlined in an athletic training service plan or protocol, as set forth in IDAPA 22.01.10, “Rules for the Licensure of Athletic Trainers to Practice in Idaho,” Section 012. ()

05. Disclosure. It is the responsibility of each directing physician to ensure that each athlete who receives athletic training services is aware of the fact that said person is not a licensed physician. This disclosure requirement can be fulfilled by the use of name tags, correspondence, oral statements, office signs, or such other procedures that under the involved circumstances adequately advise the athlete of the education and training of the person rendering athletic training services. (4-11-19)

162. DUTIES OF SUPERVISING PHYSICIANS.

01. Responsibilities. The supervising physician accepts full responsibility for the medical acts of and patient services provided by physician assistants and graduate physician assistants and for the supervision of such acts which shall include, but are not limited to: (4-11-19)

a. An on-site visit at least monthly to personally observe the quality of care provided; (4-11-19)

b. A periodic review of a representative sample of medical records to evaluate the medical services that are provided. When applicable, this review will also include an evaluation of adherence to the delegation of services agreement between the physician and physician assistant or graduate physician assistant; and (4-11-19)

c. Regularly scheduled conferences between the supervising physician and such licensees. (4-11-19)

02. Pre-Signed Prescriptions. The supervising physician will not utilize or authorize the physician assistant to use any pre-signed prescriptions. (4-11-19)

03. Supervisory Responsibility. A supervising physician or alternate supervising physician may not supervise more than four (4) physician assistants or graduate physician assistants contemporaneously. The Board, however, may authorize a supervising physician or alternate supervising physician to supervise a total of six (6) such

licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting adequate safeguards to protect the public health and safety. The responsibilities and duties of a supervising physician may not be transferred to a business entity, professional corporation, or partnership, nor may they be assigned to another physician without prior notification and Board approval. (4-11-19)

04. Available Supervision. The supervising physician will oversee the activities of the physician assistant or graduate physician assistant, and must always be available either in person or by telephone to supervise, direct, and counsel such licensees. The scope and nature of the supervision of the physician assistant and graduate physician assistant must be outlined in a delegation of services agreement, as set forth in IDAPA 22.01.03, “Rules for the Licensure of Physician Assistants,” Subsection 030.04. (4-11-19)

05. Disclosure. It is the responsibility of each supervising physician to ensure that each patient who receives the services of a physician assistant or graduate physician assistant is aware of the fact that said person is not a licensed physician. This disclosure requirement can be fulfilled by the use of nametags, correspondence, oral statements, office signs, or such other procedures that under the involved circumstances adequately advise the patient of the education and training of the person rendering medical services. (4-11-19)

163. DUTIES OF SUPERVISING PHYSICIANS OF INTERNS AND RESIDENTS.

01. Responsibilities. The supervising physician is responsible for the direction and supervision of the medical acts and patient services provided by an intern or resident. The direction and supervision of such activities include, but are not limited to: (4-11-19)

- a. An on-site visit at least monthly to personally observe the quality of care provided; (4-11-19)
- b. Recording of a periodic review of a representative sample of medical records to evaluate the medical services that are provided; and (4-11-19)
- c. Regularly scheduled conferences between the supervising physician and the intern or resident. (4-11-19)

02. Available Supervision. The supervising physician will oversee the activities of the intern or resident, and must always be available either in person or by telephone to supervise, direct and counsel the intern or resident. (4-11-19)

03. Disclosure. It is the responsibility of each supervising physician to ensure that each patient who receives the services of an intern or resident is aware of the fact that said person is not a licensed physician. This disclosure requirement can be fulfilled by the use of nametags, correspondence, oral statements, office signs, or such other procedures that under the involved circumstances adequately advise the patient of the education and training of the person rendering medical services. (4-11-19)

164. SUPERVISING PHYSICIANS OF MEDICAL PERSONNEL.

Prescriptive medical/cosmetic devices and products penetrate and alter human tissue and can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation, and hyperpigmentation. Cosmetic treatments using such prescriptive medical/cosmetic devices and products is the practice of medicine as defined in Section 54-1803(1), Idaho Code. This chapter does not authorize the practice of medicine or any of its branches by a person not so licensed by the Board. (4-11-19)

- 01. Definitions.** (4-11-19)
 - a. Ablative. Ablative is the separation, eradication, removal, or destruction of human tissue. (4-11-19)
 - b. Incisive. Incisive is the power and quality of cutting of human tissue. (4-11-19)
 - c. Cosmetic Treatment. An aesthetic treatment prescribed by a physician for a patient that uses prescriptive medical/cosmetic devices and products to alter human tissue. (4-11-19)

d. Prescriptive Medical/Cosmetic Device. A federal food and drug administration approved prescriptive device that uses waveform energy including, but not limited to, intense pulsed light or lasers, to cosmetically alter human tissue. (4-11-19)

e. Prescriptive Medical/Cosmetic Product. A federal food and drug administration approved prescriptive product whose primary intended use of the product is achieved through chemical action and cosmetically alters human tissue including, but not limited to, filler substances such as collagen or fat; lipo transfer; muscle immobilizers or sclerosing agents. (4-11-19)

02. Duties and Responsibilities of Supervising Physicians. The supervising physician accepts full responsibility for cosmetic treatments provided by medical personnel using prescriptive medical/cosmetic devices and products and for the supervision of such treatments. The supervising physician must be trained in the safety and use of prescriptive medical/cosmetic devices and products. (4-11-19)

a. Patient Record. The supervising physician must document an adequate legible patient record of his evaluation and assessment of the patient prior to the initial cosmetic treatment. An adequate patient record must contain, at minimum, subjective information, an evaluation and report of objective findings, assessment or diagnosis, and the plan of care including, but not limited to, a prescription for prescriptive medical/cosmetic devices and products. (4-11-19)

b. Supervisory Responsibility. A supervising physician or alternate supervising physician of medical personnel may not supervise more than three (3) such medical personnel contemporaneously. The Board, however, may authorize a supervising physician or alternate supervising physician to supervise a total of six (6) such medical personnel contemporaneously if necessary to provide adequate cosmetic treatments and upon prior petition documenting adequate safeguards to protect the public health and safety. The responsibilities and duties of a supervising physician may not be transferred to a business entity, professional corporation or partnership, nor may they be assigned to another physician without prior notification and Board approval. (4-11-19)

c. Available Supervision. The supervising physician will be on-site or immediately available to respond promptly to any questions or problems that may occur while a cosmetic treatment is being performed by medical personnel using prescriptive medical/cosmetic devices and products. Such supervision includes, but is not limited to: (4-11-19)

i. Periodic review of the medical records to evaluate the prescribed cosmetic treatments that are provided by such medical personnel including any adverse outcomes or changes in the treatment protocol; and (4-11-19)

ii. Regularly scheduled conferences between the supervising physician and such medical personnel. (4-11-19)

d. Scope of Cosmetic Treatments. Medical personnel providing cosmetic treatments are limited to using prescriptive medical/cosmetic devices and products that are exclusively non-incisive and non-ablative. The supervising physician will ensure cosmetic treatments using prescriptive medical/cosmetic devices and products provided by medical personnel are limited to and consistent with the scope of practice of the supervising physician. The supervising physician will ensure medical personnel do not independently provide cosmetic treatments using prescriptive medical/cosmetic devices and products. (4-11-19)

i. The supervising physician will ensure that, with respect to each procedure performed, the medical personnel possess the proper training in cutaneous medicine, the indications for the prescribed treatment, and the pre- and post-procedure care involved; and (4-11-19)

ii. The supervising physician will prepare a written protocol for medical personnel to follow when using prescriptive medical/cosmetic devices and products. The supervising physician is responsible for ensuring that the medical personnel use prescriptive medical/cosmetic devices and products only in accordance with the written protocol and do not exercise independent judgment when using prescriptive medical/cosmetic devices and products. (4-11-19)

e. Training Requirements. Medical personnel who provide cosmetic treatments using prescriptive medical/cosmetic devices and products must have training and be certified by their supervising physicians on each device or product they will use. The training on each device or product includes the following: (4-11-19)

- i. Physics and safety of the prescriptive medical/cosmetic devices and products; (4-11-19)
- ii. Basic principle of the planned procedure and treatment; (4-11-19)
- iii. Clinical application of the prescriptive medical/cosmetic devices and products including, but not limited to, wavelengths to be used with intense pulsed light/lasers; (4-11-19)
- iv. Indications and contraindications for the use of the prescriptive medical/cosmetic devices and products; (4-11-19)
- v. Pre-procedure and post-procedure care; (4-11-19)
- vi. Recognition and acute management of complications that may result from the procedure or treatment; and (4-11-19)
- vii. Infectious disease control procedures required for each treatment. (4-11-19)
- viii. The supervising physician will assure compliance with the training and reporting requirements of this rule. (4-11-19)

ix. The supervising physician will submit verification of training upon the Medical Personnel Supervising Physician Registration form provided by the Board, to the Board for approval prior to the provision of cosmetic treatments using prescriptive medical/cosmetic devices and products by medical personnel. The Board may require the supervising physician to provide additional written information, which may include his affidavit attesting to the medical personnel's qualifications and clinical abilities to perform cosmetic treatments using prescriptive medical/cosmetic devices and products. The Medical Personnel Supervising Physician Registration Form will be sent to the Board and maintained on file at each practice location and at the address of record of the supervising physician. The Board may require such changes as needed to achieve compliance with this chapter and Title 54, Chapter 18, Idaho Code, and to safeguard the public. (4-11-19)

f. Disclosure. It is the responsibility of each supervising physician to ensure that every patient receiving a cosmetic treatment using prescriptive medical/cosmetic devices and products by such medical personnel is aware of the fact that such medical personnel are not licensed physicians. This disclosure requirement can be fulfilled by the use of name tags, correspondence, oral statements, office signs, or such other procedures that under the involved circumstances adequately advise the patient of the education and training of the medical personnel rendering such cosmetic treatments. (4-11-19)

g. Patient Complaints. The supervising physician will report to the Board of Medicine all patient complaints received against medical personnel that relate to the quality and nature of cosmetic treatments rendered. (4-11-19)

h. Duties and Responsibilities Nontransferable. The responsibilities and duties of a supervising physician may not be transferred to a business entity, professional corporation, or partnership, nor may they be assigned to another physician or person. (4-11-19)

165. -- 200. (RESERVED)

201. REGISTRATION BY SUPERVISING AND DIRECTING PHYSICIANS.

01. Registration and Renewal. Each supervising, directing, and alternate physician must register with the Board and such registration will be renewed annually. (4-11-19)

02. Notification. The supervising and directing physician must notify the Board of any change in the

status of any physician assistant, graduate physician assistant, athletic trainer, or medical personnel for whom he is responsible, including, but not limited to, changes in location, duties, responsibilities, or supervision, or termination of employment within thirty (30) days of such event. (4-11-19)

202. -- 239. (RESERVED)

240. FEES - TABLE.

Nonrefundable fees are as follows:

Supervising Physician Registration Fee - Not more than \$50
Annual Renewal of Supervising Physician Registration Fee - Not more than \$25
Directing Physician Registration Fee - Not more than \$50
Annual Renewal of Directing Physician Registration Fee - Not more than \$25
Alternate supervising physicians and alternate directing physicians are not required to pay an annual fee.

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241. (RESERVED)

242. DEFINITIONS RELATED TO INTERNS AND RESIDENTS.

01. Acceptable Training Program. A medical training program or course of medical study that has been approved by the Liaison Committee for Medical Education (LCME), Council on Medical Education or Commission on Osteopathic College Accreditation (COCA) of the American Osteopathic Association (AOA). (4-11-19)

02. Acceptable Post Graduate Training Program. A post graduate medical training program or course of medical study that has been approved by the Accreditation Council for Graduate Medical Education (ACGME) or American Osteopathic Association (AOA). (4-11-19)

243. RESIDENT AND INTERN REGISTRATION.

01. Registration Certificate. Upon approval of the registration application, the Board may issue a registration certificate that sets forth the period during which the registrant may engage in activities that may involve the practice of medicine. Each registration will be issued for a period of not less than one (1) year and will set forth its expiration date on the face of the certificate. Each registration will identify the supervising physician. Each registrant will notify the Board in writing of any change of the supervising physician or the program or course of study fourteen (14) days prior to any such change. If the Board deems the intern or resident qualified, and if the course study requires, the Board may additionally certify on the registration certificate that the intern or resident is qualified to write prescriptions for Class III through Class V scheduled medications. (4-11-19)

02. Termination of Registration. The registration of an intern or resident may be terminated, suspended, or made conditional by the Board on the grounds set forth in Section 54-1814, Idaho Code, and under the procedures set forth in Section 54-1806A, Idaho Code. (4-11-19)

03. Annual Renewal of Registration. Each registration must be renewed annually prior to its expiration date. Any registration not renewed by its expiration date will be canceled. (4-11-19)

04. Notification of Change. Each registrant must notify the Board in writing of any adverse action or termination, whatever the outcome, from any post graduate training program and any name changes within fourteen (14) days of such event. (4-11-19)

05. Disclosure. It is the responsibility of each registrant to ensure that every patient is aware of the fact that such intern and resident is currently enrolled in a post graduate training program and under the supervision of a

licensed physician. This disclosure requirement can be fulfilled by the use of name tags, correspondence, oral statements, or such other procedures that under the circumstances adequately advise the patient of the education and training of the intern and resident. (4-11-19)

244. FEES - TABLE.

Resident and Intern Registration Fee	-	Not more than \$25
Registration Annual Renewal Fee	-	Not more than \$25

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245. -- 999. (RESERVED)

22.01.03 – RULES FOR THE LICENSURE OF PHYSICIAN ASSISTANTS

000. LEGAL AUTHORITY.

Pursuant to Section 54-1806(2), Idaho Code, the Idaho State Board of Medicine is authorized to promulgate rules to govern activities of persons licensed under these rules to practice as physician assistants and graduate physician assistants under the supervision of persons licensed to practice medicine or osteopathic medicine in Idaho. (4-11-19)

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 22.01.03, “Rules for the Licensure of Physician Assistants.” (3-19-99)

02. **Scope.** Pursuant to Idaho Code, Section 54-1807A(1), physician assistants and graduate physician assistants must be licensed with the Board prior to commencement of activities. (4-11-19)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Approved Program.** A course of study for the education and training of physician assistants that is accredited by the Accreditation Review Commission on Education for Physician Assistants (ARC-PA) or predecessor agency or equivalent agency recognized by the Board as recommended by the Committee. (3-29-17)

02. **Delegation of Services (DOS) Agreement.** An agreement on a Board-approved form signed and dated by the licensed physician assistant or graduate physician assistant and supervising and alternate supervising physician that defines the working relationship and delegation of duties between the supervising physician and the licensee as specified by Board rule. ()

03. **Supervision.** The direction and oversight of the activities of and patient services provided by a physician assistant or graduate physician assistant by a supervising physician or alternate supervising physician who accepts full medical responsibility with respect thereto. The constant physical presence of the supervising or alternate supervising physician is not required as long as the supervisor and such licensee are or can be easily in contact with one another by radio, telephone, or other telecommunication device. The scope and nature of the supervision will be outlined in a delegation of services agreement, as defined in Subsection 030.04 of these rules. (3-29-17)

011. -- 019. (RESERVED)

020. REQUIREMENTS FOR LICENSURE.

Requirements for licensure and renewal are found in Title 54, Chapter 18, Idaho Code, IDAPA 22.01.05, and on Board-approved forms. ()

021. -- 027. (RESERVED)

028. SCOPE OF PRACTICE.

01. **Scope.** The scope of practice of physician assistants and graduate physician assistants is generally defined in the delegation of services and may include a broad range of diagnostic, therapeutic and health promotion and disease prevention services. ()

a. The scope of practice includes only those duties and responsibilities delegated to the licensee by their supervising and alternate supervising physician and in accordance with the delegation of services agreement and consistent with the expertise and regular scope of practice of the supervising and alternate supervising physician. (3-29-17)

b. The scope of practice may include prescribing, administering, and dispensing of medical devices and drugs, including the administration of a local anesthetic injected subcutaneously, digital blocks, or the application of topical anesthetics, while working under the supervision of a licensed medical physician. (3-29-17)

c. Physician assistants and graduate physician assistants are agents of their supervising and alternate supervising physician in the performance of all practice-related activities and patient services. (4-9-09)

d. A supervising physician or alternate supervising physician will each supervise no more than a total of four (4) physician assistants or graduate physician assistants contemporaneously. ()

e. The Board, however, may authorize a supervising physician to supervise a total of six (6) such

licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting adequate safeguards to protect the public health and safety. (4-11-19)

029. CONTINUING EDUCATION REQUIREMENTS.

Requirements for Renewal. Prior to renewal of each license as set forth by the expiration date on the face of the certificate, physician assistants shall attest to maintenance of certification by the National Commission on Certification of Physician Assistants or similar certifying agency approved by the Board, which certification requires a minimum of one hundred (100) hours of continuing medical education over a two-year (2) period. (3-29-17)

030. PRACTICE STANDARDS.

01. Identification. The physician assistant or graduate physician assistant will at all times when on duty wear a placard or plate so identifying himself. (4-11-19)

02. Advertise. No physician assistant or graduate physician assistant may advertise or represent himself either directly or indirectly, as a physician. (4-11-19)

03. Supervising Physician. Each licensed physician assistant and graduate physician assistant will have a Board-approved supervising physician prior to practice. (3-29-17)

04. Delegation of Services Agreement. Each licensed physician assistant and graduate physician assistant must maintain a current, completed copy of a Delegation of Services (DOS) Agreement between the licensee and each of his supervising and alternate supervising physicians. This agreement must be sent to the Board and be maintained on file at each practice location and at the address of record of the supervising and alternate supervising physician. ()

05. Notification of Change or Addition of Supervising or Alternate Supervising Physician. A physician assistant or graduate physician assistant must notify the Board when adding, changing, or deleting a supervising physician or alternate supervising physician. ()

031. PARTICIPATION IN DISASTER AND EMERGENCY CARE.

A physician assistant or graduate physician assistant licensed in this state or licensed or authorized to practice in any other state of the United States or currently credentialed to practice by a federal employer who is responding to a need for patient services created by an emergency or a state or local disaster (not to be defined as an emergency situation which occurs in the place of one's employment) may render such patient services that they are able to provide without supervision as it is defined in this chapter, or with such supervision as is available. Any physician who supervises a physician assistant or graduate physician assistant providing patient services in response to such an emergency or state or local disaster will not be required to meet the requirements set forth in this chapter for a supervising physician. (3-16-04)

032. -- 035. (RESERVED)

036. GRADUATE PHYSICIAN ASSISTANT.

01. Licensure Prior to Certification Examination -- Board Consideration. Any person who has graduated from an approved physician assistant training program and meets all Idaho requirements, including achieving a college baccalaureate degree, but has not yet taken and passed the certification examination, may be considered by the Board for licensure as a graduate physician assistant for six (6) months when an application for licensure as a graduate physician assistant has been submitted to the Board on forms supplied by the Board and payment of the prescribed fee, provided: (4-11-19)

a. The applicant will submit to the Board, within ten (10) business days of receipt, a copy of acknowledgment of sitting for the national certification examination. The applicant will submit to the Board, within ten (10) business days of receipt, a copy of the national certification examination results. (4-9-09)

b. After the graduate physician assistant has passed the certification examination, the Board will receive verification of national certification directly from the certifying entity. Once the verification is received by the Board, the graduate physician assistant's license will be converted to a permanent license and he may apply for prescribing authority pursuant to Section 042 of these rules. (3-16-04)

c. The applicant who has failed the certification examination one (1) time, may petition the Board for a one-time extension of his graduate physician assistant license for an additional six (6) months. (3-16-04)

d. If the graduate physician assistant fails to pass the certifying examination on two (2) separate occasions, the graduate physician assistant's license will automatically be canceled upon receipt of the second failing certification examination score. (3-16-04)

e. The graduate physician assistant applicant will agree to execute an authorization for the release of information, attached to his application as Exhibit A, authorizing the Board or its designated agents, having information relevant to the application, including but not limited to the status of the certification examination, to release such information, as necessary, to his supervising physician. (3-16-04)

02. Licensure Prior to College Baccalaureate Degree -- Board Consideration. Licensure as a graduate physician assistant may also be considered upon application made to the Board on forms supplied by the Board and payment of the prescribed fee when all application requirements have been met as set forth in Section 020 of these rules, except receipt of documentation of a college baccalaureate degree, provided: ()

a. A college baccalaureate degree from a nationally accredited school with a curriculum approved by the United States Secretary of Education, the Council for Higher Education Accreditation, or both, or from a school accredited by another such agency approved by the Board shall be completed within five (5) years of initial licensure in Idaho; (4-11-19)

03. No Prescribing Authority. Graduate physician assistants shall not be entitled to issue any written or oral prescriptions unless granted an exemption by the Board. Application for an exemption must be in writing and accompany documentation of a minimum of five (5) years of recent practice as a physician assistant in another state. (4-11-19)

04. Weekly Record Review. Graduate physician assistants must have a weekly record review by their supervising physician, unless subject to an exemption as granted in Subsection 036.03. (3-29-17)

037. -- 041. (RESERVED)

042. PRESCRIPTION WRITING.

Approval and Authorization Required. A physician assistant may issue written or oral prescriptions for legend drugs and controlled drugs, Schedule II through V only in accordance with the current delegation of services agreement and applicable federal and state law, and any prescriptive practice will be consistent with the regular prescriptive practice of the supervising or alternate supervising physician. ()

043. -- 050. (RESERVED)

051. FEES - TABLE.

Nonrefundable fees are as follows:

Licensure Fee - Physician Assistant & Graduate Physician Assistant	-	Not more than \$250
Annual License Renewal Fee	-	Not more than \$150
Reinstatement Fee	-	\$50 plus past renewal fees
Reinstatement Fee for Graduate Physician Assistant	-	Not more than \$100
Inactive License Fee	-	Not more than \$150
Annual Renewal of Inactive License Fee	-	Not more than \$100
Inactive Conversion Fee	-	Not more than \$150

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052. -- 999. (RESERVED)

22.01.10 – RULES FOR THE LICENSURE OF ATHLETIC TRAINERS TO PRACTICE IN IDAHO

000. LEGAL AUTHORITY.

Pursuant to Section 54-3914(2), Idaho Code, the Idaho State Board of Medicine is authorized to promulgate rules to govern the practice of athletic trainers. (7-1-93)

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 22.01.10, “Rules for the Licensure of Athletic Trainers to Practice in Idaho.” (3-16-04)

02. **Scope.** Pursuant to this chapter and Idaho Code, Section 54-3904, athletic trainers must be licensed with the Board prior to commencement of activities related to athletic training. (3-16-04)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Actively Engaged.** A person who is employed in Idaho on a remuneration basis by an educational or health care institution, professional, amateur, or recreational sports club, or other bona fide athletic organization and is involved in athletic training as a responsibility of his employment. (3-16-04)

02. **Association.** The Idaho Athletic Trainers’ Association. (9-16-89)

03. **Athletic Training Service Plan or Protocol.** A written document, made upon a form provided by the Board, mutually agreed upon, signed and dated by the athletic trainer and directing physician that defines the athletic training services to be provided by the athletic trainer. The Board may review athletic training service plans or protocols, job descriptions, policy statements, or other documents that define the responsibilities of the athletic trainer in the practice setting, and may require such changes as needed to achieve compliance with this chapter and Title 54, Chapter 39, Idaho Code, and to safeguard the public. The Board of Chiropractic Physicians may review those athletic training service plans or protocols or other documents that define the responsibilities of the athletic trainer for those athletic trainers whose directing physicians are chiropractic physicians. (3-16-04)

011. SCOPE OF PRACTICE.

01. **Referral by Directing Physician.** An athletic injury not incurred in association with an educational institution, professional, amateur, or recreational sports club or organization must be referred by a directing physician, but only after such directing physician has first evaluated the athlete. An athletic trainer treating or evaluating an athlete with an athletic injury incurred in association with an amateur or recreational sports club or organization will especially consider the need for a directing physician to subsequently evaluate the athlete and refer for further athletic training services. (3-16-04)

02. **Limitations of Scope of Practice.** The scope of practice of the athletic trainer, as set forth in this chapter and Section 54-3903, Idaho Code, shall be limited to and consistent with the scope of practice of his directing physician. (3-16-04)

03. **Identification.** The athletic trainer will at all times when on duty identify himself as an athletic trainer. (3-16-04)

012. ATHLETIC TRAINING SERVICE PLAN OR PROTOCOL.

Each licensed athletic trainer providing athletic training services will create, upon a form provided by the Board, an athletic training service plan or protocol with his directing physician. This athletic training service plan or protocol must be reviewed and updated on an annual basis. Each licensed athletic trainer must notify the Board within thirty (30) days of any change in the status of his directing physician. This plan or protocol will not be sent to the Board, but must be maintained on file at each location in which the athletic trainer is practicing. The Board may review athletic training service plans or protocols, job descriptions, policy statements, or other documents that define the responsibilities of the athletic trainer in the practice setting, and may require such changes as needed to achieve compliance with this chapter, Title 54, Chapter 39, Idaho Code, and to safeguard the public. This plan or protocol will be made immediately available to the Board upon request. This plan or protocol will be made immediately available to the Board of Chiropractic Physicians upon request for those athletic trainers whose directing physicians are chiropractic physicians. This plan or protocol will include: (3-16-04)

01. Listing of Services and Activities. A listing of the athletic training services to be provided and specific activities to be performed by the athletic trainer. (3-16-04)

02. Locations and Facilities. The specific locations and facilities in which the athletic trainer will function; and (3-16-04)

03. Methods to be Used. The methods to be used to ensure responsible direction and control of the activities of the athletic trainer, which will provide for the: (3-16-04)

a. Recording of an on-site visit by the directing physician at least semiannually or every semester; ()

b. Availability of the directing physician to the athletic trainer in person or by telephone and procedures for providing direction for the athletic trainer in emergency situations; and (3-16-04)

c. Procedures for addressing situations outside the scope of practice of the athletic trainer. (3-16-04)

013. -- 019. (RESERVED)

020. GENERAL QUALIFICATIONS FOR LICENSURE AND RENEWAL.

Requirements for licensure and renewal are found in Title 54, Chapter 39, Idaho Code, IDAPA 22.01.05, and on Board approved forms. ()

021. -- 029. (RESERVED)

030. APPLICATION FOR LICENSURE.

01. Application for Provisional Licensure. (3-16-04)

a. The Board, based upon the recommendation of the Board of Athletic Trainers, may issue provisional licensure to applicants who have successfully completed a bachelor's or advanced degree from an accredited four (4) year college or university, and met the minimum athletic training curriculum requirement established by the Board as recommended by the Board of Athletic Trainers and who have met all the other requirements set forth by Section 020 of these rules but who have not yet passed the examination conducted by the National Athletic Trainers' Association Board of Certification or a nationally recognized credentialing agency, approved by the Board as recommended by the Board of Athletic Trainers. ()

b. Each applicant for provisional licensure will submit a completed written application to the Board on forms prescribed by the Board, together with the application fee. The application shall be verified, under oath, and include an affidavit signed by an Idaho licensed athletic trainer affirming and attesting to supervise and be responsible for the athletic training services of the provisionally licensed athletic trainer and to review and countersign all records and documentation of services performed by the provisionally licensed athletic trainer. ()

ii. Supervision. A provisionally licensed graduate athletic trainer must be in direct association with his directing physician and Idaho licensed athletic trainer who will supervise and be available to render direction in person and on the premises where the athletic training services are being provided. The directing physician and the supervising athletic trainer is responsible for the athletic training services provided by the provisionally licensed graduate athletic trainer. The extent of communication between the directing physician and supervising athletic trainer and the provisionally licensed athletic trainer is determined by the competency of the provisionally licensed athletic trainer and the practice setting and the type of athletic training services being rendered. ()

c. Scope of Practice. The scope of practice of the provisionally licensed athletic trainer, as set forth in this chapter and Section 54-3903, Idaho Code, is limited to and consistent with the scope of practice of his directing physician and supervising athletic trainer and conform with the established athletic training service plan or protocol. (3-16-04)

d. Expiration of Provisional License. All provisional licenses for athletic trainers will expire upon meeting the minimum athletic training curriculum requirement established by the Board as recommended by the Board of Athletic Trainers and meeting all the other requirements set forth by Section 020 of these rules, including passing the certification examination conducted by the National Athletic Trainers' Association Board of Certification or a nationally recognized credentialing agency, approved by the Board as recommended by the Board of Athletic Trainers. (3-16-04)

031. -- 051. (RESERVED)

052. DENIAL OR REFUSAL TO RENEW LICENSURE OR SUSPENSION OR REVOCATION OF LICENSURE.

01. Application or Renewal Denial. A new or renewal application for licensure may be denied by the Board and shall be considered a contested case. Every person licensed pursuant to Title 54, Chapter 39, Idaho Code and these rules is subject to discipline pursuant to the procedures and powers established by and set forth in Section 54-3911, Idaho Code, and the Idaho Administrative Procedure Act. ()

02. Petitions for Reconsideration of Denial. All petitions for reconsideration of a denial of a license application or reinstatement application shall be made to the Board within one (1) year from the date of the denial. (3-16-04)

053. -- 060. (RESERVED)

061. FEES -- TABLE.

Nonrefundable fees are as follows:

Athletic Trainer Licensure Fee	-	Not more than \$240
Athletic Trainer Annual Renewal Fee	-	Not more than \$160
Directing Physician Registration Fee	-	Not more than \$50
Annual Renewal of Directing Physician Registration Fee	-	Not more than \$25
Alternate Directing Physician Registration/Renewal Fee	-	\$0
Provisional Licensure Fee	-	Not more than \$80
Annual Renewal of Provisional License Fee	-	Not more than \$40
Inactive License Renewal Fee	-	Not more than \$0
Reinstatement Fee	-	Not more than \$50 plus unpaid renewal fees

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062. -- 999. (RESERVED)

**22.01.11 – RULES FOR LICENSURE OF RESPIRATORY THERAPISTS AND
PERMITTING OF POLYSOMNOGRAPHERS IN IDAHO**

000. LEGAL AUTHORITY.

Pursuant to Sections 54-4304A, 54-4305, 54-4309, 54-4310, 54-4311, 54-4312 and 54-4316, Idaho Code, the Idaho State Board of Medicine is authorized to promulgate rules governing the practice of respiratory care and polysomnography related respiratory care. (3-26-08)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 22.01.11, “Rules for Licensure of Respiratory Therapists and Permitting of Polysomnographers in Idaho.” (3-16-04)

02. Scope. Pursuant to Sections 54-4304 and 54-4304A, Idaho Code, and this chapter, respiratory therapists must be licensed and polysomnographers issued a permit by the Board prior to commencement of practice and related activities. (3-16-04)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board of Registered Polysomnographic Technologists. A nationally recognized private testing, examining and credentialing body for the polysomnography related respiratory care profession. (3-16-04)

02. Comprehensive Registry Exam. The comprehensive registry examination administered by the Board of Registered Polysomnographic Technologists, or administered by an equivalent board, recognized by the Board, the successful completion of which entitles a person to the professional designation of Registered Polysomnographic Technologist (RPSGT). (3-16-04)

03. Conditional Permit. A time-restricted permit issued by the Board. ()

04. Medical Practice Act. Title 54, Chapter 18, Idaho Code. ()

05. Written Registry and Clinical Simulation Examinations. The certification examinations administered by the National Board of Respiratory Care, Inc., or certification examinations administered by an equivalent board, recognized by the Board, the successful completion of which entitles a person the professional designation of “Registered Respiratory Therapist” (RRT). (3-16-04)

011. APPLICATION TO BOTH PERMITS AND LICENSES.

The provisions of this chapter governing procedures for suspension and revocation of licenses, payment and assessment of fees and governing misrepresentation, penalties and severability and other administrative procedures shall apply equally to permits for the practice of polysomnography related respiratory care services as to licenses for the practice of respiratory care. (3-16-04)

012. -- 030. (RESERVED)

031. GENERAL QUALIFICATIONS FOR LICENSURE AND RENEWAL.

Requirements for licensure and renewal are found in Title 54, Chapter 43, Idaho Code, IDAPA 22.01.05, and on Board approved forms. ()

01. Application for Respiratory Care and Polysomnography Related Respiratory Care Practitioner. (3-16-04)

a. The Board may issue a dual license/permit to an applicant who meets the requirements set forth in this chapter and Sections 54-4306 and 54-4304A(2) and (3), Idaho Code. A dual license/permit shall authorize the holder to perform respiratory care and polysomnography related respiratory care in this state. (3-16-04)

b. Application for a dual license/permit shall be made to the Board on a form prescribed by the Board, together with the application fee. (3-16-04)

c. Such dual license/permit shall expire on the expiration date printed on the face of the certificate unless renewed. (3-16-04)

032. CONTINUING EDUCATION.

01. Evidence of Completion. Prior to renewal each applicant for renewal, reinstatement or reapplication, shall submit evidence of successfully completing no less than twelve (12) clock hours per year of continuing education acceptable to the Board. Continuing education must be germane to the practice or performance of respiratory care. Appropriate continuing professional education activities include but are not limited to, the following: (4-11-06)

- a. Attending or presenting at conferences, seminars or inservice programs. (2-23-94)
- b. Formal course work in Respiratory Therapy related subjects. (2-23-94)

02. Polysomnographer Continuing Education. Each individual applicant for renewal of an active permit shall, on or before the expiration date of the permit, submit satisfactory proof to the Licensure Board of successful completion of not less than twelve (12) hours of approved continuing education pertaining to the provision of polysomnographic-related respiratory care per year in addition to any other requirements for renewal as adopted by the Board. The Board, as recommended by the Licensure Board, may substitute all or a portion of the coursework required in Section 032 when an applicant for renewal shows evidence of passing an approved challenge exam or of completing equivalent education as determined by the Board, as recommended by the Licensure Board, to be in full compliance with the education requirements of this chapter. ()

033. SUPERVISION OF RESPIRATORY CARE.

The practice or provision of respiratory care by persons holding a student or consulting and training exemption, or temporary permit shall be in direct association with a respiratory care practitioner or licensed physician who shall be responsible for the activities of the person being supervised and shall review and countersign all patient documentation performed by the person being supervised. The supervising respiratory care practitioner or licensed physician need not be physically present or on the premises at all times but must be available for telephonic consultation. The extent of communication between the supervising or consulting respiratory care practitioner or licensed physician and the person being supervised shall be determined by the competency of the person, the treatment setting, and the diagnostic category of the client. ()

034. DENIAL OR REFUSAL TO RENEW LICENSE OR PERMIT OR SUSPENSION OR REVOCATION OF LICENSE OR PERMIT.

Discipline. A new or renewal application may be denied, and every person licensed or issued a permit pursuant to Title 54, Chapter 43, Idaho Code and these rules is subject to discipline, pursuant to the procedures and powers established by and set forth in Section 54-4312, Idaho Code and the Administrative Procedures Act. ()

035. -- 045. (RESERVED)

046. FEES -- TABLE.

01. Fees -- Table. Nonrefundable fees for Respiratory Care Practitioners are as follows:

Respiratory Care Practitioner Initial Licensure Fee -	Not more than \$180
Respiratory Care Practitioner Reinstatement Fee -	\$50 plus unpaid renewal fees
Annual Renewal Fee for Inactive License -	Not more than \$100
Inactive Conversion Fee -	Not more than \$100
Annual Renewal Fee -	Not more than \$140
Temporary Permit Fee -	Not more than \$180

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02. Fees – Table. Nonrefundable Permit Fees for Polysomnography Related Respiratory Care Practitioners.

Initial Permit Fee – Registered Polysomnographic Technologist -	Not more than \$180
Initial Permit Fee -Polysomnographic Trainee -	Not more than \$100
Reinstatement Fee – Registered Polysomnographic Technologist -	\$50 plus unpaid renewal fees
Annual Renewal Fee – Registered Polysomnographic Technologist -	Not more than \$140
Annual Renewal Fee – Polysomnographic Trainee -	Not more than \$70
Temporary Permit Fee – Registered Polysomnographic Technologist -	Not more than \$180
Temporary Permit Fee – Polysomnographic Trainee -	Not more than \$90
Conditional Permit Fee – Registered Polysomnographic Technologist -	Not more than \$180
Conditional Permit Fee – Polysomnographic Trainee -	Not more than \$90
Annual Renewal Fee for Inactive License—Polysomnographic Technologist -	Not more than \$100
Inactive Conversion Fee -	Not more than \$100 plus unpaid active licensure fees for the time inactive

()

03. Fees - Table. Nonrefundable Dual Licensure/Permit Fees for Practitioners of Respiratory and Polysomnography Related Respiratory Care. ()

a. Initial Licensure/Permit Fee. A person holding a current license or permit, if qualified, may apply for and obtain a dual license/permit without paying an additional fee.

Dual Licensure/Permit Fee -	Not more than \$180
A person holding a current license or permit, if qualified, may apply for and obtain a dual license/permit without paying an additional fee.	
Reinstatement Fee -	\$50 plus unpaid renewal fees
Annual Renewal Fee -	Not more than \$140
Renewal is required upon the expiration of either the permit or the license, whichever expires first if the two (2) initially were not obtained at the same time.	

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047. -- 999. (RESERVED)

22.01.13 – RULES FOR THE LICENSURE OF DIETITIANS

000. LEGAL AUTHORITY.

Pursuant to Section 54-3505(2), Idaho Code, the Idaho State Board of Medicine is authorized to promulgate rules to implement provisions of the Dietitians Act. (12-28-94)

001. TITLE AND SCOPE.

These rules are titled IDAPA 22.01.13, "Rules for the Licensure of Dietitians." (12-28-94)

002. -- 019. (RESERVED)

020. GENERAL QUALIFICATIONS FOR LICENSURE AND RENEWAL.

Requirements for licensure and renewal are found in Title 54, Chapter 35, Idaho Code, IDAPA 22.01.05, and on Board-approved forms. ()

021. PROVISIONAL LICENSURE.

01. Provisional License. The Board may issue a provisional license to a person who has successfully completed the academic requirements of an education program in dietetics approved by the licensure board and has successfully completed a dietetic internship or preprofessional practice program, coordinated program or such other equivalent experience as may be approved by the board and who has met all the other requirements set forth by Section 020 of this rule but who has not yet passed the examination conducted by the Commission on Dietetic Registration. (4-2-03)

02. Provisional License Dietitian/Monitor Affidavit. The provisionally licensed dietitian must obtain an affidavit signed by an Idaho licensed dietitian affirming and attesting that they will be responsible for the activities of the provisionally licensed dietitian and will review and countersign all patient documentation signed by the provisionally licensed dietitian. supervising monitor need not be physically present or on the premises at all times but must be available for telephonic consultation. The extent of communication between the monitor and the provisionally licensed dietitian will be determined by the competency of the individual, the treatment setting, and the diagnostic category of the patients. ()

03. Provisional Licensure Expiration. Provisional licenses will become full active licenses upon the date of receipt of a copy of registration by the Commission on Dietetic Registration. All provisional licenses will expire on the last day of the current renewal cycle. ()

022. -- 031. (RESERVED)

032. DENIAL OR REFUSAL TO RENEW, SUSPENSION OR REVOCATION OF LICENSE.

01. Disciplinary Authority. A new or renewal application may be denied or a license may be suspended or revoked by the Board, and every person licensed pursuant to Title 54, Chapter 35, Idaho Code and these rules is subject to disciplinary actions or probationary conditions pursuant to the procedures and powers established by and set forth in Section 54-3505, Idaho Code, and the Idaho Administrative Procedure Act. ()

033. -- 040. (RESERVED)

041. FEES -- TABLE.

Nonrefundable fees are as follows:

Initial Licensure Fee -	Not more than \$150
Annual Renewal Fee -	Not more than \$100
Reinstatement Fee -	\$50 plus unpaid renewal fees
Inactive Conversion Fee -	Not more than \$50

()

042. -- 999. (RESERVED)

IDAPA 22 – BOARD OF MEDICINE

22.01.07 – RULES FOR THE LICENSURE OF NATUROPATHIC MEDICAL DOCTORS

DOCKET NO. 22-0107-1901 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 54-1806(2) and 54-5105(2), Idaho Code.

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

During the 2019 Legislative Session, the Legislature passed a law authorizing licensure of 4-year post-graduate educated Naturopathic Medical Doctors. Eligible Naturopathic Medical Doctors will be licensed beginning July 1, 2020, under the Board of Medicine. The Naturopathic Medical Board, a board formed under the Board of Medicine on July 1, 2019, proposes a rule that, in concert with the Naturopathic Medicine Licensing statute, will govern the licensure, scope of practice, and discipline of the Naturopathic Medical Doctors.

Changes to the pending rule were adopted by the Idaho State Board of Medicine on November 8, 2019, and include:

- Deletion of subsection 021.03 regarding a possible waiver of the requirement to take the national pharmacology exam as a prerequisite for licensure in Idaho; and
- Deletion of subsection 032.10 regarding discipline for failure to be lawfully present in the United States, to be consistent with all other Board of Medicine rules.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the November 6, 2019 Idaho Administrative Bulletin, [Vol. 19-11, pages 306-309](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 54-5106, Idaho Code.

This rule includes licensure of Naturopathic Medical Doctors, for which the agency will charge a fee not to exceed \$600 per initial license application and \$300 per annual license renewal, increasing the Board's annual income by approximately \$30,000 in the first year.

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: Not applicable. The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Anne K. Lawler, Executive Director, at (208) 327-7000.

Dated this 29th day of November, 2019.

Anne K. Lawler, JD, RN, Executive Director
Ph: (208) 327-7000 / Fax: (208) 327-7005
E-mail: anne.lawler@bom.idaho.gov

Idaho State Board of Medicine
345 W. Bobwhite Court, Suite 150
Boise, Idaho 83706

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency initiated proposed rulemaking procedures. The action is authorized Pursuant to Section 54-5105(2), Idaho Code.

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

PUBLIC HEARING

Tuesday, November 7, 2019 – 11:00 a.m. - 12:00 p.m. (MST)

Idaho State Board of Medicine
SpringHill Suites Marriott Boise Parkcenter
424 E. Parkcenter Blvd., Clearwater Room
Boise, Idaho 83706

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

During the 2019 Legislative Session, the Legislature passed a law for the licensure of 4-year post-graduate educated Naturopathic Medical Doctors. Eligible Naturopathic Medical Doctors will be licensed beginning July 1, 2020, under the Board of Medicine. The Naturopathic Medical Board, a board formed under the Board of Medicine on July 1, 2019, proposes Rules that, in concert with the Naturopathic Medicine Licensing statute, will govern the licensure, scope of practice, and discipline of the Naturopathic Medical Doctors.

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

When the Naturopathic Medical Board begins licensing Naturopathic Medical Doctors beginning July 1, 2020, the Board will charge a licensure fee of no more than \$600 per applicant as described in the Fee Table of these Rules. The other fees for license renewal, reinstatement, inactive license, and duplicate wallet card and wall certificate are also defined in these Proposed Rules.

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:

Not applicable. The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund. This rule provides for licensure of Naturopathic Medical Doctors, which will increase the Board's income by the licensure fees minus any expenses and administrative costs for licensure.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted with interested parties, including the state naturopathic association and state medical association, and such negotiations shall continue through the comment period and hearing.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2) (a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Anne K. Lawler, Executive Director, (208) 327-7000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 2019.

Dated this 19th day of September, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 22-0107-1901

22.01.07 – RULES FOR THE LICENSURE OF NATUROPATHIC MEDICAL DOCTORS

000. LEGAL AUTHORITY.

Pursuant to Section 54-5104(2), Idaho Code, the Idaho State Board of Medicine is authorized to promulgate rules to implement provisions of the Naturopathic Medicine Act. ()

001. TITLE AND SCOPE.

These rules are titled IDAPA 22.01.07, “Rules for the Licensure of Naturopathic Medical Doctors,” and governs the licensure, scope of practice, and discipline of the Naturopathic Medical Doctors. ()

002. – 009. (RESERVED)

010. DEFINITIONS.

01. Council on Naturopathic Medical Education (CNME). The accrediting organization that is recognized by the United States Department of Education as the accrediting agency for education programs that prepare naturopathic medical doctors. ()

02. North American Board of Naturopathic Examiners (NABNE). The independent, nonprofit organization that qualifies applicants to take the Naturopathic Physicians Licensing Exam and submits those results to the regulatory authority. ()

03. Naturopathic Physicians Licensing Exam (NPLEX). The board examination for naturopathic medical doctors. ()

04. Naturopathic Medical Doctor. A person who meets the definition in Section 54-5101(5), Idaho Code. Licensed naturopathic physician, physician of naturopathic medicine, naturopathic medical doctor and NMD are interchangeable terms. ()

05. Primary Care. Comprehensive first contact and/or continuing care for persons with any sign, symptom, or health concern not limited by problem of origin, organ system, or diagnosis. It includes health promotion, disease prevention, health maintenance, counseling, patient education, diagnosis and treatment of acute and chronic illness. It includes collaborating with other health professionals and utilizing consultation or referral as appropriate. ()

011. – 019. (RESERVED)

020. GENERAL QUALIFICATIONS FOR LICENSURE.

Requirements for licensure and renewal are found in Title 54, Chapter 51, Idaho Code, IDAPA 22.01.05, “General Provisions of the Board of Medicine,” and on Board-approved forms. ()

021. APPLICATION FOR LICENSURE.

01. Application. Each applicant for licensure will submit a completed written application to the Board on forms prescribed by the Board, together with the nonrefundable application fee. ()

02. Licensing Examinations. Each applicant must provide certification of passing the following four (4) NPLEX exams: ()

- a. Part I Biomedical Science; ()
- b. Part II Core Clinical Science; ()
- c. Part II Clinical Elective Minor Surgery; and ()
- d. Part II Clinical Elective Pharmacology. ()

022. AUTHORITY TO PRESCRIBE, DISPENSE, ADMINISTER, AND ORDER.

Naturopathic medical doctors are allowed to prescribe, dispense, administer, and order the following: ()

01. Laboratory and Diagnostic Procedures. Naturopathic medical doctors licensed under this chapter may perform and order physical examinations, laboratory tests, imaging, and other diagnostic tests consistent with primary care. ()

a. All examinations, laboratory, and imaging tests not consistent with primary care must be referred to an appropriately licensed health care professional for treatment and interpretation. ()

b. Any test result or lesion suspicious of malignancy must be referred to the appropriate physician licensed pursuant to Chapter 18, Title 54 Idaho Code. ()

02 Naturopathic Formulary. The formulary for naturopathic medical doctors licensed under this chapter consists of non-controlled legend medications (excluding testosterone) deemed appropriate for the primary health care of patients within the scope of practice and training of each naturopathic medical doctor. Prescribing pursuant to the Naturopathic Formulary shall be according to the standard of health care provided by other qualified naturopathic medical doctors in the same community or similar communities, taking into account their training, experience and the degree of expertise to which they hold themselves out to the public. ()

03. Formulary Exclusions. The naturopathic formulary does not include: ()

a. Scheduled, controlled drugs, except for testosterone used in physiologic doses with regular lab assessment for hormone replacement therapy, gender dysphoria, or hypogonadism; ()

b. General anesthetics; ()

c. Blood derivatives except for platelet rich plasma; or ()

d. Systemic antineoplastic agents, except for the following antineoplastic agents used orally or topically for non-cancer purposes: ()

i. Fluorouracil (5FU); ()

ii. Anastrozole; and ()

iii. Letrozole. ()

023. – 031. (RESERVED)

032. GROUNDS FOR DISCIPLINE OR DENIAL OF A LICENSE.

In addition to statutory grounds for discipline set forth in Section 54-5109, Idaho Code, every person licensed as a naturopathic medical doctor is subject to discipline by the Board under the following grounds: ()

01. Ability to Practice. Demonstrating a manifest incapacity to carry out the functions of the licensee's ability to practice naturopathic medicine or deemed unfit by the Board to practice naturopathic medicine; ()

02. Controlled Substance or Alcohol Abuse. Using any controlled substance or alcohol in a manner which has or may have a direct and adverse bearing on the licensee's ability to practice naturopathic medicine with reasonable skill and safety; ()

03. Education or Experience. Misrepresenting educational or experience attainments; ()

04. Medical Records. Failing to maintain adequate naturopathic medical records. Adequate naturopathic medical records mean legible records that contain subjective information, an evaluation or report of objective findings, assessment or diagnosis, and the plan of care; ()

05. Untrained Practice. Practicing in an area of naturopathic medicine for which the licensee is not trained; ()

06. Sexual Misconduct. Committing any act of sexual contact, misconduct, exploitation, or intercourse with a patient or former patient or related to the licensee's practice of naturopathic medicine; ()

a. Consent of the patient shall not be a defense. ()

b. Subsection 032.06 does not apply to sexual contact between a naturopathic medical doctor and the naturopathic medical doctor's spouse or a person in a domestic relationship who is also a patient. ()

c. A former patient includes a patient for whom the naturopathic medical doctor has provided naturopathic medical services within the last twelve (12) months. Sexual or romantic relationships with former patients beyond that period of time may also be a violation if the naturopathic medical doctor uses or exploits the trust, knowledge, emotions, or influence derived from the prior professional relationship with the patient. ()

07. Failure to Report. Failing to report to the Board any known act or omission of a licensee, applicant, or any other person, that violates any of the rules promulgated by the Board under the authority of the act; ()

08. Interfering with or Influencing Disciplinary Outcome. Interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats or harassment against any patient, Board or naturopathic medical board, Board staff, hearing officer, or witness in an attempt to influence the outcome of a disciplinary proceeding, investigation or other legal action; ()

09. Failure to Obey Laws and Rules. Failing to obey federal and local laws and rules governing the practice of naturopathic medicine; or ()

033. CONTINUING MEDICAL EDUCATION (CME) REQUIREMENTS.

01. Renewal. Every two (2) years, a total of forty-eight (48) hours (twenty (20) of which is pharmacology) of Board-approved CME is required as part of the naturopathic medical doctor's license renewal. ()

02. Verification of Compliance. Licensees must, at license renewal, provide a signed statement to the Board indicating compliance. The Board, in its discretion, may require such additional evidence as it deems necessary to verify compliance. ()

034. – 040. (RESERVED)

041. FEES.

Nonrefundable fees are shown in the following table:

Fee Table	
Licensure Fee	Not more than \$600
Annual License Renewal Fee	Not more than \$300
Reinstatement Fee	Not more than \$200
Inactive License Renewal Fee	Not more than \$100
Duplicate Wallet License Fee	Not more than \$20
Duplicate Wall License Fee	Not more than \$50

()

042. – 999. RESERVED

IDAPA 23 – BOARD OF NURSING

DOCKET NO. 23-0101-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-1404 (13), Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 23, rules of the Board of Nursing:

IDAPA 23

- 23.01.01, *Rules of the Idaho Board of Nursing*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 4489 - 4547](#).

The rule making was prompted by the expiration of the rules. The Board considered the Licensing Freedom Act and the Red Tape Reduction Act and the continued efforts to clarify and streamline its rules. Changes were made to Unlicensed Assistant Professionals because of no statutory authority for such rules. Some fee rules were eliminated. Minor housekeeping edits are also intended to make the Board's rules consistent with recent statutory changes, clarify and simplify existing language, and reduce or eliminate unnecessary restrictions.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

IDAPA 23.01.01

- 497.01-08:** Fees applicable to Medication Assistant-Certified and the certification process;
- 900.01-03:** Renewal and Reinstatement Fees;
- 901.01-08:** Licensure Fees;
- 903.01-02:** Education Program Fees;
- 906:** Returned Check Fee
- 999.01:** Administrative Fine

As part of this rule making, the following fees were eliminated:

- 901.04:** Verification of Licensure Fee;
- 901.05:** Emeritus License Fee;
- 901.07:** Limited License Fee.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Janet Summers (208) 577-2500.

Dated this 16th day of October, 2019.

Russ Barron, Executive Director
Idaho Board of Nursing
280 N. 8th Street, Ste. 210
PO Box 83720
Boise, Idaho 83720
Phone: (208) 577-2476
Fax: (208) 334-3262

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-1404 (13), Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 23, rules of the Board of Nursing:

IDAPA 23

- 23.01.01, *Rules of the Idaho Board of Nursing*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The Legislature has found under Section 54-1401, Idaho Code, that it is necessary to regulate nursing in the state of Idaho to safeguard the public health, safety and welfare, promote quality health care services, to prohibit unqualified and dishonest persons from practicing nursing, and to protect against acts or conduct which may endanger the health and safety of the public.

The fee or charge imposed by the rule is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and

passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. IDAPA 23.01.01 Rules of the Board of Nursing specify various fees, as detailed below, that constitute the dedicated fund portion of the Board of Nursing budget, as approved by the Legislature in its FY2020 appropriation bill.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

IDAPA 23.01.01.497.01-08: Fees applicable to Medication Assistant-Certified and the certification process;
IDAPA 23.01.01.900.01-03: Renewal and Reinstatement Fees;
IDAPA 23.01.01.901.01-08: Licensure Fees;
IDAPA 23.01.01.903.01-02: Education Program Fees;
IDAPA 23.01.01.906: Returned Check Fee
IDAPA 23.01.01.999.01: Administrative Fine

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Susan K. Odom (208) 577-2479.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 23-0101-1900F

23.01.01 – RULES OF THE IDAHO BOARD OF NURSING

000. LEGAL AUTHORITY.

This chapter is adopted in accordance with Section 54-1404(13), Idaho Code. (4-4-13)

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 23.01.01, “Rules of the Idaho Board of Nursing.” (7-1-93)

02. **Scope.** These rules include, but are not limited to the minimum standards of nursing practice, licensure, educational programs and discipline. (7-1-93)

002. FILING OF DOCUMENTS.

All written communications and documents that are intended to be part of an official record for decision in a rulemaking or contested case must be filed with the executive director of the Board. One (1) original is sufficient for submission to the hearing officer, with one (1) copy for the Board and one (1) copy submitted to the opposing party. Whenever documents are filed by facsimile transmission (FAX), originals are to be deposited in the mail the same day or hand delivered the following business day to the hearing officer or the Board, and opposing parties. (3-30-01)

003. CHANGES IN NAME AND ADDRESS – ADDRESS FOR NOTIFICATION PURPOSES.

01. **Change of Name.** Whenever a change of licensee name or address occurs, the Board is to be immediately notified of the change. Documentation confirming the change of name will be provided to the Board on request. ()

02. **Address for Notification Purposes.** (3-24-17)

a. The most recent mailing or electronic address on record with the Board is utilized for purposes of all written communication with the licensee. ()

b. In a contested case proceeding, the service of process of Board documents (including notices, summonses, complaints, subpoenas and orders) is made by: ()

i. Personal service; (3-24-17)

ii. Mailing to the licensee’s mailing address on record; or (3-24-17)

iii. E-mailing to the licensee’s electronic address on record, if authorized. Service on an electronic address is authorized when the licensee has already appeared in the proceeding or has agreed in writing to service by e-mail. (3-24-17)

004. -- 009. (RESERVED)

010. DEFINITIONS.

The definitions set forth in Section 54-1402, Idaho Code, are applicable to these rules. In addition, unless the context clearly denotes or requires otherwise, for purposes of these rules, the below terms have the following meanings: ()

01. **Abandonment.** The termination of a nurse/patient relationship without first making appropriate arrangements for continuation of required nursing care. The nurse/patient relationship begins when responsibility for nursing care of a patient is accepted by the nurse. Refusal to accept an employment assignment or refusal to accept or begin a nurse/patient relationship is not abandonment. Reasonable notification, or a timely request for alternative care for a patient, directed to a qualified provider or to a staff supervisor, prior to leaving the assignment, constitutes termination of the nurse/patient relationship. (4-4-13)

02. **Accreditation.** The official authorization or status granted by a recognized accrediting entity or agency other than a state board of nursing. (7-1-93)

03. **Administration of Medications.** The process whereby a prescribed medication is given to a patient by one (1) of several routes. Administration of medication is a complex nursing responsibility which requires a knowledge of anatomy, physiology, pathophysiology, and pharmacology. Only persons authorized under Board statutes and these rules may administer medications and treatments as prescribed by health care providers authorized

- to prescribe medications. (4-7-11)
- 04. Approval.** The process by which the Board evaluates and grants official recognition to education programs that meet standards established by the Board. (5-3-03)
- 05. Assist.** To aid or help in the accomplishment of a prescribed set of actions. (7-1-93)
- 06. Assistance With Medications.** The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a patient who cannot independently self-administer medications. (5-3-03)
- 07. Board Staff.** The executive director and other such personnel as are needed to implement the Nursing Practice Act and these rules. (7-1-93)
- 08. Charge Nurse.** A licensed nurse who bears primary responsibility for assessing, planning, prioritizing and evaluating care for the patients on a unit, as well as the overall supervision of the licensed and unlicensed staff delivering the nursing care. (5-3-03)
- 09. Clinical Preceptor.** A licensed registered nurse, or other qualified individual as defined in these rules, who acts to facilitate student training in a manner prescribed by a written agreement between the preceptor's employer and an educational institution. (3-29-17)
- 10. Competence.** Safely performing those functions within the role of the licensee in a manner that demonstrates essential knowledge, judgment and skills. (5-3-03)
- 11. Curriculum.** The systematic arrangement of learning experiences including didactic courses, practical experiences, and other activities needed to meet the requirements of the nursing program and of the certificate or degree conferred by the parent institution. (5-3-03)
- 12. Delegation.** The process by which a licensed nurse assigns tasks to be performed by others. (5-3-03)
- 13. Disability.** Any physical, mental, or emotional condition that interferes with the ability to safely and competently practice. ()
- 14. Emeritus License.** A license issued to a nurse retiring from active practice for any length of time. ()
- 15. Licensing Examination.** A licensing examination acceptable to the Board. ()
- 16. License in Good Standing.** A license not subject to current disciplinary action, restriction, probation or investigation in any jurisdiction. (5-3-03)
- 17. Nursing Assessment.** The systematic collection of data related to the patient's health needs. ()
- 18. Nursing Diagnosis.** The clinical judgment or conclusion regarding patient/client/family/community response to actual or potential health problems made as a result of the nursing assessment. (7-1-93)
- 19. Nursing Intervention.** An action deliberately selected and performed to support the plan of care. (5-3-03)
- 20. Nursing Jurisdiction.** Unless the context clearly denotes a different meaning, when used in these rules, the term nursing jurisdiction means any or all of the fifty (50) states, U.S. territories or commonwealths, as the case may be. (4-4-13)
- 21. Nursing Service Administrator.** A licensed registered nurse who has administrative responsibility for the nursing services provided in a health care setting. (7-1-93)

- 22. Organized Program of Study.** A written plan of instruction to include course objectives and content, teaching strategies, provisions for supervised clinical practice, evaluation methods, length and hours of course, and faculty qualifications. (7-1-93)
- 23. Patient.** An individual or a group of individuals who are the beneficiaries of nursing services in any setting and may include client, resident, family, community. (5-3-03)
- 24. Patient Education.** The act of teaching patients and their families, for the purpose of improving or maintaining an individual's health status. (5-3-03)
- 25. Plan of Care.** The goal-oriented strategy developed to assist individuals or groups to achieve optimal health potential. (5-3-03)
- 26. Practice Standards.** General guidelines that identify roles and responsibilities for a particular category of licensure and, used in conjunction with the decision-making model, define a nurse's relationship with other care providers. (5-3-03)
- 27. Probation.** A period of time set forth in an order in which certain restrictions, conditions or limitations are imposed on a licensee. (5-3-03)
- 28. Protocols.** Written standards that define or specify performance expectations, objectives, and criteria. (5-3-03)
- 29. Restricted License.** A nursing license subject to specific restrictions, terms, and conditions. ()
- 30. Revocation.** Termination of the authorization to practice. (5-3-03)
- 31. Scope of Practice.** The extent of treatment, activity, influence, or range of actions permitted or authorized for licensed nurses based on the nurse's education, preparation, and experience. (5-3-03)
- 32. Supervision.** Designating or prescribing a course of action, or giving procedural guidance, direction, and periodic evaluation. Direct supervision requires the supervisor to be physically present and immediately accessible to designate or prescribe a course of action or to give procedural guidance, direction, and periodic evaluation. (4-6-05)
- 33. Suspension.** An order temporarily withdrawing a nurse's right to practice nursing. (5-3-03)
- 34. Technician/Technologist.** These individuals are not credentialed by regulatory bodies in Idaho and may include, but are not limited to: surgical, dialysis and radiology technicians/technologists, monitor technicians and medical assistants. (3-30-07)
- 35. Unlicensed Assistive Personnel (UAP).** This term is used to designate unlicensed personnel employed to perform nursing care services under the direction and supervision of licensed nurses. The term also includes licensed or credentialed health care workers whose job responsibilities extend to health care services beyond their usual and customary roles and which activities are provided under the direction and supervision of licensed nurses. UAPs are prohibited from performing any licensed nurse functions that are specifically defined in Section 54-1402, Idaho Code. UAPs may not be delegated procedures involving acts that require nursing assessment or diagnosis, establishment of a plan of care or teaching, the exercise of nursing judgment, or procedures requiring specialized nursing knowledge, skills or techniques. ()
- 36. Universal Precautions.** The recommendations published by the Center for Disease Control, Atlanta, Georgia, for preventing transmission of infectious disease. ()
- 011. -- 039. (RESERVED)**
- 040. TEMPORARY LICENSE.**
A temporary license is a nonrenewable license. (3-30-07)

01. Issued at Discretion of Board. Temporary licenses are issued, and may be extended, at the discretion of the Board. (3-30-07)

02. Temporary Licensure by Interstate Endorsement. A temporary license may be issued to an applicant for interstate endorsement on proof of current licensure in good standing in another nursing jurisdiction, satisfactory documentation of employment within the three (3) years immediately preceding application, and compliance with the requirements of Section 240 of these rules. (4-4-13)

03. Temporary Licensure by Examination. A temporary license to practice nursing until notification of examination results and completion of criminal background check may be issued to an applicant for Idaho licensure following graduation from a nursing education program recognized by the professional licensing board for another nursing jurisdiction, and compliance with Section 221 of these rules. (4-4-13)

a. The practice of nursing by new graduates holding temporary licensure is limited as follows: ()

i. Direct supervision by a licensed registered nurse is provided. ()

ii. Precluded from acting as charge nurse. ()

b. Temporary licenses issued to examination candidates are issued for a period not to exceed three (3) months. ()

04. Unsuccessful Examination Candidates. (6-11-93)

a. An applicant who fails to pass the licensing examination is not eligible for further temporary licensure. ()

b. In the event that such applicant subsequently passes the licensing examination after twelve (12) months or more have elapsed following completion of the educational program, a temporary license with conditions may be issued until verification of clinical competence is received. (3-30-01)

05. Applicants Not in Active Practice. A temporary license with specific terms and conditions may be issued to a person who has not actively engaged in the practice of nursing in any nursing jurisdiction for more than three (3) years immediately prior to the application for licensure or to an applicant whose completed application indicates the need for confirmation of the applicant's ability to practice safe nursing. (4-4-13)

06. Applicants from Other Countries. Upon final evaluation of the completed application, the Board may, at its discretion, issue a temporary license to a graduate from a nursing education program outside of a nursing jurisdiction, pending notification of results of the licensing examination. (4-4-13)

07. Fee. The applicant pays the temporary license fee, as prescribed in of these rules. ()

041. -- 059. (RESERVED)

060. LPN, RN, AND APRN LICENSE RENEWAL.
All licenses are renewed as prescribed in Section 54-1411, Idaho Code. ()

01. Renewal Applications. Renewal applications may be obtained by contacting the Board. (4-7-11)

02. Final Date to Renew. The original completed renewal application and renewal fee as prescribed in Section 900 of these rules, are submitted to the Board and post-marked or electronically dated not later than August 31 of the appropriate renewal year. ()

03. Date License Lapsed. Licenses not renewed prior to September 1 of the appropriate year are lapsed and therefore invalid. ()

061. CONTINUED COMPETENCE REQUIREMENTS FOR RENEWAL OF AN ACTIVE LICENSE.

01. Learning Activities. In order to renew an LPN or RN license, a licensee shall complete or comply with at least two (2) of any of the learning activities listed below in Paragraphs 061.01.a., b., or c. within the two-year (2) renewal period: (3-25-16)

- a. Practice:** (3-25-16)
 - i. Current nursing specialty certification as defined in Section 402 of these rules; or (3-25-16)
 - ii. One hundred (100) hours of practice or simulation practice, paid or unpaid, in which the nurse applies knowledge or clinical judgment in a way that influences patients, families, nurses, or organizations; (3-25-16)
- b. Education, Continuing Education, E-learning, and In-service:** (3-25-16)
 - i. Fifteen (15) contact hours of continuing education, e-learning, academic courses, nursing-related in-service offered by an accredited educational institution, healthcare institution, or organization (a contact hour equals not less than fifty (50) minutes); or (3-25-16)
 - ii. Completion of a minimum of one (1) semester credit hour of post-licensure academic education relevant to nursing practice, offered by a college or university accredited by an organization recognized by the U.S. Department of Education; or (3-25-16)
 - iii. Completion of a Board-recognized refresher course in nursing or nurse residency program; or (3-25-16)
 - iv. Participation in or presentation of a workshop, seminar, conference, or course relevant to the practice of nursing and approved by an organization recognized by the Board to include, but not limited to: (3-25-16)
 - (1) A nationally recognized nursing organization; (3-25-16)
 - (2) An accredited academic institution; (3-25-16)
 - (3) A provider of continuing education recognized by another board of nursing; (3-25-16)
 - (4) A provider of continuing education recognized by a regulatory board of another discipline; or (3-25-16)
 - (5) A program that meets criteria established by the Board; (3-25-16)
- c. Professional Engagement:** (3-25-16)
 - i. Acknowledged contributor to a published nursing-related article or manuscript; or (3-25-16)
 - ii. Teaching or developing a nursing-related course of instruction; or (3-25-16)
 - iii. Participation in related professional activities including, but not limited to, research, published professional materials, nursing-related volunteer work, teaching (if not licensee's primary employment), peer reviewing, precepting, professional auditing, and service on nursing or healthcare related boards, organizations, associations or committees. (3-25-16)

02. APRN Continued Competence Requirements. Registered nurses who also hold an active license as an APRN shall only meet the requirements of Section 300 of these rules. (3-25-16)

03. First Renewal Exemption. A licensee is exempt from the continued competence requirement for the first renewal following initial licensure by examination. (3-25-16)

04. Extension. The Board may grant an extension for good cause for up to one (1) year for the completion of continuing competence requirements. Such extension shall not relieve the licensee of the continuing competence requirements. (3-25-16)

05. Beyond the Control of Licensee Exemption. The Board may, in the exercise of its sound discretion, grant an exemption for all or part of the continuing competence requirements due to circumstances beyond the control of the licensee. (3-25-16)

06. Disciplinary Proceeding. Continued competence activities or courses required by Board order in a disciplinary proceeding shall not be counted as meeting the requirements for licensure renewal. (3-25-16)

07. Compliance Effective Dates. Compliance with the continuing competence requirements of Sections 061 and 062 will be necessary to renew an LPN license beginning with 2018 renewals and an RN license beginning with 2019 renewals. (3-25-16)

062. DOCUMENTING COMPLIANCE WITH CONTINUED COMPETENCE REQUIREMENTS.

01. Retention of Original Documentation. All licensees are to maintain original documentation of completion for a period of two (2) years following renewal and to provide such documentation within thirty (30) days of a request from the Board for proof of compliance. ()

02. Documentation of Compliance. Documentation of compliance consists of the following: ()

a. Evidence of national certification includes a copy of a certificate that includes the name of licensee, name of certifying body, date of certification, and date of certification expiration. Certification will be initially attained during the licensure period, have been in effect during the entire licensure period, or have been recertified during the licensure period. ()

b. Evidence of post-licensure academic education includes a copy of the transcript with the name of the licensee, name of educational institution, date(s) of attendance, name of course, and number of credit hours received. ()

c. Evidence of completion of a Board-recognized refresher course includes certificate or written correspondence from the provider with the name of the licensee, name of provider, and verification of successful completion of the course. ()

d. Evidence of completion of research or a nursing project includes an abstract or summary, the name of the licensee, role of the licensee as principal or contributing investigator, date of completion, statement of the problem, research or project objectives, methods used, and summary of findings. ()

e. Evidence of contributing to a published nursing-related article, manuscript, paper, book, or book chapter includes a copy of the publication to include the name of the licensee and publication date. ()

f. Evidence of teaching a course for college credit includes documentation of the course offering indicating instructor, course title, course syllabus, and the number of credit hours. Teaching a particular course may only be used once to satisfy the continued competence requirement unless the course offering and syllabus has changed in a material or significant fashion. ()

g. Evidence of teaching a course for continuing education credit includes a written attestation from the director of the program or authorizing entity including the date(s) of the course and the number of hours awarded. ()

h. Evidence of hours of continuing learning activities or courses includes the name of the licensee, title of activity, name of provider, number of hours, and date of activity. ()

i. Evidence of one hundred (100) hours of practice in nursing includes the name of the licensee and documentation satisfactory to the Board of the number of hours worked during review period validated by the

employer/recipient agency. If self-employed, hours worked may be validated through other methods such as tax records or other business records. If practice is of a volunteer or gratuitous nature, hours worked may be validated by the recipient agency. ()

063. REINSTATEMENT (NON-DISCIPLINE).

A person whose license has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement by submitting the items set out in Section 54-1411(3), Idaho Code and a current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code, as well as paying the fees prescribed in these rules. ()

064. REINSTATEMENT AFTER DISCIPLINE.

01. Submission of Application Materials. A person whose license has been subject to disciplinary action by the Board may apply for reinstatement of the license to active and unrestricted status by: (4-7-11)

- a. Submitting the items set out in Section 54-1411(3), Idaho Code; ()
- b. Submitting a current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code; ()
- c. Paying the fees prescribed in these rules; and ()
- d. Documenting compliance with any term and restrictions set forth in any order as a condition of reinstatement. ()

02. Appearance Before Board. Applicants for reinstatement may be called to appear before the Board. ()

03. Application for Reinstatement After Revocation. Unless otherwise provided in the order of revocation, applicants for reinstatement of revoked licenses are precluded from applying for reinstatement for a period of two (2) years after entry of the order. ()

065. -- 075. (RESERVED)

076. PERSONS EXEMPTED BY BOARD.

Licensure to practice nursing is not necessary, nor is the practice of nursing prohibited for persons exempted by the Board including: ()

01. Technicians and Technologists. Technicians and technologists who comply with Section 491 of these rules. (3-30-07)

02. Non-Resident Nurses. Non-resident nurses currently licensed in good standing in another nursing jurisdiction, who are in Idaho on a temporary basis because of enrollment in or presentation of a short term course of instruction recognized or approved by the Board and who are performing functions incident to formal instruction. (4-4-13)

03. Family Members and Others. (7-1-93)

a. Family members providing care to a person to whom they are related by blood, marriage, adoption, legal guardianship or licensed foster care. (5-21-89)

b. Non-family members who provide gratuitous care to a person on a temporary basis in order to give respite to family members who regularly provide care to that person. (5-21-89)

c. Live-in domestics, housekeepers and companions provided they do not represent themselves as, nor receive compensation as, licensed nurses or other nursing care providers and so long as any health care provided is incidental to the services for which they are employed. (3-30-01)

04. Nurse Apprentice. A nurse apprentice is a nursing student or recent graduate who is employed for remuneration in a non-licensed capacity outside the student role by a Board approved health care agency. (4-11-19)

- a.** Applicants for nurse apprentice must: ()
 - i. Be enrolled in an accredited/approved nursing education program that is substantially equivalent to Idaho's approved programs for practical/registered nursing. (6-20-92)
 - ii. Be in good academic standing at the time of application and notify the Board of any change in academic standing. (6-20-92)
 - iii. Meet the employing agency's health care skills validation requirements. (3-30-01)
 - iv. Satisfactorily complete a basic nursing fundamentals course. (3-30-01)
 - v. Use obvious designations that identify the applicant as a nurse apprentice. (3-30-01)
- b.** A completed application for nurse apprentice consists of: (3-30-01)
 - i. Completed application form provided by the Board, to include a fee of ten dollars (\$10); and (7-1-93)
 - ii. Verification of satisfactory completion of a basic nursing fundamentals course; and (3-30-01)
 - iii. Validation of successful demonstration of skills from a nursing education program; and (3-30-01)
 - iv. Verification of good academic standing. (4-11-19)
- c.** An individual whose application is approved will be issued a letter identifying the individual as a nurse apprentice for a designated time period to extend not more than three (3) months after successful completion of the nursing education program. (4-11-19)
- d.** A nurse apprentice may, under licensed registered nurse supervision, perform all functions approved by the Board for unlicensed assistive personnel as set forth in Section 490 of these rules. (3-30-07)

05. Employer Application. (3-30-01)

- a.** Health care agencies wishing to employ nurse apprentices are to complete an application form provided by the Board that consists of: ()
 - i. Job descriptions for apprentice; (3-30-01)
 - ii. A written plan for orientation and skill validation; (6-20-92)
 - iii. The name of the licensed registered nurse who is accountable and responsible for the coordination or management of the nurse apprentice program; (3-30-01)
 - iv. Assurance that a licensed registered nurse is readily available when nurse apprentice is working; (3-30-01)
 - v. A written procedure for the nurse apprentice who is asked to perform a task that could jeopardize a patient and who declines to perform the task; and (3-30-01)
 - vi. A fee of one hundred dollars (\$100). (3-30-01)
- b.** Following application review, the Board may grant approval to a health care agency to employ nurse apprentices for a period of up to one (1) year. (3-30-01)

c. To ensure continuing compliance with Board requirements, each approved agency submits an annual report to the Board on forms provided by the Board. Based on its findings, the Board may grant continuing approval annually for an additional one (1) year period. ()

d. At any time, if the employing agency fails to inform the Board of changes in conditions upon which approval was based or otherwise fails to comply with established requirements, the Board may notify the agency of withdrawal of approval. (6-20-92)

077. -- 089. (RESERVED)

090. REAPPLICATION FOR A LICENSE AFTER PREVIOUS DENIAL.

01. Request for Review. Review of a denied application may be requested by submitting a written statement and documentation that includes evidence, satisfactory to the Board, of rehabilitation, or elimination or cure of the conditions for denial. ()

02. Reapplication Files. Reapplication files remain open and active for a period of twelve (12) months from date of receipt. After twelve (12) months, the file is closed and any subsequent reapplication will require submission of a new application form and payment of the applicable fees. ()

091. -- 099. (RESERVED)

100. GROUNDS FOR DISCIPLINE.

01. False Statement. A false, fraudulent or forged statement or misrepresentation in procuring a license to practice nursing means, but need not be limited to: ()

a. Procuring or attempting to procure a license to practice nursing by filing forged or altered documents or credentials; or (3-15-02)

b. Falsifying, misrepresenting facts or failing to verify and accurately report any and all facts submitted on any application for licensure, examination, relicensure, or reinstatement of licensure by making timely and appropriate inquiry of all jurisdictions in which licensee has made application for, or obtained, licensure or certification or engaged in the practice of nursing; or (3-15-02)

c. Impersonating any applicant or acting as proxy for the applicant in any examination for nurse licensure. (6-1-78)

02. Conviction of a Felony. Conviction of, or entry of a withheld judgment or a plea of nolo contendere to, conduct constituting a felony. (3-15-02)

03. False or Assumed Name. Practicing nursing under a false or assumed name means, but need not be limited to, carrying out licensed nursing functions while using other than the individual's given or legal name. ()

04. Offense Involving Moral Turpitude. An offense involving moral turpitude means, but need not be limited to, an act of baseness, vileness, or depravity in the private and social duties that a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. ()

05. Gross Negligence or Recklessness. Gross negligence or recklessness in performing nursing functions means, but need not be limited to, a substantial departure from established and customary standards of care which, under similar circumstances, would have been exercised by a licensed peer; an act or an omission where there is a legal duty to act or to refrain from acting that a reasonable and prudent practitioner of nursing under same or similar facts and circumstances would have done, would have refrained from doing or would have done in a different manner and which did or could have resulted in harm or injury to a patient/client. An exercise of so slight a degree of

care as to justify the belief that there was a conscious or overt disregard or indifference for the health, safety, well-being, or welfare of the public shall be considered a substantial departure from the accepted standard of care. ()

06. Habitual Use of Alcohol or Drugs. Habitual use of alcoholic beverages or drugs means, but need not be limited to, the use of such substances to the extent that the nurse's judgment, skills, or abilities to provide safe and competent nursing care are impaired; or that the individual is unable to care for himself or his property or his family members because of such use; or it is determined by a qualified person that the individual is in need of medical or psychiatric care, treatment or rehabilitation or counseling because of drug or alcohol use. ()

07. Physical or Mental Unfitness. Physical or mental unfitness to practice nursing means, but need not be limited to, a court order adjudging that a licensee is mentally incompetent, or an evaluation by a qualified professional person indicating that the licensee is mentally or physically incapable of engaging in registered or practical nursing in a manner consistent with sound patient care; or uncorrected physical defect that precludes the safe performance of nursing functions. ()

08. Violations of Standards of Conduct. Violations of standards of conduct and practice adopted by the Board means, but need not be limited to, any violation of those standards of conduct described in Section 101 of these rules. ()

09. Conduct to Deceive, Defraud or Endanger. Conduct of a character likely to deceive, defraud, or endanger patients or the public includes, but need not be limited to: ()

a. Violating the standards of conduct and practice adopted by the Board. (3-15-02)

b. Being convicted of any crime or act substantially related to nursing practice and including, but not limited to, sex crimes, drug violations, acts of violence and child or adult abuse. (3-15-02)

10. Action Against a License. Action against a license means entry of any order restricting, limiting, revoking or suspending or otherwise disciplining a license or privilege to practice nursing by any jurisdiction. A certified copy of an order entered in any jurisdiction is prima facie evidence of the matters contained therein. ()

11. Failure to Make Timely and Appropriate Inquiry. Failing to make timely and appropriate inquiry verifying licensure status in all jurisdictions in which the applicant has ever applied for licensure, certification or privilege to practice, including those jurisdictions in which the applicant is currently or was ever licensed, or in which applicant has practiced, prior to filing any application, verification or other statement regarding licensure status with the Board. (3-15-02)

12. 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, failure to provide information on request of the Board, or the use of threats or harassment against any patient or witness to prevent them from providing evidence. (3-30-07)

13. Patterns of Poor Practice. Repeatedly engaging in conduct that departs from the customary standards of care. (3-30-07)

101. STANDARDS OF CONDUCT.

01. Violations. Any violation of these Standards of Conduct is grounds for disciplinary action in accordance with Section 54-1413(1), Idaho Code, of the Idaho Nursing Practice Act and Section 090 or 100 of these rules. ()

02. Classification. For purposes of convenience, the standards of conduct are grouped generally into one (1) of three (3) categories: license, practice, and professional responsibility. The fact that any particular standard is so classified in any particular category is not relevant for any purpose other than ease of use. ()

03. License. (3-15-02)

a. Period of Practice. The nurse can practice registered or practical nursing in Idaho only with a current Idaho license or during the period of valid temporary licensure or as otherwise allowed by law. ()

b. Aiding in Violation of Law. The nurse shall not aid, abet, or assist any other person to violate or circumvent laws or rules pertaining to the conduct and practice of nursing. (11-28-84)

c. Reporting Grossly Negligent or Reckless Practice. The nurse shall report to the Board any licensed nurse who is grossly negligent or reckless in performing nursing functions or who otherwise violates the Nursing Practice Act or the Board rules. (7-1-93)

d. Unlawful Use of License. The nurse shall not permit their license to be used by another person for any purpose or permit unlicensed persons under their jurisdiction or supervision to indicate in any way that they are licensed to perform functions restricted to licensed persons. ()

e. Impairment of Ability. The nurse shall not practice nursing while the ability to practice is impaired by alcohol or drugs or physical, mental or emotional disability. (11-28-84)

04. Practice. The nurse shall have knowledge of the statutes and rules governing nursing and function within the defined legal scope of nursing practice, not assume any duty or responsibility within the practice of nursing without adequate training or where competency has not been maintained, and: ()

a. Delegate activities only to persons who are competent and qualified to undertake and perform the delegated activities and will not delegate to non-licensed persons functions that are to be performed only by licensed nurses. The nurse delegating functions is to supervise the persons to whom the functions have been assigned or delegated. ()

b. Act to safeguard the patient from the incompetent practice, verbal or physical abusive acts or illegal practice of any person. ()

c. Not obtain, possess, furnish or administer prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs. ()

d. Not abandon patients in need of nursing care in a negligent or wanton manner. The nurse will leave a nursing assignment only after properly reporting and notifying appropriate personnel and will transfer responsibilities to appropriate personnel or care giver when continued care is necessitated by the patient's condition. ()

e. Respect the patient's privacy. ()

f. Not disseminate information about the patient to individuals not entitled to such information except where such information is mandated by law or for the protection of the patient. ()

g. Observe the condition and signs and symptoms of a patient, record the information, and report to appropriate persons any significant changes. ()

h. Function as a member of the health team and shall collaborate with other health team members as necessary to meet the patient's health needs. ()

i. Adhere to universal precautions and carry out principles of asepsis and infection control and not place the patient, the patient's family or the nurse's coworkers at risk for the transmission of infectious diseases. ()

05. Professional Responsibility. (3-15-02)

a. Disclosing Contents of Licensing Examination. The nurse is not to disclose contents of any licensing examination, or solicit, accept, or compile information regarding the contents of any examination before, during, or after its administration. ()

b. Considerations in Providing Care. In providing nursing care, the nurse will respect and consider the individual's human dignity, health problems, personal attributes, national origin, and handicaps and not discriminate on the basis of age, sex, race, religion, economic or social status or sexual preferences. ()

c. Responsibility and Accountability Assumed. The nurse is responsible and accountable for their nursing judgments, actions and competence. ()

d. Witnessing Wastage of Controlled Substances Medication. Controlled substances may not be wasted without witnesses. The nurse cannot sign any record as a witness attesting to the wastage of controlled substance medications unless the wastage was personally witnessed. The nurse cannot solicit the signatures on any record of a person as a witness to the wastage of a controlled substance when that person did not witness the wastage. The nurse will solicit signatures of individuals who witnessed the wastage in a timely manner. ()

e. Record-keeping. The nurse shall make or keep accurate, intelligible entries into records mandated by law, employment or customary practice of nursing, and will not falsify, destroy, alter or knowingly make incorrect or unintelligible entries into patients' records or employer or employee records. ()

f. Diverting or Soliciting. The nurse will respect the property of the patient and employer and not take or divert equipment, materials, property, or drugs without prior consent or authorization, nor solicit or borrow money, materials or property from patients. ()

g. Exploit, Solicit, or Receive Fees. The nurse shall not exploit the patient or the patient's family for personal or financial gain or offer, give, solicit, or receive any fee or other consideration for the referral of a patient or client. (3-15-02)

h. Professionalism. The nurse must not abuse the patient's trust, will respect the dignity of the profession and maintain appropriate professional boundaries with respect to patients, the patients' families, and the nurse's coworkers. The nurse is not to engage in sexual misconduct or violent, threatening or abusive behavior towards patients, patients' families or the nurse's coworkers. The nurse will be aware of the potential imbalance of power in professional relationships with patients, based on their need for care, assistance, guidance, and support, and ensure that all aspects of that relationship focus exclusively upon the needs of the patient. ()

i. For purposes of this rule and Section 54-1413, Idaho Code, sexual misconduct violations include, but are not limited to: (4-11-15)

(1) Engaging in or soliciting any type of sexual conduct with a patient; (4-11-15)

(2) Using the nurse-patient relationship, trust and confidence of the patient derived from the nurse-patient relationship, or any information obtained as a result of the nurse-patient relationship, to solicit, suggest or discuss dating or a romantic or sexual relationship with a patient; (4-11-15)

(3) Using confidential information obtained during the course of the nurse-patient relationship to solicit, suggest or discuss dating or a romantic relationship, or engage in sexual conduct with a patient, former patient, colleague, or member of the public; and (4-11-15)

(4) Engaging in or attempting to engage in sexual exploitation or criminal sexual misconduct directed at patients, former patients, colleagues, or members of the public, whether within or outside the workplace. (4-11-15)

ii. For purposes of this rule: (4-11-15)

(1) Consent of a patient is not a defense. In the case of sexual exploitation or criminal sexual misconduct, consent of the victim is not a defense. ()

(2) A patient ceases to be a patient thirty (30) days after receiving the final nursing services, or final reasonably anticipated nursing services from a nurse, unless the patient is determined by the Board to be particularly vulnerable by his minority; known mental, emotional, or physical disability; known alcohol or drug dependency; or

other circumstance. A patient deemed particularly vulnerable ceases to be a patient one (1) year after receiving the final nursing services, or final reasonably anticipated nursing services from a nurse. ()

(3) It is not a violation of this rule for a nurse to continue a sexual relationship with a spouse or individual of majority if a consensual sexual relationship existed prior to the establishment of the nurse-patient relationship. (4-11-15)

iii. The following definitions apply to this rule: (4-11-15)

(1) “Sexual conduct” means any behavior that might reasonably be interpreted as being designed or intended to arouse or gratify the sexual desires of an individual. This includes, but is not limited to, physical touching of breasts, buttocks or sexual organs, creation or use of pornographic images, discussion about sexual topics unrelated to the patient’s care, intentional exposure of genitals, and not allowing a patient privacy, except as may be medically necessary. (4-11-15)

(2) “Sexual exploitation” means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual conduct of another, or withholding or threatening to withhold care, medication, food or other services to coerce sexual conduct. (4-11-15)

(3) “Criminal sexual misconduct” means any sexual conduct that, if proven, would constitute a felony or misdemeanor under state or federal law. (4-11-15)

102. -- 131. (RESERVED)

132. RESTRICTED LICENSES.

Restricted 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 restricted license will be cause for summary suspension. ()

01. Following Disciplinary Action. (3-30-07)

a. After evaluation of an application for licensure reinstatement, the Board may issue a restricted license to a nurse whose license has been revoked. ()

b. The Board will specify the conditions of issuance of the restricted license in writing. The conditions may be stated on the license. ()

02. Non-Practicing Status. (3-15-02)

a. Individuals who are prevented from engaging in the active practice of nursing may be issued a restricted license. ()

b. Non-practicing status does not entitle the licensee to engage in the active practice of nursing. The status will be noted on the license. ()

c. The non-practicing restriction 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. ()

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 restricted license. ()

b. The conditions may include, but are not limited to: ()

- 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 restricted 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. ()
- 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 restricted license as an alternative to discipline. ()
 - b.** The executive director may restrict the license of an individual who has a substance use disorder or mental health disorder for a period not to exceed five (5) years and who: (3-28-18)
 - 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 that 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 they are competent to safely practice nursing before being authorized to return to active practice. ()
 - c.** If ordered, the applicant must satisfactorily complete a treatment program accepted by the Board. ()
 - d.** The applicant agrees to participation in the Board's monitoring program. ()
 - e.** Admission to the Program for Recovering Nurses or issuance of a restricted license, or both, may be denied for any reason including, but not limited to the following: ()
 - 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 restricted license, and provided that the licensee demonstrates that they are qualified and competent to practice nursing, the executive director will lift the restriction imposed. ()
- 05. Compliance Required.** Restricted licensure is conditioned upon the individual's prompt and faithful compliance with terms and conditions, which may include: ()

- a. Satisfactory progress in any ordered continuing treatment or rehabilitation program. ()
 - 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 directed by the executive director. ()
- 06. Summary Suspension - Lack of Compliance. (3-30-07)**
- a. Any failure to comply with the terms and conditions of a restricted license is deemed to be an immediate threat to the health, safety, and welfare of the public and the executive director will, upon receiving evidence of any such failure, summarily suspend the restricted license. ()
 - i. Summary suspension of a restricted 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. ()
 - b. An individual whose restricted 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 will enter an order affirming or rejecting summary suspension of the restricted 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. ()
 - c. The Board may, for good cause, stay any order of the executive director or may modify the terms and conditions of a restricted license as deemed appropriate to regulate, monitor or supervise the practice of any licensee. ()

133. ADVISORY COMMITTEE.

The Board will appoint a committee of at least six (6) persons to provide guidance to the Board on matters relating to nurses whose practice is, or may be, impaired due to substance use disorder or mental health disorder, and advise the Board on the direction of the program. Committee members include a member of the Board who serves as the chairperson and other members as established by the Board, but will include persons who are knowledgeable about mental health and substance use disorders. (3-24-17)

134. EMERGENCY ACTION.

If the Board finds that public health, safety, or welfare requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. Such proceedings will be promptly instituted and determined as authorized in Title 67, Chapter 52, Idaho Code. ()

135. -- 164. (RESERVED)

165. PETITION FOR REHEARING OR RECONSIDERATION.

01. Petition for Rehearing or Reconsideration. An individual may petition for reconsideration of any final order or rehearing based upon the following grounds: (7-1-93)

- a.** Newly discovered or newly available evidence relevant to the issue; or (11-28-84)
- b.** Error in the proceeding or Board decision that would be grounds for reversal or judicial review of the order; or (11-28-84)
- c.** Need for further consideration of the issues and the evidence in the public interest; or (11-28-84)
- d.** A showing that issues not considered ought to be examined in order to properly dispose of the matter. (11-28-84)

02. Administrative Procedure. The Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, shall govern proceedings on petitions for reconsideration. (3-30-07)

166. -- 219. (RESERVED)

220. QUALIFICATIONS FOR LICENSURE BY EXAMINATION.

01. In-State. Individuals who have successfully completed all requirements for graduation from an Idaho nursing education program approved by the Board will be eligible to make application to the Board to take the licensing examination. ()

02. Out-of-State. Individuals who hold a certificate of completion from a nursing education program having board of nursing approval in another nursing jurisdiction will be eligible to make application to the Board to take the licensing examination, providing they meet substantially the same basic educational requirements as graduates of Idaho nursing education programs at the time of application. ()

03. Practical Nurse Equivalency Requirement. An applicant for practical nurse licensure by examination who has not completed an approved practical nurse program, must provide satisfactory evidence (such as official transcripts) of successful completion of nursing and related courses at an approved school preparing persons for licensure as registered nurses to include a course in personal and vocational relationships of the practical nurse. Related courses are to be equivalent to those same courses included in a practical nursing program approved by the Board. ()

04. Time Limit for Writing Examinations. Graduates who do not take the examination within twelve (12) months following completion of the nursing education program must follow specific remedial measures as prescribed by the Board. ()

221. EXAMINATION APPLICATION.

A completed application for licensure by examination consists of a completed board approved application, all applicable fees and any additional required documentation. ()

222. EXAMINATION AND RE-EXAMINATION.

01. Applicants for Registered or Practical Nurse Licensure. Applicants will successfully pass the National Council Licensure Examination (NCLEX) for registered nurse licensure or for practical nurse licensure, as applied for and approved. In lieu of the NCLEX, the Board may accept documentation that the applicant has taken and successfully passed the State Board Test Pool examination. ()

223. -- 239. (RESERVED)

240. QUALIFICATIONS FOR LICENSURE BY ENDORSEMENT.

An applicant for Idaho licensure by interstate endorsement must: (7-1-93)

01. Graduation. Be a graduate of a state approved/accredited practical or registered nursing education program that is substantially equivalent to Idaho's board-approved practical or registered nursing education program. Applicants for practical nurse licensure may also qualify under the provisions of Section 241 of these rules. ()

02. Licensing Examination. Have taken the same licensing examination as that administered in Idaho and achieved scores established as passing for that examination by the Board. (4-4-13)

03. Minimum Requirements. In lieu of the requirements in Subsections 240.01 and 240.02 of this rule, have qualifications that are substantially equivalent to Idaho's minimum requirements. (5-8-09)

04. Current Practice Experience. Have actively practiced nursing at least eighty (80) hours within the preceding three (3) years. (3-30-07)

05. License from Another Nursing Jurisdiction. Hold a license in good standing from another nursing jurisdiction. The license of any applicant subject to official investigation or disciplinary proceedings is not considered in good standing. ()

241. LICENSURE BY EQUIVALENCY AND ENDORSEMENT LICENSURE.

01. Application by Equivalency. An applicant for practical nurse licensure by interstate endorsement based on equivalency must meet the following requirements: (3-30-07)

a. Have successfully taken the same licensing examination as that administered in Idaho; and ()

b. Hold a license in another nursing jurisdiction based on successful completion of nursing and related courses at an approved school preparing persons for licensure as registered nurses to include a course in personal and vocational relationships of the practical nurse (or equivalent experience) and additional courses equivalent to those same courses included in a practical nursing program approved by the Board, and provide evidence thereof. ()

02. Applicants Licensed in Another Nursing Jurisdiction. Graduates of schools of nursing located outside the United States, its territories or commonwealths who are licensed in a nursing jurisdiction and who meet the requirements of Subsections 240.02 through 240.05 of these rules may be processed as applicants for licensure by endorsement from another state. (4-4-13)

03. Application for Licensure by Endorsement. A completed application for licensure by interstate endorsement consists of a completed board approved application, all applicable fees and any additional required documentation. ()

242. -- 259. (RESERVED)

260. QUALIFICATIONS FOR LICENSURE OF GRADUATES OF SCHOOLS OF NURSING LOCATED OUTSIDE THE UNITED STATES, ITS TERRITORIES, OR COMMONWEALTHS.

A graduate from a nursing education program outside of the United States, its territories or commonwealths must: (4-4-13)

01. Qualifications. Demonstrate nursing knowledge and English proficiency skills in reading, writing, speaking and listening. (4-4-13)

02. Education Credentials. Have education qualifications that are substantially equivalent to Idaho's minimum requirements at the time of application. (3-30-01)

03. License. Hold a license or other indication of authorization to practice in good standing, issued by a government entity or agency from a country outside the United States, its territories or commonwealths. (4-4-13)

04. Examination/Re-Examination. Take and achieve a passing score on the licensing examination required in Subsection 222.01 of these rules. (3-30-07)

261. APPLICATION FOR LICENSURE OF GRADUATES OF SCHOOLS OF NURSING LOCATED OUTSIDE THE UNITED STATES, ITS TERRITORIES, OR COMMONWEALTHS.

A completed application for licensure by a graduate of a nursing education program outside of the United States, its territories or commonwealths consists of a completed board approved application, all applicable fees and any additional required documentation. ()

262. -- 270. (RESERVED)

271. DEFINITIONS RELATED TO ADVANCED PRACTICE REGISTERED NURSING.

01. Accountability. Means being answerable for one's own actions. (7-1-99)

02. Advanced Practice Registered Nurse. Means a registered nurse licensed in this state who has gained additional specialized knowledge, skills and experience through a graduate or post-graduate program of study as defined herein and is authorized to perform advanced nursing practice, which may include acts of diagnosis and treatment, and the prescribing, administering and dispensing of therapeutic pharmacologic and non-pharmacologic agents, as defined herein. Advanced practice registered nurses includes nurses licensed in the roles of certified nurse-midwife, clinical nurse specialist, certified nurse practitioner, and certified registered nurse anesthetist. Advanced practice registered nurses, when functioning within the recognized scope of practice, assume primary responsibility for the care of their patients in diverse settings. This practice incorporates the use of professional judgment in the assessment and management of wellness and conditions appropriate to the advanced practice registered nurse's role, population focus and area of specialization. (7-1-13)

03. Authorized Advanced Practice Registered Nurse. Means an advanced practice registered nurse authorized by the Board to prescribe and dispense pharmacologic and non-pharmacologic agents pursuant to Section 315 of these rules. (7-1-99)

04. Certification. Means recognition of the applicant's advanced knowledge, skills and abilities in a defined area of nursing practice by a national organization recognized by the Board. The certification process measures the theoretical and clinical content denoted in the advanced scope of practice, and is developed in accordance with generally accepted standards of validation and reliability. (7-1-99)

05. Certified Nurse-Midwife. Means a licensed registered nurse who has graduated from a nationally accredited graduate or post-graduate nurse-midwifery program, and has current certification as a nurse-midwife from a national organization recognized by the Board. (7-1-13)

06. Certified Nurse Practitioner. Means a licensed registered nurse who has graduated from a nationally accredited graduate or post-graduate nurse practitioner program and has current certification as a nurse practitioner from a national organization recognized by the Board. (7-1-13)

07. Certified Registered Nurse Anesthetist. Means a licensed registered nurse who has graduated from a nationally accredited graduate or post-graduate nurse anesthesia program and has current certification as a nurse anesthetist from a national organization recognized by the Board. (7-1-13)

08. Clinical Nurse Specialist. Means a licensed registered nurse who has graduated from a nationally accredited graduate or post-graduate clinical nurse specialist program and has current certification as a clinical nurse specialist from a national organization recognized by the Board. (7-1-13)

09. Collaboration. Means the cooperative working relationship with another health care provider, each contributing their respective expertise in the provision of patient care, and such collaborative practice includes the discussion of patient treatment and cooperation in the management and delivery of health care. (7-1-99)

10. Consultation. Means conferring with another health care provider for the purpose of obtaining information or advice. (7-1-99)

11. Diagnosis. Means identification of actual or potential health problems and the need for intervention based on analysis of data collected. Diagnosis depends upon the synthesis of information obtained through interview, physical exam, diagnostic tests or other investigations. (7-1-13)

12. Intervention. Means measures to promote health, protect against disease, treat illness in its earliest stages, manage acute and chronic illness, and treat disability. Interventions may include, but are not limited to ordering diagnostic studies, performing direct nursing care, prescribing pharmacologic or non-pharmacologic or other therapies and consultation with or referral to other health care providers. (7-1-99)

13. Peer Review Process. The systematic process by which a qualified peer assesses, monitors, and makes judgments about the quality of care provided to patients measured against established practice standards. Peer review: (7-1-13)

a. Measures on-going practice competency of the advance practice registered nurse (APRN); (3-30-07)

b. Is performed by a licensed APRN, physician, physician assistant, or other professional certified by a recognized credentialing organization; and (7-1-13)

c. Focuses on a mutual desire for quality of care and professional growth incorporating attitudes of mutual trust and motivation. (3-30-07)

14. Population Focus. Means the section of the population which the APRN has targeted to practice within. The categories of population foci are: (7-1-13)

a. Family/individual across the lifespan; (7-1-13)

b. Adult-gerontology; (7-1-13)

c. Women's health/gender-related; (7-1-13)

d. Neonatal; (7-1-13)

e. Pediatrics; and (7-1-13)

f. Psychiatric-mental health. (7-1-13)

15. Prescriptive and Dispensing Authorization. Means the legal permission to prescribe, deliver, distribute and dispense pharmacologic and non-pharmacologic agents to a client in compliance with Board rules and applicable federal and state laws. Pharmacologic agents include legend and Schedule II through V controlled substances. (7-1-99)

16. Referral. Means directing a client to a physician or other health professional or resource. (7-1-99)

17. Scope of Practice of Advanced Practice Registered Nurse. Means those activities that the advanced practice registered nurse may perform. Those activities are defined by the Board according to the advanced practice registered nurse's education, preparation, experience and the parameters set forth by the advanced practice registered nurse's recognized, national certifying organization. (7-1-99)

18. Specialization. Means a more focused area of preparation and practice than that of the APRN role/population foci that is built on established criteria for recognition as a nursing specialty to include, but not limited to, specific patient populations (e.g., elder care, care of post-menopausal women), and specific health care needs (e.g., palliative care, pain management, nephrology). (7-1-13)

272. -- 279. (RESERVED)

280. STANDARDS OF PRACTICE FOR ADVANCED PRACTICE REGISTERED NURSING.

01. Purpose. (7-1-99)

a. To establish standards essential for safe practice by the advanced practice registered nurse; and (7-1-99)

b. To serve as a guide for evaluation of advanced practice registered nursing to determine if it is safe and effective. (7-1-99)

02. Core Standards for All Roles of Advanced Practice Registered Nursing. The advanced practice registered nurse is a licensed independent practitioner who shall practice consistent with the definition of advanced practice registered nursing, recognized national standards and the standards set forth in these rules. (7-1-13)

a. The advanced practice registered nurse shall provide client services for which the advanced practice registered nurse is educationally prepared and for which competence has been achieved and maintained. (7-1-13)

b. The advanced practice registered nurse shall recognize their limits of knowledge and experience and consult and collaborate with and refer to other health care professionals as appropriate. (7-1-99)

c. The advanced practice registered nurse shall evaluate and apply current evidence-based research findings relevant to the advanced nursing practice role. (7-1-13)

d. The advanced practice registered nurse shall assume responsibility and accountability for health promotion and maintenance as well as the assessment, diagnosis and management of client conditions to include the use of pharmacologic and non-pharmacologic interventions and the prescribing and dispensing of pharmacologic and non-pharmacologic agents. (7-1-13)

e. The advanced practice registered nurse shall use advanced practice knowledge and skills in teaching and guiding clients and other health care team members. (7-1-13)

f. The advanced practice registered nurse shall have knowledge of the statutes and rules governing advanced nursing practice, and practice within the established standards for the advanced nursing practice role and population focus. (7-1-13)

g. The advanced practice registered nurse shall practice consistent with Subsections 400.01 and 400.02 of these rules. (7-1-13)

03. Certified Nurse-Midwife. In addition to the core standards, the advanced practice registered nurse in the role of certified nurse midwife provides the full range of primary health care services to women throughout the lifespan, including gynecologic care, family planning services, preconception care, prenatal and postpartum care, childbirth, care of the newborn and reproductive health care treatment of the male partners of female clients. (7-1-13)

04. Clinical Nurse Specialist. In addition to core standards, the advanced practice registered nurse in the role of clinical nurse specialist provides services to patients, care providers and health care delivery systems including, but not limited to, direct care, expert consultation, care coordination, monitoring for quality indicators and facilitating communication between patients, their families, members of the health care team and components of the health care delivery system. (7-1-13)

05. Certified Nurse Practitioner. In addition to core standards, the advanced practice registered nurse in the role of certified nurse practitioner provides initial and ongoing comprehensive primary care services to clients including, but not limited to, diagnosis and management of acute and chronic disease, and health promotion, disease prevention, health education counseling, and identification and management of the effects of illness on clients and their families. (7-1-13)

06. Certified Registered Nurse Anesthetist. In addition to core standards, the advanced practice registered nurse in the role of certified registered nurse anesthetist provides the full spectrum of anesthesia care and anesthesia-related care and services to individuals across the lifespan whose health status may range across the wellness-illness continuum to include healthy persons; persons with immediate, severe or life-threatening illness or injury; and persons with sustained or chronic health conditions. (7-1-13)

07. Documentation of Specialization. Unless exempted under Section 305 of these rules, the advanced practice registered nurse must document competency within their specialty area of practice based upon education, experience and national certification in the role and population focus. (7-1-13)

281. -- 284. (RESERVED)

285. QUALIFICATIONS FOR ADVANCED PRACTICE REGISTERED NURSE.
To qualify as an advanced practice registered nurse, an applicant shall provide evidence of: (7-1-13)

01. Current Licensure. Current licensure to practice as a registered nurse in Idaho; (7-1-13)

02. Completion of Advanced Practice Registered Nurse Program. Successful completion of a graduate or post-graduate advanced practice registered nurse program which is accredited by a national organization recognized by the Board; and (7-1-13)

03. National Certification. Current national certification by an organization recognized by the Board for the specified APRN role. (7-1-13)

286. -- 289. (RESERVED)

290. APPLICATION FOR LICENSURE -- ADVANCED PRACTICE REGISTERED NURSE.
A completed application for licensure as an advanced practice registered nurse requesting licensure to practice as a certified nurse-midwife, clinical nurse specialist, certified nurse practitioner or certified registered nurse anesthetist consists of a completed board-approved application, all applicable fees and any additional required documentation. ()

291. -- 294. (RESERVED)

295. TEMPORARY LICENSURE -- ADVANCED PRACTICE REGISTERED NURSE.
A temporary license to engage in advanced practice registered nursing may be issued to the following: (7-1-13)

01. Applicants Awaiting Initial Certification Examination Results. An otherwise qualified applicant who is eligible to take the first available certification examination following completion of an approved advanced practice registered nurse education program. Verification of registration to write a Board-recognized national certification examination must be received from the national certifying organization. (7-1-99)

a. Temporary licensure to practice shall be deemed to expire upon failure of the certification examination. An applicant who fails the national certification exam shall not engage in advanced practice registered

nursing until such time as all requirements are met. (7-1-99)

b. An applicant who is granted a temporary license to practice as an advanced practice registered nurse must submit notarized results of the certification examination within ten (10) days of receipt. Failure to submit required documentation shall result in the immediate expiration of the temporary license. (7-1-99)

c. The temporary license of an applicant who does not write the examination on the date scheduled shall immediately expire and the applicant shall not engage in advanced practice registered nursing until such time as all requirements are met. (7-1-99)

02. Applicants Whose Certification Has Lapsed. A licensed registered nurse applying for re-entry into advanced registered nursing practice, who is required by the national certifying organization to meet certain specified practice requirements under supervision. The length of and conditions for temporary licensure shall be determined by the Board. (7-1-99)

03. Applicants Holding a Temporary Registered Nursing License. An advanced practice registered nurse currently authorized to practice advanced practice registered nursing in another nursing jurisdiction upon issuance of a temporary license to practice as a registered nurse, and upon evidence of current certification as an advanced practice registered nurse from a Board-recognized national certifying organization. (7-1-13)

04. Applicants Without Required Practice Hours. An advanced practice registered nurse who has not practiced the minimum required period of time during the renewal period may be issued a temporary license in order to acquire the required number of hours and demonstrate ability to safely practice. (7-1-99)

05. Application Processing. An APRN whose application has been received but is not yet complete may be issued a temporary license. (3-30-07)

06. Term of Temporary License. A temporary license expires at the conclusion of the term for which it is issued, or the issuance of a renewable license, whichever occurs earlier. (3-30-07)

296. -- 299. (RESERVED)

300. RENEWAL OF ADVANCED PRACTICE REGISTERED NURSE LICENSE.

The advanced practice registered nurse license may be renewed every two (2) years as specified in Section 54-1411, Idaho Code, provided that the advanced practice registered nurse: (7-1-13)

01. Current Registered Nurse License. Maintains a current registered nurse license or privilege to practice in Idaho. (7-1-13)

02. Evidence of Certification. Submits evidence of current APRN certification by a national organization recognized by the Board. (7-1-13)

03. Evidence of Continuing Education. Provides documentation of thirty (30) contact hours of continuing education during the renewal period, which shall include ten (10) contact hours in pharmacology if the nurse has prescriptive authority. Continuing education completed may be that required for renewal of national certification if documentation is submitted confirming the certifying organization's requirement is for at least thirty (30) contact hours. (7-1-13)

04. Hours of Practice. Attests, on forms provided by the Board, to a minimum of two hundred (200) hours of advanced registered nursing practice within the preceding two (2) year period. (7-1-99)

05. Peer Review Process. Provides evidence, satisfactory to the Board, of participation in a peer review process acceptable to the Board. (7-1-13)

06. Exemption From Requirements. Nurse practitioners not certified by a national organization recognized by the Board and approved prior to July 1, 1998 shall be exempt from the requirement set forth in Subsection 300.02 of these rules. (7-1-99)

301. REINSTATEMENT OF ADVANCED PRACTICE REGISTERED NURSE LICENSE.

An advanced practice registered nurse license may be reinstated as specified in Section 54-1411, Idaho Code, provided that the applicant: (7-1-13)

01. Current Registered Nurse License. Maintains a current registered nurse license or privilege to practice in Idaho. (7-1-13)

02. Evidence of Certification. Submits evidence of current APRN certification by a national organization recognized by the Board. (7-1-13)

03. Fee. Pays the fee specified in Section 900 of these rules. (7-1-13)

302. -- 304. (RESERVED)

305. PERSONS EXEMPTED FROM ADVANCED PRACTICE REGISTERED NURSING LICENSE REQUIREMENTS.

01. Students. Nothing in these rules prohibits a registered nurse who holds a current license, or privilege, to practice in Idaho and who is enrolled as a matriculated student in a nationally accredited educational program for advanced practice registered nursing from practicing as an advanced practice registered nurse when such practice is an integral part of the advanced practice registered nurse curriculum. (7-1-13)

02. Certified Nurse Practitioners Licensed Prior to July 1, 1998. A certified nurse practitioner authorized to practice prior to July 1, 1998 may satisfy the requirement of Section 280.07 of these rules by documenting competency within their specialty area of practice based upon education, experience and national certification in that specialty or education, experience and approval by the Board. ()

03. Advanced Practice Registered Nurses Educated Prior to January 1, 2016. (7-1-13)

a. An applicant for APRN licensure who completed a nationally accredited undergraduate or certificate APRN program prior to January 1, 2016, does not need to meet the APRN graduate or post-graduate educational requirements for initial licensure contained within Section 285 of these rules. (7-1-13)

b. A person applying for APRN licensure in Idaho who: holds an existing APRN license issued by any nursing jurisdiction, completed their formal APRN education prior to January 1, 2016, and who meets all of the requirements for initial licensure contained within Sections 285 and 286 of these rules except for the APRN graduate or post-graduate educational requirement, may be issued an APRN license by endorsement if at the time the person received their APRN license in the other jurisdiction they would have been eligible for licensure as an APRN in Idaho. ()

306. DISCIPLINARY ENFORCEMENT.

The Board may revoke, suspend or otherwise discipline the advanced practice registered nurse license of a licensee who fails to comply with current recognized scope and standards of practice, who fails to maintain national certification or competency requirements, or who violates the provisions of the Nursing Practice Act or rules of the Board. (7-1-99)

307. -- 314. (RESERVED)

315. PRESCRIPTIVE AND DISPENSING AUTHORIZATION FOR ADVANCED PRACTICE REGISTERED NURSES.

01. Initial Authorization. An application for the authority to prescribe and dispense pharmacologic and non-pharmacologic agents may be made as part of initial licensure application or by separate application at a later date. Advanced practice registered nurses who complete their APRN graduate or post-graduate educational program after December 31, 2015, will automatically be granted prescriptive and dispensing authority with the issuance of their Idaho license. (7-1-13)

a. An advanced practice registered nurse who applies for authorization to prescribe pharmacologic and non-pharmacologic agents within the scope of practice for the advanced practice role, shall: (7-1-13)

i. Provide evidence of completion of thirty (30) contact hours of post-basic education in pharmacotherapeutics obtained as part of study within a formal educational program or continuing education program, related to advanced nursing practice; and (7-1-13)

ii. Submit a completed, notarized application form provided by the Board. (7-1-99)

b. Exceptions to the pharmacotherapeutic education may be approved by the Board. (7-1-99)

c. Prescriptions written by authorized advanced practice registered nurses shall contain all the minimum information required by Idaho Board of Pharmacy statute and administrative rules and applicable federal law as well as the printed name and signature of the nurse prescriber, and the abbreviation for the applicable role of the advanced practice nurse (i.e. “CNP,” “CNM,” “CNS,” or CRNA”). If the prescription is for a controlled substance, it shall also include the DEA registration number and address of the prescriber. ()

02. Temporary Authorization. The Board may grant temporary prescriptive authority to an applicant who holds a temporary advanced practice registered nurse license and who meets the requirements for initial authorization pursuant to Subsection 315.01 of these rules. (7-1-99)

03. Expiration of Temporary Prescriptive Authorization. Temporary prescriptive authorization automatically expires on the expiration, revocation, suspension, placement on probation, or denial of any advanced practice registered nurse license. (7-1-99)

04. Prescribing and Dispensing Authorization. All authorized advanced practice registered nurses may prescribe and dispense pharmacologic and non-pharmacologic agents pursuant to applicable state and federal laws. (7-1-13)

05. Valid Advanced Practice Registered Nurse/Patient Relationships. (7-1-13)

a. An advanced practice registered nurse shall not dispense pharmacologic agents except in the course of his professional practice and when a bona fide advanced practice registered nurse/patient relationship has been established. A valid relationship will exist when the advanced practice registered nurse has obtained sufficient knowledge of the patient’s medical condition through examination and has assumed responsibility for the health care of the patient. (7-1-13)

b. A valid advanced practice registered nurse/patient relationship is not required when dispensing or prescribing medications under the circumstances set forth at Section 54-1733(4), Idaho Code. (7-1-13)

316. GROUNDS FOR DISCIPLINE OF AN ADVANCED PRACTICE REGISTERED NURSE LICENSE.

In addition to the grounds set forth in Section 54-1413, Idaho Code, and Section 100 of these rules, an advanced practice registered nursing license may be suspended, revoked, placed upon probation, or other disciplinary sanctions imposed by the Board on the following grounds: (3-30-07)

01. Prescribing or Dispensing Controlled Substances. Prescribing, dispensing, or selling any drug classified as a controlled substance to a family member or to himself. For purposes of Section 316 of these rules, “family member” is defined as the licensee’s spouse, child (biological, adopted, or foster), parent, sibling, grandparent, grandchild, or the same relation by marriage. (4-7-11)

02. Violating Governing Law. Violating any state or federal law relating to controlled substances. (7-1-99)

03. Outside Scope of Practice. Prescribing or dispensing outside the scope of the advanced practice registered nurse’s practice. (7-1-99)

- 04. Other Than Therapeutic Purposes.** Prescribing or dispensing for other than therapeutic purposes. (7-1-99)

317. -- 319. (RESERVED)

320. RECOGNITION OF NATIONAL CERTIFYING ORGANIZATIONS FOR ADVANCED PRACTICE REGISTERED NURSING.

The Board recognizes advanced practice registered nurse certification organizations that meet criteria as defined by the National Council of State Boards of Nursing. (7-1-13)

321. -- 389. (RESERVED)

390. USE OF TITLES, ABBREVIATIONS, AND DESIGNATIONS FOR THE PRACTICE OF NURSING.

01. Title for Graduates. A new graduate issued a temporary license pursuant to Section 040 of these rules can use the title graduate nurse, abbreviated GN, or graduate practical nurse, abbreviated GPN, or graduate nurse midwife, abbreviated GNM, or graduate clinical nurse specialist, abbreviated GCNS, or graduate nurse practitioner, abbreviated GNP, or graduate nurse anesthetist, abbreviated GNA, whichever is appropriate, until the renewable license is issued. (3-30-07)

02. Titles for Advanced Practice Registered Nurses. Individuals who have successfully met all requirements for licensure as an advanced practice registered nurse have the right to use the title corresponding to the role of advanced nursing practice for which the individual is licensed. ()

a. Individuals who have successfully met all requirements for licensure as a certified nurse-midwife have the right to use the title certified nurse-midwife, abbreviated APRN, CNM. ()

b. Title of Clinical Nurse Specialist. Individuals who have successfully met all requirements for licensure as a clinical nurse specialist have the right to use the title clinical nurse specialist, abbreviated APRN, CNS. ()

c. Individuals who have successfully met all requirements for licensure as a certified nurse practitioner have the right to use the title certified nurse practitioner, abbreviated APRN, CNP. ()

d. Individuals who have successfully met all requirements for licensure as a certified registered nurse anesthetist have the right to use the title certified registered nurse anesthetist, abbreviated APRN, CRNA. ()

03. Registered Nurse Title. Individuals who have successfully met all requirements for licensure as registered nurse have the right to use the title Registered Nurse, abbreviated RN. (7-1-13)

04. Licensed Practical Nurse Title. Individuals who have successfully met all requirements for licensure as a practical nurse have the right to use the title Licensed Practical Nurse, abbreviated LPN. (7-1-13)

391. -- 399. (RESERVED)

400. DECISION-MAKING MODEL.

The decision-making model is the process by which a licensed nurse evaluates whether a particular act is within the legal scope of that nurse's practice and determines whether to delegate the performance of a particular nursing task in a given setting. This model applies to all licensure categories permitting active practice, regardless of practice setting. (5-3-03)

01. Determining Scope of Practice. To evaluate whether a specific act is within the legal scope of nursing practice, a licensed nurse shall determine whether: (5-3-03)

- a.** The act is expressly prohibited by the Nursing Practice Act, or the act is limited to the scope of

practice of advanced practice registered nurses or to licensed registered nurses, or the act is prohibited by other laws; (5-3-03)

b. The act was taught as a part of the nurse's educational institution's required curriculum and the nurse possesses current clinical skills; (5-3-03)

c. The act does not exceed any existing policies and procedures established by the nurse's employer; (5-3-03)

d. The act is consistent with standards of practice published by a national specialty nursing organization or supported by recognized nursing literature or reputable published research and the nurse can document successful completion of additional education through an organized program of study including supervised clinical practice or equivalent demonstrated competency; (5-3-03)

e. The employment setting/agency has established policies and procedures or job descriptions authorizing performance of the act; and (7-1-96)

f. Performance of the act is within the accepted standard of care that would be provided in a similar situation by a reasonable and prudent nurse with similar education and experience and the nurse is prepared to accept the consequences of the act. (7-1-96)

02. Deciding to Delegate. When delegating nursing care, the licensed nurse retains accountability for the delegated acts and the consequences of delegation. Before delegating any task the nurse shall: (5-3-03)

a. Determine that the acts to be delegated are not expressly prohibited by the Nursing Practice Act or Board rules and that the activities are consistent with job descriptions or policies of the practice setting; (7-1-96)

b. Assess the client's status and health care needs prior to delegation, taking into consideration the complexity of assessments, monitoring required and the degree of physiological or psychological instability; (7-1-96)

c. Exercise professional judgment to determine the safety of the delegated activities, to whom the acts may be delegated, and the potential for harm; (5-3-03)

d. Consider the nature of the act, the complexity of the care needed, the degree of critical thinking required and the predictability of the outcome of the act to be performed; (5-3-03)

e. Consider the impact of timeliness of care, continuity of care, and the level of interaction required with the patient and family; (5-3-03)

f. Consider the type of technology employed in providing care and the knowledge and skills required to effectively use the technology, including relevant infection control and safety issues; (7-1-96)

g. Determine that the person to whom the act is being delegated has documented education or training to perform the activity and is currently competent to perform the act; and (7-1-96)

h. Provide appropriate instruction for performance of the act. (5-3-03)

03. Delegating to UAPs. ()

a. The nursing care tasks that may be delegated to UAPs shall be stated in writing in the practice setting. Decisions concerning delegation will be determined in accordance with the provisions of Section 400 of these rules. UAPs may complement the licensed nurse in the performance of nursing functions, but cannot substitute for the licensed nurse; UAPs cannot redelegate a delegated act. ()

b. Where permitted by law, after completion of a Board-approved training program, UAPs in care settings may assist patients who cannot independently self-administer medications, provided that a plan of care has been developed by a licensed registered nurse, and the act has been delegated by a licensed nurse. Assistance with

medication may include: breaking a scored tablet, crushing a tablet, instilling eye, ear or nose drops, giving medication through a pre-mixed nebulizer inhaler or gastric (non-nasogastric) tube, assisting with oral or topical medications and insertion of suppositories. ()

04. Monitoring Delegation. Subsequent to delegation, the licensed nurse shall: (5-3-03)

a. Evaluate the patient's response and the outcome of the delegated act, and take such further action as necessary; and (5-3-03)

b. Determine the degree of supervision required and evaluate whether the activity is completed in a manner that meets acceptable outcomes. The degree of supervision shall be based upon the health status and stability of the patient, the complexity of the care and the knowledge and competence of the individual to whom the activity is delegated. (5-3-03)

401. LICENSED REGISTERED NURSE (RN).

In addition to providing hands-on nursing care, licensed registered nurses work and serve in a broad range of capacities including, but not limited to, regulation, delegation, management, administration, teaching, and case management. Licensed registered nurses, also referred to as registered nurses or as "RNs," are expected to exercise competency in judgment, decision making, implementation of nursing interventions, delegation of functions or responsibilities, and administration of medications and treatments prescribed by legally authorized persons. (5-3-03)

01. Standards of Practice. A licensed registered nurse adheres to the decision-making model set forth in Section 400 of these rules. (5-3-03)

02. Functions. A partial listing of tasks within the licensed registered nurse's function follows. This listing is for illustrative purposes only, it is not exclusive. The licensed registered nurse: (5-3-03)

a. Assesses the health status of individuals and groups; (5-3-03)

b. Utilizes data obtained by assessment to identify and document nursing diagnoses which serve as a basis for the plan of nursing care; (5-3-03)

c. Collaborates with the patient, family, and health team members; (5-3-03)

d. Develops and documents a plan for nursing intervention based on assessment, analysis of data, identified nursing diagnoses and patient outcomes; (5-3-03)

e. Is accountable and responsible for implementation of planned and prescribed nursing care;(5-3-03)

f. Maintains safe and effective nursing care by: (5-3-03)

i. Maintaining a safe environment; (5-3-03)

ii. Evaluating patient status and instituting appropriate therapy or procedures which might be required in emergency situations to stabilize the patient's condition or prevent serious complications in accordance with standard procedures established by the policy-making body in the health care setting, including but not limited to administration of intravenous drugs and starting intravenous therapy based on protocols if the patient has been assessed and determined to be in peril; (5-3-03)

iii. Acting as a patient's advocate; (5-3-03)

iv. Applying principles of asepsis and infection control and universal standards when providing nursing care; (5-3-03)

v. Implementing orders for medications and treatments issued by an authorized prescriber; and (5-3-03)

- vi. Providing information and making recommendations to patients and others in accordance with employer policies; (5-3-03)
- g. Utilizes identified goals and outcomes to evaluate responses to interventions; (5-3-03)
- h. Collaborates with other health professionals by: (5-3-03)
- i. Communicating significant changes in a patient's status or responses to appropriate health team professionals; (5-3-03)
- ii. Coordinating the plan of care with other health team professionals; and (5-3-03)
- iii. Consulting with nurses and other health team members as necessary; (5-3-03)
- i. Teaches the theory and practice of nursing; and (5-3-03)
- j. Facilitates, mentors and guides the practice of nursing formally and informally in practice settings. (5-3-03)
- k. Engages in other interfaces with healthcare providers and other workers in settings where there is not a structured nursing organization and in settings where health care plays a secondary role, where the nurse needs to identify the nursing role and responsibility for the particular type of interface, for example, teaching, supervising, consulting, advising, etc. (3-20-14)

03. Chief Executive Role. A licensed registered nurse functioning in a chief executive role is accountable and responsible for: ()

- a. Prescribing, directing and evaluating the quality of nursing services including, but not limited to, staff development and quality improvement; (7-1-96)
- b. Assuring that organizational policies and procedures, job descriptions and standards of nursing practice conform to the Nursing Practice Act and nursing practice rules; (7-1-96)
- c. Assuring that the knowledge, skills and abilities of nursing care staff are assessed and that nursing care activities do not exceed the legally defined boundaries of practice; and (7-1-96)
- d. Assuring that documentation of all aspects of the nursing organization is maintained. (7-1-96)

04. Management Role. A licensed registered nurse functioning in a management role is accountable and responsible for: (5-3-03)

- a. The quality and quantity of nursing care provided by nursing personnel under their supervision; (5-3-03)
- and b. Managing and coordinating nursing care in accordance with established guidelines for delegation; (5-3-03)
- c. Providing leadership in formulating, interpreting, implementing, and evaluating the objectives and policies of nursing practice. (7-1-96)

402. LICENSED REGISTERED NURSE FUNCTIONING IN SPECIALTY AREAS.

01. Extended Functions. A licensed registered nurse may carry out functions beyond the basic educational preparation described in Sections 600 through 681 of these rules under certain conditions. (3-25-16)

02. Conditions for Licensed Registered Nurses Functioning in Specialty Practice Areas. A licensed registered nurse may carry out functions defined within parameters of a nursing specialty that meets criteria

approved by the American Board of Nursing Specialties (ABNS) or the National Commission for Certifying Agencies (NCCA) of the National Organization for Competency Assurance (NOCA) when the nurse: (3-25-16)

a. Can document successful completion of additional education through an organized program of study including supervised clinical experience or equivalent demonstrated competence consistent with provisions of Section 400 of these rules; and (3-25-16)

b. Conforms to recognized nursing specialty practice parameters, characters, and standards for practice of the specialty. (3-25-16)

403. -- 459. (RESERVED)

460. LICENSED PRACTICAL NURSE (LPN).

Licensed practical nurses function in dependent roles. Licensed practical nurses, also referred to as LPNs, provide nursing care at the delegation of a licensed registered nurse, licensed physician, or licensed dentist pursuant to rules established by the Board. The stability of the patient's environment, the patient's clinical state, and the predictability of the outcome determine the degree of direction and supervision that must be provided to the licensed practical nurse. (5-3-03)

01. Standards. The licensed practical nurse shall be personally accountable and responsible for all actions taken in carrying out nursing activities and adheres to the decision-making model set forth in Section 400 of these rules. (5-3-03)

02. Functions. A partial listing of some of the functions that are included within the legal definition of licensed practical nurse, Section 54-1402(3), Idaho Code, (Nursing Practice Act) follows. This list is for example only, it is not complete. The licensed practical nurse: (5-3-03)

a. Contributes to the assessment of health status by collecting, reporting and recording objective and subjective data; (5-3-03)

b. Participates in the development and modification of the plan of care; (5-3-03)

c. Implements aspects of the plan of care; (5-3-03)

d. Maintains safe and effective nursing care; (5-3-03)

e. Participates in the evaluation of responses to interventions; (5-3-03)

f. Fulfills charge nurse responsibilities in health care facilities as allowed by state and federal law; (5-3-03)

g. Delegates to others as allowed by application of the decision-making model; and (5-3-03)

h. Accepts delegated assignments only as allowed by application of the decision-making model. (5-3-03)

i. Engages in other interfaces with healthcare providers and other workers in settings where there is not a structured nursing organization and in settings where health care plays a secondary role, where the nurse needs to identify the nursing role and responsibility for the particular type of interface, for example, teaching, supervising, consulting, advising, etc. (3-20-14)

461. -- 490. (RESERVED)

491. TECHNICIANS/TECHNOLOGISTS.

01. Functions. Technicians/technologists may perform limited nursing functions within the ordinary, customary, and usual roles in their fields and are exempted from licensure by the Board under Section 54-1412, Idaho

Code, (Nursing Practice Act), provided they are: (5-3-03)

- a. Enrolled in or have completed a formal training program acceptable to the Board; or (5-3-03)
- b. Registered with or certified by a national organization acceptable to the Board. (5-3-03)

02. Supervision. Technicians/technologists providing basic nursing care services on an organized nursing unit in an institutional setting must function under the supervision of a licensed registered nurse. (3-30-07)

492. MEDICATION ADMINISTRATION BY MEDICATION ASSISTANTS - CERTIFIED (MA-C).

01. When Tasks May Be Performed. A medication assistant - certified may perform the delegated function of administration of medications and related tasks under the direct supervision of a licensed nurse, if: (3-26-08)

- a. The medication assistant - certified does not assume other unrelated tasks while he is administering drugs; (3-26-08)
- b. The medication is given by an approved medication route, to include: (3-26-08)
 - i. Orally, to include sublingual, buccal; (3-26-08)
 - ii. Topically; (3-26-08)
 - iii. For the eye, ear, or nose; (3-26-08)
 - iv. Vaginally; (3-26-08)
 - v. Rectally; (3-26-08)
 - vi. Transdermally; (3-26-08)
 - vii. Oral inhaler; (3-26-08)
 - viii. Established gastric (non-nasogastric) tube; and (3-26-08)
- c. The delegation does not conflict with provisions of Subsection 400.02 of these rules. (3-26-08)

02. When Tasks Shall Not Be Performed. A medication assistant - certified shall not perform a task involving the administration of medication if: (3-26-08)

- a. The medication administration requires a nurse's assessment of the patient prior to or following the medication, a calculation of the dosage of the medication, or the conversion of the dosage. The provision does not restrict the medication assistant - certified from administering PRN medication to stable patients; or (3-26-08)
- b. The supervising nurse is unavailable to monitor the progress of the patient and the effect on the patient of the medication; or (3-26-08)
- c. The patient's condition is unstable or the patient has changing nursing needs. (3-26-08)

03. Report Medication Errors. A medication assistant - certified who has any reason to believe that he has made an error in the administration of medication shall follow facility policy and procedure to report the possible or known error to their supervising nurse and shall assist in completing any required documentation of the medication error. (3-26-08)

04. Medication Administration Policies. (3-26-08)

- a. The medication assistant - certified shall report to the supervising nurse: (3-26-08)
 - i. Signs or symptoms that appear life-threatening; (3-26-08)
 - ii. Events that appear health threatening; and (3-26-08)
 - iii. Medications that produce no results or undesirable effects as reported by the patient. (3-26-08)
- b. A licensed nurse shall supervise medication assistant - certified. (3-26-08)
- c. A licensed registered nurse shall periodically review the following: (3-26-08)
 - i. Authorized provider orders; and (3-26-08)
 - ii. Patient medication records. (3-26-08)
- d. Tasks that may not be performed by the medication assistant - certified: (3-26-08)
 - i. Receive controlled substances. (3-26-08)
 - ii. Administration of parenteral or injectable medications. (3-26-08)
 - iii. Administration of any medication by nasogastric tube. (3-26-08)
 - iv. Calculate drug dosage. (3-26-08)
 - v. Destruction of medications. (3-26-08)
 - vi. Receive written or verbal medication orders. (3-26-08)
 - vii. Request initial dose medications. (3-26-08)
 - viii. Evaluate medication error reports. (3-26-08)
 - ix. Perform treatments unrelated to the administration of medications. (3-26-08)
 - x. Conduct patient assessments. (3-26-08)
 - xi. Engage in patient teaching activities. (3-26-08)
 - xii. Administer initial dose or non-routine medications when the patient's response to the medication is not predictable. (3-26-08)

493. EDUCATION AND TRAINING FOR MEDICATION ASSISTANT - CERTIFIED.

- 01. Education Program Content.** Education for medication assistant - certified shall include: (3-26-08)
 - a. At least eighty (80) clock hours of didactic content in: (3-26-08)
 - i. The role of the medication assistant - certified, to include, but not be limited to, medication administration as a delegated nursing function under the supervision of a licensed nurse in a setting or facility where the performance of the delegated function is not otherwise prohibited by law. (3-26-08)
 - ii. Fundamentals of medication administration, to include, but not be limited to, medication orders, medication storage, measurement, forms of medications, preparation of medications, role of the medication assistant

- certified, and role of the delegating nurse. (3-26-08)

iii. Safety factors in administering medications, to include, but not be limited to, rights of medication administration, prevention of medication errors, and reporting medication errors. (3-26-08)

iv. Communication and documentation, to include, but not be limited to, communication process, boundaries, reporting symptoms and side effects, reporting deviations from normal, and documenting medication administration. (3-26-08)

v. Medication administration, to include, but not be limited to, routes of administration, factors affecting how the body responds to medications, and classes of medications. (3-26-08)

vi. Ethical and legal issues, to include, but not be limited to, responsibility of the medication assistant - certified, patient rights, patient self-administration of medications, and ethical and legal violations. (3-26-08)

b. At least forty (40) clock hours of correlated supervised practicum in medication administration. (3-26-08)

02. Board Approval. Programs preparing medication assistant - certified must be approved by the Board. (3-26-08)

a. Institutions applying for initial approval must make application to the Board on forms supplied by the Board. The following information must be included: (3-26-08)

i. Accreditation status, relationship of educational program to parent institution. (3-26-08)

ii. Curriculum to be used. (3-26-08)

iii. Clinical sites to be used. (3-26-08)

iv. Provision for qualified faculty. (3-26-08)

b. Provisional approval for one (1) year will be granted to programs on initial application that provide evidence that Board-approved training standards will be met. (3-26-08)

c. Programs with provisional approval must apply for full approval on forms supplied by the Board and submit such application to the Board office one (1) month prior to the expiration of provisional approval. (3-26-08)

d. A representative of the Board shall visit the program one (1) year following initial provisional approval and submit a written report to the Board. (3-26-08)

i. Following the Board's review of the visit report, the institution shall be notified of the Board's decision within thirty (30) days of the review. (3-26-08)

ii. Following its review, the Board may grant full approval, if all conditions have been met; or conditional approval, if all conditions have not been met; or denial of approval if, conditions have not been met and the institution can provide no indication that they will be met within a reasonable timeframe. (3-26-08)

e. A letter of continuing approval will be granted annually to programs that substantially meet the Board's requirements, as evidenced by: (3-26-08)

i. Information included in annual reports to the Board; and (3-26-08)

ii. Information obtained by Board representative during on-site visits. (3-26-08)

03. Administration of Program. The educational program shall be administered by an educational

institution accredited by an organization recognized by the U.S. Department of Education. (3-26-08)

04. Medication Assistant - Certified Program Requirements. An educational program preparing medication assistant - certified shall: (3-26-08)

a. Provide evidence of financial support and resources adequate to achieve the purpose of the program, to include, but not limited to, classrooms, laboratories, equipment, supplies, and qualified administrative, instructional, and support personnel and services. (3-26-08)

b. Maintain current and final records for each student enrolled in the program in accordance with policies of the parent institution. (3-26-08)

c. Provide sufficient numbers of qualified faculty to implement the curriculum. (3-26-08)

d. Provide sufficient numbers of faculty in the clinical setting to assure patient safety and meet student learning needs. (3-26-08)

e. Use a curriculum approved by the Board that includes didactic content and supervised clinical as defined in Subsection 493.01 of these rules. (3-26-08)

05. Program Administrator. Medication assistant - certified program administrator shall meet institutional requirements for the position. (3-26-08)

06. Program Instructors. Medication assistant - certified instructors shall: (3-26-08)

a. Hold a current, unencumbered license to practice as a registered nurse in Idaho. (3-26-08)

b. Have a minimum of two (2) years practice experience in a health care facility. (3-26-08)

c. Have at least one (1) year clinical experience relevant to areas of teaching responsibility. (3-26-08)

d. Provide documented evidence of preparation for teaching adults. (3-26-08)

07. Instructor Responsibilities. Medication assistant - certified instructor responsibilities are the same as those identified in Subsection 644.01 of these rules. (3-26-08)

08. Program Changes. Board approval is required to make substantive changes in an approved medication assistant - certified training program. The program provider shall submit a description of the proposed change in curriculum or other substantive change to the Board for review at least sixty (60) days before the program provider plans to implement the changes. The Board will notify the provider in writing of its decision. (3-26-08)

09. Periodic Training Program Evaluation. To ensure compliance with the requirements for medication assistant - certified programs: (3-26-08)

a. Each program shall submit a report annually regarding the program's operation and compliance with the Board rules. (3-26-08)

b. Each program shall be on-site surveyed by representatives of the Board and evaluated for ongoing approval every four (4) years or as requested by the Board. (3-26-08)

c. A copy of the survey visit report will be made available to the education and training program. (3-26-08)

10. Withdrawal of Approval. (3-26-08)

a. The Board shall withdraw approval of medication assistant - certified education and training programs when the Board determines that there is not sufficient evidence that the program is meeting requirements.

(3-26-08)

b. The Board shall provide due process rights and adhere to the procedures of the Idaho Administrative Procedures Act, providing notice, opportunity for hearing, and correction of deficiencies. (3-26-08)

c. The Board may consider reinstatement or approval of an educational program upon submission of satisfactory evidence that the program meets the requirements. (3-26-08)

11. Closing of Education Programs. When a person or entity plans to discontinue offering an education program, it shall comply with the requirements set forth at Section 604 of these rules. (3-26-08)

494. APPLICATION FOR CERTIFICATION FOR MEDICATION ASSISTANT - CERTIFIED.

01. Application Submission. An applicant for medication assistant - certified shall submit to the Board: (3-26-08)

a. A completed, notarized application form provided by the Board; (3-26-08)

b. A notarized affidavit of graduation from an approved medication assistant - certified education and training program; (3-26-08)

c. Evidence of successful completion of a medication assistant - certified competency evaluation, approved by the Board; (3-26-08)

d. Payment of application fees as established in Section 497 of these rules; and (3-26-08)

e. Applicant's current fingerprint-based criminal history check as set forth in Section 54-1406A(5), Idaho Code. (3-26-08)

02. Temporary Certification. (3-26-08)

a. At the Board's discretion, and pending completion of the competency evaluation and receipt of the criminal background report, a temporary certification may be issued to an applicant who meets all other requirements. (3-29-12)

b. Temporary certification is valid for six (6) months from the date of issuance or until a permanent certification is issued or denied, whichever occurs first. (3-26-08)

c. The applicant must pay the temporary certification fee established in Section 498 of these rules. (3-26-08)

03. Denial of Certification. Certification as a medication assistant - certified may be denied for any of the following grounds: (3-26-08)

a. Failure to meet any requirement established by statute or these rules; or (3-26-08)

b. False representation of facts on an application for certification; or (3-26-08)

c. Failure to pass any certification examination required by the Board; or (3-29-12)

d. Having another person appear in their place for any certification examination required by the Board; or (3-29-12)

e. Engaging in any conduct which would be grounds for discipline under Section 54-1406A, Idaho Code, or these rules; or (3-26-08)

f. Revocation, suspension, limitation, reprimand, voluntary surrender, or any other disciplinary action

or proceeding including investigation against a certificate to practice by another state or jurisdiction. (3-26-08)

04. Notification. If certification is denied, the Board will notify the applicant in writing of the reason for denial and inform him of his procedural rights under the Idaho Administrative Procedures Act. (3-26-08)

495. CERTIFICATION RENEWAL FOR MEDICATION ASSISTANT - CERTIFIED.

01. Renewal Time. Certifications of medication assistants - certified must be renewed every two (2) years. (3-26-08)

02. Renewal Application. A renewal application will be provided by the Board to persons certified under these rules. The application will be either mailed to the applicant's address on record with the Board no later than one (1) month before expiration of the certification, or be available to applicants on the Board's website. (3-26-08)

03. Final Date to Renew. The original signed renewal application and renewal fees, as establish in Section 497 of these rules, must be submitted to the Board by personal delivery or postmarked no later than August 31 of every even-numbered year. (3-26-08)

04. Attestation of Good Standing. Along with the renewal application and applicable fees, the applicant must submit evidence that he is currently listed in good standing on the state's certified nurse aide registry and has been employed as a medication assistant - certified within the preceding twenty-four (24) month period. (3-26-08)

05. Date Certification Lapsed. Certifications not renewed prior to September 1 of the appropriate year will automatically lapse and be invalid. (3-26-08)

496. REINSTATEMENT OF CERTIFICATION.

01. Within One Year. A person whose certificate has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement within one (1) year by: (3-26-08)

a. Filing a completed renewal application; and (3-26-08)

b. Payment of the verification of records fee and the reinstatement fee as prescribed in Section 498 of these rules. (3-26-08)

02. After One Year. After one (1) year, but less than three (3) years, a person whose certificate has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement by: (3-26-08)

a. Filing a completed reinstatement application; (3-26-08)

b. Payment of the fees prescribed in Section 497 of these rules; (3-26-08)

c. Providing evidence satisfactory to the Board of the applicant's ability to practice safely and competently; and (3-26-08)

d. A current fingerprint-based criminal history check as set forth in Section 54-1406A(5), Idaho Code. (3-26-08)

03. After Three Years. After three (3) years, a person whose certificate has lapsed for failure to timely pay the renewal fee may apply for reinstatement by: (3-26-08)

a. Filing a completed reinstatement application; (3-26-08)

b. Payment of the fees prescribed in Section 497 of these rules; (3-26-08)

c. Payment of the temporary certification fee prescribed in Section 497 of these rules, if required;

(3-26-08)

d. Providing evidence, satisfactory to the Board, of the applicant's ability to practice safely and competently; and (3-26-08)

e. A current fingerprint-based criminal history check as set forth in Section 54-1406A(5), Idaho Code. (3-26-08)

04. After Discipline. A person whose certificate has been subject to disciplinary action by the Board may apply for reinstatement of the certificate to active and unrestricted status by: (3-26-08)

a. Submitting a completed application for reinstatement; (3-26-08)

b. Payment of the fees prescribed in Section 497 of these rules; (3-26-08)

c. Documenting compliance with any term and restrictions set forth in any order as a condition of reinstatement; (3-26-08)

d. Providing evidence, satisfactory to the Board, of the applicant's ability to practice safely and competently; and (3-26-08)

e. A current fingerprint-based criminal history check as set forth in Section 54-1406A(5), Idaho Code. (3-26-08)

f. A person whose certificate has been revoked may not apply for reinstatement until two (2) years following the order of revocation. (3-26-08)

497. FEES APPLICABLE TO MEDICATION ASSISTANT - CERTIFIED AND THE CERTIFICATION PROCESS.

The applicable fees are as follows: (3-26-08)

01. Initial Fee by Examination. The initial application fee for medication assistant - certified, by examination: thirty-five dollars (\$35). (3-26-08)

02. Initial Fee by Endorsement. The initial application fee for medication assistant - certified, by endorsement: forty dollars (\$40). (3-26-08)

03. Temporary. Temporary certification fee: twenty-five dollars (\$25). (3-26-08)

04. Renewal. Renewal of certification fee: sixty-five dollars (\$65). (3-26-08)

05. Reinstatement. Reinstatement of certification fee: fifty dollars (\$50). (3-26-08)

06. Records. Verification of records fee: thirty-five dollars (\$35). (3-26-08)

07. Verification. Fee for verification of certification to another state or jurisdiction: thirty dollars (\$30). (3-26-08)

08. Evaluation of Education Programs. A fee not to exceed one hundred dollars (\$100) per day will be assessed for survey and evaluation of medication assistant - certified education programs, which will be due at the time the evaluation is requested. (3-26-08)

498. CHANGES IN NAME AND ADDRESS FOR NOTIFICATION PURPOSES.

01. Change of Name. Whenever a change of certificate holder name occurs, the Board must be immediately notified of the change. Documentation confirming the change of name must be provided to the Board on request. (3-26-08)

02. Change of Address. Whenever a change of certificate holder mailing address occurs, the Board must be immediately notified of the change. (3-26-08)

03. Address for Notification Purposes. The most recent mailing address on record with the Board will be utilized for purposes of all written communication with the certificate holder including, but not limited to, notification of renewal and notices related to disciplinary actions. (3-26-08)

499. -- 599. (RESERVED)

600. NURSING EDUCATION FOR REGISTERED AND PRACTICAL NURSES.

601. PURPOSE OF APPROVAL.

To assure safe practice of nursing by establishing standards, criteria, and curriculum requirements for education programs preparing persons for the practice of nursing, and for enhancing the knowledge and skills of those in practice. (4-5-00)

01. Preparation of Graduates. To ensure that graduates of nursing education programs are prepared for safe and effective nursing practice. (4-5-00)

02. Guide for Development. To serve as a guide for the development of new nursing education programs. (4-5-00)

03. Continued Improvement. To foster the continued improvement of established nursing education programs. (4-5-00)

04. Evaluation Criteria. To provide criteria for the evaluation of new and established nursing education programs. (4-5-00)

05. Eligibility for Licensing Examination. To assure eligibility for admission to the licensing examination for nurses, and to facilitate interstate endorsement of graduates of Board-approved nursing education programs. (4-5-00)

602. APPROVAL OF A NEW EDUCATIONAL PROGRAM.

01. Educational Programs. ()

a. Any university, college, or other institution wishing to establish a nursing education program must make application to the Board on forms supplied by the Board. The following information is to be included with the initial application: ()

i. Purpose for establishing the nursing education program; (11-28-84)

ii. Community needs and studies made, as basis for establishing a nursing education program; (11-28-84)

iii. Type of program; (11-28-84)

iv. Accreditation status, relationship of educational program to parent institution; (4-5-00)

v. Financial provision for the educational program; (11-28-84)

vi. Potential student enrollment; (11-28-84)

vii. Provision for qualified faculty; (11-28-84)

viii. Proposed clinical facilities and other physical facilities; and (11-28-84)

- ix. Proposed time schedule for initiating the program. (11-28-84)
- b. A representative of the Board will visit the educational and clinical facilities and then submit a written report to the Board. (4-5-00)
- c. Representatives of the parent institution must meet with the Board to review the application within ninety (90) days of the conduct of the initial survey visit. (4-5-00)
- d. Following the Board's review, the parent institution will be notified of the Board's decision within thirty (30) days of the review. (4-5-00)
- e. Following the appointment of a qualified nurse administrator, a minimum period of twelve (12) months is necessary for planning to be completed before the first class of students is admitted to the program. ()
- f. Provisional approval may be applied for when the following conditions have been met: (4-5-00)
 - i. A qualified nurse administrator has been appointed; (11-28-84)
 - ii. There are sufficient qualified faculty to initiate the program; (11-28-84)
 - iii. The curriculum and plans for its implementation have been developed, including tentative clinical affiliation agreements; and (7-1-91)
 - iv. Program policies have been developed. (11-28-84)
- g. Provisional approval must be granted before the first students are admitted to the nursing program. (4-5-00)
- h. Students can be admitted to the nursing program once provisional approval is granted. ()
 - i. A representative of the Board will make a follow-up survey visit to the educational program and submit a written report to the Board. (7-1-93)
 - ii. Following the Board's review, the parent institution will be notified of the Board's decision within thirty (30) days. (7-1-93)
 - iii. Following its review, the Board may grant: full approval, if all conditions have been met; or conditional approval, if all standards have not been met, with such conditions and requirements as the Board may designate to insure compliance with standards within the designated time period; or denial of approval, if standards have not been met. (4-5-00)
- i. Full approval will be applied for and granted within a three (3) year period following eligibility. (4-5-00)

603. CONTINUANCE OF FULL APPROVAL OF EDUCATIONAL PROGRAM.

- 01. Continuing Full Approval.** ()
 - a. A certificate of continuing full approval will be granted for up to eight (8) years to nursing education programs that consistently meet the Board's standards, as evidenced by: (4-5-00)
 - i. Information included in the annual report to the Board; (4-5-00)
 - ii. Information obtained by a Board representative through consultation visits; and (4-5-00)

iii. Acceptable performance on the licensing examination for each program shall be a pass rate of eighty percent (80%) for its first-time writers in any given calendar year. A program whose pass rate falls below eighty percent (80%) for first-time writers in any two (2) consecutive calendar years shall: (4-5-00)

(1) Present to the Board a plan for identifying possible contributing factors and for correcting any identified deficiencies; and (4-5-00)

(2) Submit periodic progress reports on a schedule determined by the Board. (4-5-00)

b. To ensure continuing compliance with the Board's standards, each approved nursing education program will submit an annual report to the Board. Based on its findings the Board may: (4-5-00)

i. Request additional information from the nursing education program. (7-1-91)

ii. Conduct an on-site review of the nursing education program. (7-1-91)

iii. Request a full survey of the nursing education program. (7-1-91)

c. Written reports of the survey will be submitted to the Board for review and acceptance. Copies of the report and recommendations will then be sent to the educational institution within thirty (30) days of the review. (4-5-00)

d. Nursing education programs that do not meet the standards of the Board may be placed on conditional approval status, with such conditions and requirements as the Board may designate to ensure compliance with standards within a reasonable time period. (4-5-00)

e. At the end of the period of conditional approval, full approval may be restored if the required conditions have been met, or approval may be withdrawn if the required conditions have not been met. Upon petition and written documentation by the nursing education program of extenuating circumstances, the Board may consider extending the period of conditional approval. The school must submit documentation within ten (10) days of notification of withdrawal of full approval. (4-5-00)

f. Following notification of the Board's decision to place a program on conditional approval or to withdraw program approval, the educational program will have ten (10) days in which to request a hearing. Upon receipt of a request for hearing, the Board's action will be stayed until the matter is heard. Hearings shall be conducted in the same manner as disciplinary hearings, in accordance with Title 67, Chapter 52, Idaho Code. (4-5-00)

604. DISCONTINUANCE OF AN EDUCATIONAL PROGRAM.

When an educational institution plans to discontinue its education program, the following procedure must be used: (11-28-84)

01. Notify in Writing. Notify the Board in writing at least one (1) academic year prior to the closure; and (11-28-84)

02. Follow Plan. Follow institutional plan for program closure including: (4-5-00)

a. Maintenance of program standards until last class has graduated; and (4-5-00)

b. Provision for disposition of student records. (4-5-00)

605. -- 629. (RESERVED)

630. PHILOSOPHY AND OBJECTIVES OF EDUCATIONAL PROGRAM.

The nursing education program shall have statements of philosophy and objectives that are consistent with those of the parent institution and with the law governing the practice of nursing. (11-28-84)

631. ADMINISTRATION OF EDUCATIONAL PROGRAM.

01. Administration of Educational Programs. ()

a. The educational program in nursing shall be an integral part of an accredited institution of higher learning. (4-5-00)

b. There shall be an institutional organizational design that demonstrates the relationship of the program to the administration and to comparable programs within the institution, and that clearly delineates the lines of authority, responsibility, and channels of communication. The program faculty are given the opportunity to participate in the governance of the program and the institution. (4-5-00)

i. Qualifications, rights, and responsibilities of faculty are addressed in written personnel policies which are consistent with those of the parent institution as well as those of other programs within the institution. (4-5-00)

ii. Faculty workloads shall be consistent with responsibilities identified in Section 644 of these rules. (4-5-00)

c. The program must have an organizational design with clearly defined authority, responsibility, and channels of communication that assures both faculty and student involvement. (4-5-00)

d. Administrative responsibility and control shall be delegated to the nursing education administrator by the parent institution. (4-5-00)

e. The program must have a written purpose that is consistent with the mission of the institution. The program must have written policies that are congruent with the institution's policies and are periodically reviewed. (4-5-00)

632. FINANCIAL SUPPORT OF EDUCATIONAL PROGRAM FOR PRACTICAL NURSE, REGISTERED NURSE, AND ADVANCED PRACTICE REGISTERED NURSE.

There must be evidence of financial support and resources adequate to achieve the purpose of the program. Resources include: facilities, equipment, supplies, and qualified administrative, instructional, and support personnel and services. (4-5-00)

633. RECORDS OF EDUCATIONAL PROGRAM.

The nursing education program structure shall provide for pre-admission and current records for each student while enrolled. Final records for each student shall be maintained on a permanent basis in accordance with the policies of the parent institution. (11-28-84)

634. -- 639. (RESERVED)

640. FACULTY QUALIFICATIONS.

01. 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)

02. 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)

03. 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 shall have: (3-28-18)

- a.** A current, unencumbered license to practice as a registered nurse in this state; and (4-5-00)
- b.** A graduate degree or post-graduate degree in nursing; (3-28-18)
- c.** An advanced practice registered nurse license and national certification if responsible for courses in a specific advanced practice registered nurse role and population; and (3-28-18)
- d.** Evidence of advanced registered nursing practice experience. (3-28-18)

04. Non-clinical Nursing Courses Faculty Qualifications. Interprofessional faculty teaching non-clinical nursing course shall have advanced preparation appropriate for the content being taught. (3-28-18)

05. 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)

07. Continued Study. The parent institution will support and make provisions for continued professional development of the faculty. (7-1-91)

641. FACULTY.

01. Numbers Needed. There shall be sufficient faculty with educational preparation and nursing expertise to meet the objectives and purposes of the nursing education program. (4-5-00)

a. Number of faculty shall be sufficient to design and implement the curriculum necessary to prepare students to function in a rapidly changing healthcare environment. (4-5-00)

b. Number of faculty in the clinical setting shall be sufficient in number to assure patient safety and meet student learning needs. (4-5-00)

02. Faculty-Student Ratio. There shall be no more than ten (10) students for every faculty person in the clinical agencies. Deviations may be presented for approval with the program's annual report to the Board with written justification assuring client safety and supporting accomplishment of program objectives. (3-24-17)

642. (RESERVED)

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. (3-28-18)

a. Practical Nurse Administrator. The administrator in a program preparing for practical nurse licensure shall: (4-5-00)

i. Hold a minimum of a graduate degree with a major in nursing; and (3-28-18)

ii. Have evidence of experience in education, administration, and practice sufficient to administer the program. (4-5-00)

b. Registered Nurse Administrator. The administrator in a program preparing for registered nurse licensure shall: (4-5-00)

i. Hold a minimum of a graduate degree with a major in nursing and meet institutional requirements; and (3-28-18)

ii. Have evidence of experience in education, administration, and practice sufficient to administer the program. (4-5-00)

c. Advanced Practice Registered Nurse Administrator. The administrator in a program preparing for advanced practice registered nursing shall: (4-5-00)

i. Hold a graduate and post-graduate degree, one (1) of which is in nursing; and (3-28-18)

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)

644. FACULTY RESPONSIBILITIES.

01. Faculty Responsibilities. Nursing faculty responsibilities include, but are not limited to the following: ()

a. Assess, plan, implement, evaluate, and modify the program based on sociological and environmental indicators; (4-5-00)

b. Design, implement, evaluate, and update the curriculum using a written plan; (4-5-00)

c. Develop, implement, evaluate, and update policies for student admission, progression, retention, and graduation in keeping with the policies of the school; (4-5-00)

d. Participate in academic advisement and guidance of students; (4-5-00)

e. Provide theoretical instruction and practice experiences; (4-5-00)

f. Select, monitor, and evaluate preceptors and the student learning experiences; (4-5-00)

g. Evaluate student achievement of curricular outcomes related to nursing knowledge and practice; (4-5-00)

h. Evaluate teaching effectiveness; (4-5-00)

i. Participate in activities that facilitate maintaining the faculty members' own nursing competence

and professional expertise in the area of teaching responsibility, including instructional methodology; (4-5-00)

j. Participate in other scholarly activities, including research, consistent with institutional and professional requirements; and (4-5-00)

k. Participate in the organization of the program and institution. (4-5-00)

645. -- 659. (RESERVED)

660. STUDENTS, EDUCATIONAL PROGRAM.

01. Student Policies. Student policies should facilitate mobility and articulation and be consistent with the educational standards of the parent institution. Student policies in relation to the following must be in writing and available: ()

a. Admission, readmission, progression, retention, graduation, dismissal, and withdrawal; (4-5-00)

b. Physical, mental health, and legal standards required by affiliate agencies and the law governing the practice of nursing; (4-5-00)

c. Student responsibilities; (4-5-00)

d. Student rights and grievance procedures; and (4-5-00)

e. Student opportunity to participate in program governance and evaluation. (4-5-00)

661. -- 679. (RESERVED)

680. CURRICULUM, EDUCATIONAL PROGRAM.

01. Student Competence. (4-5-00)

a. Students enrolled in a practical nursing program shall be provided the opportunity to acquire and demonstrate the knowledge, skills, and abilities for safe and effective nursing practice. The graduate from a practical nurse program is responsible and accountable to practice according to the standards of practice for the licensed practical nurse as defined in Section 460 of these rules. (4-6-05)

b. Students enrolled in a registered nurse program shall be provided the opportunity to acquire and demonstrate the knowledge, skills, and abilities for safe and effective nursing practice. The graduate from a registered nurse program is responsible and accountable to practice according to the standards of practice for the registered nurse as defined in Section 401 of these rules. (4-6-05)

c. Students enrolled in advanced practice registered nursing education shall be provided the opportunity to acquire and demonstrate the knowledge, skills, and abilities for safe and effective advanced nursing practice. The graduate from an advanced practice registered nursing program is responsible and accountable to practice according to the standards for the advanced practice nursing role for which the nurse is prepared as defined in Section 280 of these rules. (4-5-00)

02. Program Evaluation. The program shall have a plan for total program evaluation that includes, but is not limited to the following: organization and administration, faculty, students, curriculum, and performance of graduates. Implementation of the plan and use of findings for relevant decision making must be evident. (4-5-00)

681. CURRICULUM REQUIREMENTS FOR NURSING EDUCATION PROGRAMS.

01. General Curriculum. For licensed practical nurses, registered nurses, and advanced practice registered nurses the general curriculum is as follows: ()

- a. Be planned, implemented, and evaluated by the faculty with provisions for student input; (5-3-03)
 - b. Reflect the mission and purpose of the nursing education program; (5-3-03)
 - c. Be organized logically and sequenced appropriately; (5-3-03)
 - d. Facilitate articulation for horizontal and vertical mobility; (5-3-03)
 - e. Have a syllabus for each nursing course; (5-3-03)
 - f. Have written, measurable terminal outcomes that reflect the role of the graduate; and (4-5-00)
 - g. Be responsive to changing healthcare environment. (4-5-00)
- 02. Curriculum Changes.** Major curriculum changes, as defined in Section 700 of these rules, will be submitted to the Board for approval prior to implementation. (4-5-00)
- 03. Practice Sites.** The program will have sufficient correlated practice experiences to assure development of nursing competencies. (4-5-00)
- 04. Practical Nurse Curriculum.** The curriculum includes: (5-3-03)
- a. Nursing didactic content and practice experience that establish the knowledge base for demonstrating beginning competency; and (5-3-03)
 - b. Integrated, combined or separate coursework from the following academic disciplines and meets requirements for the credential with a major in practical nursing: (5-3-03)
 - i. Communication and information systems concepts; (5-3-03)
 - ii. Behavioral and social science concepts that serve as a framework for understanding growth and development throughout the life cycle, human behavior, interpersonal relationships, and cultural diversity; (5-3-03)
 - iii. Physical and biological sciences concepts that help the students gain an understanding of the principles of scientific theory and computation; (5-3-03)
 - iv. Nursing concepts that provide the basis for understanding the principles of nursing care and appropriate and sufficient correlated nursing practice experiences to assure development of competencies as a member of the interdisciplinary team; (5-3-03)
 - v. Concepts regarding legal, managerial, economic, and ethical issues related to responsibilities of the practical nurse; and (4-5-00)
 - vi. Courses to meet the school's general education requirements for the credential awarded. (4-5-00)
- 05. Registered Nurse Curriculum.** The curriculum includes: (5-3-03)
- a. Nursing didactic content and practice experience that establish the knowledge base for demonstrating beginning competency related to: (5-3-03)
 - i. Nursing practice; (5-3-03)
 - ii. Systems thinking and interdisciplinary team function; and (4-5-00)
 - iii. The promotion and restoration of optimal patient health throughout the lifespan in a variety of primary, secondary and tertiary settings focusing on individuals, groups, and communities. (5-3-03)

b. Integrated, combined or separate coursework from the following academic disciplines and meets requirements for a degree with a major in nursing: (5-3-03)

i. Concepts in written and oral communication, values clarification, scientific inquiry, computation, and informatics; (5-3-03)

ii. Behavioral and social sciences concepts that serve as a framework for the understanding of growth and development throughout the life cycle, human behavior, interpersonal relationships, cultural diversity, and economics related to the social context of healthcare; (5-3-03)

iii. Physical and biological sciences concepts that help the student gain an understanding of the principles of scientific theory; (5-3-03)

iv. Arts and humanities concepts that develop the aesthetic, ethical, and intellectual capabilities of the student; (5-3-03)

v. Concepts regarding research, nursing theory, legal and ethical issues, trends in nursing, principles of education and learning, and professional responsibilities; (5-3-03)

vi. Experiences that promote the development of leadership and management skills, interdisciplinary and professional socialization; and (4-5-00)

vii. Courses to meet the school's general education requirements for the academic degree. (4-5-00)

06. Advanced Practice Registered Nursing Program Curriculum. The curriculum includes: (5-3-03)

a. Content necessary to prepare the graduate for practice consistent with defined standards for advanced nursing practice; and (5-3-03)

b. Content from nursing and related academic disciplines and meet requirements for a graduate degree with a major in nursing: (5-3-03)

i. Advanced theory and research in nursing, biological and behavioral sciences, interdisciplinary education, cultural diversity, economics and informatics sufficient to practice as a graduate prepared registered nurse; (5-3-03)

ii. Legal, ethical, and professional responsibilities of a graduate prepared registered nurse; (5-3-03)

iii. Didactic content and supervised practice experience relevant to the nursing focus of the graduate specialty; and (5-3-03)

iv. Courses to meet the school's requirements for the graduate degree. (5-3-03)

682. -- 699. (RESERVED)

700. CURRICULUM CHANGE, EDUCATIONAL PROGRAM.

Any proposed curriculum revision that involves major changes in the philosophy and objectives, significant course content changes, or changes in the length of the program, shall be submitted to and approved by the Board prior to implementation. Minor curriculum changes such as redistribution of nursing course content or slight increase or decrease in the number of theory and clinical hours must be reported to the Board in the Annual Report, but do not require Board approval. Curriculum revision that alters existing articulation agreements must be approved by the State Board of Education prior to implementation. (4-5-00)

701. -- 729. (RESERVED)

730. PRACTICE SITES.

The program must have sufficient practice experiences to assure development of nursing competencies. (4-5-00)

01. Approval by Other Agencies. Cooperating agencies shall be approved by the recognized accreditation, evaluation or licensing body as appropriate. ()

02. Evaluation by Faculty. Agencies used to provide practice experiences must be evaluated periodically by faculty. (4-5-00)

03. Sufficient Experiences. There must be sufficient practice experiences to assure the development of nursing competencies consistent with the level of preparation. (4-5-00)

04. Written Agreements. There must be written agreements with cooperating agencies that are reviewed and revised periodically. (4-5-00)

05. Faculty Supervision. Sufficient faculty must be employed to supervise student practice experiences. An appropriate student to faculty ratio must be maintained to provide for safety and protection of patients, students, and faculty members. (4-5-00)

06. Planned Communication. Means shall be provided for ongoing and periodic planned communication between faculty and agency administrative personnel and between faculties of all educational programs using the agency; the responsibility for coordination shall be specifically identified. (4-5-00)

731. -- 899. (RESERVED)

900. INITIAL LICENSE, RENEWAL AND REINSTATEMENT FEES.

01. Assessed Fees. Fees will be assessed for renewal of licensure or for reinstatement of a lapsed, disciplined, limited, or emeritus license. Any person submitting the renewal application and fee post-marked or electronically dated later than August 31 shall be considered delinquent and the license lapsed and therefore invalid:

	Registered Nurse	Practical Nurse	Advanced Practice Nurse
Temporary License Fee	\$25	\$25	\$25
Initial Application Fee			\$90
License by Exam Fee	\$90	\$75	
License by Endorsement	\$110	\$110	
License Renewal	\$90	\$90	\$90
Expiration date	Aug 31 - odd years	Aug 31 - even years	Aug 31 - odd years

()

02. Reinstatement Fee. Nurses requesting reinstatement of a lapsed, disciplined, or restricted license, or reinstatement of an emeritus license to active status, will be assessed the records verification and renewal fees.

()

901. OTHER FEES.

Fees will be assessed for licensure of registered and practical nurses by examination and endorsement, and for temporary licenses and verification of licensure to another state.

Records Verification Fee	\$35
Return Check Fee	\$25

()

902. (RESERVED)

903. EDUCATION PROGRAM FEES.

01. Evaluation of Nursing Education Programs. A fee not to exceed two hundred fifty dollars (\$250) per day will be assessed for survey and evaluation of nursing education programs which will be due at the time the evaluation is requested. (3-30-01)

02. Evaluation of Courses of Instruction. A fee not to exceed five hundred dollars (\$500) will be assessed for approval of courses of instruction related to nursing that are offered by commercial establishments. This fee will be due at the time the evaluation is requested. (3-30-01)

904. NO REFUNDS.
Fees are not refundable either in whole or in part. (3-30-01)

905. ONLY ONE LICENSE - EXCEPTION.
A licensee may hold only one (1) active renewable license to practice nursing at any time except that licensed advanced practice registered nurses must also be licensed to practice as licensed registered nurses. (3-30-01)

906. -- 998. (RESERVED)

999. ADMINISTRATIVE FINE.
An administrative fine not to exceed one hundred dollars (\$100) for each separate offense of practicing nursing without current licensure may be assessed as a condition of reinstatement of a license, or the issuance of a temporary or renewable license. ()

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.03.01 – RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS

DOCKET NO. 24-0301-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-707, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 24.03.01, rules of the State Board of Chiropractic Physicians.

IDAPA 24.03.01

- 24.03.01, *Rules of the State Board of Chiropractic Physicians*: all proposed rules except 010.04, 020, 100.01, 250, 300.02.b., 300.02.c., 300.02.d., 450.01, 450.02, 450.03, 450.04, 450.05, 450.06, 450.07, 450.08, 450.09, 450.10, 500, 550.01, 551.01, 560, 701, 702.02.a., 702.03.a., and 709.03, 709.04.

The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.03.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Rules of the State Board of Chiropractic Physicians was published. This pending fee rule will allow the Legislature to review for codification IDAPA 24.03.01, the Rules of the State Board of Chiropractic Physicians. On July 12, 2019, the State Board of Chiropractic Physicians held a public meeting which was noticed pursuant to the Idaho Open Meetings Law where the public and other interested parties, including industry organizations, were given the opportunity to comment as this chapter was reviewed. Changes made to the pending fee rule which differ from the proposed text were made to accomplish the Recommendations for Improvement, Modification, or Elimination of Requirements from the Licensing Freedom Act of 2017, Executive Order No. 2017-06; the directives set forth in the Licensing Freedom Act of 2019, Executive Order No. 2019-01; the directives set forth in the Red Tape Reduction Act, Executive Order No. 2019-02; and the continued efforts to clarify and streamline its rules. This pending fee rule removes outdated language and processes, reorders certain sections to improve overall organization, removes redundant language, moves fees into an easier to read tabular format, and adds the phrase “not to exceed” before fee amounts, which will allow for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity. Further, the pending fee rule expands continuing education options for licensees through adding two categories of approved continuing education, the rule revises the advertisement rules through eliminating examples to align with other medical advertising rules, and the rule eliminates unnecessary storage duration and waste disposal rules.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4605 - 4620.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules, except that it changes the fee structure to set a cap.

The fee caps are above the current fee level for applications by \$50;
Original licensure by \$50;
License renewal by \$50;

Inactive renewal by \$50;
Temporary permit by \$50;
Intern permit by \$50;
Applications for clinical nutrition certification by \$25;
Clinical nutrition certification renewal by \$25.

Fee caps are established in accordance with Section 54-707A, Idaho Code, as follows:

Application fee: not to exceed \$200;
Original license fee: not to exceed \$200;
Annual renewal fee: not to exceed \$200;
Inactive license fee: not to exceed \$150;
Temporary permit fee: not to exceed \$150;
Intern permit fee not to exceed \$150;
Application for clinical nutrition certification fee: not to exceed \$175;
Clinical nutrition certification fee not to exceed \$175;
Reinstatement fee of an expired license is being reduced to \$35.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking. Additionally, the Board is not a general fund agency, and these rule changes have no fiscal impact on the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade (208) 334-3233.

Dated this 16th day of October, 2019.

Kelley Packer
Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-707, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.03.01, rules of the State Board of Chiropractic Physicians:

IDAPA 24

- 24.03.01, *Rules of the State Board of Chiropractic Physicians* – All rules *except Subsections 010.02, 010.03, 250.01, 250.03, and Section 600.*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules govern the qualifications for chiropractors as well as regulate the practice of chiropractic physicians. Allowing these rules to expire would harm licensees and consumers who seek treatment from chiropractic physicians.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and the immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Absent the ability to impose the licensure fees defined in this chapter, the State Board of Chiropractic Physicians would not be able to remain self-sufficient, contrary to its statutory requirement.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-707A, Idaho Code, as follows: application fee: \$50; original license fee: \$150; annual renewal fee: \$150; inactive license fee: \$100; temporary permit fee: \$100; intern permit fee: \$100; application for clinical nutrition certification fee: \$150; and clinical nutrition certification fee: \$150.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state General Fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-0301-1900F

24.03.01 – RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS

000. LEGAL AUTHORITY.

These rules are hereby prescribed and established pursuant to the authority vested in the State Board of Chiropractic Physicians by the provisions of Section 54-707, Idaho Code. (7-1-93)

001. TITLE AND SCOPE.

These rules are titled IDAPA 24.03.01, “Rules of the State Board of Chiropractic Physicians.” (7-1-93)

002. -- 009. (RESERVED)

010. DEFINITION.

01. Chiropractic Assistant. A chiropractic assistant is an individual functioning in a dependent relationship with a supervising chiropractic physician in the performance of any chiropractic practice. ()

02. Chiropractic Intern. A chiropractic intern is defined as any individual who is presently enrolled in a school of chiropractic and is qualified to practice as an intern as established by the approved chiropractic college that the individual attends and who will function in a dependent relationship with a supervising chiropractic physician in the performance of chiropractic practice. ()

03. Direct Personal Supervision. Direct Personal Supervision means that the licensed chiropractic physician is physically present in the clinic, is monitoring the activities of the supervisee, and is available to intervene, if necessary. (3-29-10)

04. Inactive Retired. The status of a licensee who is over sixty-five (65) years of age, has paid the inactive retired fee and is permanently retired from the practice of chiropractic. The holder of an inactive retired license may not practice chiropractic in Idaho. (3-15-02)

011. -- 099. (RESERVED)

100. APPLICATIONS.

01. Qualifications. (7-1-93)

a. New applicants will meet the following requirements: (7-1-93)

i. National Boards Parts I, II, III, and IV; (7-1-99)

ii. Graduation from a Council on Chiropractic Education (CCE) approved college or university; and (7-1-93)

iii. Applicants will be required to sign an affidavit swearing under oath that they have fully reviewed and understand and will abide by the Chiropractic Act, Title 54, Chapter 7, Idaho Code, and the Board’s Rules, IDAPA 24, Title 03, Chapter 01, “Rules of the State Board of Chiropractic Physicians.” (7-1-99)

b. Endorsement applicants will meet the following requirements: (7-1-93)

i. Successful passage of the National Boards Parts which were in effect at the time of graduation from chiropractic college and physiotherapy; (4-2-08)

ii. If licensed prior to January, 1980, CCE approved college or university not required. If licensed after January, 1980, applicant must have graduated from a CCE approved college or university; (7-1-93)

iii. Five (5) years of consecutive practice without discipline immediately prior to application and holds a current, valid license to practice in a state, territory, or district of the United States or Canada; (4-11-19)

iv. Applicants must demonstrate that they possess the requisite qualifications to provide the same standard of chiropractic care as provided by physicians in this state. The Board may, in its sole discretion, require further examination to establish such qualifications, such as passage of the National Board Special Purposes Examination for Chiropractors (SPEC); and (4-11-19)

v. Applicants will be required to sign an affidavit swearing under oath that they have fully reviewed and understand and will abide by the Chiropractic Act, Title 54, Chapter 7, Idaho Code, and the Board’s Rules, IDAPA 24, Title 03, Chapter 01, “Rules of the State Board of Chiropractic Physicians.” (7-1-99)

101. -- 149. (RESERVED)

150. FEES.

All fees are non-refundable.

Fee Type	Amount (Not to Exceed)
Application	\$200
Original license	\$200
Annual renewal	\$200
Inactive license	\$150
Reinstatement of expired license	\$35
Reinstatement of inactive license	\$150
Temporary permit	\$150
Intern permit	\$150
Application for clinical nutrition certification	\$175
Clinical nutrition certification renewal	\$175

()

151. -- 199. (RESERVED)

200. EXAMINATIONS.

It shall be the applicant's duty to take and successfully pass the National Board Examinations administered by the National Board of Chiropractic Examiners as specified in these rules. (3-10-00)

201. -- 299. (RESERVED)

300. INACTIVE LICENSE.

A licensee holding a current active license in this state who is not practicing chiropractic in this state may be issued an inactive license in accordance with Section 54-708(2), Idaho Code, as follows: (4-11-19)

01. Inactive Status. Each application for an Inactive status license must be accompanied by: (3-15-02)

a. The established fee; and (3-15-02)

b. A written application to change a current active license to an inactive license. (4-11-19)

c. An inactive license shall be issued for one (1) year. (4-11-19)

02. Inactive License Status Renewal. (4-11-19)

a. An inactive license must be renewed annually by submitting the established fee and renewal application. Inactive licenses not renewed will be canceled. (4-11-19)

b. All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing or supervising in Idaho. (4-11-19)

03. Return to Active Status of License Inactive for Five (5) or Fewer Years. An inactive license holder whose license has been inactive for five (5) or fewer years may convert from inactive to active license status by: (4-11-19)

- a. Making written application to the Board on a form prescribed by the Board; (4-11-19)
- b. Providing documentation to the Board showing successful completion within the previous twelve (12) months of the continuing education requirements for renewal of an active license; and (4-11-19)
- c. Paying a fee equivalent to the difference between the current inactive fee and the active renewal fee. (4-11-19)

04. Return to Active Status of License Inactive for More Than Five (5) Years. An inactive license holder whose license has been inactive for more than five (5) years may convert from inactive to active license status by: (4-11-19)

- a. Making written application to the Board on a form prescribed by the Board. (4-11-19)
- b. Providing an account to the Board for that period of time during which the license was inactive and fulfilling requirements that demonstrate competency to resume practice. Those requirements may include, but are not limited to, education, supervised practice, and examination as determined by the Board. The Board may consider practice in another jurisdiction in determining competency. (4-11-19)
- c. Paying a fee equivalent to the difference between the current inactive fee and the active renewal fee. (4-11-19)

05. Clinical Nutrition Certificate Expires. If a licensee holds a clinical nutrition certificate and places their license on inactive status, the clinical nutrition certificate is immediately canceled as though the license was not timely renewed as provided in Section 703 of these rules. (4-11-19)

06. Reissuance of Clinical Nutrition Certificate. An inactive license holder who held a clinical nutrition certificate at the time their license was placed on inactive status who returns to active license status pursuant to this rule may be reissued a clinical nutrition certificate by showing proof of compliance with the provisions of Sections 704, 705, and 706 that apply to their situation. (4-11-19)

301. -- 349. (RESERVED)

350. CONTINUING EDUCATION.

All licensees must comply with the following continuing education requirements: (4-11-19)

01. Requirement. Applicants for renewal shall be required to complete a minimum of eighteen (18) hours of continuing education within the preceding twelve (12) months, as approved by the Board. (4-11-19)

- a. Continuing education credit will only be given for actual time in attendance or for the time spent participating in the educational activity. (4-11-19)
- b. The educational setting may include a classroom, conference/seminar, on-line, or a virtual classroom. ()
- c. If the licensee completes two (2) or more courses having substantially the same content during any one (1) renewal period, the licensee only will receive continuing education credit for one (1) of the courses. (4-11-19)

02. Documentation. Each licensee shall maintain documentation verifying continuing education attendance and curriculum for a period of five (5) years from the date of completion. This documentation will be subject to audit by the Board. (4-11-19)

- a. Documented evidence of meeting the continuing education requirement shall be in the form of a certificate or letter from the sponsoring entity that includes verification of attendance by the licensee, the title of the activity, the subject material covered, the dates and number of hours credited, and the presenter's full name and professional credentials. (4-11-19)

b. A licensee must submit the verification documentation to the Board if requested by the Board. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the licensee may be subject to disciplinary action. (4-11-19)

03. Waiver. The Board may waive the requirements of this rule for reasons of individual hardship including health or other good cause. The licensee should request the waiver in advance of renewal and must provide any information requested by the Board to assist in substantiating hardship cases. This waiver is granted at the sole discretion of the Board. (4-11-19)

04. Carryover of Continuing Education Hours. Continuing education hours not claimed in the current renewal year may be claimed in the next renewal year. Hours may be carried forward from the immediately preceding year, and may not be carried forward more than one renewal year. (4-11-19)

05. Exemption. A licensee is exempt from the continuing education requirements under this section for the period between the initial issuance or the original license and the first expiration date of that license. (4-11-19)

06. Continuing Education Activities. The following educational activities qualify for continuing education: ()

a. Post-graduate education courses, germane to chiropractic practice as approved by the Board. ()

b. Attendance at Board meetings. ()

351. APPROVAL OF CONTINUING EDUCATION COURSES.

01. Approved Continuing Education Courses. Approved continuing education courses shall be those courses, programs, and activities that are germane to the practice of chiropractic, as defined in Sections 54-704(1) and (2), Idaho Code, and meet the general requirements and content requirements of these rules, and are approved, sponsored, or provided by the following entities or organizations, or otherwise approved by the Board: (4-11-19)

a. Council of Chiropractic Education (CCE) approved chiropractic college or university, a college or university accredited by a nationally recognized accrediting agency as recognized by the United States Secretary of Education or an educational program approved by the Board; (4-11-19)

b. Providers of Approved Continuing Education (PACE); (4-11-19)

c. National and state chiropractic associations; and (4-11-19)

d. Provider Course Approval. Other courses that may be approved by the Board based upon documentation submitted by a continuing education provider. Requests for approval of courses made by the provider must be submitted on a form approved by the Board that includes: (4-11-19)

i. The nature and subject of the course and how it is germane to the practice of chiropractic; (4-11-19)

ii. The name of the instructor(s) and their qualifications; (4-11-19)

iii. The date, time, and location of the course; (4-11-19)

iv. The specific agenda for the course; (4-11-19)

v. The number of continuing education hours requested; (4-11-19)

vi. The procedures for verification of attendance; and (4-11-19)

vii. Other information as may be requested by the Board. (4-11-19)

viii. Upon review of all information requested, the Board may deny any request for a course that does not meet the requirements of Idaho law or rule. Board approval of a course shall be granted for a period not to exceed two (2) years or until the course materials or instructors are changed, whichever may occur first. (4-11-19)

02. Licensee Course Approval. Other courses that may be approved by the Board based upon documentation submitted by the licensee. All requests for approval must be made to the Board in writing and include the nature and subject of the course and its relevancy to the practice of chiropractic, name of instructor(s) and their qualifications, date, time and location of the course, and procedures for verification of attendance. (4-11-19)

352. -- 399. (RESERVED)

400. APPROVED SCHOOLS OF CHIROPRACTIC.

01. Requirement for Approval. (7-1-93)

a. The Board will consider a school, college, or university in good standing only if such school, college, or university conforms to the requirements of "recognized candidate for accreditation," or "accredited" of the Council of Chiropractic Education or any foreign country college which meets equivalent standards as determined by the Board and teaches accredited courses in all the subjects set forth in Section 54-709(1)(b), Idaho Code. ()

b. Regardless of the Council on Chiropractic Education status, the Board may make additional requirements for approval as a reputable school, college or university of Chiropractic. (7-1-93)

02. New Schools. Those graduates of new schools of chiropractic will only be accepted for licensure application provided the school reaches "recognized candidate for accreditation" status with the Council on Chiropractic Education within one year following the first graduating class. (4-11-19)

401. -- 449. (RESERVED)

450. ADVERTISEMENTS.

01. Prohibited Advertising. No chiropractor shall disseminate or cause the dissemination of any advertisement or advertising which is any way fraudulent, false, deceptive or misleading. Any advertisement or advertising shall be deemed by the board to be fraudulent, false, deceptive, or misleading if it: (7-1-93)

a. Is likely to deceive, defraud, or harm the public; or ()

b. Uses false or misleading statement(s) regarding a chiropractor's skill or the efficacy or value of the chiropractic medicine, treatment, or remedy prescribed by a chiropractor or at a chiropractor's direction in the treatment of any disease or other condition of the body or mind. ()

451. -- 549. (RESERVED)

550. CHIROPRACTIC ASSISTANTS.

01. Chiropractic Physician Responsible and Liable. The chiropractic physician shall be responsible and liable for: (7-1-93)

a. Direct personal supervision; ()

b. Any acts of the assistant in the performance of chiropractic practice; (7-1-93)

c. Proper training and capabilities of the chiropractic assistant before authorization is given to perform any chiropractic practice. (7-1-93)

- 02. Chiropractic Assistant Limitations.** A chiropractic assistant shall not: (7-1-93)
- a.** Manipulate articulations; (7-1-93)
 - b.** Provide diagnostic results or interpretations to the patient; (7-1-93)
 - c.** Provide treatment advice to any patient without instructions from the supervising Chiropractic Physician. (7-1-93)

551. CHIROPRACTIC INTERN.

- 01. Chiropractic Physician Responsible and Liable.** The chiropractic physician shall be responsible and liable for: (3-15-02)
- a.** Direct personal supervision of the intern; (3-15-02)
 - b.** Any acts of the intern in the performance of chiropractic practice; (3-15-02)
 - c.** Determining that the intern possesses sufficient training and capabilities before authorization is given to perform any chiropractic practice. (3-15-02)

- 02. Chiropractic Intern Limitations.** A chiropractic intern shall not: (3-15-02)
- a.** Perform any chiropractic practice independently, but must perform all such practice under the direct personal supervision of a licensed Chiropractic Physician; (3-15-02)
 - b.** Provide diagnostic results or interpretations to the patient prior to consultation with the supervising Chiropractic Physician; (3-15-02)
 - c.** Provide treatment advice to any patient without instructions from the supervising Chiropractic Physician. (3-15-02)

552. TEMPORARY PRACTICE PERMITS.

When an original application for license or internship is accepted by the board as being fully completed, in accordance with the requirements of the Idaho Chiropractic Physician Law and these Rules, a temporary permit to practice may be issued. (3-15-02)

- 01. Supervision Required.** A permit holder may work only when under the direct personal supervision of a chiropractic physician currently licensed in Idaho. The name, address and signature of the supervising chiropractic physician shall appear on the application. (3-15-02)

- 02. Only One Permit May Be Issued.** Only one (1) permit may be issued under any circumstances to any individual. (3-15-02)

- 03. Validity of Temporary Permits.** Temporary permit to practice will be valid for a period not to exceed twelve (12) months and only: (3-15-02)

a. In the case of an applicant for Idaho licensure, until the results of the next scheduled examination have been released. No work permit will be issued to an applicant who has previously failed an examination for licensure in this or any other state, territory, possession, or country more than once. Failure to sit for the next scheduled examination will invalidate the work permit and no further permits will be issued. (3-29-10)

b. In the case of an intern, until the scheduled date of graduation from an approved school of chiropractic. Upon original application for licensure in Idaho, the intern permit may be extended by the board until the results of the next scheduled examination have been released. No work permit will be issued to an applicant who has previously failed an examination for licensure in this or any other state, territory, possession, or country more

than once. Failure to sit for the next scheduled examination will invalidate the work permit and no further permits will be issued. (3-29-10)

553. -- 604. (RESERVED)

605. CODE OF ETHICS.

Chiropractic physicians are responsible for maintaining and promoting ethical practice in accordance with the ethical principles set forth in Appendix A in these rules. (4-7-11)

606. -- 699. (RESERVED)

700. CLINICAL NUTRITION CERTIFICATION AND PRACTICE.

01. Non-Certified Clinical Nutritional Practice. Clinical nutritional methods as referenced in Section 54-704(1), Idaho Code, include, but are not limited to, the clinical use, administration, recommendation, compounding, prescribing, selling, and distributing non-prescription vitamins, minerals, botanical medicine, herbals, homeopathic, phytonutrients, antioxidants, enzymes and glandular extracts, and durable and non-durable medical goods and devices. Nothing herein shall allow any deviation from Section 54-704(3), Idaho Code. ()

02. Certified Clinical Nutritional Practice. The Board may issue clinical nutrition certification to a chiropractic physician licensed by the Board who successfully completes the minimum education and complies with requirements in Chapter 7, Title 54, Idaho Code governing clinical nutrition certification and the requirements of Sections 700 through 706. ()

701. (RESERVED)

702. REQUIREMENTS FOR CLINICAL NUTRITION CERTIFICATION.

The Board may grant clinical nutrition certification to a licensee who completes an application, pays the applicable fees and meets the following requirements: (3-22-18)

01. General. (3-22-18)

a. Hold and maintain a current, active, unrestricted license as a chiropractic physician issued by the Board. (3-22-18)

b. Not have been on probation or otherwise disciplined by the Board or by any other licensing board or regulatory entity; provided the applicant may make written request to the Board for an exemption review to determine the applicant's suitability for certification, which the Board shall determine in accordance with the following: (3-22-18)

i. The exemption review shall consist of a review of any documents relating to the probation or discipline and any supplemental information provided by the applicant bearing upon the applicant's suitability for certification. The Board may, at its discretion, grant an interview of the applicant. During the review, the Board shall consider the following factors or evidence: (3-22-18)

(1) The severity or nature of the violation(s) resulting in probation or discipline; (3-22-18)

(2) The period of time that has passed since the violation(s) under review; (3-22-18)

(3) The number or pattern of violations or other similar incidents; (3-22-18)

(4) The circumstances surrounding the violation(s) that would help determine the risk of repetition; (3-22-18)

(5) The relationship of the violation(s) to the practice of chiropractic or any health care profession, including but not limited to, whether the violation(s) related to clinical practice, involved patient care, a violation of any state or federal law, rule or regulation relating to controlled substances or to a drug, substance or product

identified in Section 54-704(3)(b), Idaho Code; (3-22-18)

(6) The applicant's activities since the violation(s) under review, such as employment, education, participation in treatment, payment of restitution, or any other factors that may be evidence of current rehabilitation; and (3-22-18)

(7) Any other mitigating or aggravating circumstances. (3-22-18)

ii. The applicant shall bear the burden of establishing current suitability for certification. (3-22-18)

c. Successfully complete the requirements of Section 54-717, Idaho Code, and Section 702. (3-22-18)

d. Written verification of current health care provider cardiopulmonary resuscitation (CPR) certification. Health care provider CPR certification must be from a course that includes a hands-on skill component as provided by the American Heart Association, American Red Cross, American Health and Safety Institute or similar provider approved by the Board. Written verification of current basic life support (BLS) certification. All chiropractic physicians holding clinical nutrition certification must maintain current health care provider CPR and BLS certification as provided in this Section. (3-22-18)

e. Certify that the chiropractic physician has BLS equipment on the premises where clinical nutrition treatment is being performed. BLS equipment shall include at a minimum: (3-22-18)

i. Rescue breathing equipment. (3-22-18)

ii. Oxygen. (3-22-18)

iii. Epinephrine. (3-22-18)

f. Certify that the chiropractic physician possesses and will provide to patients informed consent documentation that explains the benefits and potential risks of the specific course of intravenous or injectable nutrition therapy that is being proposed and that the physician will in advance obtain from the patient written voluntary permission to perform the proposed therapy in accordance with Section 54-717(7), Idaho Code. (3-22-18)

g. Payment of all fines, costs, fees or other amounts that are due and owing to the Board or in compliance with a payment arrangement with the Board is required to be eligible for clinical nutrition certification pursuant to Sections 700 through 706. (3-22-18)

02. Didactic Education Requirement. Provide a certificate or other evidence acceptable to the Board of successful completion of a minimum of seven (7) credits (seventy-seven (77) hours) of didactic human nutrition, nutrition biochemistry, and nutritional pharmacology courses. The certificate or other evidence of successful completion must be provided directly to the Board by the educational institution. (3-22-18)

a. Chiropractic physicians licensed by the Board who apply for clinical nutrition certification may be determined to have satisfied the didactic education requirements only if they present a certificate or other evidence acceptable to the Board pursuant to this Section demonstrating they commenced obtaining the didactic education required by this Section no earlier than three (3) years prior to applying for clinical nutrition certification and thereafter successfully completed the requirements. ()

03. Practicum Requirement. Provide a certificate or other evidence acceptable to the Board of successful completion of a minimum of twenty-four (24) hours of practicum in intravenous and injectable nutrient therapy, which must include: sterile needle practices, phlebotomy, proper injection techniques, intravenous therapy techniques, intramuscular injection techniques, safety practices, and use and expected outcomes utilizing micronutrients, response to adverse effects, lab testing, and blood chemistry interpretation. (3-22-18)

a. After July 1, 2019, the practicum of any applicant for clinical nutrition certification required by this Section must not have commenced more than two (2) years prior to the date of application for clinical nutrition

certification and be successfully completed thereafter. (3-22-18)

04. Accredited Institution and Program Requirement. The courses and practicum required by Subsections 702.02 and 702.03 must be taken from an accredited chiropractic college or other accredited institution of higher education. In addition the courses and practicum must be from an accredited program at the college or institution or be a program approved by the Board. (3-22-18)

a. For purposes of this Section “accredited” means accredited by an accrediting agency recognized by the United States Department of Education. (3-22-18)

b. For purposes of this Section “approved by the Board” means a program that is a “recognized candidate for accreditation,” has “initial accreditation” status or “preaccreditation” status by an accrediting body recognized by the United States Department of Education, or is substantially equivalent to a program having that status. (3-22-18)

c. An applicant for clinical nutrition certification shall bear the burden to demonstrate their education and training in clinical nutrition meets the requirements of this Section, including both the accredited institution and accredited program requirements. (3-22-18)

05. Audit of Compliance with Clinical Nutrition Certification and Recertification Requirements. The Board may conduct audits to confirm that licensees meet the requirements to maintain clinical nutrition certification and recertification. In the event a licensee audited by the Board fails to provide documentation or other evidence acceptable to the Board of meeting the clinical nutrition certification or recertification requirements as verified to the Board as part of their annual license renewal or the recertification process the matter will be referred to Bureau’s investigative unit for investigation and potential disciplinary proceedings by the Board. (3-22-18)

06. Requirement to Maintain Supporting Documentation. A licensee need not submit documentation to the Board with a chiropractic license renewal application verifying qualifications for annual issuance of clinical nutrition certification pursuant to Section 703, or verifying qualifications to recertify clinical nutrition certification pursuant to Section 706. However, a licensee must maintain documentation for a period of five (5) years verifying the licensee has satisfied the requirements. A licensee must submit the documentation to the Board if the annual reissuance or the recertification is audited. All documentation must include the licensee’s name, and as applicable, the date the course or other required activity commenced and was completed, provider name, course title and description, length of the course/activity, and other information required by the Board. (3-22-18)

703. ANNUAL ISSUANCE OF CLINICAL NUTRITION CERTIFICATION WITH LICENSE RENEWAL.

01. Expiration Date. Chiropractic physicians’ clinical nutrition certification expires on the expiration date of their chiropractic license and must be issued annually with the renewal of their license pursuant to Section 250. The Board shall waive the clinical nutrition certification fee in conjunction with the first timely renewal of the chiropractic license after initial clinical nutrition certification. (3-22-18)

02. Issuance. Clinical nutrition certification shall be issued annually by timely submission of a chiropractic license renewal application, payment of the chiropractic license renewal fee, the clinical nutrition certification fee, any amounts owing pursuant to Subsection 702.01.g., and verifying to the Board that the licensee is in compliance with the requirements for clinical nutrition certification as provided in the Board’s laws and rules. (3-22-18)

03. Failure to Comply with Issuance Requirements. (3-22-18)

a. If a licensee with clinical nutrition certification fails to verify meeting clinical nutrition certification annual issuance requirements when renewing their chiropractic physician license the clinical nutrition certification is canceled and the chiropractic physician license will be renewed without clinical nutrition certification. (3-22-18)

b. If a licensee with clinical nutrition certification fails to timely renew their chiropractic physician license their clinical nutrition certification is canceled. (3-22-18)

c. Clinical nutrition certification canceled pursuant to this Section may be reissued within three (3) years in accordance with Section 704. (3-22-18)

704. REISSUANCE OF CANCELLED CLINICAL NUTRITION CERTIFICATION.

01. Reissuance. Clinical nutrition certification canceled pursuant to Subsection 703.03 may be reissued within three (3) years of cancellation as follows: (3-22-18)

a. Submission of a reissuance application and payment of the current clinical nutrition certification fee. (3-22-18)

b. Submission of any other documents required by the Board for reissuance including but not limited to: (3-22-18)

i. Documentation of holding current licensure as a chiropractic physician from the Board meeting the requirements of Section 702. (3-22-18)

ii. Documentation of compliance with clinical recertification requirements in accordance with Section 706. (3-22-18)

iii. Documentation of current health care provider CPR and BLS certification and certification that the chiropractic physician has BLS equipment on the premises where clinical nutrition treatment is performed and that informed consent and voluntary permission to perform the proposed therapy are being used in accordance with Section 702. (3-22-18)

705. CLINICAL NUTRITION CERTIFICATION CANCELLED FOR OVER THREE (3) YEARS.

Clinical nutrition certification canceled for a period of more than three (3) years may not be reissued. The chiropractic physician so affected shall be required to make application to the Board in compliance with Section 701 and Section 702 and pay the application and other fees for new clinical nutrition certification. The applicant shall be reviewed by the Board and considered as follows: (3-22-18)

01. Current Competency and Training. The chiropractic physician shall fulfill requirements as determined by the Board that demonstrate the chiropractic physician's competency to regain clinical nutrition certification in this state. Such requirements may include, but are not limited to, education, supervised practice, and examination, including some or all education, training and other requirements for original clinical nutrition certification as set forth in Section 54-717, Idaho Code, and Section 702. (3-22-18)

02. New Clinical Nutrition Certification. Chiropractic Physicians who fulfill the conditions and requirements of this Section may be granted a new clinical nutrition certification. (3-22-18)

706. CLINICAL NUTRITION RECERTIFICATION REQUIREMENT.

01. Recertification in Clinical Nutrition Every Three (3) Years. After Initial certification in clinical nutrition, chiropractic physicians must recertify in clinical nutrition every three (3) years in order to maintain clinical nutrition certification. (3-22-18)

02. Annual Verification of Meeting Requirements. In order to maintain clinical nutrition certification pursuant to Section 54-717, Idaho Code, and Section 700, chiropractic physicians having clinical nutrition certification must annually verify, along with their chiropractic license renewal, pursuant to Subsection 706.01 by attesting to the Board they are in compliance with the requirements to recertify in clinical nutrition the following: (3-22-18)

a. Completion within the three (3) years prior to required recertification of a twelve (12) hour in person face to face classroom course from an institution and program meeting Section 702.04 accreditation requirements. The course must include both didactic education and practical review and practice of contemporary developments and best practices to maintain core competency in the practice of clinical nutrition as set forth in

Section 54-716, Idaho Code, and Section 54-717, Idaho Code. (3-22-18)

b. Current licensure as a chiropractic physician issued by the Board meeting the requirements of Section 702. (3-22-18)

c. Current health care provider CPR and BLS certification and that BLS equipment is maintained on the premises where clinical nutrition treatment is performed pursuant to Section 702. (3-22-18)

d. They possess and will provide to patients informed consent documentation that explains the benefits and potential risks of the specific course of intravenous or injectable nutrition therapy that is being proposed and that the physician will in advance obtain from the patient written voluntary permission to perform the proposed therapy in accordance with Section 54-717(7), Idaho Code. (3-22-18)

03. Recertification is in Addition to Required Annual Continuing Education. The twelve (12) hour recertification course requirement is in addition to the annual eighteen (18) hours of continuing education required under Subsection 300.01. (3-22-18)

04. Failure to Timely Recertify in Clinical Nutrition. Clinical nutrition certification not timely recertified in accordance with Section 706 shall expire and be canceled. Clinical nutrition certification canceled for failure to recertify may be reissued within three (3) years in accordance with Section 704. (3-22-18)

707. OBTAINING AND INDEPENDENTLY ADMINISTERING CLINICAL NUTRITION PRESCRIPTION DRUG PRODUCTS.

A chiropractic physician with clinical nutrition certification as defined by Sections 54-704(4), 54-716 and 54-717, Idaho Code, may obtain and independently administer prescription drug products in the practice of chiropractic subject to the conditions below. (3-22-18)

01. Current Certification in Clinical Nutrition Required. Only chiropractic physicians who hold current certification in clinical nutrition by the Board may obtain and independently administer prescription drug products during chiropractic practice. (3-22-18)

02. Obtain Prescription Drugs Products from the Formulary. A chiropractic physician with clinical nutrition certification may not obtain a prescription drug product that is not listed in the chiropractic clinical nutrition formulary. (3-22-18)

03. Only Administer Prescription Drug Products from the Formulary. Chiropractic physicians with clinical nutrition certification may only administer those prescription drug products listed in the chiropractic clinical nutrition formulary. (3-22-18)

a. Chiropractic physicians with clinical nutrition certification shall not prescribe, dispense, distribute, or direct to a patient the use of a prescription drug product. (3-22-18)

04. Routes of Administration and Dosing of Prescription Drug Products. Prescription drug products listed in the chiropractic clinical nutrition formulary may be administered through oral, topical, intravenous, intramuscular or subcutaneous routes by a chiropractic physician with clinical nutrition certification. The route of administration and dosing shall be in accordance with the product's labeling as approved by the federal food and drug administration or with the manufacturer's instructions. (3-22-18)

05. Practice Limited to Chiropractic Physicians with Clinical Nutrition Certification. Chiropractic interns, chiropractic assistants, holders of chiropractic temporary practice permits and others working under the authority or direction of a chiropractic physician may not perform any practice or function requiring clinical nutrition certification. (3-22-18)

06. Sale, Transfer, or Other Distribution of Prescription Drugs Prohibited. Chiropractic physicians with clinical nutrition certification may obtain and administer prescription drug products to a patient only in accordance with this Section 707. Chiropractic physicians may not prescribe, sell, transfer, dispense, or otherwise distribute prescription drug products to any person or entity. Prescription drug products not administered to a patient

shall be handled in accordance with Subsections 708.05, 708.06, and 708.07. (3-22-18)

708. CLINICAL NUTRITION FORMULARY.

Chiropractic physicians certified in clinical nutrition may obtain and independently administer, during chiropractic practice, only the prescription drug products listed in this chiropractic clinical nutrition formulary and subject to the provisions hereof. (3-22-18)

01. Chiropractic Clinical Nutrition Prescription Drug Formulary. Prescription drug products that may be used by chiropractic physicians with clinical nutrition certification are limited to the following: (3-22-18)

- a.** Vitamins: vitamin A, all B vitamins and vitamin C; (3-22-18)
- b.** Minerals: ammonium molybdate, calcium, chromium, copper, iodine, magnesium, manganese, potassium, selenium, sodium, and zinc; (3-22-18)
- c.** Fluids: dextrose, lactated ringers, plasma lyte, saline, and sterile water; (3-22-18)
- d.** Epinephrine; and (3-22-18)
- e.** Oxygen for use during an emergency or allergic reaction. (3-22-18)

02. Sources of Clinical Nutrition Prescription Drug Products. Prescription drug products listed in the chiropractic clinical nutrition formulary shall be obtained only by a chiropractic physician with clinical nutrition certification and only from a source licensed under Chapter 17, Title 54, Idaho Code, that is a wholesale distributor, a manufacturer, a pharmacy, or an outsourcing facility and from no other source. (3-22-18)

03. No Compounding of Prescription Drug Products. No vitamin or mineral may be compounded, as defined in Section 54-1705, Idaho Code, by a chiropractic physician. A compounded drug product containing two (2) or more of the vitamins or minerals approved in the chiropractic clinical nutrition formulary shall be obtained for office use by a chiropractic physician with clinical nutrition certification only from an outsourcing facility licensed under Chapter 17, Title 54, Idaho Code and from no other source. A chiropractic physician may not obtain or use in chiropractic practice a compounded drug product containing a prescription drug product that is not included in the chiropractic clinical nutrition formulary. (3-22-18)

04. Limitations on Possession of Prescription Drug Products. Possession of prescription drug products without a valid prescription drug order by chiropractic physicians licensed pursuant to Chapter 7, Title 54, Idaho Code, and certified pursuant to Sections 54-708, and 54-717, Idaho Code, or their agents or employees shall be limited to: (3-22-18)

- a.** Only those prescription drug products listed in Sections 54-716, Idaho Code, and in the chiropractic clinical nutrition formulary; (3-22-18)
- b.** Only those quantities reasonably required for use in the usual and lawful course of the chiropractic physician's clinical nutrition practice based on the patient panel size and history of orders. (3-22-18)

05. Prescription Drug Product Storage. Clinical nutrition prescription drugs must be stored in accordance with United States Pharmacopeia-National Formulary requirements in an area maintained and secured appropriately to safeguard product integrity and protect against product theft or diversion. (3-22-18)

06. Expired, Deteriorated, Adulterated, Damaged, or Contaminated Prescription Drug Products. Expired, deteriorated, adulterated, damaged, or contaminated prescription drug products must be removed from stock and isolated for return, reclamation or destruction. (3-22-18)

07. Compliance with Federal and State Requirements. In addition to the requirements of the Idaho Chiropractic Practice Act and rules of the Board, chiropractic physicians shall comply with all federal and state laws, rules and policies governing possession, storage, record keeping, use, and disposal of prescription drug products. (3-22-18)

709. MEDICAL WASTE.

Chiropractic physicians certified in clinical nutrition must dispose of medical waste during the practice of chiropractic clinical nutrition according to the following protocol: (3-22-18)

01. Containers for Non-Sharp, Medical Waste. Medical waste, except for sharps, must be placed in disposable containers/bags that are impervious to moisture and strong enough to preclude ripping, tearing, or bursting under normal conditions of use. The bags must be securely tied so as to prevent leakage or expulsion of solid or liquid waste during storage, handling, or transport. The containment system must have a tight-fitting cover and be kept clean and in good repair. All bags used for containment of medical waste must be clearly identified by label or color, or both. (3-22-18)

02. Containers for Sharps. Sharps must be placed in impervious, rigid, puncture-resistant containers immediately after use. After use, needles must not be bent, clipped or broken by hand. Rigid containers of discarded sharps must either be labeled or colored like the disposable bags used for other medical waste, or placed in such labeled or colored bags and disposed of according to container guidelines. ()

710. -- 999. (RESERVED)

Appendix A – Chiropractic Physicians Code of Ethics

PREAMBLE

This code of ethics set forth principles for the ethical practice of chiropractic. All chiropractic physicians are responsible for maintaining and promoting ethical practice and otherwise complying with the terms of this code of ethics. To this end, the chiropractic physician shall act in the best interest of the patient. This code of ethics shall be binding on all chiropractic physicians.

1. Duty to Report

A. Duty to Report. It shall be the duty of every licensee to notify the Board through the Bureau of Occupational Licenses of any violation of the Chiropractic Act or Board Rules, if the licensee has personal knowledge of the conduct.

B. Reporting of Certain Judgments to Board. If a judgment is entered against a licensee in any court, or a settlement is reached on a claim involving malpractice exceeding fifty thousand dollars (\$50,000), a licensee shall report that fact to the Board within thirty (30) days. The licensee may satisfy the provision of this subsection if he/she provides the Board with a copy of the judgment or settlement.

If a licensee is convicted of a felony or a crime involving dishonesty, theft, violence, habitual use of drugs or alcohol, or sexual misconduct, he/she shall report that fact to the board within thirty (30) days following the conviction.

2. Advertising of Research Projects

Advertisement of Affiliation with Research Projects. If a licensee advertises any affiliation with a research project, he must make a written statement of the objectives, cost and budget of the project, and the person conducting the research. Such statements are to be made available at the request of the Board, to scientific organizations, and to the general public. The advertisement must indicate that it is supported by clinical research. Any willful failure to comply with these requirements will be deemed false and deceptive advertising under rule 450. Licensee must comply with all state and federal laws and regulations governing research projects on humans, and shall obtain "Institutional Review Board" (IRB) approval as established and set forth in the U.S. Code of Federal Regulations, Title 45, Part 46, Subpart A (45 CFR 46.101-46-505).

3. Sexual Misconduct

The doctor-patient relationship requires the chiropractic physician to exercise utmost care that he or she will do nothing to exploit the trust and dependency of the patient. Sexual misconduct is a form of behavior that adversely affects the public welfare and harms patients individually and collectively. Sexual misconduct exploits the doctor-

patient relationship and is a violation of the public trust. This section of the Code of Ethics shall not apply between a chiropractor and their spouse.

For the purposes of this subsection, sexual misconduct is divided into sub-categories based upon the severity of the conduct:

A. Sexual Impropriety. Any behavior such as gestures, expressions, and statements which are sexually suggestive or demeaning to a patient, or which demonstrate a lack of respect for a patient's privacy.

B. Sexual Violation. Physician-patient contact of a sexual nature, whether initiated by the physician or the patient.

C. A chiropractic physician shall wait at least one (1) year ("waiting period") following the termination of a professional doctor-patient relationship, before beginning any type of sexual relationship with a former patient.

4. Prepaid Funds

A chiropractic physician shall promptly refund any unearned fees within thirty (30) days upon request and cancellation of the prepaid contract. A full accounting of the patient account shall be provided to the patient at the time of the refund or upon request.

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.05.01 – RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS

DOCKET NO. 24-0501-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-2406, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 24.05.01, Rules of the Board of Drinking Water and Wastewater Professionals:

IDAPA 24.05.01

- 24.05.01, *Rules of the Board of Drinking Water and Wastewater Professionals*: all proposed rules except 010.01, 010.02, 010.12, 010.13, 010.14, 010.16, 100.01.a., 100.01.b., 10.02.a., 100.02.b., 150.03, and 600.01

The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.05.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Rules of the Board of Drinking Water and Wastewater Professionals was published. This pending fee rule will allow the Legislature to review for codification IDAPA 24.05.01, the Rules of the Board of Drinking Water and Wastewater Professionals. The Board considered the Licensing Freedom Act of 2017, Executive Order No. 2017-06, Licensing Freedom Act of 2019, Executive Order No. 2019-01; and the Red Tape Reduction Act, Executive Order No. 2019-02 and the continued efforts to clarify and streamline its rules. This pending fee rule removes redundant language, moves fees into an easier to read tabular format, and adds the phrase “not to exceed” before fee amounts, which allows for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4632 - 4647.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking.

This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-2407, Idaho Code, as follows:

Application fee: not to exceed \$25;
Examination fee as set by the examination provider;
License by endorsement fee: not to exceed \$30;
Original license fee: not to exceed \$30;
Renewal fee: not to exceed \$30.

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 anticipated to

have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade at (208) 332-3433.

Dated this 16th day of October, 2019.

Kelley Packer
Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2406, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.05.01, Rules of the Board of Drinking Water and Wastewater Professionals:

IDAPA 24

- 24.05.01, *Rules of the Board of Drinking Water and Wastewater Professionals*—All rules *except Subsections 010.01, 010.02, 010.12, 010.13, 010.14, and 010.16.*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and

processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules govern the qualifications for individuals who maintain Idaho's public drinking water and public wastewater systems. Allowing these rules to expire would harm the licensees, the localities who operate public drinking water and public wastewater systems, the environment, and the public health.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and the immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Absent the ability to impose the licensure fees outlined in this chapter, the Board of Drinking Water and Wastewater Professionals would not be able to remain self-sufficient, contrary to its statutory mandate.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-2407, Idaho Code, as follows: application fee: \$25; examination fee: \$37; license by endorsement fee: \$30; original license fee: \$30; and renewal fee: \$30.

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 anticipated to have any fiscal impact on the state General Fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-0501-1900F

24.05.01 – RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS

000. LEGAL AUTHORITY.

These rules are hereby prescribed and established pursuant to the authority vested in the Board of Drinking Water and Wastewater Professionals by the provisions of Section 54-2406, Idaho Code. (3-24-05)

001. TITLE AND SCOPE.

These rules are titled IDAPA 24.05.01, “Rules of the Board of Drinking Water and Wastewater Professionals.” (3-24-05)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Class I Restricted License. Class I restricted license means a water or wastewater license associated with a specific class I system. A restricted license is available for water distribution or treatment or for wastewater collection or treatment. A restricted license is not transferable and does not qualify for endorsement. (3-29-10)

02. DEQ. The Idaho Department of Environmental Quality. (3-24-05)

03. Direct Supervision. Supervision in a way that will ensure the proper operation and maintenance of the public drinking water or public wastewater system. Supervision shall include, but not be limited to, providing written, hands-on, or oral instruction as well as verification that the instructions are being completed. The supervisor has an active on-site or on-call presence at the specific facility. (3-21-12)

04. Endorsement. Endorsement (often referred to as “reciprocity”) is that process by which a person licensed in another jurisdiction may apply for a license in Idaho. (3-24-05)

05. EPA. The United States Environmental Protection Agency. (3-24-05)

06. Experience. One (1) year of experience is based upon a minimum of one thousand six hundred hours (1,600) worked. (4-11-19)

07. On-Site Operating Experience. On-site operating experience means experience obtained while physically present at the location of the system. (3-21-12)

08. Operating Personnel. Operating personnel means any person who is employed, retained, or appointed to conduct the tasks associated with the day-to-day operation and maintenance of a public drinking water system or a public wastewater system. Operating personnel shall include every person making system control or system integrity decisions about water quantity or water quality that may affect public health. (3-24-05)

09. Person. A human being, municipality, or other governmental or political subdivision or other public agency, or public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent or other legal representative of the foregoing or other legal entity. (3-24-05)

10. Responsible Charge Operator. An operator of a public drinking water system or wastewater system, designated by the system owner, who holds a valid license at a class equal to or greater than the drinking water system or wastewater classification, who is in responsible charge of the public drinking water system or the wastewater system. (3-21-12)

11. Substitute or Back-Up Responsible Charge Operator. An operator of a public drinking water or wastewater system who holds a valid license at a class equal to or greater than the drinking water or wastewater system classification, designated by the system owner to replace and to perform the duties of the responsible charge operator when the responsible charge operator is not available or accessible. (3-21-12)

12. Very Small Public Drinking Water System. A community or non-transient non-community public water system that serves five hundred (500) persons or less and has no treatment other than disinfection or has only treatment which does not require any chemical treatment, process adjustment, backwashing or media regeneration by an operator (e.g. calcium carbonate filters, granular activated carbon filters, cartridge filters, ion exchangers). (3-21-12)

13. Very Small Wastewater System. A public wastewater system that serves five hundred (500) connections or less and includes a collection system with a system size of six (6) points or less on the Department of

Environmental Quality (DEQ) system classification rating form and is limited to only one (1) of the following wastewater treatment processes: (3-21-12)

- a. Aerated lagoons: (3-21-12)
- b. Non-aerated lagoon(s); (3-21-12)
- c. Primary treatment; or (3-21-12)
- d. Primary treatment discharging to a large soil absorption system (LSAS). (3-21-12)

011. -- 099. (RESERVED)

100. ORGANIZATION.

01. Meetings. The Board shall meet at least two (2) times annually at such times and places as designated by the Board or the Chairman of the Board. A minimum of four Board members shall constitute a quorum and shall be required to be present in order to hold a meeting of the Board. A majority vote of the Board members present at a meeting shall be considered the action of the Board as a whole. The Chairman may vote only in the event of a tie vote. ()

02. Organization of the Board. At the first meeting of each fiscal year, the Board shall elect from its members a Chairman, who shall assume the duty of the office immediately upon such selection. (3-24-05)

101. -- 149. (RESERVED)

150. APPLICATION.

Each applicant for licensure shall submit a complete application together with the required fees. The applicant must provide or facilitate the provision of any supplemental third party documents that may be required. The Board shall not review an application until all required information is furnished and the required fees paid. (3-24-05)

01. Licensure by Examination. An application shall be made on the uniform application form adopted by the Board and furnished to the applicant by the Bureau. All applications shall include: (3-24-05)

- a. Documentation of having met the appropriate educational requirement; (3-24-05)
- b. Documentation of all actual applicable experience giving kind and type of work done, together with dates of employment, and verification by affidavit of the most current applicable experience, signed by the person under whose supervision the work was performed. (3-24-05)

02. Licensure by Endorsement. An application shall be made on the uniform application form adopted by the Board and furnished to the applicant by the Bureau. All applications shall include: (3-24-05)

- a. Official documentation of licensure sent to the Bureau directly from each regulatory authority from which the applicant has obtained licensure. Such documentation shall note name, address, current status, date originally issued, expiration date, and any disciplinary action imposed; (3-24-05)
- b. A copy of the current regulations governing licensure in each jurisdiction from which the applicant obtained licensure. (3-24-05)

03. Application Required. Applicants seeking licensure in any type or classification of licensure shall submit a separate application for each type and classification of licensure being sought. Applicants holding a current type and classification of license and who are seeking a classification upgrade within the same license type and category shall not be required to submit an original license fee with their application. (3-24-05)

04. Lack of Activity. Applications on file with the Board where an applicant has failed to respond to a Board request or where the applications have lacked activity for twelve (12) consecutive months shall be deemed

denied and shall be terminated upon thirty (30) days written notice unless good cause is established to the Board.
(5-8-09)

151. -- 174. (RESERVED)

175. LICENSE TYPES AND CLASSIFICATIONS.

The Board shall issue each of the following licenses under the provisions of Chapter 24, Title 54, Idaho Code.
(3-24-05)

- 01. Drinking Water Distribution Operator.** (3-24-05)
 - a. Class Operator-In-Training. (3-24-05)
 - b. Class I Restricted. (3-29-10)
 - c. Class I. (3-24-05)
 - d. Class II. (3-24-05)
 - e. Class III. (3-24-05)
 - f. Class IV. (3-24-05)
- 02. Drinking Water Treatment Operator.** (3-24-05)
 - a. Class Operator-In-Training. (3-24-05)
 - b. Class I Restricted. (3-29-10)
 - c. Class I. (3-24-05)
 - d. Class II. (3-24-05)
 - e. Class III. (3-24-05)
 - f. Class IV. (3-24-05)
- 03. Wastewater Treatment Operator.** (3-24-05)
 - a. Class Operator-In-Training. (3-24-05)
 - b. Lagoon. (3-24-05)
 - c. Class I Restricted. (3-29-10)
 - d. Class I. (3-24-05)
 - e. Class II. (3-24-05)
 - f. Class III. (3-24-05)
 - g. Class IV. (3-24-05)
 - h. Land Application. (3-24-05)
- 04. Wastewater Collection Operator.** (3-24-05)

- a. Class Operator-In-Training. (3-24-05)
- b. Class I Restricted. (3-29-10)
- c. Class I. (3-24-05)
- d. Class II. (3-24-05)
- e. Class III. (3-24-05)
- f. Class IV. (3-24-05)
- 05. Wastewater Laboratory Analyst. (3-24-05)**
 - a. Class I. (3-24-05)
 - b. Class II. (3-24-05)
 - c. Class III. (3-24-05)
 - d. Class IV. (3-24-05)
- 06. Backflow Assembly Tester. (3-24-05)**
- 07. Drinking Water Very Small System Operator. (3-21-12)**
- 08. Wastewater Very Small System Operator. (3-21-12)**

176. -- 199. (RESERVED)

200. FEES FOR EXAMINATION AND LICENSURE.
 Application and examination fees are non-refundable.

FEE TYPE	AMOUNT (Not to Exceed)
Application	\$25
Examination	Amount set by examination provider
Endorsement	\$30
Original License	\$30
Annual renewal	\$30
Reinstatement	As provided in Section 67-2614, Idaho Code

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201. -- 249. (RESERVED)

250. LICENSE REQUIRED -- SCOPE OF PRACTICE.

All water and wastewater operating personnel, including those in responsible charge and those in substitute responsible charge, of public water systems and public wastewater systems, and all backflow assembly testers, shall be licensed under the provisions of these rules and Chapter 24, Title 54, Idaho Code. (3-21-12)

01. Drinking Water Operator Scope. Operating personnel shall only act in accordance with the nature and extent of their license. Those in responsible charge or substitute responsible charge of a public water

system must hold a valid license equal to or greater than the classification of the public water system where the responsible charge or substitute responsible charge operator is in responsible charge. The types of water systems are distribution and treatment. (3-24-05)

02. Wastewater Operator Scope. Operating personnel shall only act in accordance with the nature and extent of their license. Those in responsible charge or substitute responsible charge of a public wastewater system shall hold a valid license equal to or greater than the classification of the public wastewater system where the responsible charge or substitute responsible charge operator is in responsible charge. The types of wastewater systems are collection, laboratory analyst, and treatment. (3-21-12)

03. Backflow Assembly Tester. Individuals licensed as backflow assembly testers may inspect and test backflow prevention assemblies as defined in Title 54, Chapter 24, Idaho Code. (3-24-05)

04. Operator-in-Training. Operators-in-training shall practice only under the direct supervision of a licensed operator of a type, category, and classification higher than operator-in-training. No operator-in-training shall accept or perform the designated responsible charge duties at any system. (3-24-05)

251. -- 299. (RESERVED)

300. GENERAL REQUIREMENTS FOR LICENSE.

Applicants shall submit an application together with the required fees and such documentation as is required. (3-24-05)

01. Examination Requirement. Applicants must pass a written examination for each individual classification in each type of licensure with a minimum score of seventy percent (70%). (3-21-12)

a. The examination will reflect different levels of knowledge, ability and judgment required for the established license type and class. The Board will administer examinations at such times and places as the Board may determine. (3-24-05)

b. The examination for all types and classes of licensure shall be validated and provided by the Association of Boards of Certification (ABC). The American Backflow Prevention Association (ABPA) backflow assembly tester examination is also approved for backflow assembly tester licensure. (5-8-09)

c. Applicants who fail an examination must make application to retake the same type and class examination and pay the required examination fees prior to retaking the examination. (3-24-05)

d. Applicants must take and pass the examination within one (1) year of application approval. After one (1) year a new application and applicable fees must be submitted. (3-30-07)

02. Education Requirements. Documentation must be provided showing proof of education required for the type and level of license being sought. (3-21-12)

03. Experience Requirement. Only actual verified on-site operating experience at a treatment, distribution or collection system will be acceptable except as may be allowed by substitution as set forth in these rules. Experience as a laboratory analyst can be counted as wastewater operating experience for up to one-half (1/2) of the wastewater operating experience requirement but cannot be counted as responsible charge experience. Experience as a wastewater operator can be counted as laboratory analyst experience for up to one-half (1/2) of the laboratory analyst experience. Applicants shall not receive more than one (1) year of experience for hours worked in excess of one thousand six hundred (1,600) hours in a calendar year unless specifically approved by the Board based upon documentation submitted by the Applicant. (4-11-19)

04. Apprenticeship Program. The Board may approve Apprenticeship Programs that are designed to provide either experience or experience and education for individuals seeking licensure in Idaho as an Operator-In-Training, or a Class I, II or III Water or Wastewater Operator. A basic Apprenticeship Program is designed to provide hands on experience and education related to the operation of Class I and II facilities. An advanced Apprenticeship Program is designed to provide hands on experience and education related to Class III facilities. All approved

Apprenticeship Programs shall be registered with the U.S. Department of Labor, Office of Apprenticeship, meet the Standards of Apprenticeship developed by the U.S. Department of Labor and meet the intent of these rules regarding the education and experience necessary for Operator-In-Training, Class I, II and III licensure. Sponsors of Apprenticeship Programs shall seek Board approval by application along with all supporting documentation necessary to establish the program meets the intent of these rules regarding education and experience. The Board may revoke the approval of any program that fails to comply with the Board's rules. (4-11-19)

301. -- 309. (RESERVED)

310. REQUIREMENTS FOR OPERATOR-IN-TRAINING LICENSE.

Each applicant for an Operator-In-Training License must meet the following requirements: (3-21-12)

01. Education. Possess a high school diploma or GED; and (3-21-12)

02. Examination. Pass the relevant Class I examination or be enrolled in an Apprenticeship Program approved by the Board. (4-11-19)

311. -- 314. (RESERVED)

315. REQUIREMENTS FOR A VERY SMALL WATER SYSTEM LICENSE.

To qualify for a Very Small Water System license an operator must meet the following requirements: (3-21-12)

01. Education. Possess a high school diploma or GED and; (3-21-12)

02. Experience. Document eighty-eight (88) hours of acceptable on-site operating experience at a water system; and (3-21-12)

a. Complete an approved six-hour water treatment course or an approved six-hour chlorination course or a combination of said approved courses equaling six (6) hours; and (3-20-14)

b. Complete an approved six-hour water distribution course; and (3-21-12)

03. Examination. Pass the relevant very small water system examination. (3-21-12)

316. -- 319. (RESERVED)

320. REQUIREMENTS FOR A VERY SMALL WASTEWATER SYSTEM LICENSE.

To qualify for a Very Small Wastewater System license, an operator must meet the following requirements: (3-21-12)

01. Education. Possess a high school diploma or GED; and (3-21-12)

02. Experience. Document fifty (50) hours of acceptable on-site operating experience at a wastewater collection system; and (3-21-12)

a. Fifty (50) hours of acceptable relevant on-site operating experience at a wastewater treatment system or lagoon; and (3-21-12)

b. Complete an approved six-hour pumps and motors course or an approved six-hour collection course or a combination of said approved courses equaling six (6) hours; and (3-20-14)

c. Complete an approved six-hour lagoon operation and maintenance course; or an approved six-hour large soil absorption system course or an approved six-hour wastewater treatment course or a combination of said approved courses equaling six (6) hours; and (3-20-14)

03. Examination. Pass the relevant lagoon examination. (3-21-12)

321. -- 324. (RESERVED)

325. REQUIREMENTS FOR CLASS I RESTRICTED WATER OR WASTEWATER LICENSE.

To qualify for a Class I Restricted water or wastewater license an operator must meet the following requirements:

(3-21-12)

01. Education. Possess a high school diploma or GED; and

(3-21-12)

02. Experience. Document two hundred sixty (260) hours of acceptable relevant on-site operating experience during twelve (12) consecutive months with the system and complete sixteen (16) hours of continuing education relevant to the license; and

(3-21-12)

03. Examination. Pass the relevant Class I examination.

(3-21-12)

04. Restricted License Upgrade. Upon obtaining one thousand six hundred (1,600) hours of supervised on-site operating experience for each license, the operator shall be eligible to apply for an unrestricted Class I license. There is no limit on the amount of time needed to obtain the necessary experience to qualify for the unrestricted license. A restricted license is limited to a specific system.

(3-21-12)

326. -- 327. (RESERVED)

328. REQUIREMENTS FOR A CLASS I OPERATOR LICENSE.

To qualify for a Class I operator license an applicant must meet the following requirements:

(3-21-12)

01. Education. Possess a high school diploma or GED; and

(3-21-12)

02. Experience. Document one (1) year of acceptable relevant on-site operating experience at a Class I or higher system or successfully complete one (1) year of an Approved Apprenticeship Program; and

(4-11-19)

03. Examination. Pass the relevant Class I examination.

(3-21-12)

329. (RESERVED)

330. REQUIREMENTS FOR A CLASS II OPERATOR LICENSE.

To qualify for a Class II license an applicant must meet the following requirements:

(3-21-12)

01. Education. Possess a high school diploma or GED; and

(3-21-12)

02. Experience. Document three (3) years of acceptable relevant on-site operating experience at a Class I or higher system or successfully complete an Approved Apprenticeship Program; and

(4-11-19)

03. Examination. Pass the relevant Class II examination.

(3-21-12)

331. -- 334. (RESERVED)

335. REQUIREMENTS FOR A CLASS III OPERATOR LICENSE.

To qualify for a Class III license an applicant must meet the following requirements:

(3-21-12)

01. Education. Possess a high school diploma or GED and two (2) years of post-high school education in the environmental control field, engineering or related science; and

(3-21-12)

02. Experience. Document four (4) years of acceptable relevant on-site operating experience, including two (2) years of responsible charge of a major segment of a system in the same or next lower class, of a Class I or higher system for collection or distribution or Class II or higher system for treatment or successful completion of an Approved Apprenticeship Program; and

(4-11-19)

03. Examination. Pass the relevant Class III examination.

(3-21-12)

336. -- 339. (RESERVED)

340. REQUIREMENTS FOR A CLASS IV OPERATOR LICENSE.

To qualify for a Class IV license an applicant must meet the following requirements; (3-21-12)

01. Education. Possess a high school diploma or GED and four (4) years of post-high school education in the environmental control field, engineering or related science; and (3-21-12)

02. Experience. Document four (4) years of acceptable relevant on-site operating experience, including two (2) years of responsible charge of a major segment of a system in the same or next lower class, at a Class I or higher system for collection or distribution or Class III or higher system for treatment; and (3-25-16)

03. Examination. Pass the relevant Class IV examination. (3-21-12)

341. -- 344. (RESERVED)

345. REQUIREMENTS FOR A LAGOON OPERATOR LICENSE.

To qualify for a lagoon license, an operator must meet the following requirements; (3-21-12)

01. Education. Possess a high school diploma or GED; and (3-21-12)

02. Experience. Document twelve (12) consecutive months of acceptable on-site operating experience at a Lagoon system; and (3-21-12)

03. Examination. Pass the relevant Lagoon examination. (3-21-12)

346. -- 349. (RESERVED)

350. REQUIREMENTS FOR A WASTEWATER LAND APPLICATION LICENSE.

To qualify for a Wastewater Land Application license, an operator must meet the following requirements: (3-21-12)

01. Education. Possess a high school diploma or GED; and (3-21-12)

02. Experience. Document a minimum six (6) months of on-site operating experience at a wastewater land application system; and (3-21-12)

03. Examination. Pass the relevant Wastewater Land Application examination; and (3-21-12)

04. Other. Possess a wastewater Class I or higher operation license. The wastewater land application operator that is a responsible charge or substitute responsible charge operator must be licensed at the type and class equal to or greater than the classification of the wastewater system. (3-21-12)

351. -- 354. (RESERVED)

355. REQUIREMENTS FOR A BACKFLOW ASSEMBLY TESTER LICENSE.

To qualify for a backflow assembly tester license, an applicant must meet the following requirements: (3-21-12)

01. Education. Possess a high school diploma or GED, and (3-21-12)

02. Experience. Document successful completion of a Board-approved backflow assembly tester training program in compliance with the Cross Connection Control Accepted Procedure and Practice Manual and consisting of theory instruction, practical instruction, and a practical examination in compliance with the USC Test procedures; and (3-21-12)

03. Examination. Pass the relevant Backflow Assembly Tester examination. (3-21-12)

356. -- 359. (RESERVED)

360. REQUIREMENTS FOR WASTEWATER LABORATORY ANALYST LICENSE.

To qualify for a wastewater laboratory analyst license, an applicant must meet the following requirements for the relevant class: (3-21-12)

- 01. Class I.** (3-21-12)
 - a.** Possess a high school diploma or GED; and (3-21-12)
 - b.** Document one (1) year of acceptable lab experience at a class I or higher system; and (3-21-12)
 - c.** Pass the relevant class I laboratory analyst examination. (3-21-12)
- 02. Class II.** (3-21-12)
 - a.** Possess a high school diploma or GED; and (3-21-12)
 - b.** Document three (3) years of acceptable lab experience at a class I or higher system; and (3-21-12)
 - c.** Pass the relevant class II laboratory analyst examination. (3-21-12)
- 03. Class III.** (3-21-12)
 - a.** Possess a high school diploma or GED and two (2) years of post-high school education in the environmental control field, engineering or related science; and (3-21-12)
 - b.** Document four (4) years of acceptable lab experience at a class II or higher system; and (3-21-12)
 - c.** Pass the relevant class III laboratory analyst examination. (3-21-12)
- 04. Class IV.** (3-21-12)
 - a.** Possess a high school diploma or GED and four (4) years of post-high school education in the environmental control field, engineering or related science; and (3-21-12)
 - b.** Document four (4) years of acceptable lab experience at a class III or higher system; and (3-21-12)
 - c.** Pass the relevant class IV laboratory analyst examination. (3-21-12)

361. -- 374. (RESERVED)

375. SUBSTITUTIONS.

01. Substituting Education for Experience. Applicants may substitute approved education for operating and responsible charge experience as specified below. (3-21-12)

- a.** No substitution for on-site operating experience shall be permitted for licensure as a very small system operator or a Class I operator. (3-21-12)
- b.** For Classes II, III and IV, substitution shall only be allowed for the required experience when fifty percent (50%) of all stated experience (both on-site operating and responsible charge) has been met by actual on-site operating experience. (3-21-12)
- c.** For Class II, a maximum of one and one-half (1½) years of post-high school education in the environmental control field, engineering or related science may be substituted for one and one-half (1½) years of operating experience. (3-21-12)

d. For Class III and IV, a maximum of two (2) years of post-high school education in the environmental control field, engineering or related science may be substituted for two (2) years of on-site operating experience; however the applicant for Class III must still have one (1) year of responsible charge experience and the applicant for Class IV must have two (2) years of responsible charge experience. (3-21-12)

e. Education substituted for on-site operating experience may not be also credited toward the education requirement. (3-21-12)

f. One (1) year of post-high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required on-site operating or responsible charge experience. (3-21-12)

02. Substituting Experience for Education. Where applicable, approved on-site operating and responsible charge experience may be substituted for education as specified below: (3-21-12)

a. One (1) year of on-site operating experience may be substituted for two (2) years of grade school or one (1) year of high school with no limitation. (3-21-12)

b. For Class III and IV, additional responsible charge experience (that exceeding the two-year class requirements) may be substituted for post-high school education on a one (1) for one (1) basis: one (1) year additional responsible charge equal one (1) year post-high school education. (3-21-12)

03. Substituting Experience for Experience. Related experience may be substituted for experience up to one-half (½) of the operating experience requirement for Class II, III and IV. Experience that may be substituted includes, but is not limited to, the following: (3-21-12)

a. Experience as an environmental or operations consultant; (3-21-12)

b. Experience in an environmental or engineering branch of federal, state, county, or local government; (3-21-12)

c. Experience as a wastewater collection system operator; (3-21-12)

d. Experience as a wastewater treatment plant operator; (3-21-12)

e. Experience as a water distribution system operator and/or manager; (3-21-12)

f. One (1) year of post-high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required operating or responsible charge experience. (3-21-12)

g. Experience in waste treatment operation and maintenance. (3-21-12)

h. Experience as a laboratory analyst can be counted as wastewater operating experience for up to one-half (1/2) of the wastewater operating experience requirement but cannot be counted as responsible charge experience. (3-21-12)

i. Experience as a wastewater operator can be counted as laboratory analyst experience for up to one-half (1/2) of the laboratory analyst experience requirement. (3-21-12)

04. Equivalency Policy. Substitutions for education or experience requirements needed to meet minimum requirements for license will be evaluated upon the following equivalency policies: (3-21-12)

a. High School - High School diploma equals GED or equivalent as approved by the Board equals four (4) years. (3-21-12)

b. College - Thirty (30) credits equal one (1) year (limited to curricula in environmental engineering, environmental sciences, water/wastewater technology, and/or related fields as determined by the Board). (4-11-19)

c. Continuing Education Units (CEU) for operator training courses, seminars, related college courses, and other training activities. Ten (10) classroom hours equal one (1) CEU; forty-five (45) CEUs equal one (1) year of college. (3-21-12)

376. -- 399. (RESERVED)

400. ENDORSEMENT.

The board may waive the examination requirements and issue the appropriate license for applicants holding licenses issued by other States that have equivalent license requirements and who otherwise meet the requirements set forth in Subsections 150.02, 150.03, and 150.04. (3-24-05)

401. -- 449. (RESERVED)

450. WASTEWATER GRANDPARENT PROVISION.

The board issued grandparent licenses to wastewater operators who provided documentation satisfactory to the board of being in responsible charge of an existing public wastewater system on or before April 15, 2006. (4-11-19)

01. Grandparent License. A grandparent license allowed the licensee to operate in responsible charge of the specific facility identified in the original application. The license is site specific and non-transferable and does not grant authority for the holder to practice at any other system in any capacity as an operator. (4-11-19)

02. License Requirements. A grandparent licensed wastewater operator is required to meet all other requirements including the continuing education and renewal requirements. (3-21-12)

03. Wastewater System Classification Limitations. The grandparent license shall become invalid any time the classification of the wastewater system changes to a higher classification. (3-24-05)

451. -- 499. (RESERVED)

500. CONTINUING EDUCATION.

In order to further protect the health, safety and welfare of Idaho's public, and to facilitate the continued competence of persons licensed under the drinking water and wastewater professionals licensing act, the Board has adopted the following rules for continuing education. (3-24-05)

01. Continuing Education Requirement. Each licensee must successfully complete a minimum of six (6) hours (0.6 CEUs) of approved continuing education annually for license renewal, except that backflow assembly testers shall complete an eight (8) hour refresher course every two (2) years for license renewal. Continuing education must be earned in a subject matter relevant to the field in which the license is issued. A licensee holding one (1) or more drinking water license(s) shall be required to meet the annual continuing education requirement for only one license. A licensee holding one (1) or more wastewater license(s) shall be required to meet the annual continuing education requirement for only one license. A licensee holding both drinking water and wastewater class licenses must complete a minimum of six (6) hours annually for the drinking water license plus six (6) hours annually for the wastewater license. (3-30-06)

a. Each licensee shall submit to the Board an annual license renewal application form, together with the required fees, certifying by signed affidavit that compliance with the CE requirements have been met. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with the CE requirements. (3-24-05)

b. A licensee shall be considered to have satisfied their CE requirements for the first renewal of their license. (3-24-05)

c. A water or wastewater licensee may carryover a maximum of six (6) hours of continuing education to meet the next year's continuing education requirement. The same hours may not be carried forward more than one (1) renewal cycle. (3-24-05)

d. Continuing Education hours for approved operator training courses, seminars, related college

courses, and other training activities may be converted to Continuing Education Units (CEU) as follows: Six (6) classroom hours = point six (0.6) CEU. (3-24-05)

02. Subject Material. The subject material of the continuing education requirement shall be relevant to the license for which the continued education is required. “Relevant” shall be limited to material germane to the operation, maintenance and administration of drinking water and wastewater systems as referenced in Chapter 24, Title 54, Idaho Code, and includes those subjects identified in the “need to know” criteria published by the Associations of Boards of Certification. (3-30-06)

03. Course Approval. All course providers must submit requests for approval of continuing education courses to the Board in writing no less than thirty (30) days prior to the course being offered, on a form approved by the Board that includes: (3-30-06)

- a. The name and qualifications of the instructor or instructors; (3-24-05)
- b. The date, time and location of the course; (3-24-05)
- c. The specific agenda for the course; (3-24-05)
- d. The type and number of continuing education credit hours requested; (3-24-05)
- e. A statement of how the course is believed to be relevant as defined; (3-24-05)
- f. Any certificate of approval from a governmental agency if the course has been previously approved for continuing education; (3-30-06)
- g. The training materials; (3-24-05)
- h. Other information as may be requested by the Board. (3-24-05)
- i. Upon review of all information requested, the Board may either approve or deny any request for a course. Board approval of a course shall be granted for a period not to exceed five (5) years or until the course materials or instructors are changed. (4-11-19)

04. Approved Courses. Those continuing education courses which are relevant and approved by the states of Nevada, Oregon, Montana, Utah, Wyoming, and Washington are deemed approved by the Board. (2-26-08)

05. Verification of Attendance. It shall be necessary for each licensee to maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours attended by the licensee. This verification shall be maintained by the licensee and provided upon request of the Board or its agent. (3-24-05)

06. Distance Learning and Independent Study. The Board may approve a course of study for continuing education credit that does not include the actual physical attendance of the licensee in a face-to-face setting with the course instructor. The licensee shall maintain documentation of the nature and details of the course and evidence that the licensee successfully completed the course, which shall be made available to the Board upon request. (3-30-06)

07. Failure to Fulfill the Continuing Education Requirements. The license will not be renewed for those licensees who fail to certify or otherwise provide acceptable documentation of meeting the CE requirements. Licensees who make a false attestation regarding compliance with the CE requirements shall be subject to disciplinary action by the Board. (3-24-05)

08. Exemptions. The Board may waive the continuing education requirement or extend the deadline up to ninety (90) days for any one or more of the following circumstances. The licensee must request the exemption and provide any information requested to assist the Board in making a determination. An exemption may be granted at the sole discretion of the Board. (3-30-06)

a. The licensee is a resident of another jurisdiction recognized by the Board having a continuing professional education requirement for licensure renewal and has complied with the requirements of that state or district. (3-24-05)

b. The licensee is a government employee working outside the continental United States. (3-24-05)

c. The licensee documents individual hardship, including health (certified by a medical doctor) or other good cause. (3-24-05)

501. -- 599. (RESERVED)

600. RENEWAL OR REINSTATEMENT OF LICENSE.

01. Expiration Date. All licenses expire and must be renewed annually on forms approved by the Board in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (3-24-05)

02. Reinstatement. Any license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code, with the exception that the applicant shall submit proof of having completed the total number of required continuing education for each year the license or certificate was cancelled. (2-26-08)

03. Operator-in-Training License. Applicants for the operator-in-training license shall, upon compliance with the requirements of Subsections 300.01 and 300.02, be issued a “one-time” non-renewable license for the purpose of gaining supervised experience as an operator-in-training (OIT). This license will be valid for three (3) years from the date of issue. (4-11-19)

04. Backflow Assembly Testers. Backflow assembly testers shall complete a Board-approved eight (8) hour refresher course every two (2) years for license renewal. (3-30-06)

05. Wastewater Land Application License. Wastewater land application licenses shall not be renewed unless the licensee also maintains a current wastewater treatment license. (3-30-06)

601. -- 649. (RESERVED)

650. BACKFLOW ASSEMBLY TESTER CODE OF ETHICS AND STANDARDS OF CONDUCT.

All backflow assembly tester licensees shall comply with the Idaho Backflow Assembly Tester Code of Ethics and Standards of Conduct as approved by the Board and attached to these rules as Appendix A. (3-25-16)

651. -- 699. (RESERVED)

700. DISCIPLINE.

01. Civil Fine. The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensee for each violation of Chapter 24, Title 54, Idaho Code. (3-24-05)

02. Costs and Fees. The Board may order a licensee to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee for violation of Chapter 24, Title 54, Idaho Code. (3-24-05)

701. -- 799. (RESERVED)

800. STAKEHOLDER INVOLVEMENT.

Ongoing drinking water stakeholder involvement shall be provided through the existing DEQ drinking water advisory committee. (3-24-05)

801. -- 999. (RESERVED)

APPENDIX A
IDAHO BACKFLOW ASSEMBLY TESTER CODE OF ETHICS AND STANDARDS OF CONDUCT

The purpose of this rule is to protect public health by setting minimum requirements and standards for licensed Backflow Assembly Testers in Idaho who inspect and field test backflow assemblies, backflow prevention devices and air gaps that protect public water systems.

1. Code of Ethics -- A licensed Backflow Assembly Tester shall:

- a.** At all times, act in accordance with his/her primary obligation to perform his/her duties with due care and diligence to protect the safety, health and welfare of the public;
- b.** Comply with the laws and rules governing Backflow Assembly Testers and all applicable state and federal laws and regulations relating to backflow assembly testing;
- c.** Perform only those duties consistent with and appropriate to his/her experience, training, skills, abilities, and licensure; and
- d.** Be objective and truthful in all professional reports, statements, or testimony and include all relevant and pertinent information in such reports, statements or testimony.

2. Definitions:

- a.** Backflow Prevention Assembly: an approved assembly such as a Double Check Valve Assembly (DCVA), a Pressure Vacuum Breaker Assembly (PVBA), a Reduced Pressure Backflow Assembly (RPBA), or a Spill-Resistant Pressure Vacuum Breaker Assembly (SVBA) used for the protection of the public water supply according to the provisions of IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," as administered by DEQ.
- b.** Backflow Prevention Device: an approved device such as an Atmospheric Vacuum Breaker (AVB), which does not contain valves or test ports, or a method, such as an air gap, that is utilized to prevent cross connections to a public water supply.
- c.** Calibration/Verification: the annual verification, calibration, or both of a backflow assembly field test kit by an instrument calibration laboratory/facility or by a person qualified to verify and calibrate a field test kit such as a manufacturer, dealer licensed to calibrate or verify field test kits, or calibration technician.
- d.** Customer: means the owner of the property or his/her authorized or appointed agent.
- e.** Field Test Kit: an instrument, either mechanical or electronic in design, and all related fittings, tools, equipment and appurtenances necessary to perform field verification tests on backflow prevention assemblies.

3. Standards of Conduct

- a.** Principle 1 -- A Backflow Assembly Tester shall act only within the scope of practice as set forth in the Board's laws and rules. A Backflow Assembly Tester must use due care and diligence in performing his/her duties.
- b.** Principle 2 -- When conducting inspections and field tests of backflow prevention assemblies, a Backflow Assembly Tester must use test procedures that comply with standard field test procedures.
- c.** Principle 3 -- The Backflow Assembly Tester shall observe or inspect existing installations of backflow prevention assemblies to identify whether the assembly is properly installed and whether, in the opinion of the Backflow Assembly Tester, the assembly is adequate and appropriate for the degree of hazard posed to the Public Water System having jurisdiction over the assembly.

i. A Backflow Assembly Tester must report improperly installed assemblies to the customer and the Public Water System having jurisdiction over the backflow prevention assembly and also must note the discrepancy on the test report and submit the test report to the customer and the Public Water System having jurisdiction over the backflow prevention assembly.

ii. A Backflow Assembly Tester must note discrepancies regarding inadequate or inappropriate backflow prevention assemblies on the test report and submit the test report to the customer and the Public Water System having jurisdiction over the backflow prevention assembly.

d. Principle 4 -- A Backflow Assembly Tester shall use a properly working and calibrated field test kit that meets the requirements of the Pacific Northwest Section of the American Water Works Association Cross Connection Control Manual, Seventh Edition, November 2012. When requested by a Public Water System, a Backflow Assembly Tester shall submit the most recent calibration report that verifies the accuracy of the field kit. When requested by a Public Water System, a Backflow Assembly Tester shall submit proof of current licensure in Idaho as a Backflow Assembly Tester.

e. Principle 5 -- The Backflow Assembly Tester must competently use a field test kit, all tools, and other equipment and appurtenances necessary to inspect and field test backflow prevention assemblies, inspect air gaps and backflow prevention devices.

f. Principle 6 -- When a backflow prevention assembly passes a field test, the Backflow Assembly Tester shall submit within fifteen (15) business days of performing the field test a passing test report to the customer and the Public Water System having jurisdiction over the backflow prevention assembly.

g. Principle 7 -- When a backflow prevention assembly is defective or fails to pass the field test, the Backflow Assembly Tester shall submit immediately, if possible, but no later than within two (2) business days, a failing field test report to the customer and the Public Water System having jurisdiction over the backflow prevention assembly.

h. Principle 8 -- The Backflow Assembly Tester shall complete a test report for each backflow prevention assembly for which the Backflow Assembly Tester conducts a field test. A test report must be legible and contain all relevant and pertinent information pertaining to the field test including, at a minimum, the make, model, size, serial number, orientation, and test results for each test conducted.

i. A Backflow Assembly Tester shall record data and sign test reports only for backflow prevention assemblies for which the Backflow Assembly Tester has personally conducted the field test.

ii. A Backflow Assembly Tester shall not falsify the results of a backflow prevention assembly field test or inspection.

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.06.01 – RULES FOR THE LICENSURE OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

DOCKET NO. 24-0601-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-3717(2), Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 24.06.01, rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants:

IDAPA 24.06.01

- 24.06.01, *Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants*: all proposed rules except 010.01, 010.02.a., 010.02.b., 010.02.c., 010.02.d., 010.07, 010.08, 010.09, 010.10, 010.12, 010.13, 020.03, 020.05, 020.06, 021.01, 021.02.a., 021.02.b., 021.03.a., 021.04.a., 023, 025.03.b., 025.03.c., 025.03.d., 025.05.l, 025.06.a., 025.06.b., 025.06.c., 032.02.c., and 032.02.e.

The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.06.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Rules for the Licensure of Occupational Therapists and Occupational Therapy was published. This pending fee rule will allow the Legislature to review for codification IDAPA 24.06.01, the Rules for the Licensure of Occupational Therapists and Occupational Therapy. On June 10, 2019, the State Occupational Therapy Licensure Board held a public meeting which was noticed pursuant to the Idaho Open Meetings Law where the public and other interested parties, including industry organizations, were given the opportunity to comment as this chapter was reviewed. Changes made to the pending fee rule which differ from the proposed text were made to accomplish the Recommendations for Improvement, Modification, or Elimination of Requirements from the Licensing Freedom Act of 2017, Executive Order No. 2017-06; the directives set forth in the Licensing Freedom Act of 2019, Executive Order No. 2019-01; the directives set forth in the Red Tape Reduction Act, Executive Order No. 2019-02; and the continued efforts to clarify and streamline its rules. This pending fee rule removes outdated language and processes, reorders certain sections to improve overall organization, removes redundant language, moves fees into an easier to read tabular format, and adds the phrase “not to exceed” before fee amounts, which will allow for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity.

Further, this pending fee rule added mechanical and physical agent modalities to rule 012 to reflect the scope of practice allowed in the Board’s governing statute. This pending fee rule also replaced the term patient with the term client to reflect industry practice. This pending fee rule also removed the term good moral character, to clarify requirements for licensure. Additionally, this pending fee rule clarified the continuing education requirements for licensees which was identified in the Board’s Licensing Freedom Act of 2017 Report. These changes will make the continuing education requirements easier to understand, as well as increase the number of allowed continuing education courses. This pending fee rule updates the requirements an inactive licensee must meet before returning to active status. To ensure all active practitioners are proficient, this pending rule will require licensees inactive for five or more years to show proof of competency before returning to active status as well as the criteria to determine competency. Finally, this pending fee rule institutes standards of practice for telehealth, which will aid both therapists and clients in determining whether telehealth is appropriate.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 4650 - 4660](#).

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Sections 54-3707 and 54-3712, Idaho Code, as follows:

- Initial licensure fee for occupational therapists: not to exceed \$80;
- Initial licensure fee for occupational therapy assistants: not to exceed \$60;
- Fee for limited permit or temporary license: not to exceed \$25;
- Active license annual renewal fee for occupational therapists: not to exceed \$40;
- Active license renewal fee for occupational therapy assistants: not to exceed \$30;
- Inactive license annual renewal fee for occupational therapists and occupational therapy assistants: not to exceed \$20;
- Fee for reinstating an inactive license to an active license is the difference between the current inactive and active license renewal fees.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade at (208) 334-3233.

Dated this 16th day of October, 2019.

Kelley Packer
Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-3717(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.06.01, rules of the Occupational Therapy Licensure Board:

IDAPA 24

- 24.06.01, *Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants*—All rules *except Subsections 010.01, 010.02, 010.09, 010.11, 010.12, and 010.14.*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The Occupational Therapy Licensure Board licenses individuals who meet a national education standards and qualifications to therapeutically use everyday life activities to help individuals or groups participate in roles and situations in home, school, the workplace, community, and other settings. These rules public health, safety, and welfare through ensuring those who work with vulnerable members of our society are ethical in their practice and possess and maintain the education and training to assess and treat people who need services in order to function in everyday life activities.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and the immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Without the ability to assess and collect the licensure fees described in this chapter, the Occupational Therapy Licensure Board would not be able to remain self-sufficient, contrary to its statutory requirement.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Sections 54-3707 and 54-3712, Idaho Code, as follows: initial licensure fee for occupational therapists: \$80; initial licensure fee for occupational therapy assistants: \$60; fee for limited permit or temporary license: \$25; active license annual renewal fee for occupational therapists: \$40; active license renewal fee for occupational therapy assistants: \$30; inactive license annual renewal fee for occupational therapists and occupational therapy assistants: \$20; and the fee for reinstating an inactive license to an active license is the difference between the current inactive and active license renewal fees.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being

re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-0601-1900F

**24.06.01 – RULES FOR THE LICENSURE OF OCCUPATIONAL THERAPISTS
AND OCCUPATIONAL THERAPY ASSISTANTS**

000. LEGAL AUTHORITY.

Pursuant to Section 54-3717(2), Idaho Code, the Occupational Therapy Licensure Board of Idaho is authorized to promulgate rules that implement the provisions of Chapter 37, Title 54, Idaho Code. (3-29-10)

001. TITLE AND SCOPE.

These rules are titled IDAPA 24.06.01, “Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants.” (7-1-93)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Client-Related Tasks. Client-related tasks are routine tasks during which the aide may interact with the client but does not act as a primary service provider of occupational therapy services. ()

02. Direct Line-of-Sight Supervision. Direct line-of-sight supervision requires the supervisor’s physical presence when services are being provided to clients by the individual under supervision. ()

03. Direct Supervision. Direct supervision requires daily, in-person contact by the supervisor at the site where services are provided to clients by the individual under supervision. (4-11-19)

04. Evaluation. Evaluation is the process of obtaining and interpreting data necessary for treatment, which includes, but is not limited to, planning for and documenting the review, specific observation, interviewing, and administering data collection procedures, which include, but are not limited to, the use of standardized tests, performance checklists, and activities and tasks designed to evaluate specific performance abilities. (4-11-19)

05. General Supervision. General Supervision requires in-person or synchronous interaction at least once per month by an occupational therapist and contact by other means as needed. Other means of contact include, but are not limited to, electronic communications such as email. (4-11-19)

06. Routine Supervision. Routine Supervision requires in-person or synchronous interaction at least once every two (2) weeks by an occupational therapist and contact by other means as needed. Other means of contact include, but are not limited to, electronic communications such as email. (4-11-19)

011. SUPERVISION.

An occupational therapist shall supervise and be responsible for the patient care given by occupational therapy assistants, limited permit holders, aides, and students. An occupational therapist’s or occupational therapy assistant’s failure to provide appropriate supervision in accordance with these rules is grounds for discipline. (4-11-19)

01. Occupational Therapy Assistants. Occupational therapy assistants must be supervised by an occupational therapist. General Supervision must be provided at a minimum. (4-11-19)

02. Limited Permit Holders. Limited permit holders must be supervised by an occupational therapist or occupational therapy assistant. Direct supervision must be provided at a minimum. The occupational therapist is responsible for the overall use and actions of the limited permit holder. (4-11-19)

03. Occupational Therapy Aides. Occupational therapy aides do not provide skilled occupational therapy services. An aide must be trained by an occupational therapist or an occupational therapy assistant to perform specifically delegated tasks. The occupational therapist is responsible for the overall use and actions of the aide. The occupational therapist must oversee the development, documentation, and implementation of a plan to supervise and routinely assess the ability of the occupational therapy aide to carry out non-client related and client-related tasks. The occupational therapy assistant may contribute to the development and documentation of this plan. (4-11-19)

a. The following factors must be present when an occupational therapist or occupational therapy assistant assigns a selected client-related task to the aide: ()

i. The outcome of the assigned task is predictable; ()

ii. The situation of the client and the environment is stable and will not require that judgment, interpretations, or adaptations be made by the aide; ()

- iii. The client has demonstrated some previous performance ability in executing the task; and ()
- iv. The task routine and process have been clearly established. ()
- b. Before assigning client-related and non-client related tasks to an aide, the occupational therapist or occupational therapy assistant must ensure that the aide is able to competently perform the task. (4-11-19)
- c. The occupational therapist or occupational therapy assistant must train the aide to perform client-related and non-client related tasks at least once per month. (4-11-19)
- d. An aide must perform client-related tasks under the direct line-of-sight supervision of an occupational therapist or occupational therapy assistant. (4-11-19)
- e. Occupational therapists and occupational therapy assistants must document all training and supervision of an aide. ()

04. Students. Students must be under the direct on-site supervision of an occupational therapist or occupational therapy assistant who is appropriately supervised by an occupational therapist. The occupational therapist is responsible for the overall use and actions of the student. (4-11-19)

05. Supervision Requirements. Supervision is the direction and review of service delivery, treatment plans, and treatment outcomes. Unless otherwise specified in this rule, General Supervision is the minimum level of supervision that must be provided. Methods of supervision may include, but are not limited to, Direct Line-of-Sight Supervision, Direct Supervision, Routine Supervision, or General Supervision, as needed to ensure the safe and effective delivery of occupational therapy. (4-11-19)

- a. An occupational therapist and an occupational therapy assistant must ensure the delivery of services by the individual being supervised is appropriate for client care and safety and must evaluate: (4-11-19)
 - i. The complexity of client needs; (4-11-19)
 - ii. The number and diversity of clients; (4-11-19)
 - iii. The skills of the occupational therapist assistant, aide, or limited permit holder; ()
 - iv. The type of practice setting; (4-11-19)
 - v. The requirements of the practice setting; and (4-11-19)
 - vi. Other regulatory requirements applicable to the practice setting or delivery of services. (4-11-19)
- b. Supervision must be documented in a manner appropriate to the supervised position and the setting. The documentation must be kept as required by Section 013 of these rules. ()
- c. Supervision must include consultation at appropriate intervals regarding evaluation, intervention, progress, reevaluation and discharge planning for each patient. Consultation must be documented and signed by the supervisor and supervisee. (4-11-19)

012. DEEP THERMAL, ELECTROTHERAPEUTIC, MECHANICAL PHYSICAL AGENT MODALITIES, AND WOUND CARE.

01. Qualifications. Except as provided in Subsection 012.02 of these rules, a person may not utilize occupational therapy techniques involving deep thermal, electrotherapeutic, or mechanical physical agent modalities or perform wound care management unless the person is licensed by the Board as an occupational therapist and certified by the Hand Therapy Commission. In lieu of being certified by the Hand Therapy Commission, the person must have obtained education and training as follows. ()

a. If the person utilizes techniques involving deep thermal, electrotherapeutic, or mechanical physical agent modalities, the person must have successfully completed thirty (30) contact hours in the application of deep thermal, electrotherapeutic modalities, and mechanical physical agent modalities, along with forty (40) hours of supervised, on-the-job or clinical internship or affiliation training pertaining to such modalities. ()

b. If the person manages wound care, the person must have successfully completed fifteen (15) contact hours in wound care management, along with forty (40) hours of supervised, on-the-job or clinical internship or affiliation training pertaining to wound care management. ()

c. If the person utilizes both deep thermal, electrotherapeutic, or mechanical physical agent modalities and manages wound care, the forty (40) hours of supervised components may be obtained concurrently. ()

02. Obtaining Education and Supervised Training. A student occupational therapist, graduate occupational therapist, and an occupational therapist may utilize deep thermal, electrotherapeutic, or mechanical physical agent modalities or manage wound care while working towards obtaining the education and supervised training described in Section 012 of these rules. The supervisor must provide at least direct supervision to the student occupational therapist, and at least routine supervision to the graduate occupational therapist or occupational therapist. An occupational therapy assistant may apply deep thermal, electrotherapeutic, or mechanical physical agent modalities under routine supervision if the occupational therapy assistant has obtained the education and training described in this section. Otherwise, the occupational therapy assistant must work under direct line-of-sight supervision while applying such modalities. ()

03. Supervised Training by Qualified Individual. The supervised training described in Section 012 of these rules must be provided by an occupational therapist who is qualified pursuant to Subsection 012.01, or by another type of licensed health care practitioner whose education, training, and scope of practice enable the practitioner to competently supervise the person as to the modalities utilized and wound care management provided. ()

013. RECORD KEEPING.

Occupational therapists and occupational therapy assistants must maintain adequate records that are consistent with the standard business practices of the setting in which the licensee is providing occupational therapy or supervision and that show necessary client care, supervision provided by the licensee, and compliance with regulatory requirements applicable to the setting. ()

014. -- 019. (RESERVED)

020. GENERAL QUALIFICATIONS FOR LICENSURE.

01. Applicant. The Board may refuse licensure if it finds the applicant has engaged in conduct prohibited by Section 54-3718, Idaho Code; provided, the Board shall take into consideration the rehabilitation of the applicant and other mitigating circumstances. ()

02. Education. Each applicant shall provide evidence of successful completion of the academic requirements of an educational program in occupational therapy that is accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE), or by a predecessor or successor organization recognized by the United States Secretary of Education, the Council for Higher Education Accreditation, or both. (3-29-10)

03. Examination. Each applicant shall either pass an examination required by the Board or shall be entitled to apply for licensure by endorsement or limited permit. (1-5-88)

a. The written examination shall be the examination conducted by the National Board for Certification in Occupational Therapy, Inc. (NBCOT) and the passing score shall be the passing score established by the NBCOT. (4-2-03)

b. An applicant for licensure by examination who fails to pass the examination on two (2) attempts must submit a new application. ()

021. APPLICATION FOR LICENSURE.

01. Licensure by Endorsement. An applicant may be eligible for licensure without examination if he or she meets all of the other qualifications prescribed in Section 54-3709, Idaho Code, and also holds a current valid license or registration from some other state, territory or district of the United States, or certified by the National Board for Certification in Occupational Therapy providing they meet Idaho standards and are equivalent to the requirements for licensure pursuant to these rules. (3-29-10)

02. Limited Permit. The Board may issue a Limited Permit to a graduate occupational therapist or graduate occupational therapy assistant who meets the requirements set forth by Sections 54-3706(1) and 54-3706(2), Idaho Code, who has not yet passed the examination as required in Paragraph 020.04.a. of these rules. (3-29-10)

a. A Limited Permit shall only allow a person to practice occupational therapy in association with and under the supervision of a licensed occupational therapist. (1-5-88)

b. A Limited Permit shall be valid six (6) months from the date of issue. (3-20-14)

c. A Limited Permit may be extended by the Board for good cause. (3-20-14)

04. Temporary License. The Board may issue a temporary license to a person applying for licensure as an occupational therapist or an occupational therapy assistant if the person is currently licensed and in good standing to practice in another jurisdiction and meets that jurisdiction's requirements for licensure by endorsement. (3-29-10)

a. A temporary license shall automatically expire once the Board has processed the person's application for licensure and issued or denied the applied-for license, or in six (6) months after the date on which the Board issued the temporary license, whichever is sooner. (3-29-10)

05. Personal Interview. The Board may, at its discretion, require the applicant to appear for a personal interview. (1-5-88)

022. WRITTEN STATEMENT OF SUITABILITY FOR LICENSURE.

An applicant who, or whose license, has a criminal conviction, finding of guilt, withheld judgment, or suspended sentence for any crime under any municipal, state, or federal law other than minor traffic offenses, or has been subject to discipline by any state professional regulatory agency or professional organization must submit with the application a written statement and any supplemental information establishing the applicant's current suitability for licensure. ()

01. Consideration of Factors and Evidence. The Board shall consider the following factors or evidence: (4-11-19)

a. The severity or nature of the crime or discipline; (4-11-19)

b. The period of time that has passed since the crime or discipline under review; (4-11-19)

c. The number or pattern of crimes or discipline or other similar incidents; (4-11-19)

d. The circumstances surrounding the crime or discipline that would help determine the risk of repetition; (4-11-19)

e. The relationship of the crime or discipline to the practice of occupational therapy; (4-11-19)

f. The applicant's activities since the crime or discipline under review, such as employment, education, participation in treatment, payment of restitution, or any other factors that may be evidence of current rehabilitation; and (4-11-19)

g. Any other information regarding rehabilitation or mitigating circumstances. (4-11-19)

02. Interview. The Board may, at its discretion, grant an interview of the applicant. (4-11-19)

03. Applicant Bears the Burden. The applicant shall bear the burden of establishing the applicant's current suitability for licensure. (4-11-19)

023. -- 024. (RESERVED)

025. CONTINUING EDUCATION.

In order to protect public health and safety and promote the public welfare, the Board has adopted the following continuing education requirement of all licensees: (3-25-16)

01. Requirement. Each licensee shall successfully complete, in the twelve (12) months preceding license renewal, a minimum of ten (10) contact hours of continuing education, as approved by the Board. ()

a. One (1) contact hour is equivalent to one (1) clock hour for the purpose of obtaining continuing education. ()

b. The Board shall waive the continuing education requirement for the first license renewal after initial licensure. ()

02. Attestation. The licensee must attest, as part of the annual license renewal process, that the licensee is in compliance with the continuing education requirement. ()

03. Courses and Activities. At least five (5) contact hours must directly relate to the delivery of occupational therapy services. The remaining contact hours must be germane to the practice of occupational therapy and relate to other areas of a licensee's practice. A licensee may take online or home study courses or self-competency assessments, as long as a course completion certificate is provided. ()

a. The delivery of occupational therapy services may include: models, theories or frameworks that relate to client care in preventing or minimizing impairment, enabling function within the person/environment or community context. ()

b. Other areas may include, but are not limited to, occupation based theory assessment/interview techniques, intervention strategies, and community/environment as related to the licensee's practice. ()

c. Continuing education acceptable to the Board includes, but is not limited to, programs or activities sponsored by the American Occupational Therapy Association (AOTA), the Idaho Occupational Therapy Association (IOTA), or National Board for Certification in Occupational Therapy (NBCOT); post-professional coursework completed through any approved or accredited educational institution; or otherwise meet all of the following criteria: ()

i. The program or activity contributes directly to professional knowledge, skill, and ability; (3-29-10)

ii. The program or activity relates directly to the practice of occupational therapy; and (3-29-10)

iii. The program or activity must be objectively measurable in terms of the hours involved. (3-29-10)

04. Carry Over and Duplication. A maximum of ten (10) continuing education hours may be carried forward from the immediately preceding year, and may not be carried forward more than one renewal year. If the licensee completes two (2) or more courses having substantially the same content during any one (1) renewal period, the licensee only will receive continuing education credit for one (1) of the courses. ()

05. Documentation. A licensee need not submit documentation of continuing education when the licensee renews a license. However, a licensee must maintain documentation verifying that the licensee has completed the continuing education requirement for a period of four (4) years from the date of completion. A licensee

must submit the verification documentation to the Board if the licensee is audited by the Board. A percentage of occupational therapists and certified occupational therapy assistants will be audited every year. Documentation for all activities must include licensee's name, date of activity or when course was completed, provider name, course title, description of course/activity, and number of contact hours. ()

a. Continuing education course work. The required documentation for this activity is a certificate or documentation of attendance. (3-29-10)

b. In-service training. The required documentation for this activity is a certificate or documentation of attendance. (3-29-10)

c. Professional conference or workshop. The required documentation for this activity is a certificate or documentation of attendance. (3-29-10)

d. Course work offered by an accredited college or university, provided that the course work is taken after the licensee has obtained a degree in occupational therapy, and the course work provides skills and knowledge beyond entry-level skills or knowledge. The required documentation for this activity is a transcript. (3-29-10)

e. Publications. The required documentation for this activity is a copy of the publication. (3-29-10)

f. Presentations. The required documentation for this activity is a copy of the presentation or program listing. Any particular presentation may be reported only once per reporting period. (3-29-10)

g. Interactive online courses and evidence-based competency assessments. The required documentation for this activity is a certificate or documentation of completion. ()

h. Development of instructional materials incorporating alternative media such as video, audio and/or software programs to advance professional skills of others. The required documentation for this activity is a program description. The media/software materials must be available if requested during audit process. (3-29-10)

i. Professional manuscript review. The required documentation for this activity is a letter from the publishing organization verifying review of manuscript. A maximum of five (5) hours is allowed per renewal period for this category. ()

j. Guest lecturer for occupational therapy related academic course work (academia not primary role). The required documentation for this activity is a letter or other documentation from instructor. (3-29-10)

k. Serving on a professional board, committee, disciplinary panel, or association. The required documentation for this activity is a letter or other documentation from the organization. A maximum of five (5) hours is allowed per renewal period for this category. ()

l. Level II fieldwork direct supervision of an occupational therapy student or occupational therapy assistant student by site designated supervisor(s). The required documentation for this activity is the name of student(s), letter of verification from school, and dates of fieldwork. ()

06. Exemptions. A licensee may request an exemption from the continuing education requirement for a particular renewal period for reasonable cause. The licensee must provide any information requested by the Board to assist in substantiating the licensee's need for a claimed exemption: ()

026. -- 029. (RESERVED)

030. INACTIVE STATUS.

01. Request for Inactive Status. Occupational Therapists and Occupational Therapy Assistants requesting an inactive status during the renewal of their active license must submit a written request and pay the established fee. (4-7-11)

- 02. Inactive License Status.** (4-7-11)
- a.** Licensees may not practice in Idaho while on inactive status. (4-7-11)
- b.** All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing or supervising in Idaho, subject to Subsection 030.03 of these rules. (4-7-11)
- 03. Reinstatement to Full Licensure from Inactive Status.** ()
- a.** Return to Active Status of License - Inactive for Five (5) or Fewer Years. An inactive license holder whose license has been inactive for five (5) or fewer years may convert from inactive to active license status by: ()
- i.** Providing documentation to the Board showing successful completion within the previous twelve (12) months of the continuing education requirements for renewal of an active license; and ()
- ii.** Paying a fee equivalent to the difference between the current inactive fee and the active renewal fee. ()
- b.** Return to Active Status of License - Inactive for Greater than Five (5) Years. An inactive license holder whose license has been inactive for greater than five (5) years may convert from inactive to active license status by: ()
- i.** Providing documentation to the Board showing successful completion within the previous twelve (12) months of the continuing education requirements for renewal of an active license; and ()
- ii.** Providing proof that the licensee has actively engaged in the practice of occupational therapy in another state or territory of the United States for at least three (3) of the immediately preceding five (5) years, or provide proof that the licensee is competent to practice in Idaho. ()
- iii.** The Board may consider the following factors when determining proof of competency: ()
- (1) Number of years of practice prior to transfer from active status; ()
- (2) Employment in a field similar to occupational therapy; and ()
- (3) Any other factors the Board deems appropriate. ()
- 031. (RESERVED)**
- 032. DENIAL OR REFUSAL TO RENEW, SUSPENSION OR REVOCATION OF LICENSE.**
- 01. Disciplinary Authority.** A new application may be denied or renewal refused, and every person licensed pursuant to Title 54, Chapter 37, Idaho Code and these rules is subject to discipline, pursuant to the procedures and powers established by and set forth in Section 54-3718, Idaho Code, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," and the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. ()
- 02. Grounds for Discipline.** In addition to the grounds set forth in Section 54-3718, Idaho Code, applicants may be denied or refused licensure and licensees are subject to discipline upon the following grounds, including but not limited to: ()
- a.** Obtaining a license by means of fraud, misrepresentation, or concealment of material facts; (1-5-88)
- b.** Being guilty of unprofessional conduct or violating the Code of Ethics in Appendix A, incorporated herein by reference governing said licensees, including the provision of health care which fails to meet the standard of health care provided by other qualified licensees in the same community or similar communities, taking into

account the licensee’s training, experience and the degree of expertise to which he holds himself out to the public; ()

- c. The unauthorized practice of medicine; (1-5-88)
- d. Failure to properly supervise persons as required in these rules. (3-29-10)

03. Penalties. In addition to any other disciplinary sanctions the Board may impose against a licensee, the Board may impose a fine of up to one thousand dollars (\$1,000) per violation, or in such greater amount as the Board may deem necessary to deprive the licensee of any economic advantage gained by the licensee through the conduct that resulted in discipline and that reimburses the Board for costs of the investigation and disciplinary proceedings. (3-29-10)

033. -- 040. (RESERVED)

041. FEES.

FEE TYPE	AMOUNT (Not to Exceed)	RENEWAL FEE (Not to Exceed)
Initial Licensure for Occupational Therapists	\$80	\$40
Initial Licensure for Occupational Therapy Assistants	\$60	\$30
Limited Permit or Temporary License	\$25	
Reinstatement Fee	As provided in Section 67-2614, Idaho Code.	
Inactive License Renewal	\$20	
Inactive to Active License	The difference between the current inactive and active license renewal fees	

()

042. STANDARDS OF PRACTICE FOR TELEHEALTH

01. Determining Type of Evaluation. In making the determination whether an in-person evaluation or intervention are necessary, an occupational therapist shall consider at a minimum: ()

- a. The complexity of the client's condition; ()
- b. His or her own knowledge, skills and abilities; ()
- c. The client's context and environment; ()
- d. The nature and complexity of the intervention; ()
- e. The pragmatic requirements of the practice setting; and ()
- f. The capacity and quality of the technological interface. ()

02. Supervision of Occupational Therapy Assistant. Supervision of Occupational Therapy Assistant under 24.06.01.011 for routine and general supervision, can be done through telehealth, but cannot be done when direct or direct line-of-sight is determined by the supervising occupational therapist. The same considerations in

(1)(a) through (f) must be considered in determining whether telehealth should be used. ()

043. -- 999. (RESERVED)

APPENDIX A
OCCUPATIONAL THERAPY CODE OF ETHICS
PREAMBLE

All Occupational Therapists, Occupational Therapy Assistants, and Limited Permit Holders (collectively, “occupational therapy personnel”) are responsible for maintaining and promoting the ethical practice of occupational therapy. Occupational therapy personnel shall act in the best interest of the patient/client at every level of practice. This Code of Ethics, modeled in principle and the spirit of the Code of Ethics of the American Occupational Therapy Association, sets forth principals for the ethical practice of occupational therapy for occupational therapy personnel. This Code of Ethics shall be binding on all occupational therapy personnel.

Principle 1.

Occupational therapy personnel shall demonstrate, a concern for the well-being of the recipients of their services. (beneficence).

Principle 2.

Occupational therapy personnel shall take reasonable precautions to avoid imposing or inflicting harm upon the recipient of services or to his or her property. (nonmaleficence)

Principle 3.

Occupational therapy personnel shall respect the recipient and/or their surrogate(s) as well as the recipient's rights. (autonomy, privacy, confidentiality)

Principle 4.

Occupational therapy personnel shall achieve and continually maintain high standards of competence. (duties)

Principle 5.

Occupational therapy personnel shall comply with laws and policies guiding the profession of occupational therapy. (justice)

Principle 6.

Occupational therapy personnel shall provide accurate information about occupational therapy services. (veracity)

Principle 7.

Occupational therapy personnel shall treat colleagues and other professionals with fairness, discretion, and integrity. (fidelity)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.09.01 – RULES OF THE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

DOCKET NO. 24-0901-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-1604, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 24.09.01, rules of the Board of Examiners of Nursing Home Administrators:

IDAPA 24.09.01

- 24.09.01, *Rules of the Board of Examiners of Nursing Home Administrators*: all proposed rules except 010, 050, 100.05, 200.03, 200.04, 300.03, 300.06, 450.01.a., 450.01.b., and 450.02.

The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.09.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Board of Examiners of Nursing Home Administrators was published. This pending fee rule will allow the Legislature to review for codification IDAPA 24.09.01, the Rules of the Board of Examiners of Nursing Home Administrators. On June 14, 2019, the Board of Examiners of Nursing Home Administrators held a public meeting which was noticed pursuant to the Idaho Open Meetings Law where the public and other interested parties, including industry organizations, were given the opportunity to comment as this chapter was reviewed. The Board considered the Recommendations for Improvement, Modification, or Elimination of Requirements from the Licensing Freedom Act of 2017, Executive Order No. 2017-06; the directives set forth in the Licensing Freedom Act of 2019, Executive Order No. 2019-01; the directives set forth in the Red Tape Reduction Act, Executive Order No. 2019-02; and the Board's continued efforts to clarify and streamline its rules.

This pending fee rule reorganizes and combines sections for clarity, removes redundant language, moves fees into an easier to read tabular format, and adds the phrase "not to exceed" before fee amounts, which allows for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity. This pending fee rule removed the previous good moral character requirement and replaced it with guidelines and factors for the Board to consider when determining suitability for licensure. Further, this pending fee rule updates the required training domains set by the National Association of Long-Term Care Administration Boards. Finally, this pending rule also adds a master's degree in business administration with a healthcare emphasis as an acceptable degree for endorsement purposes.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4681 - 4685.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-1605, Idaho Code, as follows:

Original license fee: not to exceed \$200;
Annual renewal fee: not to exceed \$200;
Original application fee: not to exceed \$200;
Endorsement application fee: not to exceed \$200;
Temporary permit fee: not to exceed \$100;
Administrator-in-training fee: not to exceed \$100;
License reinstatement fee: not to exceed \$100.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade at (208) 334-3233.

Dated this 16th day of October, 2019.

Kelley Packer
Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-1604, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.09.01, rules of the Board of Examiners of Nursing Home Administrators:

IDAPA 24

- 24.09.01, *Rules of the Board of Examiners of Nursing Home Administrators*—All rules *except Subsections/ Section 010.01, 010.02, and 601.*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules govern the qualifications for nursing home administrators, which ensures the integrity and competence of a profession charged with maintaining the quality of care for vulnerable citizens. Allowing these rules to expire would harm the health, safety, and welfare of residents of nursing homes, as well as current and prospective licensees.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and the immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Absent the ability to impose the licensure fees outlined in this chapter, the Board of Examiners of Nursing Home Administrators would not be able to remain self-sufficient, contrary to its statutory mandate.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-1605, Idaho Code, as follows: original license fee: \$200; annual renewal fee: \$200; original application fee: \$200; endorsement application fee: \$200; temporary permit fee: \$100; administrator-in-training fee: \$100; and license reinstatement fee: \$100.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-0901-1900F

24.09.01 – RULES OF THE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

000. LEGAL AUTHORITY.

These rules are hereby prescribed and established pursuant to the authority vested in the Board of Examiners of Nursing Home Administrators by the provisions of Section 54-1604, Idaho Code. (7-1-93)

001. TITLE AND SCOPE.

These rules are titled IDAPA 24.09.01, “Rules of the Board of Examiners of Nursing Home Administrators.”

002. ADDRESS OF THE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS.

The office of the Board of Examiners of Nursing Home Administrators is located within the Bureau of Occupational Licenses, 700 W. State Street, Boise, Idaho 83702. The Bureau is open between the hours of 8:00 a.m. and 5:00 p.m. each day except Saturdays, Sundays and holidays. The telephone number of the Board is (208) 334-3233. The Board's fax number is (208) 334-3945. The Board's e-mail address is nha@ibol.idaho.gov. The Board's official website is <http://www.ibol.idaho.gov>. (4-6-05)

003. -- 099. (RESERVED)

100. EXAMINATION FOR LICENSURE (RULE 100).

01. Examination Fee. The examination fee for the national examination shall be in the amount as determined by the National Association of Long Term Care Administration Boards and shall be paid to the entity administering said examination. The examination fee is in addition to the license fee provided for in Section 54-1604, sub-paragraph (g), Idaho Code. ()

02. Good Moral Character. An applicant who has a criminal conviction, finding of guilt, withheld judgment, or suspended sentence for any felony or any crime related to an applicant’s fitness for licensure, or whose license has been subject to discipline by any state professional regulatory agency or professional organization must submit with the application a written statement and any supplemental information establishing the applicant’s current suitability for licensure. ()

- a.** Consideration of Factors and Evidence. The Board shall consider the following factors or evidence: ()
 - i.** The severity or nature of the crime or discipline; ()
 - ii.** The period of time that has passed since the crime or discipline under review; ()
 - iii.** The number or pattern of crimes or discipline or other similar incidents; ()
 - iv.** The circumstances surrounding the crime or discipline that would help determine the risk of repetition; ()
 - v.** The relationship of the crime or discipline to the practice; ()
 - vi.** The applicant's activities since the crime or discipline under review, such as employment, education, participation in treatment, payment of restitution, or any other factors that may be evidence of current rehabilitation; and ()
 - vii.** Any other information regarding rehabilitation or mitigating circumstances. ()
- b.** Interview. The Board may, at its discretion, grant an interview of the applicant. ()
- c.** Applicant Bears the Burden. The applicant shall bear the burden of establishing the applicant’s current suitability for licensure. ()

03. Contents of Exam, Passing Scores. An applicant must pass an examination issued by NAB, and an examination pertaining to Idaho law and rules governing nursing homes administered by the Board. The passing score of the Idaho Laws and Rules Examination shall be seventy-five percent (75%). ()

04. Date and Location of Exam. Examinations shall be held at the location and at the times determined by the entity administering the national examination. The state examination shall be a take-home examination and be returned to the Board. ()

101. -- 199. (RESERVED)

200. CONTINUING EDUCATION REQUIREMENTS.

01. Educational Requirements. In order to qualify as continuing education, a seminar or course of study must be relevant to nursing home administration as determined by the Board and sponsored by accredited universities or colleges, State or National health related associations, and/or approved by NCERS (National Continuing Education Review Service). (4-11-19)

02. Renewal of License. Applicants for renewal of license shall be required to complete a minimum of twenty (20) clock hours of approved courses within the preceding twelve-month (12) period. Licensees shall not be required to comply with this requirement during the first year in which they become licensed under this chapter. ()

03. Carryover of Continuing Education Hours. Continuing education hours not claimed in the current renewal year may be claimed in the next renewal year. A maximum of twenty (20) hours may be carried forward from the immediately preceding year, and may not be carried forward more than one (1) renewal year. ()

04. Waiver. The Board may waive the requirements of this rule for reasons of individual hardship including health or other good cause. The licensee should request the waiver in advance of renewal and must provide any information requested by the Board to assist in substantiating hardship cases. This waiver is granted at the sole discretion of the Board. ()

201. -- 299. (RESERVED)

300. ENDORSEMENT.

Each applicant for licensure by endorsement shall be required to document compliance with each of the following requirements. (4-6-05)

01. A Valid License. Hold a valid and current nursing home administrator license issued in another state or jurisdiction with substantially equivalent licensing standards. ()

02. Experience/Education. (3-30-07)

a. One thousand (1,000) hours of experience as an administrator in training in another state; or (4-11-19)

b. A total of one thousand (1,000) hours of combined experience obtained in an administrator in training program and from practical experience as an administrator in another state; or (4-11-19)

c. A master's degree in health administration related to long-term care from an accredited institution; or (3-30-07)

d. A master's degree in health administration or business administration with a healthcare emphasis from an accredited institution and one (1) year management experience in long-term care. ()

03. National Examination. Has taken and successfully passed the NAB examination. (4-6-05)

04. State Examination. Has taken and successfully completed the state of Idaho examination. (4-6-05)

05. Criminal History. Applicant is subject to Section 100.02 of these rules. ()

301. -- 399. (RESERVED)

400. NURSING HOME ADMINISTRATORS-IN-TRAINING.

01. Supervised Hour Requirements. An individual must successfully complete one thousand (1,000) hours under the direct supervision of a licensed nursing home administrator in compliance with Section 54-1610, Idaho Code, and these rules in order to be eligible to take the examination. (4-11-19)

02. Trainees. A trainee must work on a full time basis in any capacity in an Idaho licensed nursing home setting. Full time shall be at least a thirty-two (32) hour per week work schedule with consideration for normal leave taken. (4-11-19)

a. Each trainee shall register with the Board as a Nursing Home Administrator-In-Training (AIT) by submitting an application provided by the Board together with the required fee. The effective date of each AIT program shall be the date the Board approves the application. (3-13-02)

b. Reports for those trainees employed in a nursing home must be submitted to the Board after completion of each five hundred (500) hour increment and reflect that the preceptor of the trainee has instructed, assisted and given assignments as deemed necessary to fulfill the requirements of Subsection 400.03. (4-11-19)

03. Nursing Home Administrator-in-Training Requirements. A Nursing Home Administrator-in-Training shall be required to train in all domains of nursing home administration including the following: (4-7-11)

a. Customer care, support, and services. ()

b. Human resources. ()

c. Finance. ()

d. Environment. ()

e. Management and leadership. ()

f. Completion of a specialized course of study in nursing home long-term health care administration approved by NAB or otherwise approved by the Board. (4-6-05)

04. Facility Administrator. The trainee must spend no less than thirty-two (32) hours a month with the preceptor in a training and/or observational situation in the five (5) domains of nursing home administration as outlined in Subsection 400.03. Time spent with the preceptor must be in addition to the full time work that the trainee must perform under Subsection 400.02, unless the Administrator-in-Training role is designated as a full time training position. Collectively, during the training period, reports must reflect particular emphasis on all five (5) domains of nursing home administration during the time spent in the nursing home. ()

05. Preceptor Certification. (7-1-93)

a. A nursing home administrator who serves as a preceptor for a nursing home administrator-in-training must be certified by the Board of Examiners of Nursing Home Administrators. The Board will certify the Idaho licensed nursing home administrator to be a preceptor who: (7-1-98)

i. Is currently practicing as a nursing home administrator and who has practiced a minimum of two (2) consecutive years as a nursing home administrator; and (7-1-98)

ii. Who successfully completes a six (6) clock hour preceptor orientation course approved by the Board. (7-1-93)

b. The orientation course will cover the philosophy, requirements and practical application of the nursing home administrator-in-training program and a review of the six (6) phases of nursing home administration as outlined in Subsection 400.03. (7-1-93)

c. The preceptor must be re-certified by the Board every ten (10) years. (4-7-11)

401. -- 449. (RESERVED)

450. ADMINISTRATOR DESIGNEE QUALIFICATION.

In order to practice as an administrator designee, an individual shall register with the Board as an Administrator Designee by submitting an application and providing documentation of each the following requirements. (3-13-02)

- 01. Criminal History.** Applicant is subject to Section 100.02 of these rules. ()
- 02. Education.** Provide proof of either: (3-13-02)
 - a.** A bachelors degree from an approved college or university, or (3-13-02)
 - b.** Two (2) years of satisfactory practical experience in nursing home administration or a related health administration area for each year of the required education as set forth in Section 54-1605(3), Idaho Code; (3-13-02)
- 04. Experience.** Provide proof of having one (1) year of management experience in a skilled nursing facility. Experience documented in Subsection 450.03.b. may also be used to meet this requirement. (3-13-02)
- 05. Authorization.** Submit an agreement signed by an Idaho Licensed Nursing Home Administrator who will act as a consultant to assist the designee in administrating the facility. (3-13-02)

451. -- 499. (RESERVED)

500. PERMITS.

- 01. Requirements for Issuance.** A temporary permit may be issued upon submission of an endorsement application evidencing a license in good standing in another state and payment of fees. The permit shall be valid until the Board acts upon their endorsement application. No more than one (1) temporary permit may be granted to any applicant for any reason. (4-11-19)
- 02. Issuance of a Temporary Permit Does Not Obligate the Board.** Issuance of a temporary permit does not obligate the board to subsequently issue a license. Issuance of a subsequent license depends upon a successful application to the Board. (7-1-98)

501. -- 599. (RESERVED)

600. FEES.

FEE	AMOUNT (Not to Exceed)
Original Application	\$200
Original License	\$200
Annual Renewal	\$200
Endorsement Application	\$200
Temporary Permit	\$100
Administrator-in-training	\$100
License Reinstatement	\$100

()

601. -- 999. (RESERVED)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.10.01 – RULES OF THE STATE BOARD OF OPTOMETRY

DOCKET NO. 24-1001-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-1509, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 24.10.01, rules of the State Board of Optometry:

IDAPA 24.10.01

- 24.10.01, *Rules of the State Board of Optometry*: all proposed rules except 175.01.b., 300.01.a., and 300.02.a.

The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.10.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Rules of the State Board of Optometry was published. This pending fee rule will allow the Legislature to review for codification IDAPA 24.10.01, the Rules of the State Board of Optometry. The Board considered the Licensing Freedom Act of 2017, Executive Order No. 2017-06, Licensing Freedom Act of 2019, Executive Order No. 2019-01; and the Red Tape Reduction Act, Executive Order No. 2019-02 and the continued efforts to clarify and streamline its rules. This pending fee rule removes redundant language, moves fees into an easier to read tabular format, and adds the phrase “not to exceed” before fee amounts, which allows for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4688 - 4697.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-1506, Idaho Code, as follows:

Annual renewal fee: not to exceed \$75;
Annual fund fee: not to exceed \$75;
License application fee: not to exceed \$100;
Certificate to obtain and use pharmaceutical agents fee: not to exceed \$10.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade at (208) 334-3233.

Dated this 16th day of October, 2019.

Kelley Packer
Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-1509, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.10.01, rules of the State Board of Optometry:

IDAPA 24

- 24.10.01, Rules of the State Board of Optometry—All rules *except Subsections/Section 010.01, 010.02, 125, and 625.*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules govern the qualifications to practice optometry and maintain practice fitness. Allowing these rules to expire would reduce consumer choice, harm licensees, and impose a barrier to entry into the profession.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which

makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and the immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Absent the ability to impose the licensure fees outlined in this chapter, the State Board of Optometry would not be able to remain self-sufficient, contrary to its statutory mandate.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-1506, Idaho Code, as follows: annual renewal fee: \$75; annual fund fee: \$75; license application fee: \$100; and certificate to obtain and use pharmaceutical agents fee: \$10.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state General Fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-1001-1900F

24.10.01 – RULES OF THE STATE BOARD OF OPTOMETRY

000. LEGAL AUTHORITY.

These rules are hereby prescribed and established pursuant to the authority vested in the State Board of Optometry by the provisions of Section 54-1509, Idaho Code. (7-1-93)

001. TITLE AND SCOPE.

These rules are titled IDAPA 24.10.01, “Rules of the State Board of Optometry.” (7-1-93)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Low Vision. Refer to Section 54-1501(5), Idaho Code, correcting defects may include low vision but is not limited to low vision rehabilitation. (7-1-97)

02. Opticianry. The professional practice of filling prescriptions from a licensed optometrist or ophthalmologist for ophthalmic lenses, contact lenses, and any other ophthalmic device used to improve vision. Opticianry does not include prescriptive authority. (3-29-10)

03. Vision Therapy. Any person who assesses, diagnoses, treats, or prescribes treatment for conditions of the visual system or manages a patient with vision therapy, visual training, visual rehabilitation, orthoptics or eye exercises or who hold him/herself out as being able to do so for the rehabilitation and/or treatment of physical, physiological, sensorimotor, neuromuscular or perceptual anomalies of the eyes or vision system or who prescribes or utilizes lenses, prisms, filters, occlusion or other devices for the enhancement, rehabilitation and/or treatment of the visual system or prevention of visual dysfunctions, except under the supervision and management of a licensed optometrist, is engaged in the practice of optometry. (7-1-97)

011. -- 149. (RESERVED)

150. MEETING OF THE BOARD.

The Board shall meet at least annually and at other such times and places as designated by the Chairman or upon written request of any two members of the Board. All meetings shall be held in accordance with the Idaho Open Meeting Law, Chapter 23, Title 67, Idaho Code. (4-4-13)

151. -- 174. (RESERVED)

175. METHOD OF APPLICATION-EXAMINATION OF APPLICANTS.

Applications for license shall be made on forms approved by the Board. (4-4-13)

01. Application. The application must be accompanied by: (4-4-13)

a. The required fee. (7-1-93)

b. A complete transcript of credits from any college of optometry attended. (7-1-93)

c. A photocopy of any diplomas granted by any college of optometry. (7-1-93)

d. A copy of certified results establishing successful passage of the required examinations. (3-30-01)

02. Application Review. Only fully completed applications accompanied by appropriate documents shall be reviewed for licensure. (3-30-01)

03. Exam Content. The written and the practical portions of the Idaho examination shall be all parts of the National Board of Examiners in Optometry Examination (NBEOE) and the Board approved jurisprudence examination. A passing grade for the NBEOE shall be that established by the test provider. The passing grade for the jurisprudence examination shall be seventy-five percent (75%). A passing score on all examinations shall be necessary to qualify for a license to practice Optometry in Idaho. (4-4-13)

176. -- 199. (RESERVED)

200. APPROVAL OF SCHOOLS OF OPTOMETRY.

The State Board of Optometry recognizes as reputable and in good standing the schools and colleges of optometry

which have met the standards set by the Accreditation Council on Optometric Education, or its successor agency, a list of which may be obtained from the secretary of the Board or from the office of the Bureau of Occupational Licenses in Boise. (4-4-13)

201. -- 224. (RESERVED)

225. APPROVAL OF PRELIMINARY EDUCATION.

The State Board of Optometry recognizes the preliminary education prerequisites for entry into a school, college or university of optometry approved by the Council on Optometric Education of the American Optometric Association as adequate preliminary education prerequisites for licensing in Idaho. (7-1-93)

226. -- 249. (RESERVED)

250. LICENSES CANCELED FOR FAILURE TO RENEW.

A license that has been canceled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. Any person whose license to practice optometry has been canceled for failure to renew for a period of more than five (5) years must apply for a new license in accordance with the requirements of Section 67-2614, Idaho Code. (3-24-17)

251. -- 274. (RESERVED)

275. ENDORSEMENT.

01. Endorsement. Any person who presents to the Board of Optometry a certified copy of a certificate or license of registration which he holds in good standing in another state or a foreign country, which state or foreign country has similar requirements for licensing or registration as is provided for new applicants in Idaho (including therapeutic privileges), may apply to the Board for the issuance of a license to practice optometry in the state of Idaho. (4-5-00)

02. Conditions to be Granted a License. The right to be granted a license to practice optometry in Idaho is also subject to the following conditions set out below: (7-1-93)

a. The submission of a completed application meeting the requirements of Subsection 175.01 including the applicable fee. (4-5-00)

b. That the license or certificate of registration of the applicant shall not have been suspended or revoked by any state or country or subject to any pending or unresolved licensure action in any state or country. That the applicant must not have committed any act which would constitute a violation of the Optometry Act or Board Rules. (4-5-00)

c. For those licensed in another state the applicant must document to the Board for approval, the education, training, and examination for diagnostic and therapeutic privileges in the other state and return the state of Idaho law examination. (3-30-07)

d. That the applicant has been engaged in the practice of optometry continuously for three (3) of the last four (4) years. (3-30-07)

276. -- 299. (RESERVED)

300. CONTINUING EDUCATION IN OPTOMETRY.

01. Hours Required, Advance Approval. (4-11-15)

a. Each optometrist licensed by the state of Idaho shall attend in each calendar year prior to license renewal, a minimum of twelve (12) full hours of approved optometric continuing education courses or meetings. ()

b. Approved optometric continuing education courses or meetings shall be those post-graduate optometric education courses or meetings approved in advance by the Board of Optometry or post-graduate study sessions or seminars at an accredited school or college of optometry. In addition, all Council on Optometric Practitioners Education (COPE) approved courses are approved for continuing education credit. If an optometrist attends or plans to attend a course of study or seminar which has not been approved in advance, he may petition the Board for approval of that educational course of study, setting forth a description of the course. The Board may, in its discretion, approve the course upon review of the material submitted either in advance or after completion of the course. (4-11-15)

02. Additional Hours Required to Use Therapeutic Pharmaceutical Agents. (4-11-15)

a. Each optometrist licensed by the state of Idaho to use therapeutic pharmaceutical agents shall attend in each calendar year prior to license renewal, a minimum of six (6) additional full hours of approved optometric courses or meetings. ()

b. This six (6) hours of continuing education must be in courses involving ocular pharmacology and/or advanced ocular disease and are in addition to the twelve (12) hours of continuing education required under Subsection 300.01. (4-11-15)

03. Correspondence/Home Study Courses/Observation. The Board allows credit for correspondence courses, individual home study and observation that is germane to the practice of optometry. No more than nine (9) hours of continuing education shall be permitted each year in correspondence courses or other continuing education obtained from "home study" courses or observation. (3-24-17)

04. Waiver of Requirements. The Board of Optometry shall waive the continuing education requirement for the first license renewal after initial licensure. The Board of Optometry may, upon application, waive the requirements of this rule in cases involving illness, unusual circumstances interfering with the optometrist's ability to practice or inability to conform to the rules due to military duty. (3-15-02)

05. Renewal Application Form. Each licensed Idaho optometrist will be furnished a license renewal application form by the State Board of Optometry on which each optometrist shall attest on their annual license renewal application that they have satisfied the continuing education requirements. False attestation of satisfaction of the continuing education requirements on a renewal application shall subject the licensee to disciplinary action. (3-20-04)

06. Audit. The Board may conduct audits to confirm that the continuing education requirements have been met. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the license will not be renewed. (3-20-04)

07. Documentation of Attendance. It shall be necessary for each licensed Idaho optometrist to provide documentation verifying attendance or completion of continuing education by securing authorized signatures, documentation, or electronic verification from the course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. This documentation must be maintained by the licensee and provided upon request by the Board or its agent. (4-4-13)

08. Excess Hours. A licensee may carryover a maximum of six (6) hours of continuing education to meet the next year's continuing education requirement. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) year. (4-11-15)

301. -- 324. (RESERVED)

325. CODE OF ETHICS.

01. Patient's Visual Welfare. The licensed optometrist shall keep the patient's visual welfare uppermost in his consideration at all times and promote the best methods of care for the visual needs of mankind. (7-1-93)

02. Confidentiality. The optometrist shall preserve information concerning his patients in confidence and not release that information unless authorized by the patient or their lawful agent. An optometrist may, however, supply information of an otherwise confidential or privileged nature when lawfully subpoenaed to testify at a deposition or hearing in any proceeding before the Board of Optometry, or at any other time and place ordered by a court of law. (4-4-13)

03. Conduct of Practice. The optometrist shall conduct his practice in a dignified and professional manner and in keeping with the mode of practice of a professional person entrusted with the care of the health of citizens of this state and shall abide by the rulings of the Board of Optometry. (7-1-93)

04. Unprofessional Conduct. In order to define what constitutes unprofessional conduct, the board sets forth certain prohibited actions. In conducting his practice, an optometrist must not: (3-30-07)

a. Practice optometry in any manner other than as a professional person in an individual capacity, or in partnership with or associate with other licensed health care professionals. An optometrist may be a stock holder in and practice as a member of a professional service corporation with other licensed health care professionals as authorized by Title 54, Chapter 15, Idaho Code, but the optometrist must list his individual name as well as any name selected for the professional service corporation on any letterheads, telephone directories, office or building directories, or other places where the general public might be advised of the fact that the individual is practicing optometry, as required by these rules. (3-30-07)

b. Use either “Cappers” or “Steerers” or accept a split or divided fee for the purpose of obtaining patients or use solicitors or agents for the purpose of securing patients or conducting eye examinations or furnishing optometric services. (7-1-93)

c. Allow his prescription files and records to be used by any unlicensed person, firm, or corporation not under the direct control of that optometrist for the practice of optometry. (4-4-13)

d. Fail to perform services for which fees have been received. (7-1-93)

e. File false reports of services performed or fees rendered. (7-1-93)

f. Permit the use of his name or professional title by or in conjunction with any person not an optometrist, or any firm, company, corporation or military association which illegally practices or in any manner holds himself or itself out to the public as being entitled to practice the profession of optometry when not licensed to do so under the law of Idaho or which uses the title “Optometric Services” in such a manner in advertising as to convey to the public the impression that the individual or corporation is entitled to practice optometry or furnish optometric advice or services when not so authorized by law. (7-1-93)

326. -- 424. (RESERVED)

425. RULES DEFINING GROSS INCOMPETENCE.

In order to protect the public, the Board of Optometry defines as “gross incompetence” any behavior or practice on the part of the licensed optometrist which demonstrates a lack of competence with respect to discharging professional obligations or duties which might result in injury or damage to a patient whether such injury or damage actually occurs or not and in particular, the Board defines as “gross incompetence” any of the following: (11-6-93)

01. Failure to Meet Prevailing Standards. Failure to meet prevailing standards, or willful rendering of substandard care, either individually or as part of a third party reimbursement agreement or by other agreement. (7-1-97)

02. Failure to Meet Prevailing Standards in the Referral of Any Patient Who Is Suffering From Any Apparent or Suspected Pathological Condition. A failure to meet prevailing standards in the referral of any patient who is suffering from any apparent or suspected pathological condition to a person competent and licensed to properly treat or diagnose the condition. (7-1-93)

03. Employment of Techniques or Methods of Practice. Employment of techniques or methods of

practice in treating or prescribing for a patient when he does not have proper training in the technique or methods of practice. (7-1-93)

04. Failure to Advise Patient of Possible Danger When a Lens Not Meeting Impact Resistance Standards of F.D.A. Failure to advise his patient of possible danger when a lens does not meet impact resistance standards of F.D.A. Regulation, 21 CFR 801.410, and is provided to the patient. (4-4-13)

05. Failure to Provide Follow-Up Care. Failure to provide follow-up care according to prevailing standards. (11-6-93)

06. Displaying Gross Ignorance or Demonstrating Gross Inefficiency. Displaying gross ignorance or demonstrating gross inefficiency in the care of a patient. (7-1-93)

07. Failure to Verify the Specifications of All Lenses. Failure to verify the specifications of all lenses provided by him. (11-6-93)

08. Failing to Perform Tests and Record Findings. In the course of an examination of a patient, failure to perform tests and record findings in a manner consistent with prevailing standards of optometric care. (11-6-93)

09. Using Pharmaceutical Agents. Using pharmaceutical agents in the practice of optometry without having attended sufficient training programs or schools and acquiring the knowledge necessary to use the drugs in a competent manner. (11-6-93)

10. Illegal Prescription Sale, Administration, Distribution, or Use of Drugs. Prescribing, selling, administering, distributing, giving, or using drugs legally classified. Prescribing, selling, administering, distributing, giving, or using drugs legally classified as a controlled substance or as an addictive or dangerous drug for other than accepted diagnostic or therapeutic purposes. (7-1-97)

11. Disciplinary Action or Sanctions. Disciplinary action or sanctions taken by another state, jurisdiction, peer review body or a professional association or society against an optometrist for acts or conduct similar to acts or conduct which would constitute grounds for action as defined under "Rules of the Idaho Board of Optometry." (7-1-97)

12. Sanitary Office. Failure to maintain sanitary office conditions, equipment, and use appropriate techniques and procedures. (4-4-13)

13. Failure to Release Prescription. Failure to release either a spectacle or contact lens prescription as required by Federal law. (3-29-10)

14. Sufficient Training or Education. Performing procedures without having successfully completed education, instruction or certification. (4-4-13)

426. -- 449. (RESERVED)

450. PRESCRIPTIONS FOR SPECTACLES AND CONTACT LENSES.

Eyeglasses and contact lenses, including plano or cosmetic contact lenses, may only be dispensed upon a current prescription issued by an optometrist or medical physician. Every prescription written or issued by an optometrist practicing in Idaho shall contain at least the following information: (4-4-13)

01. Prescription for Spectacles. Prescriptions for spectacles must contain the following: (7-1-93)

a. Sphere, cylinder, axis, prism power and additional power, if applicable; and (3-30-07)

b. The standard expiration date of the prescription must be at least one (1) year from date the prescription was originally issued. (3-29-10)

02. All Prescriptions for Rigid Contact Lenses. All prescriptions for rigid contact lenses must contain at least the following information: (7-1-93)

- a. Base curve; (7-1-93)
- b. Lens manufacturer or “brand” name; (4-4-13)
- c. Overall diameter; (7-1-93)
- d. Lens material; (4-4-13)
- e. Power; and (3-30-07)

f. The standard expiration date of the prescription must be at least one (1) year from date the prescription was originally issued. A shorter prescription period may be allowed when based upon a documented medical condition. (3-29-10)

03. All Prescriptions for Soft Contact Lenses. All prescriptions for soft contact lenses must contain at least the following information: (7-1-93)

- a. Lens manufacturer or “brand” name; (7-1-93)
- b. Series or base curve; (7-1-93)
- c. Power; (7-1-93)
- d. Diameter, if applicable; (7-1-93)
- e. Color, if applicable; and (7-1-93)

f. The standard expiration date of the prescription is one (1) year from date the prescription was originally issued. A shorter prescription period may be allowed when based upon a documented medical condition. (3-29-10)

04. Alteration of Prescriptions. A person may not alter the specifications of an ophthalmic lens prescription without the prescribing doctor’s consent. (4-4-13)

05. Expired Contact Lens Prescription. A person may not fill an expired contact lens prescription. (4-4-13)

06. Fitting and Dispensing Contact Lenses. (4-4-13)

a. Contact lenses may be fitted only by an optometrist, or licensed physician. (4-4-13)

b. An ophthalmic dispenser may dispense contact lenses on a fully written contact lens prescription issued by an optometrist or licensed physician. (4-4-13)

c. Notwithstanding Subsection 450.06.b., an optometrist, or licensed physician who issues a contact lens prescription remains professionally responsible to the patient. (4-4-13)

451. -- 474. (RESERVED)

475. PATIENTS RECORDS.

01. Optometrist Shall Keep a Complete Record of All Patients Examined. Every optometrist practicing in the state of Idaho shall keep a complete record of all patients examined by him or for whom he has adapted optical accessories, including copies of prescriptions issued to the patient and copies of statements of charges

delivered or provided to the patient. All such records shall be maintained in an orderly and accessible manner and place and shall be maintained for at least five (5) years following the optometrist's last professional contact with the patient. Failure to maintain such records is deemed to be unprofessional conduct and constitutes gross incompetence in the handling of the patient's affairs. (7-1-93)

02. Prescription Files. The prescription files and all records pertaining to the practice of optometry shall be maintained as the sole property of the optometrist and not be distributed to any unlicensed person except as required by law or when lawfully subpoenaed in a criminal or civil proceeding in court, or subpoenaed for presentation at a deposition or hearing authorized by the Board of Optometry. (7-1-93)

03. Storage of Patient Records. Storage of patient records must be in compliance with rules in accordance with Health Insurance Portability and Accountability Act (HIPAA) including that patient records must be stored in an area inaccessible to patients. (4-4-13)

476. -- 499. (RESERVED)

500. PRECEPTORSHIP PROGRAM.

An optometrist may use a student of optometry in his office under his direct supervision for educational purposes. (7-1-93)

501. -- 524. (RESERVED)

525. GENERAL RULES.

01. Engaging as an Advisor or Staff Optometrist. An optometrist may be engaged as an advisor for or be engaged as a staff optometrist for an administrator for: (7-1-93)

- a. Industrial plants where industrial vision programs are being, or have been instituted. (7-1-93)
- b. Health programs sponsored or funded by any agency or municipal county, state or federal government. (7-1-93)
- c. Research organizations or educational institutions. (7-1-93)
- d. Insurance companies. (7-1-93)
- e. Hospitals. (7-1-93)
- f. Ophthalmologists. (7-1-93)
- g. Corporations where the optometrist's full time is engaged by the corporation to care for the visual needs of the employees of such corporation and their families. (7-1-93)

02. Professional Responsibilities. Provided, however, that in acting in the capacity of consultant, advisor, or staff optometrists, the optometrist shall at all times remain cognizant of his professional responsibilities and shall with demeanor, decorum and determination retain his right of independent professional judgment and title in all situations and circumstances and in a manner similar to that which he would exercise if he were engaged in practice in his own office. (7-1-93)

526. -- 574. (RESERVED)

575. FEES.

FEE TYPE	AMOUNT (Not to Exceed)
License Application	\$100
Annual Fund	\$75
Annual Renewal	\$75
Certificate to obtain and use pharmaceutical agents	\$10
Reinstatement	As provided in Section 67-2614, Idaho Code

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576. -- 599. (RESERVED)

600. BOARD CERTIFICATION OF OPTOMETRIST AUTHORIZED TO OBTAIN AND USE PHARMACEUTICAL AGENTS.

01. The Right to Obtain and Use Topically Applied Diagnostic Pharmaceutical Agents. The right to obtain and use topically applied diagnostic pharmaceutical agents for use in diagnosis of another in the practice of optometry as defined by Section 54-1501, Idaho Code, is subject to the following conditions set out below: (7-1-93)

a. Optometrists who have obtained a certificate from the Board of Optometry authorizing them to obtain and use topically applied diagnostic pharmaceutical agents shall obtain, from pharmacists licensed by the state of Idaho, or from any other source, and use only those agents listed below: (7-1-93)

- i. All medications for use in the diagnosis of conditions of the human eye and/or eyelid. (4-4-13)
- ii. All over-the-counter agents. (4-4-13)
- iii. Such other diagnostic pharmaceutical agents as may be approved by the Board of Optometry. (4-4-13)

b. The Board of Optometry shall issue a certificate to obtain and use the diagnostic drugs specifically identified and listed in this rule to any optometrist licensed to practice in Idaho who complies with both the minimum educational requirements in the subject of general and ocular pharmacology and the minimum continuing educational requirements set out below: (7-1-93)

i. Each optometrist certified to obtain and use topically applied pharmaceutical agents shall have completed courses totaling fifty-five (55) hours of actual classroom instruction in general and ocular pharmacology and emergency medical care given by an institution approved by the Council on Post Secondary Accreditation of the U.S. Department of Education or an instructor accredited and employed by such institution and which have been approved by the Board of Optometry. (7-1-93)

ii. Each optometrist certified to obtain and use topically applied pharmaceutical agents shall also have completed a refresher course in cardiopulmonary resuscitation (CPR), emergency medical care provided by the Emergency Medical Services Bureau, or equivalent program either approved or provided by the Board of Optometry, within a two (2) year period preceding issuance of the certificate by the Board of Optometry. (7-1-93)

iii. In order to maintain the certificate issued by the Board, each certified optometrist must complete a refresher course in CPR described in Subsection 600.01.b.ii. above once during each two (2) year period following certification and shall list and describe the course attended and the dates of attendance upon a license renewal application form filed pursuant to Section 300. (4-4-13)

c. In order to implement this rule, the Board of Optometry may designate and approve courses of instruction given by those institutions or instructors described in Subsection 600.01.b.i. above which may be

necessary to provide practicing optometrists who have received less than fifty-five (55) hours of actual classroom instruction in general and ocular pharmacology in optometry school with the opportunity to meet the requirements of this rule. (7-1-93)

02. The Right to Prescribe, Administer and Dispense Therapeutic Pharmaceutical Agents. The right to prescribe, administer and dispense therapeutic pharmaceutical agents in the practice of optometry as defined by Section 54-1501, Idaho Code, is subject to the following conditions set out below: (11-6-93)

a. Optometrists who have obtained a certificate from the Board of Optometry authorizing them to prescribe, administer and dispense therapeutic pharmaceutical agents shall obtain, from pharmacists licensed by the State of Idaho, or from any other source, and use only those agents listed below: (11-6-93)

i. All medications for use in the treatment of the human eye and/or eyelid. (7-1-97)

ii. All over-the-counter agents. (11-6-93)

iii. Such other therapeutic pharmaceutical agents as may be approved by the Board of Optometry. (11-6-93)

b. The Board of Optometry shall issue a certificate to prescribe, administer and dispense the therapeutic medications to any optometrist licensed to practice in Idaho who complies with Subsection 600.01 and both the minimum educational and clinical experience requirements in the subject of ocular pharmacology and therapeutics and the minimum continuing educational requirements set out below: (7-1-97)

i. Completion of a minimum of one hundred (100) hours of actual classroom and clinical instruction in ocular pharmacology and therapeutics courses given by an institution or organization approved by the Council on Post-Secondary Accreditation of the U.S. Department of Education, or an Instructor employed by such institution, which have been approved by the Board of Optometry. (7-1-93)

ii. Successful passage of the "Treatment and Management of Ocular Diseases" section of the optometrist examination approved by the Association of Regulatory Boards of Optometry, Inc. (ARBO) or its equivalent as approved by the Board. (4-4-13)

601. -- 999. (RESERVED)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.11.01 – RULES OF THE STATE BOARD OF PODIATRY

DOCKET NO. 24-1101-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-605, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 24.11.01, rules of the State Board of Podiatry:

IDAPA 24.11.01

- 24.11.01, *Rules of the State Board of Podiatry*: all proposed rules except 100, 200.01, 200.03, 401.01, 425.02.b., and 425.02.d.

The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.11.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Rules of Rules of the State Board of Podiatry was published. This pending fee rule will allow the Legislature to review for codification IDAPA 24.11.01, the Rules of the State Board of Podiatry. The Board considered the Licensing Freedom Act of 2017, Executive Order No. 2017-06, Licensing Freedom Act of 2019, Executive Order No. 2019-01; and the Red Tape Reduction Act, Executive Order No. 2019-02 and the continued efforts to clarify and streamline its rules. This pending fee rule removes redundant and unnecessary language, moves fees into an easier to read tabular format, and adds the phrase “not to exceed” before fee amounts, which allows for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4700 - 4704.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Sections 54-605 and 54-606, Idaho Code, as follows:

Application fee: not to exceed \$200;
Original license fee: not to exceed \$400;
Annual renewal fee: not to exceed \$500;
Annual renewal fee for inactive license: not to exceed \$250.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade at (208) 334-3233.

Dated this 16th day of October, 2019.

Kelley Packer
Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-605, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.11.01, rules of the State Board of Podiatry:

IDAPA 24

- 24.11.01, *Rules of the State Board of Podiatry* - All rules **except Subsections 010.01, 010.02, and 010.05.**

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules govern the qualifications for the practice of podiatry and define the ethical standards of the profession in Idaho. Allowing these rules, including the ethical standards, to expire would harm the public health, safety, and welfare, harm licensees, and harm prospective licensees.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and

passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and the immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Absent the ability to impose the licensure fees outlined in this chapter, the State Board of Podiatry would not be able to remain self-sufficient, contrary to its statutory mandate.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Sections 54-605 and 54-606, Idaho Code, as follows: application fee: \$200; original license fee: \$400; annual renewal fee: \$500; and annual renewal fee for inactive license: \$250.

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 anticipated to have any fiscal impact on the state General Fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-1101-1900F

24.11.01 – RULES OF THE STATE BOARD OF PODIATRY

000. LEGAL AUTHORITY.

These rules are hereby prescribed and established pursuant to the authority vested in the State Board of Podiatry, by the provisions of Section 54-605, Idaho Code. (7-1-93)

001. TITLE AND SCOPE.

These rules are titled IDAPA 24.11.01, “Rules of the State Board of Podiatry.” (7-1-93)

002. INCORPORATION BY REFERENCE.

The document titled American Podiatric Medical Association’s Code of Ethics as published by the American Podiatric Medical Association, dated March 2013 and referenced in Section 500, is herein incorporated by reference and is available for review at the Board’s office and on the Board’s web site at <http://www.ibol.idaho.gov>. (3-20-14)

003. -- 009. (RESERVED)

010. DEFINITIONS AND STANDARDS.

01. **Licensure.** Licensure means a license to practice podiatry in Idaho. (3-13-02)

02. **Reputable School.** A “reputable school” of podiatry is defined as an approved podiatry school located within the United States or Canada and designated as such by the Council on Podiatric Medical Education and the American Podiatric Medical Association. (3-20-14)

011. -- 149. (RESERVED)

150. PRE-PROFESSIONAL EDUCATION.

All applicants must provide official documentation of credits granted for at least two (2) full years of general college study in a college or university of recognized standing. (3-20-14)

151. PROFESSIONAL EDUCATION.

All applicants must possess evidence of graduation from four (4) full years of study in a reputable school of podiatry, as defined in Subsection 010.04 of these rules. (3-13-02)

152. PODIATRIC RESIDENCY.

01. **Residency Required for Licensure.** A candidate may not apply for licensure until completion of an accredited podiatric residency as approved by the Council on Podiatric Medical Education of no less than twenty-four (24) months, a minimum of twelve (12) months of which must be surgical. (4-11-06)

02. **Submission of Verification of Residency Curriculum.** Notwithstanding the provisions of Subsection 152.01, a candidate must provide directly from the residency program such official documentation of completion of the entire curriculum as the board may require. Any deviation of this requirement must be approved by the Board. (4-11-06)

153. -- 199. (RESERVED)

200. CREDENTIALS TO BE FILED BY ALL APPLICANTS.

01. **Certified Copy of National Board Results.** A copy of the applicable National Board results that has been certified as true and correct by the examining entity. (7-1-97)

02. **Educational Certificate Requirement.** Each applicant must provide official documentation of a collegiate education of not less than two (2) years in an accredited college or university giving instruction in letters and sciences. (3-20-14)

03. **Diploma.** Certified photostatic copy of diploma granted by any college of podiatry and official certified transcripts indicating graduation from the program. (3-13-02)

04. **Residency Certification Requirement.** All applications must include certification of completion of a residency as defined in Rule 152. (3-13-02)

201. -- 299. (RESERVED)

300. FEES.

All fees are non-refundable; if a license is not issued, the license fee will be refunded.

FEE TYPE	AMOUNT (Not to Exceed)
Application	\$200
Original License	\$400
Written Examination	Set by National Examining Entity
Annual Renewal	\$500
Inactive License Annual Renewal	\$250

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301. -- 399. (RESERVED)

400. LICENSURE BY EXAMINATION.

01. Examination of Applicants. All applicants must successfully pass all parts of the American Podiatric Medical Licensing Examination developed and administered by the National Board of Podiatric Medical Examiners. (3-20-14)

02. Passing Grade. A passing grade in all subjects examined is the grade established by the examination provider. (3-20-14)

401. LICENSURE BY ENDORSEMENT.

Under Section 54-613, Idaho Code, applicants for licensure by endorsement may be granted a license upon the approval of the Board. Each applicant for licensure by endorsement must provide documentation for each of the following before licensure will be considered: (3-15-02)

01. Certification of License. Certification of having maintained a current license or other authority to practice issued by a regulatory board of Podiatry in any state or territory. (4-11-06)

02. Credentials. Credentials as required in Subsections 200.02 through 200.05. (3-29-10)

03. Examination. Successful passage of a written licensure examination covering all those subjects noted in Section 54-606, Idaho Code. Official certification of examination must be received by the board directly from: (4-11-06)

a. The applicant's state or territory of licensure; or (3-15-02)

b. The national board of podiatric medical examiners. (3-20-14)

04. Residency. Proof of completion of the residency requirement as set forth in Subsection 200.06 of this rule. However, if the applicant graduated from a college of podiatry prior to 1993, this requirement will be waived. (3-29-10)

05. Practical Experience. Having practiced podiatry under licensure for three (3) of the last five (5) years immediately prior to the date of application. (4-11-06)

06. Continuing Education. Having completed at least fifteen (15) hours of continuing education germane to the practice of podiatry during the twelve (12) months prior to the date of application. (4-11-19)

07. Disciplinary Action. Has not been the subject of any disciplinary action including pending or unresolved licensure actions within the last five (5) years immediately prior to application and has never had a license

to practice podiatry revoked or suspended either voluntarily or involuntarily in any jurisdiction. (3-29-10)

402. TEMPORARY LICENSES.

No temporary licenses will be granted for the practice of podiatry in Idaho. (3-13-02)

403. -- 409. (RESERVED)

410. ORIGINAL APPLICATION.

The original application will be considered null and void after a period of two (2) years from date of original application if no license has been issued. (4-2-08)

411. -- 424. (RESERVED)

425. INACTIVE STATUS.

01. Request for Inactive Status. Each person requesting an inactive status during the renewal of their active license must submit a written request and pay the inactive license fee. (4-6-15)

02. Inactive License Status. (4-6-15)

a. All continuing education requirements will be waived during the time that a licensee maintains an inactive license in Idaho. (4-6-15)

b. When the licensee desires active status, the licensee must show acceptable fulfillment of continuing education requirements for the previous twelve (12) months and submit a fee equivalent to the difference between the inactive and active renewal fee. (4-6-15)

426. -- 449. (RESERVED)

450. SCOPE OF PRACTICE.

01. Competence. Upon being granted a license to practice podiatry, a practitioner is authorized to provide only those services and treatments for which that practitioner has been trained and prepared to provide. Information contained within the application file and supplemental certified information of additional training and experience included in the credential file maintained by the practitioner is prima facie evidence of the practitioner's education and experience. It is the responsibility of the individual practitioner to ensure that the information in his credential file is accurate, complete and supplemented to support all procedures, applications and treatments employed by the practitioner. Practice beyond a practitioner's documented education and experience may violate the adopted code of ethics and be grounds for discipline by the board. (4-11-06)

02. Advanced Surgical Procedures. Advanced surgical procedures must be performed in a licensed hospital or certified ambulatory surgical center accredited by the joint commission on accreditation of healthcare organizations or the accreditation association for ambulatory health care where a peer review system is in place. Advanced surgical procedures are defined as: (4-11-06)

a. Ankle fractures - Open Reduction and Internal Fixation. (4-11-06)

b. Ankle and rearfoot arthrodesis. (4-11-06)

c. Nerve surgery of the leg. (4-11-06)

d. Major tendon repair or transfer surgery - proximal to ankle. (4-11-06)

e. Autogenous bone grafting. (4-11-06)

f. External fixation of the rearfoot, ankle and leg. (4-11-06)

451. -- 499. (RESERVED)

500. STANDARDS OF THE ETHICAL PRACTICE OF PODIATRY.

The standards for the ethical practice of podiatry is the American Podiatric Medical Association's Code of Ethics as referenced in Section 004 of these rules and are hereby adopted and apply to all practitioners of podiatry. (5-3-03)

501. -- 549. (RESERVED)

550. DISCIPLINE.

01. Civil Fine. The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensed podiatrist for each violation of Sections 54-608 and 54-609, Idaho Code. (3-18-99)

02. Costs and Fees. The Board may order a licensed podiatrist to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee for violation of Sections 54-608 and 54-609, Idaho Code. (3-18-99)

551. -- 699. (RESERVED)

700. CONTINUING EDUCATION.

01. Education Requirement for License Renewal. Each podiatrist licensed by the state of Idaho must complete in each twelve-month period preceding the renewal of a license to practice podiatry in Idaho, a minimum of fifteen (15) full hours of podiatry continuing education. Continuing education includes lectures, conferences, seminars, moderator-guided panel discussions, clinical and practical workshops, internet based learning and home study. Education must be germane to the practice of podiatry; and (4-11-19)

a. Approved by the Council on Podiatric Medical Education; or (4-2-08)

b. Otherwise approved by the Board. (4-2-08)

02. Submission of License Renewal Application Form. Each licensed Idaho podiatrist will be furnished a license renewal application form by the Bureau of Occupational Licenses on which each podiatrist will be required to certify by signed affidavit that compliance with the continuing education requirements has been met and must submit the renewal application together with the required fees to the Bureau. (3-15-02)

03. Verification of Completion. A licensee must maintain verification of completion by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours completed by the licensee. This verification must be maintained by the licensee and provided to the Board upon the request of the Board or its agent. The Board will conduct random audits to monitor compliance. Failure to provide proof of meeting the continuing education upon request of the Board will be grounds for disciplinary action. (4-11-19)

04. Carryover of Continuing Education Hours. Continuing education not claimed for credit in the current renewal year may be credited for the next renewal year. A maximum of fifteen (15) hours may be carried forward from the immediately preceding year. (4-11-19)

05. Special Exemption. The Board has authority to make exceptions for reasons of individual hardship, including health, when certified by a medical doctor, or for other good cause. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. (3-20-14)

701. -- 999. (RESERVED)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.12.01 – RULES OF THE IDAHO STATE BOARD OF PSYCHOLOGIST EXAMINERS

DOCKET NO. 24-1201-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-2305, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 24.12.01, rules of the Idaho State Board of Psychological Examiners:

IDAPA 24.12

- 24.12.01, *Rules of the Idaho State Board of Psychological Examiners*—all proposed rules *except 200.05, 250.02.e., 250.02.f., 250.02.g., 250.02.h., 275.02.b., 275.02.d., 375.02, 400.01, 402.08, 550.01.b., 550.04.a., 550.04.b., 550.04.c., 550.04.d., 550.04.e., 550.04.f., 550.04.g., 550.04.h., 550.04.i., and 550.04.j.* which have been vacated.

The text of the pending fee rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4,707-4,727. The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.12.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Rules of the Idaho State Board of Psychological Examiners was published. This pending fee rule will allow the Legislature to review for codification IDAPA 24.12.01, the Rules of the Idaho State Board of Psychological Examiners. On July 19, 2019, the State Board of Psychological Examiners held a public meeting which was noticed pursuant to the Idaho Open Meetings Law where the public and other interested parties, including industry organizations, were given the opportunity to comment as this chapter was reviewed. Changes made to the pending fee rule which differ from the proposed text were made to accomplish the Recommendations for Improvement, Modification, or Elimination of Requirements from the Licensing Freedom Act of 2017, Executive Order No. 2017-06; the directives set forth in the Licensing Freedom Act of 2019, Executive Order No. 2019-01; the directives set forth in the Red Tape Reduction Act, Executive Order No. 2019-02; and the continued efforts to clarify and streamline its rules. This pending fee rule removes outdated language and processes, reorders certain sections to improve overall organization, removes redundant language, moves fees into an easier to read tabular format, and adds the phrase “not to exceed” before fee amounts, which will allow for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity.

Further, this pending fee rule reorganizes the qualifications for licensure by endorsement in order to clarify qualifying experience and education. This pending fee rule also updates the endorsement for certification of prescriptive authority section, the continuing education hours section, the guidelines for approval of continuing education credits section, and the supervised practice of provisional certification holder section to accurately reflect the rules previously promulgated by the Board and the Advisory Panel. This pending fee rule updates the temporary license requirements because the program administered by the association of state and provincial psychology boards (ASPPB) will be ending. Finally, this pending fee rule enlarges the scope of eligible licensees who may act as service extenders, expanding access to mental health services.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-2307, 54-2312, 54-2312A, 54-2315, and 54-2318, Idaho Code, as follows: annual renewal fee: not to exceed \$250; annual renewal fee for inactive lice: not to exceed \$125; original application fee for licensure by exam: not to exceed \$150; original application fee for licensure by endorsement/senior psychologist: not to exceed \$250; original application fee for provisional certification of prescriptive authority: not to exceed \$250; annual renewal fee for provisional certification of prescriptive authority: not to exceed \$250; original application fee for certification of prescriptive authority: not to exceed \$250; annual renewal fee for certification of prescriptive authority: not to exceed \$250; original application fee for certification of prescriptive authority by endorsement: not to exceed \$250; service extender application fee not to exceed \$100; service extender annual renewal fee: \$ not to exceed 100; and examination and reexamination fee: \$25.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade at (208) 334-3233.

Dated this 16th day of October, 2019.

Kelley Packer
Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2305, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.12.01, rules of the Idaho State Board of Psychological Examiners:

IDAPA 24.12

- 24.12.01. *Rules of the Idaho State Board of Psychological Examiners*—All rules *except Subsections/Section 010.01, 010.02, 010.05, 010.06, 010.09, 100.03, 100.04, 100.05, 125, 201.03, 260, 600, 625, and 650.*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules govern the qualifications and ethical standards for psychologists in Idaho, as well as the necessary credentials and standards of practice for certified psychologists to exercise prescriptive authority. Allowing these rules to expire would deprive the Board of the ability to admit new psychologists to practice and renew current licenses, harming the public health, safety, and welfare.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and the immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Absent the ability to impose the licensure fees outlined in this chapter, the Board would not be able to remain self-sufficient, contrary to its statutory mandate.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-2307, 54-2312, 54-2312A, 54-2315, and 54-2318, Idaho Code, as follows: annual renewal fee: \$250; annual renewal fee for inactive lice: \$125; original application fee for licensure by exam: \$150; original application fee for licensure by endorsement/senior psychologist: \$250; original application fee for provisional certification of prescriptive authority: \$250; annual renewal fee for provisional certification of prescriptive authority: \$250; original application fee for certification of prescriptive authority: \$250; annual renewal fee for certification of prescriptive authority: \$250; original application fee for certification of prescriptive authority by endorsement: \$250; service extender application fee \$100; service extender annual renewal fee: \$100; and examination and reexamination fee: \$25.

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 anticipated to have any fiscal impact on the state General Fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-1201-1900F

24.12.01 – RULES OF THE IDAHO STATE BOARD OF PSYCHOLOGIST EXAMINERS

000. LEGAL AUTHORITY.

These rules are hereby prescribed and established pursuant to the authority vested in the Idaho State Board of Psychologist Examiners by the provisions of Section 54-2305, Idaho Code. (7-1-93)

001. TITLE AND SCOPE.

These rules are titled IDAPA 24.12.01, “Rules of the Idaho State Board of Psychologist Examiners.” (7-1-93)

002. INCORPORATION BY REFERENCE (RULE 4).

The document titled “Ethical Principles of Psychologists and Code of Conduct,” published by the American Psychological Association and dated June 1, 2003 with the 2010 amendments effective June 1, 2010, as referenced in Section 350, is herein incorporated by reference and is available from the Board’s office and on the Board web site. (3-24-16)

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Certificate of Professional Qualification. A certificate of professional qualification means the certificate of professional qualification granted to a psychologist by the Association of State and Provincial Psychology Boards. (3-15-02)

02. Collaboration or Collaborative Relationship. Collaboration or collaborative relationship means a cooperative working relationship between a prescribing psychologist and a licensed medical provider in the provision of patient care, including cooperation in the management and delivery of physical and mental health care, to ensure optimal patient care. (4-1-19)

03. Geriatric Patient. A person sixty-five (65) years of age or older. (4-1-19)

04. Licensed Medical Provider. A physician or physician assistant licensed pursuant to chapter 18, title 54, Idaho Code, or an advanced practice registered nurse licensed pursuant to chapter 14, title 54, Idaho Code. (4-1-19)

05. Mental, Nervous, Emotional, Behavioral, Substance Abuse, and Cognitive Disorders. Disorders, illnesses, or diseases listed in either the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or those listed in the International Classification of Diseases published by the World Health Organization. (4-1-19)

06. Pediatric Patient. A person seventeen (17) years of age or younger. (4-1-19)

07. Prescribing Psychologist. A person who holds a license to practice psychology issued by the Board and who holds a Certification or Provisional Certification of Prescriptive Authority issued by the Board under Sections 54-2317, 54-2318, 54-2319, Idaho Code, and these rules. (4-1-19)

08. Supervising Physician. A board-certified psychiatrist, neurologist, or other physician with specialized training and experience in the management of psychotropic medication and who is licensed under chapter 18, title 54, Idaho Code, or an equivalent licensing provision of the law of a state adjoining Idaho. (4-1-19)

011. -- 099. (RESERVED)

100. APPLICATION.

01. Filing an Application. Applicants for licensure or certification or provisional certification of prescriptive authority must submit a complete application, verified under oath, to the Board at its official address. The application must be on the forms approved by the Board and submitted together with the appropriate fee(s) and supporting documentation. (4-1-19)

02. Supporting Documents. The applicant must provide or facilitate the provision of any supporting third-party documents that may be required under the qualifications for the license being sought. (4-1-19)

a. Any third-party documents, including letters of reference, must be received by the Board directly from the third party. (4-1-19)

b. One (1) of the two (2) years of supervised experience as required by Section 2307(2)(a), Idaho Code, for initial licensure may be pre-doctoral. The second year must be post-doctoral work under appropriate supervision and must be verified by the appropriate supervisor. ()

101. -- 149. (RESERVED)

150. FEES.

All fees are non-refundable. The examination or reexamination fee are in addition to the application fee and must accompany the application.

FEE TYPE	AMOUNT (Not to Exceed)	RENEWAL (Not to Exceed)
Original Application for Licensure by Exam	\$150	
Inactive License Renewal	\$125	
Annual Renewal	\$250	
Original Application for Licensure by Endorsement/Senior Psychologist	\$250	
Original Application for Provisional Certification of Prescriptive Authority	\$250	\$250
Original Application for Certification of Prescriptive Authority	\$250	\$250
Original Application for Certification of Prescriptive Authority by Endorsement	\$250	
Application for Service Extender	\$100	\$100
Examination and Reexamination	The amount charged by the national examining entity plus a processing fee of \$25	
Reinstatement	As set forth in Section 67-2614, Idaho Code.	
Temporary License	\$50	

()

151. -- 199. (RESERVED)

200. EXAMINATIONS.

01. Written Exam Required. The Board will require a written examination of applicants. The written examination will be the National Examination for Professional Practice In Psychology (EPPP). (3-20-04)

02. Passing Score. The Board has determined that a passing score on the EPPP is a raw score of one hundred forty (140) or, for examinations after April 1, 2001, a scaled score of five hundred (500) for licensure. (3-20-04)

03. Time and Place of Exam. The examination will be conducted at a time and place specified by the administrator of the national examination for professional practice in psychology (EPPP). (5-8-09)

04. Failure of Exam. The first time the examination is failed the applicant may take it again the next

time it is given upon application and payment of fees. If the examination has been failed twice, the individual must wait at least one (1) year and petition the Board for approval to take the examination the third time. The petition must include evidence satisfactory to the Board that the applicant has taken additional study in the field of Psychology before approval will be granted. (5-8-09)

201. EXAMINATION FOR PROVISIONAL CERTIFICATION OF PRESCRIPTIVE AUTHORITY.

The approved examination for provisional certification of prescriptive authority is the Psychopharmacology Examination for Psychologists (PEP). (4-1-19)

01. Passing Score. A passing score will be determined by the Association of State and Provincial Psychology Boards (ASPPB). (4-1-19)

02. Date of Exam. The passage of the exam may have occurred prior to the effective date of these rules. (4-1-19)

202. -- 249. (RESERVED)

250. ENDORSEMENT.

01. Eligibility for Endorsement. An applicant who is in possession of a valid statutory license or statutory certificate from another state or Canada may apply for licensing under the endorsement section of this law. (3-15-02)

02. Requirements for Endorsement. An applicant under the endorsement section must have: (3-15-02)

a. A valid psychology license or certificate issued by the regulatory entity of another jurisdiction; and (3-15-02)

b. A history of no disciplinary action in any jurisdiction; and ()

c. Meet one of the following qualifications: ()

i. A current certificate of professional qualification in Psychology as defined in these rules; or ()

ii. A registration with the National Register of Health Service Providers in Psychology; or ()

iii. A certification by American Board of Professional Psychology; or ()

iv. Graduated from an APA accredited program with a doctoral degree in psychology and two (2) years of supervised experience acceptable to the Board, one (1) year of which may include a pre-doctoral practicum or internship and one (1) year of which must be post-doctoral; ()

d. Or complete both of the following: ()

i. Graduated with a doctoral degree in psychology or a related field, provided experience and training are acceptable to the Board; and ()

ii. A record of practicing Psychology at the independent level for the five (5) years of the last seven (7) years immediately prior to application. ()

251. ENDORSEMENT FOR CERTIFICATION OF PRESCRIPTIVE AUTHORITY (RULE 251).

The Board may grant a provisional certification or certification of prescriptive authority by endorsement to an applicant who completes an application as set forth in Section 100 of these rules, pays the required fee, and meets the following requirements: (4-1-19)

01. Holds a Current License. The applicant must be the holder of a current and unrestricted license to

practice psychology in another state and in Idaho; (4-1-19)

02. Holds a Current Certificate of Prescriptive Authority. (4-1-19)

a. The applicant must be the holder of a current and unrestricted certification of prescriptive authority from another state that imposes substantially equivalent educational and training requirements as those contained in Sections 54-2317 and 54-2318, Idaho Code, and these rules; or ()

b. The applicant must have training from the United States department of defense demonstration project or other similar program developed and operated by any branch of the armed forces that imposes substantially equivalent educational and training requirements as those contained in Sections 54-2317 and 54-2318, Idaho Code, and these rules. (4-1-19)

03. Credit Toward Requirements. In the event that an applicant has not met the requirements for certification of prescriptive authority, the Board may consider an applicant's experience in prescribing in another state as meeting a portion of the requirements necessary to qualify for provisional certification or certification of prescriptive authority in this state. In that event, the Board may require additional education, supervision, or both to satisfy the requirements to obtain a provisional certification or certification of prescriptive authority in this state. (4-1-19)

04. Advisory Panel. The Advisory Panel, as established in Section 54-2320, Idaho Code, will review the education and training of an applicant seeking certification by endorsement and advise the Board as to its sufficiency to meet the requirements for provisional certification or certification of prescriptive authority under Chapter 23, Title 54, Idaho Code, and these rules. (4-1-19)

252. -- 274. (RESERVED)

275. INACTIVE STATUS.

01. Request for Inactive Status. Persons requesting an inactive status during the renewal of their active license must submit a written request and pay the established fee. (3-29-10)

02. Inactive License Status. (3-29-10)

a. All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing or supervising in Idaho. (3-29-10)

b. When the licensees desire active status, they must show fulfillment of continuing education requirements within the previous twelve (12) months and submit a fee equivalent to the difference between the current inactive and active renewal fee. (3-29-10)

276. -- 299. (RESERVED)

300. TEMPORARY LICENSES (RULE 300).

Persons not licensed in this state who desire to practice psychology under the provisions of this chapter for a period not to exceed thirty (30) days within a calendar year may do so if they hold a license in another state or province have had no disciplinary action, and pay the required fee. Persons authorized to practice under this section must hold a certification of prescriptive authority issued by the Idaho Board of Psychologist Examiners to issue a prescription. ()

301. -- 349. (RESERVED)

350. CODE OF ETHICS.

All licensees must have knowledge of the Ethical Principles of Psychologists and Code of Conduct, as published in the American Psychologist, as referenced in Section 004. (5-8-09)

351. -- 374. (RESERVED)

375. DISCIPLINE.

The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensed psychologist for each violation of Section 54-2309, Idaho Code. ()

376. -- 379. (RESERVED)

380. REHABILITATION COMPONENTS.

In the event of a violation of Board laws or rules, the Board, in its discretion, may implement a plan of rehabilitation. Completion of the plan may lead to consideration of submission of an application for re-licensure, the removal of suspension, or the removal of supervision requirements. In the event the licensee has not met the Board's criteria for rehabilitation, the plan may be revised, expanded, or continued depending upon the progress of the rehabilitation program. The rehabilitation components listed in this Section should be considered illustrative, but not exhaustive, of the potential options available to the Board. In each instance, rehabilitation parameters will be tailored to the individual needs of the licensee. ()

01. Options in Devising Rehabilitation Program. The Board may follow one (1) or more options in devising a rehabilitation program: (3-29-10)

a. The individual may be supervised in all or selected areas of activities related to his practice as a licensee by a licensed psychologist approved by the Board for a specified length of time. (3-29-10)

i. The Board may specify the focus of the supervision. (3-29-10)

ii. The Board may specify the number of hours per week required in a face-to-face supervisory contract. (3-29-10)

iii. The Board may require the supervisor to provide periodic and timely reports to the Board concerning the progress of the supervisee. (3-29-10)

iv. Any fees for supervision time will be the responsibility of the supervisee. (3-29-10)

02. Educational Programs. The individual may be expected to successfully complete a variety of appropriate educational programs. Appropriate educational formats may include, but are not limited to, workshops, seminars, courses in regionally accredited universities, or organized pre- or post-doctoral internship settings. Workshops or seminars that are not held in a setting of academic review (approved continuing education) need prior approval of the Board. Any course of study must be approved by the Board prior to enrollment if it is to meet the criteria of a rehabilitation plan. (3-29-10)

03. Additional Requirements. The Board may require of the individual: (3-29-10)

a. Psychodiagnostic evaluations by a psychologist approved by the Board; (3-29-10)

b. A physical examination that may include an alcohol and drug screen by a physician approved by the Board; (3-29-10)

c. Psychotherapy on a regular basis from a psychologist approved by the Board; (3-29-10)

d. Take or retake and pass the appropriate professional examination; or (3-29-10)

381. -- 399. (RESERVED)

400. RENEWAL OF LICENSE -- CONTINUING EDUCATION.

Licenses may be renewed or reinstated by payment of the required fees and by submitting certification of having satisfied the continuing education requirement. ()

401. CONTINUING EDUCATION REQUIREMENTS FOR RELICENSURE IN PSYCHOLOGY.

01. Number of Hours Required. All licensed psychologists, in order to renew their license, must have accumulated twenty (20) hours per year of continuing education credits. All prescribing psychologists, in order to renew their provisional certification or certification of prescriptive authority, must have accumulated twenty (20) hours per year of continuing education credits in psychopharmacology or psychopharmacotherapy offered in accordance with Subsection 402.01 of these rules. Continuing education credits for a prescribing psychologist are in addition to the continuing education credits required to renew their psychologist license. ()

a. At the time of renewal of the psychologists' licenses and prescribing psychologists' certifications, they will certify that they are aware of the requirements for continuing education and that they have met those requirements for the preceding year. ()

b. At the time of reinstatement of a psychologist's license or a prescribing psychologist's certification or provisional certification, the psychologist must provide proof of meeting the requirements for continuing education for the preceding year. ()

c. A minimum of four (4) hours credit in ethics, standards of care, and/or review of laws pertaining to the practice of psychology is required every three (3) years. Areas covered may include practice, consultation, research, teaching, and/or supervision. These units may be used as part of the continuing education credit required. (4-1-19)

02. Professional Level of Continuing Education -- Time Period Records Kept - Audit. This continuing education experience must be at an appropriate level for professional training in psychology. The licensees have responsibility for demonstrating the relevance and adequacy of the educational experience they select. The licensees are also responsible for keeping an accurate record of their own personal continuing education hours for a period of five (5) years. A random audit may be conducted to insure compliance. (7-1-93)

03. Newly Licensed Individuals. Newly licensed individuals will be considered to have satisfied the continuing education requirements for the remainder of the year in which their license is granted. (7-1-93)

04. Certificates of Satisfactory Attendance and Completion. Certificates of satisfactory attendance and completion, participant lists, transcripts from universities, letters of certification on instructor's letterhead, and other reasonably convincing proof of the submitted activities may serve as documentation when persons audited are required to submit proof of continuing education. ()

05. Licensees Who Do Not Fulfill the Continuing Education Requirements. Licensees who do not fulfill the continuing education requirements may be subject to disciplinary action. (7-1-93)

06. Carryover of Continuing Education Hours. Continuing education courses not claimed for CE credit in the current renewal year, may be credited for the next renewal year. A maximum of twenty (20) hours may be carried forward from the immediately preceding year for renewal of a psychologist license, and a maximum of twenty (20) hours may be carried forward from the immediately preceding year for renewal of a prescribing psychologist's certificate. ()

07. Special Exemption. The Board may make exceptions for reasons of individual hardship including health, when certified by a medical doctor, or other good cause. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. Request for special exemption must be made prior to licensure renewal. ()

402. GUIDELINES FOR APPROVAL OF CONTINUING EDUCATION CREDITS (RULE 402).

01. Continuing Education Credit. Continuing education credit will be given to formally organized workshops or classes with an attendance roster and preassigned continuing education credit offered in association with or under the auspices of: (7-1-93)

a. Regionally accredited institutions of higher education. (7-1-93)

- b. The American Psychological Association. (7-1-93)
- c. A Regional Psychological Association. (7-1-93)
- d. A State Psychological Association. (7-1-93)
- e. For prescribing psychologists, in addition to the approved organizations above, workshops or classes may be classified as continuing medical education credit and offered in association with or under the auspices of:
()
 - i. The American Medical Association; (4-1-19)
 - ii. A regional medical association; (4-1-19)
 - iii. A state medical association; or (4-1-19)
 - iv. Offered by sponsors accredited by the Accreditation Council for Continuing Medical Education (ACCME). (4-1-19)
- f. Credit will be given for the number of credit hours preauthorized by the sponsoring agency with no upper limit on the number of hours. (7-1-93)

02. Credit for International, National and Regional Meetings of Psychological Organizations. Six (6) hours of continuing education credit will be allowed for documented attendance at international, national and regional meetings of psychological organizations. (7-1-93)

03. Credit for Other Relevant Workshops, Classes or Training Experiences. Other relevant workshops, classes or training experiences when not offered, approved, or provided by an entity in Subsection 402.01, may receive up to six (6) hours of credit per experience provided they are conducted by a licensed or reputable psychologist or other mental health professional. Each documented hour of training experience counts as one (1) hour of continuing education experience. (4-4-13)

04. Presentation of Papers. Presentation of papers at international, national, regional or state psychological or other professional associations may be counted as equivalent to six (6) hours per event. Only actual presentation time may be counted; preparation time does not qualify for credit. The licensee must provide the Board with a letter from a sponsor, host organization, or professional colleague, copy of the program, and a summary of the evaluations from the event. (3-29-10)

05. Self-Study, Lectures or Public or Professional Publications and Presentations. The Board also recognizes the value of self-study, lectures or public or professional publications and presentations (including for example, in the case of the university faculty, preparation of a new course). Therefore, the Board will allow credit for six (6) hours of individual study per year. (7-1-93)

a. Self-Study. The reading of a publication may qualify for credit with proper documentation verifying completion. A licensee seeking credit for reading a publication must submit results from a test on the information contained within the publication. If a test is not available, the licensee must seek pre-approval of the Board. (3-29-10)

b. Professional publications. Publication activities are limited to articles in professional journals, a chapter in an edited book, or a published book. The licensee must provide the Board with a copy of the cover page of the article or book in which the licensee has been published. For chapters of an edited book, licensees must submit a copy of the table of contents. (3-29-10)

06. Board Assessment of Continuing Education Activities. The Board of Psychologist Examiners may avail itself of help and consultation from the American Psychological Association or the Idaho Psychological Association in assessing the appropriateness of continuing education activities. (3-29-10)

07. Electronic Continuing Education Courses. ()

a. Non-interactive. A maximum of ten (10) on-line, non-interactive continuing education hours relevant to the practice of psychology may be counted during each reporting period. ()

i. Continuing education credit will be given to on-line education offered in association with or under the auspices of the organizations listed in Subsections 402.01.a. through 402.01.d. of these rules. (3-29-17)

ii. The licensee must provide the Board with a copy of the certification, verified by the authorized signatures from the course instructors, providers, or sponsoring institution, substantiating any hours completed by the licensee. (3-29-10)

b. Interactive. To qualify for credit, teleconferences must feature an interactive format. Interactive conferences are those that provide the opportunity for participants to communicate directly with the instructor or that have a facilitator present at the conference site. The licensee must provide the Board with a copy of the certificate, or a letter signed by course instructors, providers, or sponsoring institution, substantiating any hours attended by licensee. ()

i. When offered, approved, or provided by entities in Subsection 402.01, the number of hours that may be counted during each reporting period is not limited. (4-4-13)

ii. When not offered, approved, or provided by an entity in Subsection 402.01, a maximum of six (6) hours may be counted during each reporting period. (4-4-13)

403. -- 449. (RESERVED)

450. GUIDELINES FOR USE OF SERVICE EXTENDERS TO LICENSED PSYCHOLOGISTS.

The Board recognizes that licensed psychologists may choose to extend their services by using service extenders. The Board provides general rules to cover all service extenders as well as specific rules to cover service extenders with different levels of training and experience. (7-1-93)

01. General Provisions for Licensed Psychologists Extending Their Services Through Others. (7-1-93)

a. The licensed psychologist will have administrative control for a service extender. ()

b. The licensed psychologist exercising professional direction for a service extender must: (7-1-93)

i. Prior to employing the service extender, formulate and provide to the Board a written supervisory plan for each service extender and obtain approval for the plan. The plan must include provisions for supervisory sessions and chart review. If the psychologist requires recordings to be made of psychological services delivered by the service extender, then the plan must also specify review and destruction of these recordings. The plan must also specify the hours per calendar week that the licensed psychologist will be at the same physical location as the person extending the services of the licensed psychologist. The plan must be accompanied by a completed application form and appropriate application fee. ()

ii. Establish and maintain a level of supervisory contact sufficient to be readily accountable in the event that professional, ethical, or legal issues are raised. For service extenders in Categories I and II, there will be a minimum of one (1) hour of face-to-face supervisory contact by the licensed psychologist with the service extender for each one (1) to twenty (20) hours of services provided by the service extender during any calendar week. At least one half (1/2) of this face-to-face supervisory contact will be conducted individually, and up to one half (1/2) of this face-to-face supervisory contact may be provided using a group format. A written record of this supervisory contact, including the type of activities conducted by the service extender, must be maintained by the licensed psychologist. Except under unusual circumstances, the supervisory contact will occur either during the week the services are extended or during the week following. In no case will services be extended more than two (2) weeks without supervisory contact between the service extender and the licensed psychologist. For service extenders in Category III, there will be a minimum of one (1) hour of face-to-face supervisory contact by the licensed psychologist with the

service extender during each calendar month that services are provided by the service extender. A written record of this supervisory contact, including the type of activities conducted by the service extender, must be maintained by the licensed psychologist. The licensed psychologist will also be available for consultation either face-to-face, by phone, or by other means of contact on any day that services are provided by the service extender. ()

iii. Provide the service extender a copy of the current Ethical Standards of the American Psychological Association, and obtain a written agreement from the service extender of his intention to abide by them. (7-1-93)

c. Supervision of service extenders through electronic communications, including video conferencing, cannot replace face-to-face supervision. Psychologists will ensure that the service that they provide through the use of service extenders is provided according to all applicable laws and rules. (3-29-17)

02. Qualifications for Service Extenders. (7-1-93)

a. Category I: A service extender will be placed in Category I if: (7-1-93)

i. The licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender holds a license in counseling, social work, or a related mental health profession issued by the state of Idaho to practice a specific profession, and that the issuance of that license requires the licensee hold a master's degree or its equivalent as determined by the Board; or ()

ii. The service extender meets the criteria for Category II specified below and the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender has satisfactorily functioned as a service extender to one (1) or more licensed psychologist for at least twenty (20) hours per calendar week over a period totaling two hundred sixty (260) weeks. (7-1-93)

b. Category II: A service extender will be placed in Category II if the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender holds a master's degree or equivalent from a program in psychology, counseling, or human development as determined by the Board. (3-29-17)

c. Category III: A service extender will be placed in Category III if the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender holds a master's degree or equivalent from a program in psychology, counseling, or human development as determined by the Board, and the service extender will only provide psychometrician services. Such services are defined as administrating, scoring, and/or summarizing psychological or neuropsychological tests and test data that require specialized training. Interpretation of the testing data must be performed by the licensed psychologist. Service extenders in Category III will not be allowed to perform psychotherapy, intake assessments, or other services outside the scope of psychometric services defined above. The licensed psychologist wishing to employ the service extender must also verify in writing to the satisfaction of the Board that the service extender has been properly trained in all of the testing instruments that the service extender will administer at the start of employment and will continue to receive proper training in any new testing instruments utilized by the service extender over the course of employment. (3-29-17)

03. Conditions for Use of Service Extenders. (7-1-93)

a. All persons used to extend the services of a licensed psychologist must be under the direct and continuing administrative control and professional direction of a licensed psychologist. These service extenders may not use any title incorporating the word "psychologist" or any of its variants or derivatives, e.g. "psychological," "psychotherapist." (5-8-09)

b. Work assignments must be commensurate with the skills of the service extender and procedures must be planned in consultation with the licensed psychologist under all circumstances. (7-1-93)

c. Public announcement of fees and services, as well as contact with lay or professional public must be offered only in the name of the licensed psychologist whose services are being extended. However, persons licensed to practice professions other than psychology may make note of their status in such announcements or

contacts. (7-1-93)

d. Setting and collecting of fees must remain the sole domain of the licensed psychologist; excepting that when a service extender is used to provide services of the licensed psychologist, third party payers must be informed of this occurrence in writing at the time of billing. Unless otherwise provided in these rules and regulations, licensed psychologists may neither claim nor imply to service recipients or to third party payers an ability to extend their services through any person who has not been approved as a service extender to that psychologist as specified in this section. ()

e. All service recipients must sign a written notice of the service extender's status as a service extender for the licensed psychologist. A copy of the signed written notice will be maintained on file with the licensed psychologist. (7-1-93)

f. Within the first three (3) contacts, the licensed psychologist must have face-to-face contact with each service recipient. (7-1-93)

g. A licensed psychologist must be available to both the service extender and the service recipient for emergency consultation. (7-1-93)

h. Service Extenders must be housed in the same service delivery site as the licensed psychologist whose services they extend. Whatever other activities they may be qualified to perform, service extenders must limit themselves to acting as service extenders of the licensed psychologist when providing direct services so long as they are physically located in the offices of the licensed psychologist. (7-1-93)

i. A service extender in Category I may deliver as much as, but not more than fifty percent (50%) of their service while the licensed psychologist is not physically present at the service delivery site. A service extender in Category II may deliver as much as, but not more than twenty-five percent (25%) of their service while the licensed psychologist is not physically present at the service delivery site. Service extenders in the Category III may deliver as much as, but not more than seventy-five percent (75%) of their service while the licensed psychologist is not physically present at the service delivery site. Service Extenders providing as many as, but no more than, three (3) hours of service extension per calendar week must be exempted from the on-site provisions of Section 450 of this rule. Without notification to the Board, short term exemption from this rule for atypical circumstances, such as irregular travel by the licensed psychologist, may occur for periods as long as, but no longer than three (3) calendar weeks. Longer exemptions may be granted at the discretion of the Board on written request by the licensed psychologist to the Board. (3-29-17)

j. The licensed psychologist must employ no more than three (3) service extenders. (3-18-99)

k. When a licensed psychologist terminates employment of a service extender, the licensed psychologist will notify the Board in writing within thirty (30) days. (7-1-93)

l. At the time of license renewal the licensed psychologist must submit for each service extender the appropriate fee together with certification to the Board that they possess: (3-19-07)

i. A written record of supervisory contact for the previous twelve (12) months; and (3-20-04)

ii. The percentage of time during the previous twelve (12) months that the service extender extended services while the licensed psychologist was at the service delivery site; and (3-20-04)

iii. An updated plan for the supervision of each of his service extenders. (3-20-04)

m. Documentation of supervisory notes, hours of supervision, number of hours on-site while the service extender provided services, and plan of supervision must be maintained by the supervisor for not less than three (3) years for each service extender and submitted to the Board upon request. (5-8-09)

451. -- 499. (RESERVED)

500. EDUCATIONAL AND CREDENTIALING REQUIREMENTS FOR LICENSURE.

Applicants who receive a doctoral degree from a program accredited by the American Psychological Association are considered to have met all criteria outlined in Section 500. (5-3-03)

01. Training in Professional Psychology. Training in professional psychology is doctoral training offered in an institution of higher education accredited by: (7-1-93)

- a. Middle States Commission on Higher Education. (7-1-93)
- b. The New England Association of Schools and Colleges. (7-1-93)
- c. Higher Learning Commission. (7-1-93)
- d. The Northwest Commission on Colleges and Universities. (7-1-93)
- e. The Southern Association of Colleges and Schools. (7-1-93)
- f. The Western Association of Schools and Colleges. (7-1-93)

02. Training Program. The training program must stand as a recognizable, coherent organizational entity within the institution. Programs that are accredited by the American Psychological Association or that meet the criteria for such accreditation are recognized as meeting the definition of a professional psychology program. (5-3-03)

03. Authority and Primary Responsibility. There must be a clear authority and primary responsibility for the core and specialty areas by a designated leader who is a doctoral psychologist and is a member of the core faculty. (5-8-09)

04. Content of Program. The program must be an integrated, organized sequence of study. (7-1-93)

05. There Must Be an Identifiable Training Faculty and a Psychologist Responsible for the Program. There must be an identifiable training faculty on site of sufficient size and breadth to carry out the training responsibilities. A faculty psychologist must be responsible for the program. (5-3-03)

06. Program Must Have an Identifiable Body. The program must have an identifiable body of students who are matriculated in that program for a degree. (7-1-93)

07. What the Program Must Include. The program must include supervised practicum and pre-doctoral internship appropriate to the practice of psychology. Pre-doctoral internships must be completed at member sites of the Association of Psychology Postdoctoral and Internship Centers, or sites demonstrating an equivalent program. (5-8-09)

08. Curriculum. The curriculum must encompass a minimum of three (3) academic years of full time graduate study at least one (1) year of which is spent in full-time physical residence at the degree granting educational institution. In addition to instruction in professional areas of competence, which include assessment and diagnosis, intervention, consultation, and supervision, the core program must require each student to demonstrate competence in specific substantive areas. Minimal competence is demonstrated by passing a three (3) credit semester graduate course (or a five (5) credit quarter graduate course) in each of the substantive areas listed below: (3-20-04)

- a. Biological Bases of Behavior: Physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology. (7-1-93)
- b. Cognitive-Affective Bases of Behavior: Learning, cognition, motivation, emotion. (3-20-04)
- c. Social Bases of Behavior: Social psychology, group processes, organizational and systems theory. (7-1-93)

- d. Individual Differences: Personality theory, human development, abnormal psychology. (7-1-93)
- e. Scientific and Professional Standards and Ethics. (3-20-04)
- f. Research Design and Methodology. (3-20-04)
- g. Techniques of Data Analysis: statistics, multivariate statistics, factor analysis, multiple regression, non-parametric statistics. (3-20-04)
- h. Psychological Measurement: psychometric principles, test theory, personality assessment, cognitive assessment. (3-20-04)
- i. History and Systems of Psychology. (3-20-04)
- j. Multiculturalism and Individual Diversity. (3-20-04)

501. -- 549. (RESERVED)

550. REQUIREMENTS FOR SUPERVISED PRACTICE.

01. Duration and Setting of Supervised Practice. (7-1-93)

a. A year of supervised experience is defined as a minimum of one thousand (1000) hours of supervised service provision acquired during not less than a twelve (12) month and no more than a thirty-six (36) calendar month period. The first year of supervised experience must be accredited only after acquiring the equivalent of one (1) year of full time graduate study. A second year must be obtained post-doctorally. (5-3-03)

02. Qualifications of Supervisors. Supervising psychologists must be licensed and must have training in the specific area of practice in which they are offering supervision. (7-1-93)

03. Amount of Supervisory Contact. One (1) hour per week of face-to-face individual contact per twenty (20) hours of applicable experience is a minimum. (7-1-93)

04. Evaluation and Accreditation of Supervised Practice. The Board will require submission of information by the supervisor(s) that enable it to evaluate and credit the extent and quality of the candidate's supervised practice, on a form approved by the Board ()

05. Unacceptable Supervision. Supervised practice time during which the supervisor deems supervisee's performance to have been unacceptable will not be credited towards the required supervised practice hours. (7-1-93)

551. -- 600. (RESERVED)

601. TELEPSYCHOLOGY.

This rule supplements Title 54, Chapter 57, Idaho Code, the Idaho Telehealth Access Act, the American Psychological Association Guidelines for the Practice of Telepsychology, and all other laws and rules applicable to the practice of telepsychology in this state. (3-29-17)

01. Definitions. For purposes of telepsychology services, the following terms are defined as follows: (3-29-17)

a. **Emergency.** Emergency means a situation in which there is an occurrence that poses an imminent threat of a life threatening condition or severe bodily harm. (3-29-17)

b. **Information Technology.** Information technology means the production, storage, and communication of information using computers and microelectronics including but not limited to telephones, mobile devices, interactive videoconferencing, email, chat, text, social media, and other Internet based services. (3-29-17)

c. Telehealth Provider. Telehealth provider means a person who is licensed, required to be licensed, or, if located outside of Idaho, would be required to be licensed if located in Idaho by Title 54, Chapter 23, Idaho Code and who provides or offers to provide telepsychology services to persons who are located in or who reside in Idaho. (3-29-17)

d. Telepsychology Services. Telepsychology services mean psychological services provided by a provider through the use of electronic communications, information technology, asynchronous store and forward transfer of information or synchronous interaction between the provider at a distant site and a service recipient at an originating site. Such services include, but are not limited to, assessing, testing, diagnosing, treating, educating, and consulting. (3-28-18)

02. General. (3-29-17)

a. When telepsychology services are contemplated, a telehealth provider will document individualized potential benefits and potential risks to the service recipient(s). (3-29-17)

b. Before telepsychology services are provided, a telehealth provider will document an emergency plan in the service recipient's record. The plan will specify the procedure for dealing with emergencies that will in an effective and timely way, provide for the service recipient's welfare. (3-29-17)

c. Except for psycho-educational purposes, the use of avatars for telepsychology services is prohibited. (3-29-17)

03. Initial Contact. Telehealth providers will, upon initial contact with the service recipient except in an emergency, prior to providing telepsychology services, obtain the written, informed consent of the service recipient(s), consistent with accepted professional and legal requirements concerning: (3-28-18)

a. The limitations and challenges of using information technology to provide telepsychology services; (3-28-18)

b. The potential for breaches in confidentiality of information while delivering telepsychology services; (3-28-18)

c. The risks of sudden and unpredictable disruption of telepsychology services and the alternative means by which communication may be re-established. (3-28-18)

04. Informed Consent. Telehealth providers will, upon initial and subsequent contact with the service recipient: (3-29-17)

a. Make reasonable efforts to verify the identity of the service recipient; (3-29-17)

b. Provide to the service recipient alternative means of contacting the telehealth provider should communications be disrupted during the provision of services. (3-29-17)

c. Discuss who, in addition to the provider and the service recipient, may have access to the content of telecommunications between the provider and service recipient; (3-29-17)

d. Inform the service recipient of when and how the provider will respond to electronic messages; (3-29-17)

e. Ensure that a written agreement has been executed with service recipient(s) concerning compensation, billing, and payment arrangements. (3-29-17)

05. Security and Confidentiality. Telehealth providers must: (3-29-17)

a. Use secure communications when providing telepsychology services and document consent for the

use of non-secure communication means when they are necessary; (3-28-18)

b. Document how electronic communications are stored and maintain confidentiality of communications with service recipients; (3-29-17)

c. Ensure that unauthorized persons cannot recover or access confidential electronically-stored information when retained by the provider and after the data or equipment in which the data is stored has been discarded. (3-29-17)

d. Inform service recipients how electronic communications may be sent to the provider and how the provider will store these communications. (3-29-17)

06. Assessment. (3-29-17)

a. When conducting psychological assessments using telepsychology services, telehealth providers must only use test and assessment procedures that are empirically supported for the patient population being evaluated. (3-29-17)

b. Telehealth providers using telepsychology for assessment must ensure that the identity of service recipients remains secure, that test security is maintained, that test-taking conditions are conducive to quiet and private test administration, and that the parameters of the test(s) are not compromised. (3-29-17)

c. Telehealth providers will explain to service recipients the potential limitations of conclusions and recommendations drawn from the results on online assessments and will document these limitations in the findings or report. Treatment will not be based solely upon the results of online assessments. (3-29-17)

07. Interjurisdictional Practice. (3-29-17)

a. Before delivering telepsychology services to recipients across state, territorial, and international boundaries, telehealth providers should familiarize themselves and ensure that they comply with all applicable laws. (3-29-17)

b. Telehealth providers who are licensed to practice psychology pursuant to Title 54, Chapter 23, Idaho Code are under the jurisdiction of the Board when providing telepsychology services to Idaho residents located either within or outside of Idaho and to all recipients located within the state of Idaho. (3-29-17)

c. Except when providing telepsychology services in response to an emergency, telehealth providers who are not licensed to practice psychology in this state, who do not hold a temporary license under Section 300, or who are not otherwise exempt by law, but who are nevertheless providing telepsychology services to recipients located in this state, are guilty of a misdemeanor crime under Chapter 23, Title 54, Idaho Code. (3-29-17)

602. -- 699. (RESERVED)

700. QUALIFICATIONS FOR PROVISIONAL CERTIFICATION OF PRESCRIPTIVE AUTHORITY.

The Board may grant a provisional certification of prescriptive authority to an applicant who holds a current license to practice psychology in Idaho, who completes an application as set forth in Section 100 of these rules, pays the required fee, and who meets the following educational and training qualifications. (4-1-19)

01. Doctoral Degree. The applicant must have been awarded a doctoral degree in psychology from an institution of higher education that meets the requirements in Section 54-2317(2), Idaho Code. (4-1-19)

02. Master's Degree. The applicant must have been awarded a master's degree in clinical psychopharmacology from an accredited program that meets the requirements in Section 54-2317(3), Idaho Code. (4-1-19)

03. Clinical Experience. An applicant must have successfully completed clinical experience as part of the master's clinical psychopharmacology program that includes a diverse population of patients. (4-1-19)

- a.** Clinical experience must include a minimum of four hundred (400) hours consisting of direct patient contact and collaboration with licensed medical providers involving a minimum of one hundred (100) separate patients. (4-1-19)
- b.** A diverse population of patients includes diversity in: (4-1-19)
- i.** Gender; (4-1-19)
- ii.** Different ages throughout the life cycle, including adults, children/adolescents, and geriatrics, as possible and appropriate; (4-1-19)
- iii.** Range of disorders listed in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and acute and chronic disorders; (4-1-19)
- iv.** Ethnicity; (4-1-19)
- v.** Socio-cultural background; and (4-1-19)
- vi.** In-patient and out-patient settings, as possible and appropriate. (4-1-19)
- 04. Examination.** An applicant must successfully pass the national examination in psychopharmacology, as approved by the Board under Section 201 of these rules. (4-1-19)
- 05. Supervision Agreement.** An applicant must submit to the Board a supervision agreement that identifies the supervising physician(s) who will directly supervise the applicant's prescribing under a provisional certification of prescriptive authority. The documentation submitted to the Board must also identify: (4-1-19)
- a.** For each supervising physician, the supervisor's name, address, license number, state in which granted, licensure status, length of licensure, and area of specialization; (4-1-19)
- b.** For each supervising physician, documentation of the physician's board-certification as a psychiatrist or neurologist or of specialized training and experience in the management of psychotropic medication; (4-1-19)
- c.** For an applicant seeking to prescribe for pediatric or geriatric patients, the supervising physician(s)' specialized training and experience in treating the patient population for which the applicant seeks to prescribe; (4-1-19)
- d.** Designate a primary supervising physician when more than one (1) supervising physician is identified. The primary supervising physician will be responsible for coordinating between the other supervising physician(s) to obtain written progress reports at least every six (6) months concerning how the provisional prescribing psychologist is performing in the domains for supervision. (4-1-19)
- e.** The types of cases for which each supervisor will be responsible for supervising and in which the supervisor has specialized training and experience. (4-1-19)
- f.** The number of provisional certification holders supervised by each supervising physician. A supervising physician may not concurrently supervise more than three (3) provisional certification holders unless otherwise approved by the Board; and (4-1-19)
- g.** The name and nature of setting in which the applicant will practice; (4-1-19)
- h.** Prior to a change in supervisors or a change in the supervision agreement, the supervisee must notify the Board and the change must be approved by the Board, or a designated member of the Board, prior to the commencement of supervision by a new supervisor or implementation of the change. (4-1-19)

701. SUPERVISED PRACTICE OF PROVISIONAL CERTIFICATION HOLDER.

A holder of a provisional certification of prescriptive authority may only prescribe under the supervision of physician(s) approved by the Board. Prior to application for a certification of prescriptive authority, a provisional certification holder must complete two (2) years of satisfactory prescribing, which includes: (4-1-19)

01. Hours of Supervision. A minimum of two thousand (2,000) hours acquired in not less than twenty-four (24) months and not more than forty-eight (48) months. (4-1-19)

a. The two thousand (2,000) hours may consist of direct patient contact, supervision, case consultations, and collaboration with licensed health care providers for the purpose of evaluation and treatment of patients with medication(s) within the formulary set forth in Section 730 of these rules. (4-1-19)

b. Supervised practice time during which the supervisor(s) deem(s) a supervisee's performance to have been unsatisfactory will not be credited towards the required supervised practice hours. A supervisor who believes the supervisee's practice is unsatisfactory should notify the supervisee and the primary supervisor as soon as possible and identify the basis for such conclusion including, but not limited to, specific domains or issues needing remediation. (4-1-19)

02. Number of Patients. A minimum of fifty (50) separate patients who are seen for the purpose of evaluation and treatment with those medications that are within the formulary established in Section 730 of these rules. (4-1-19)

03. Amount of Supervisory Contact. Supervision must occur on a one-to-one basis at a minimum of one (1) hour for each six (6) hours of clinical contact time with patients being seen for the purpose of evaluation and treatment with those medications that are within the formulary established in Section 730 of these rules. One-to-one supervision must be provided either face-to-face, telephonically, or by live video communication. ()

04. Domains for Supervision. Supervision must include assessment of the provisional certification holder with regard to each of the following domains: (4-1-19)

- a.** Basic science; (4-1-19)
- b.** Neurosciences; (4-1-19)
- c.** Physical assessments and laboratory exams; (4-1-19)
- d.** Clinical medicine and pathophysiology; (4-1-19)
- e.** Clinical and research pharmacology and psychopharmacology; (4-1-19)
- f.** Clinical pharmacotherapeutics; (4-1-19)
- g.** Research; and (4-1-19)
- h.** Professional, ethical, and legal issues. (4-1-19)

702. QUALIFICATIONS TO PRESCRIBE FOR PEDIATRIC OR GERIATRIC PATIENTS.

A prescribing psychologist may not prescribe for pediatric or geriatric patients unless approved by the Board. The Board may only grant prescriptive authority for pediatric patients or geriatric patients to an applicant for certification of prescriptive authority who has completed one (1) year of satisfactory prescribing, as attested to by the supervising physician, for the patient population for which the prescribing psychologist seeks to prescribe. ()

01. Credit Toward Certification. The one (1) year of satisfactory prescribing for a pediatric or geriatric population may be counted as one (1) year of the two (2) years of satisfactory prescribing required to qualify for a certification of prescriptive authority. (4-1-19)

02. Hours of Supervision. One (1) year of satisfactory prescribing includes a minimum of one

thousand (1,000) hours acquired in not less than twelve (12) months and not more than twenty-four (24) months. (4-1-19)

a. The one thousand (1,000) hours may consist of direct patient contact, supervision, case consultations, and collaboration with licensed medical providers for the purpose of evaluation and treatment of patients with medication(s) within the formulary set forth in Section 730 of these rules. A minimum of eight hundred (800) hours of the one thousand (1,000) hours must be directly related to the population for which the prescribing psychologist seeks to prescribe. (4-1-19)

b. Supervised practice time during which the supervisor(s) deem(s) a supervisee's performance to have been unsatisfactory will not be credited towards the required supervised practice hours. A supervisor who believes the supervisee's practice is unsatisfactory should notify the supervisee and the primary supervisor as soon as possible and identify the basis for such conclusion including, but not limited to, specific domains or issues needing remediation. ()

03. Number of Patients. One (1) year of satisfactory prescribing includes a minimum of twenty-five (25) separate patients in the population for which the prescribing psychologist seeks to prescribe and who are seen for the purpose of evaluation and treatment with those medications that are within the formulary established in Section 730 of these rules. For a prescribing psychologist who seeks to prescribe for pediatric patients, a minimum of ten (10) separate patients must be twelve (12) years of age or younger and a minimum of ten (10) separate patients must be between thirteen (13) years of age and seventeen (17) years of age. (4-1-19)

04. Amount of Supervisory Contact. Supervision must be obtained in accordance with Subsection 701.03 of these rules, and under a supervision agreement approved by the Board in accordance with Subsection 700.05 of these rules. ()

05. Domains for Supervision. Supervision must include assessment in each of the domains set forth in Subsection 701.04 of these rules. (4-1-19)

703. -- 709. (RESERVED)

710. QUALIFICATIONS FOR CERTIFICATION OF PRESCRIPTIVE AUTHORITY.
The Board may grant a certification of prescriptive authority to an applicant who completes an application as set forth in Section 100 of these rules and who meets the following educational and training qualifications. (4-1-19)

01. Holds a License to Practice Psychology. The applicant must hold a current license to practice psychology issued by the Board. (4-1-19)

02. Holds Provisional Certification. The applicant must hold a provisional certification of prescriptive authority issued by the Board. (4-1-19)

03. Supervision. The applicant must have successfully completed at least two (2) years of satisfactory prescribing under supervision that meets the requirements of Section 701 of these rules, as attested to by the supervising physician(s). (4-1-19)

711. -- 719. (RESERVED)

720. STANDARDS OF PRACTICE FOR PRESCRIPTIVE AUTHORITY.
A prescribing psychologist who issues a prescription for medication to a patient must collaborate with the patient's licensed medical provider and follow standards of practice as set forth in these rules. (4-1-19)

01. Licensed Medical Provider. A prescribing psychologist may only prescribe medication to a patient who has a licensed medical provider. If a patient does not have a licensed medical provider, the prescribing psychologist must refer the patient to a licensed medical provider prior to prescribing medication. (4-1-19)

a. In the event a patient terminates the relationship with the patient's licensed medical provider, with whom the prescribing psychologist has established a collaborative relationship, and the patient declines to secure a

new licensed medical provider, the prescribing psychologist must advise the patient that the prescribing psychologist cannot continue to psychopharmacologically manage the patient. (4-1-19)

b. The prescribing psychologist must document that the psychologist has made every reasonable effort to encourage the patient to maintain or establish a relationship with a licensed medical provider. (4-1-19)

c. In those cases, in which an abrupt discontinuation of a psychopharmacologic medication could represent a health risk or result in adverse effects, the prescribing psychologist, with concurrence from the previously established licensed medical provider, may prescribe the medication in a manner that is customarily recognized as a discontinuation regimen until the medication has been completely discontinued. The prescribing psychologist must document the discontinuation regimen in the patient's medical records. (4-1-19)

02. Release of Information. A prescribing psychologist must obtain a release of information from the patient or the patient's legal guardian authorizing the psychologist to contact the patient's licensed medical provider. If the patient or the patient's legal guardian refuses to sign a release of information for the patient's licensed medical provider, the prescribing psychologist must inform the patient or the patient's legal guardian that the psychologist cannot treat the patient pharmacologically without an ongoing collaborative relationship with the patient's licensed medical provider. The psychologist must refer the patient to another mental health care provider who is not required to maintain an ongoing collaborative relationship with a licensed medical provider. (4-1-19)

03. Initial Collaboration with Licensed Medical Provider. Prior to prescribing medication, a prescribing psychologist must contact the patient's licensed medical provider as provided in these rules and receive the results of the licensed medical provider's assessment. (4-1-19)

a. The prescribing psychologist must inform the licensed medical provider of: (4-1-19)

i. The medication(s) the prescribing psychologist intends to prescribe for mental, nervous, emotional, behavioral, substance abuse, cognitive disorders; and (4-1-19)

ii. Any laboratory tests that the prescribing psychologist ordered or reviewed. (4-1-19)

b. The prescribing psychologist must discuss with the licensed medical provider the relevant indications and contraindications to the patient of prescribing the medication(s) that the prescribing psychologist intends to prescribe. (4-1-19)

c. The prescribing psychologist must document the date and time of contacts with the licensed medical provider, a summary of what was discussed, and the outcome of the discussions or decisions reached. (4-1-19)

04. Ongoing Collaboration with Licensed Medical Provider. After the initial collaborative relationship with the patient's licensed medical provider is established, the prescribing psychologist must maintain and document the collaborative relationship to ensure that relevant information is exchanged accurately and in a timely manner. At a minimum the prescribing psychologist must: (4-1-19)

a. Contact the licensed medical provider for any changes in medication not previously discussed with the licensed medical provider. (4-1-19)

b. Contact the licensed medical provider if and when the patient experiences adverse effects from medications prescribed by the psychologist that may be related to the patient's medical condition for which he or she is being treated by a health care practitioner. (4-1-19)

c. Contact the licensed medical provider regarding results of laboratory tests related to the medical care of the patient that have been ordered by the psychologist in conjunction with psychopharmacological treatment. (4-1-19)

d. Inform the licensed medical provider as soon as possible of any change in the patient's psychological condition that may affect the medical treatment being provided by the licensed medical provider.

(4-1-19)

e. Request that as part of the collaborative relationship, the licensed medical provider inform the prescribing psychologist of any new medical diagnosis or changes in the patient's medical condition that may affect the treatment being provided by the prescribing psychologist. (4-1-19)

f. Request that as part of the collaborative relationship, the licensed medical provider inform the prescribing psychologist of any psychotropic medications prescribed or discontinued by the licensed medical provider or other licensed medical provider, of which the licensed medical provider is aware, the dates of any subsequent changes in psychotropic medications prescribed by the licensed medical provider or other licensed medical provider, of which the licensed medical provider is aware, and the efforts to coordinate the mental health care of the patient as soon as possible. (4-1-19)

05. Disagreement between Prescribing Psychologist and Licensed Medical Provider. If the licensed medical provider and the prescribing psychologist do not agree about a particular psychopharmacological treatment strategy, the prescribing psychologist must document the reasons for recommending the psychopharmacological treatment strategy that is in disagreement and must inform the licensed medical provider of that recommendation. If the licensed medical provider believes the medication is contraindicated because of a patient's medical condition, the prescribing psychologist must defer to the judgment of the licensed medical provider and may not prescribe that psychopharmacological treatment strategy. (4-1-19)

06. Prohibited Agreements with Licensed Medical Providers. A prescribing psychologist is prohibited from employing a licensed medical provider or entering into an independent contractor or similar contractual or financial relationship with a licensed medical provider with whom the prescribing psychologist collaborates, unless approved by the Board. The Board may grant an exception to this requirement on a case-by-case basis where the prescribing psychologist shows that such relationship is structured so as to prohibit interference with the licensed medical provider's relationship with patients, the licensed medical provider's exercise of independent medical judgment, and satisfaction of the obligations and responsibilities in Chapter 23, Title 57, Idaho Code, and these rules. (4-1-19)

07. Prescriptions. All prescriptions issued by a prescribing psychologist must comply with all applicable federal and state laws, rules and regulations and these rules. (4-1-19)

08. Emergencies. If a prescribing psychologist determines that an emergency exists that may jeopardize the health or well being of the patient, the prescribing psychologist may, without prior consultation with the patient's licensed medical provider, prescribe psychotropic medications or modify an existing prescription for psychotropic medication previously written for that patient by that prescribing psychologist. The prescribing psychologist must consult with the licensed medical provider as soon as possible. The prescribing psychologist must document in the patient's psychological evaluation/treatment records the nature and extent of the emergency and the attempt(s) made to contact the licensed medical provider prior to prescribing or other reason why contact could not be made. (4-1-19)

09. Disaster Areas. If a prescribing psychologist is working in a declared emergency/disaster area, the on-site medical staff can serve as the evaluating licensed medical provider. (4-1-19)

721. -- 729. (RESERVED)

730. FORMULARY.

A prescribing psychologist may prescribe medications and controlled substances that are recognized in or customarily used in the diagnosis, treatment and management of individuals with mental, nervous, emotional, behavioral, substance abuse and cognitive disorders and that are relevant to the practice of psychology or other procedures directly related thereto under the following limitations. (4-1-19)

01. Prohibited Medications and Controlled Substances. A prescribing psychologist may not prescribe: (4-1-19)

a. Any medication or controlled substance designated or included as a Schedule I controlled

substance; or (4-1-19)

b. Any opioid. (4-1-19)

02. Disorders and Conditions. A prescribing psychologist may not prescribe medication to treat a primary endocrine, cardiovascular, orthopedic, neurologic, gynecologic, obstetric, metabolic, hematologic, respiratory, renal, gastrointestinal, hepatic, dermatologic, oncologic, infectious, ophthalmologic, or rheumatologic illness or disorder. The provisions of this rule do not prohibit a prescribing psychologist from prescribing to treat a mental, nervous, emotional, behavioral, substance abuse or cognitive disorder that arises secondary to a primary physical illness, provided that the primary illness is being treated by a licensed medical provider and the prescribing psychologist collaborates with the patient's licensed medical provider, as provided in these rules. ()

731. -- 999. (RESERVED)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.13.01 – RULES GOVERNING THE PHYSICAL THERAPY LICENSURE BOARD

DOCKET NO. 24-1301-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-2206, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 24.13.01, rules governing the Physical Therapy Licensure Board.

IDAPA 24.13.01

- 24.13.01, *Rules Governing the Physical Therapy Licensure Board*: all proposed rules except 150.07 and 150.09.

The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.13.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Rules Governing the Physical Therapy Licensure Board was published. This pending fee rule will allow the Legislature to review for codification IDAPA 24.13.01, the Rules Governing the Physical Therapy Licensure Board. The Board considered the Licensing Freedom Act of 2017, Executive Order No. 2017-06, Licensing Freedom Act of 2019, Executive Order No. 2019-01; and the Red Tape Reduction Act, Executive Order No. 2019-02 and the continued efforts to clarify and streamline its rules. This pending fee rule removes redundant language, moves fees into an easier to read tabular format, and adds the phrase “not to exceed” before fee amounts, which allows for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4730 - 4741.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 65-2207, Idaho Code, as follows:

Initial licensure and annual renewal fee of a physical therapist: not to exceed \$25;
Initial licensure and annual renewal fee of a physical therapist assistant: not to exceed \$20;
Examination fee: not to exceed \$20;
Application fee: not to exceed \$25.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade at (208) 334-3233.

Dated this 16th day of October, 2019.

Kelley Packer
Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2206, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.13.01, rules of the Idaho Physical Therapy Licensure Board:

IDAPA 24

- 24.13.01, *Rules governing the Physical Therapy Licensure Board*—All rules **except Subsections 010.01, 010.02, and 010.03.**

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules govern the qualifications for physical therapists and physical therapist assistants and define the ethical standards to which licensees must adhere. Allowing these rules to expire would harm the public health, safety, and welfare since these rules help ensure the competence and appropriate conduct of physical therapists and physical therapist assistants.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and

approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and the immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Absent the ability to impose the licensure fees outlined in this chapter, the Physical Therapy Licensure Board would not be able to remain self-sufficient, contrary to its statutory mandate.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 65-2207, Idaho Code, as follows: initial licensure and annual renewal fee of a physical therapist: \$25; initial licensure and annual renewal fee of a physical therapist assistant: \$20; examination fee: \$20; and application fee: \$25.

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 anticipated to have any fiscal impact on the state General Fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-1301-1900F

24.13.01 – RULES GOVERNING THE PHYSICAL THERAPY LICENSURE BOARD

000. LEGAL AUTHORITY (RULE 0).

These rules are hereby prescribed and established pursuant to the authority vested in the Physical Therapy Licensure Board by the provisions of Section 54-2206, Idaho Code. (3-19-07)

001. TITLE AND SCOPE (RULE 1).

The rules are titled IDAPA 24.13.01, "Rules Governing the Physical Therapy Licensure Board." (3-19-07)

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

01. Physical Therapist Assistant. An individual who meets the requirements of Title 54, Chapter 22, Idaho Code, holds an active license, and who performs physical therapy procedures and related tasks that have been selected and delegated only by a supervising physical therapist. (3-19-07)

02. Supportive Personnel. An individual, or individuals, who are neither a physical therapist or a physical therapist assistant, but who are employed by and/or trained under the direction of a licensed physical therapist to perform designated non-treatment patient related tasks and routine physical therapy tasks. (3-19-07)

03. Non-Treatment Patient Related Tasks. Actions and procedures related to patient care that do not involve direct patient treatment or direct personal supervision, but do require a level of supervision not less than general supervision, including, but not limited to: treatment area preparation and clean-up, equipment set-up, heat and cold pack preparation, preparation of a patient for treatment by a physical therapist or physical therapist assistant, transportation of patients to and from treatment, and assistance to a physical therapist or physical therapist assistant when such assistance is requested by a physical therapist or physical therapist assistant when safety and effective treatment would so require. (3-19-07)

04. Routine Physical Therapy Tasks. Actions and procedures within the scope of practice of physical therapy, which do not require the special skills or training of a physical therapist or physical therapist assistant, rendered directly to a patient by supportive personnel at the request of and under the direct personal supervision of a physical therapist or physical therapist assistant. (3-19-07)

05. Testing. (3-19-07)

a. Standard methods and techniques used in the practice of physical therapy to gather data about individuals including: (3-19-07)

- i. Electrodiagnostic and electrophysiological measurements; (3-19-07)
- ii. Assessment or evaluation of muscle strength, force, endurance and tone; (3-19-07)
- iii. Reflexes; (3-19-07)
- iv. Automatic reactions; (3-19-07)
- v. Posture and body mechanics; (3-19-07)
- vi. Movement skill and accuracy; (3-19-07)
- vii. Joint range of motion and stability; (3-19-07)
- viii. Sensation; (3-19-07)
- ix. Perception; (3-19-07)
- x. Peripheral nerve function integrity; (3-19-07)
- xi. Locomotor skills; (3-19-07)
- xii. Fit, function and comfort of prosthetic, orthotic, and other assistive devices; (3-19-07)

- xiii. Limb volume, symmetry, length and circumference; (3-19-07)
 - xiv. Clinical evaluation of cardiac and respiratory status to include adequacy of pulses, noninvasive assessment of peripheral circulation, thoracic excursion, vital capacity, and breathing patterns; (3-19-07)
 - xv. Vital signs such as pulse, respiratory rate, and blood pressure; (3-19-07)
 - xvi. Activities of daily living; and the physical environment of the home and work place; and (3-19-07)
 - xvii. Pain patterns, localization and modifying factors; and (3-19-07)
 - xviii. Photosensitivity. (3-19-07)
- b.** Specifically excluded are the ordering of electromyographic study, electrocardiography, thermography, invasive vascular study, selective injection tests, or complex cardiac or respiratory function studies without consultation and direction of a physician. (3-19-07)
- 06. Functional Mobility Training.** Includes gait training, locomotion training, and posture training. (3-19-07)
- 07. Manual Therapy.** Skilled hand movements to mobilize or manipulate soft tissues and joints for the purpose of: (3-19-07)
- a.** Modulating pain, increasing range of motion, reducing or eliminating soft tissue swelling, inflammation or restriction; (3-19-07)
 - b.** Inducing relaxation; (3-19-07)
 - c.** Improving contractile and non-contractile tissue extensibility; and (3-19-07)
 - d.** Improving pulmonary function. (3-19-07)
- 08. Dry Needling.** A skilled intervention performed by a physical therapist that uses a thin filiform needle to penetrate the skin and stimulate underlying neural, muscular, and connective tissues for the evaluation and management of neuromusculoskeletal conditions, pain and movement impairments. (4-11-19)
- 09. Physical Agents or Modalities.** Thermal, acoustic, radiant, mechanical, or electrical energy used to produce physiologic changes in tissues. (3-19-07)
- 10. General Supervision.** A physical therapist's availability at least by means of telecommunications, which does not require a physical therapist to be on the premises where physical therapy is being provided, for the direction of a physical therapist assistant. (3-19-07)
- 11. Direct Supervision.** A physical therapist's or physical therapist assistant's physical presence and availability to render direction in person and on the premises where physical therapy is being provided. (3-19-07)
- 12. Direct Personal Supervision.** A physical therapist's or physical therapist assistant's direct and continuous physical presence and availability to render direction, in person and on the premises where physical therapy is being provided. The physical therapist or physical therapist assistant must have direct contact with the patient during each session and assess patient response to delegated treatment. (3-19-07)
- 13. Supervising Physical Therapist.** A licensed physical therapist who developed and recorded the initial plan of care and/or who has maintained regular treatment sessions with a patient. Such physical therapist's designation of another licensed physical therapist if the physical therapist who developed and recorded the initial plan of care or maintained regular treatment sessions is not available to provide direction at least by means of telecommunications. (3-19-07)

14. Nationally Accredited School. A school or course of physical therapy or physical therapist assistant with a curriculum approved by: (3-19-07)

a. The American Physical Therapy Association (APTA) from 1926 to 1936; or the APTA Accreditation Commission; or (3-19-07)

b. The Council on Medical Education and Hospitals of the American Medical Association from 1936 to 1960; or (3-19-07)

c. An accrediting agency recognized by the U.S. Department of Education, the Council on Postsecondary Accreditation, or a successor entity, or both. (4-7-11)

15. Examination. The examination is the National Physical Therapy Examination (NPTE) administered by Federation of State Boards of Physical Therapy. The examination may also include a jurisprudence examination adopted by the Board. (4-2-08)

011. -- 015. (RESERVED)

016. SUPERVISION (RULE 16).

A physical therapist shall supervise and be responsible for patient care given by physical therapist assistants, supportive personnel, physical therapy students, and physical therapist assistant students. (3-19-07)

01. Procedures and Interventions Performed Exclusively by Physical Therapist. The following procedures and interventions shall be performed exclusively by a physical therapist: (3-19-07)

a. Interpretation of a referral for physical therapy if a referral has been received. (3-19-07)

b. Performance of the initial patient evaluation and problem identification including a diagnosis for physical therapy and a prognosis for physical therapy. (3-19-07)

c. Development or modification of a treatment plan of care which is based on the initial evaluation and which includes long-term and short-term physical therapy treatment goals. (3-19-07)

d. Assessment of the competence of physical therapist assistants, physical therapy students, physical therapist assistant students, and supportive personnel to perform assigned procedures, interventions and routine tasks. (3-19-07)

e. Selection and delegation of appropriate portions of treatment procedures, interventions and routine physical therapy tasks to the physical therapist assistants, physical therapy students, physical therapist assistant students, and supportive personnel. (3-19-07)

f. Performance of a re-evaluation when any change in a patient's condition occurs that is not consistent with the physical therapy treatment plan of care, patient's anticipated progress, and physical therapy treatment goals. (3-19-07)

g. Performance and documentation of a discharge evaluation and summary of the physical therapy treatment plan. (3-19-07)

h. Performance of dry needling. (4-11-19)

02. Supervision of Physical Therapist Assistants. A physical therapist assistant must be supervised by a physical therapist by no less standard than general supervision. (3-19-07)

a. A physical therapist assistant must not change a procedure or intervention unless such change of procedure or intervention has been included within the treatment plan of care as set forth by a physical therapist. (3-19-07)

b. A physical therapist assistant may not continue to provide treatment as specified under a treatment plan of care if a patient's condition changes such that further treatment necessitates a change in the established treatment plan of care unless the physical therapist assistant has consulted with the supervising physical therapist prior to the patient's next appointment for physical therapy, and a re-evaluation is completed by the supervising physical therapist. (3-19-07)

c. The supervising physical therapist must provide direct personal contact with the patient and assess the plan of care on or before every ten (10) visits or once a week if treatment is performed more than once per day but no less often than once every sixty (60) days. The supervising therapist's assessment must be documented in the patient record. (3-20-14)

d. A physical therapist assistant may refuse to perform any procedure, intervention, or task delegated by a physical therapist when such procedure, intervention, or task is beyond the physical therapist assistant's skill level or scope of practice standards. (3-19-07)

e. A physical therapist is not required to co-sign any treatment related documents prepared by a physical therapist assistant, unless required to do so in accordance with law, or by a third-party. (3-19-07)

03. Supervision of Supportive Personnel. Any routine physical therapy tasks performed by supportive personnel requires direct personal supervision. (3-19-07)

04. Supervision of Physical Therapy and Physical Therapist Assistant Students. Supervision of physical therapy students and physical therapist assistant students requires direct supervision. (3-19-07)

a. A physical therapy student is only supervised by the direct supervision of a physical therapist. (3-19-07)

b. A physical therapy student is required to sign all treatment notes with the designation "SPT" after their name, and all such signatures require the co-signature of the supervising physical therapist. (3-19-07)

c. A physical therapist assistant student is required to sign all treatment notes with the designation "SPTA" after their name, and all such signatures require the co-signature of the supervising physical therapist or supervising physical therapist assistant. (3-19-07)

05. Supervision Ratios. (3-19-07)

a. At no time during the treatment of a patient or patients for physical therapy may the number of physical therapist assistants providing such treatment be more than twice in number of such supervising physical therapist(s) providing physical therapy treatment at any physical therapy practice or site. (3-19-07)

b. At no time during the treatment of a patient or patients for physical therapy may the number of supportive personnel performing routine physical therapy tasks be more than twice in number of such supervising physical therapist(s) or supervising physical therapist assistant(s) providing physical therapy treatment at any physical therapy practice or site. (3-19-07)

c. At no time during the treatment of a patient or patients for physical therapy may the number of physical therapy students performing delegated supervised physical therapy tasks be more than twice in number of such supervising physical therapist(s) providing physical therapy treatment at any physical therapy practice or site. (3-19-07)

d. At no time during the treatment of a patient or patients for physical therapy may the number of physical therapist assistant students performing delegated supervised physical therapy tasks be more than twice in number of such supervising physical therapist(s) or supervising physical therapist assistant(s) providing physical therapy treatment at any physical therapy practice or site. (3-19-07)

e. At no time during the treatment of a patient or patients for physical therapy shall the number of

physical therapist assistants, physical therapy students, physical therapist assistants students, and supportive personnel, or a combination thereof, performing delegated supervised physical therapy or routine physical therapy tasks be more than three (3) times in number of such physical therapist(s) providing physical therapy treatment at any physical therapy practice or site; nor may the number of physical therapist assistant students or supportive personnel, or a combination thereof, performing delegated and supervised physical therapy tasks or routine physical therapy tasks be more than twice in number of such physical therapist assistant(s) providing physical therapy treatment at any physical therapy practice or site. (3-19-07)

017. -- 099. (RESERVED)

100. MEETINGS AND ORGANIZATION (RULE 100).

01. Meetings. The Board meets at least once annually at such time and place as designated by the Board or the Chairman of the Board. Special meetings may be held at the call of the Chairman or any two (2) members, and all members shall be notified in writing. (3-19-07)

02. Voting. A quorum is three (3) Board members. A majority vote of Board members present is considered the action of the Board as a whole. Any motion before the Board fails on a tie vote. (3-19-07)

101. -- 149. (RESERVED)

150. APPLICATION (RULE 150).

Each applicant must submit a completed written application on forms provided by the Board together with applicable fees. The application must be verified under oath and requires the following information: (3-19-07)

01. Education. The educational background of the applicant; (3-19-07)

02. Evidence of Graduation. Evidence of graduation from a nationally accredited school; (3-19-07)

03. Criminal Convictions. The disclosure of any criminal conviction or charges against the applicant other than minor traffic offenses; (3-19-07)

04. Disciplinary Action. The disclosure of any disciplinary action against the applicant by any professional regulatory agency; (3-19-07)

05. License or Registration Denial. The disclosure of the denial of registration or licensure by any state or district regulatory body; (3-19-07)

06. References. Two (2) references from individuals, other than relatives or individuals living with the applicant, who have at least two (2) years of personal knowledge of the applicant's character and ability to provide physical therapy; and (3-19-07)

07. Other Information. Such other information as the Board deems necessary to identify and evaluate the applicant's credentials. (3-19-07)

08. Lack of Activity. Applications on file with the Board where an applicant has failed to respond to a Board request or where the applications have lacked activity for twelve (12) consecutive months is deemed denied and will be terminated upon thirty (30) days written notice unless good cause is established to the Board. (4-7-11)

151. -- 174. (RESERVED)

175. REQUIREMENTS FOR LICENSURE (RULE 175).

An individual shall be entitled to a license upon meeting the following requirements: (4-2-08)

01. Application. Submission of a complete application establishing that the individual has met the qualifications as set forth in these rules. (4-2-08)

02. Examination. Submission of proof that the individual has successfully passed the NPTE with a scaled score of at least six hundred (600) and the jurisprudence examination with a score of at least seventy-five percent (75%). Foreign educated individuals whose native language is not English must submit proof of successfully passing one (1) of the following English proficiency exams: (4-7-11)

a. Test of English as a Foreign Language (TOEFL) with minimum passing scores of two hundred twenty (220) for computer test and five hundred sixty (560) for paper test; (4-7-11)

b. Test of English as a Foreign Language - internet based test (TOEFL IBT) with minimum passing scores of twenty-four (24) in writing; twenty-six (26) in speaking, twenty-one (21) in reading, and eighteen (18) in listening; or (4-7-11)

c. As otherwise approved by the Board. (4-7-11)

176. -- 179. (RESERVED)

180. REQUIREMENTS TO PRACTICE DRY NEEDLING (RULE 180).

A physical therapist, with at least one (1) year of practice as a licensed physical therapist, may perform dry needling upon successful completion of education and training in dry needling that meets the following requirements: (4-11-19)

01. Length of Course. The education and training consists of a minimum of twenty-seven (27) hours of in-person instruction of which no less than sixteen (16) hours must be hands-on application of dry needling techniques by the physical therapist; (4-11-19)

02. Safety Training. The education and training includes instruction and training on indications/contraindications for dry needling, safe needling technique, and blood borne pathogens; (4-11-19)

03. Course Approval. Each course is approved by the Federation of State Boards of Physical Therapy (FSBPT) or another nationally recognized accrediting body of physical therapy that is approved by the Board; and (4-11-19)

04. Proficiency Assessment. Each course requires successful completion of an assessment of proficiency in dry needling, which includes a practical demonstration of the physical therapist's dry needling skills. (4-11-19)

05. Course Completion. Completion of this education and training may have occurred prior to the effective date of these rules. (4-11-19)

181. PRACTICE OF DRY NEEDLING (RULE 181).

A physical therapist who practices dry needling must maintain documentation of having satisfied the requirements of Section 180 of these rules and must obtain and maintain documentation of written informed consent from patients. (4-11-19)

01. Documentation of Training. Upon request by the Board, a physical therapist must produce documentation of having satisfied the education and training requirements in Section 180 of these rules. (4-11-19)

02. Written Informed Consent. Prior to performing dry needling on a patient, the physical therapist must provide the patient with information that includes a definition and description of the practice of dry needling and a description of the risks, benefits, and potential side effects of dry needling and obtain the patient's written consent to treatment, which documentation must be maintained as part of the patient record. (4-11-19)

182. -- 199. (RESERVED)

200. FEES (RULE 200).

All fees are non-refundable.

FEE TYPE	AMOUNT (Not to Exceed)	RENEWAL (Not to Exceed)
Physical Therapist License	\$25	\$25
Physical Therapist Assistant License	\$20	\$20
Examination	Established by examination entity plus an administrative fee not to exceed \$20	
Reinstatement	As provided in Section 67-2614, Idaho Code	
Application	\$25	

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201. -- 249. (RESERVED)

250. CONTINUING EDUCATION REQUIREMENT (RULE 250).

01. Renewal of License. Every person holding a license issued by the Board must annually complete sixteen (16) contact hours of continuing education prior to license renewal. (3-28-18)

02. Reinstatement of License. Any license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code, with the exception that the applicant must submit proof of having met the following continuing education requirement: (3-28-18)

- a.** For licenses expired for one (1) year or less, one (1) year of continuing education; (3-28-18)
- b.** For licenses expired for more than one (1) year and up to two (2) years, two (2) years of continuing education; (3-28-18)
- c.** For licenses expired for more than two (2) years, three (3) years of continuing education. (3-28-18)

03. Contact Hours. The contact hours of continuing education must be obtained in areas of study germane to the practice for which the license is issued as approved by the board. (3-19-07)

04. Documentation of Attendance. The applicant must provide documentation verifying attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. This documentation must be maintained by the licensee and provided to the board upon request by the board or its agent. (3-19-07)

05. Excess Hours. Continuing education hours accumulated during the twelve (12) months immediately preceding the license expiration date may be applied toward meeting the continuing education requirement for the next license renewal. Hours in excess of the required hours may be carried forward. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) time. (3-19-07)

06. Compliance Audit. The board may conduct random continuing education audits of those persons required to obtain continuing education in order to renew a license and require that proof acceptable to the board of meeting the continuing education requirement be submitted to the bureau. Failure to provide proof of meeting the continuing education upon request of the board are grounds for disciplinary action. (3-19-07)

07. Special Exemption. The board has authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The licensee must provide any

information requested by the board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the board. (3-19-07)

08. Continuing Education Credit Hours. Hours of continuing education credit may be obtained by attending and participating in a continuing education activity approved by the Board. (3-19-07)

a. General Criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit: (3-19-07)

i. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee; (3-19-07)

ii. Pertains to subject matters integrally related and germane to the practice of the profession; (3-19-07)

iii. Conducted by individuals who have specialized education, training and experience to be considered qualified to present the subject matter of the program. The Board may request documentation of the qualifications of presenters; (3-19-07)

iv. Application for Board approval is accompanied by a paper, manual or outline which describes the specific offering and includes the program schedule, goals and objectives; and (3-19-07)

v. Provides proof of attendance to licensees in attendance including: Date, location, course title, presenter(s); Number of program contact hours (One (1) contact hour equals one (1) hour of continuing education credit.); and the official signature or verification of the program sponsor. (3-19-07)

b. Specific Criteria. Continuing education hours of credit may be obtained by: (3-19-07)

i. Presenting professional programs which meet the criteria listed in these rules. Two (2) hours of credit will be awarded for each hour of presentation by the licensee. A course schedule or brochure must be maintained for audit; (3-19-07)

ii. Providing official transcripts indicating successful completion of academic courses which apply to the field of physical therapy in order to receive the following continuing education credits: (3-19-07)

(1) One (1) academic semester hour = fifteen (15) continuing education hours of credit; (3-19-07)

(2) One (1) academic trimester hour = twelve (12) continuing education hours of credit; (3-19-07)

(3) One (1) academic quarter hour = ten (10) continuing education hours of credit. (3-19-07)

iii. Attending workshops, conferences, symposiums or electronically transmitted, live interactive conferences which relate directly to the professional competency of the licensee; (3-19-07)

iv. Authoring research or other activities that are published in a recognized professional publication. The licensee will receive five (5) hours of credit per page; (3-19-07)

v. Viewing videotaped presentations if the following criteria are met: (3-19-07)

(1) There is a sponsoring group or agency; (3-19-07)

(2) There is a facilitator or program official present; (3-19-07)

(3) The program official may not be the only attendee; and (3-19-07)

(4) The program meets all the criteria specified in these rules; (3-19-07)

- vi. Participating in home study courses that have a certificate of completion; (3-19-07)
- vii. Participating in courses that have business-related topics: marketing, time management, government regulations, and other like topics; (3-19-07)
- viii. Participating in courses that have personal skills topics: career burnout, communication skills, human relations, and other like topics; (4-7-11)
- ix. Participating in courses that have general health topics: clinical research, CPR, child abuse reporting, and other like topics; (3-29-12)
- x. Supervision of a physical therapist student or physical therapist assistant student in an accredited college program. The licensee will receive four (4) hours of credit per year; and (3-29-12)
- xi. Completion and awarding of Board Certification or recertification by American Board of Physical Therapy Specialists (ABPTS). The licensee will receive sixteen (16) hours for the year the certification or recertification was received. (3-29-12)

09. Course Approval. Courses of study relevant to physical therapy and sponsored or provided by the following entities or organizations are approved for continuing education credits: (3-29-12)

- a. The American Physical Therapy Association (APTA) or any of its sections or local chapters; or (3-29-12)
- b. The Federation of State Boards of Physical Therapy (FSBPT); or (3-29-12)
- c. Commission on Accreditation in Physical Therapy Education (CAPTE); or (3-29-12)
- d. National Athletic Trainers Association (NATA); or (3-29-12)
- e. A College or University which is accredited or a candidate for accreditation by the Northwest Association of Secondary and Higher Schools or any similar accrediting body; or (3-29-12)
- f. Otherwise approved by the Board. (3-29-12)

10. Submitting False Reports or Failure to Comply. The Board may condition, limit, suspend, or refuse to renew the license of any individual whom the Board determines submitted a false report of continuing education or failed to comply with the continuing education requirements. (3-19-07)

11. Failure to Receive the Renewal Application. Failure to receive the renewal application does not relieve the licensee of the responsibility of meeting the continuing education requirements and submitting the renewal application and renewal fee. (3-19-07)

251. -- 274. (RESERVED)

275. DISCIPLINARY PENALTY (RULE 275).

01. Disciplinary Procedures. The disciplinary procedures of the Bureau are the disciplinary procedures of the Board. (3-19-07)

02. Civil Fine. The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) for each violation upon anyone licensed under Title 54, Chapter 22, Idaho Code who is found by the Board to be in violation of Section 54-2219, Idaho Code. (3-19-07)

03. Costs and Fees. The Board may order anyone licensed under Title 54, Chapter 22, Idaho Code, who is found by the Board to be in violation of the provisions of Title 54, Chapter 22, Idaho Code, to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee. (3-19-07)

276. -- 299. (RESERVED)

300. CODE OF ETHICS (RULE 300).

Physical therapists and physical therapist assistants are responsible for maintaining and promoting ethical practice in accordance with the ethical principles set forth in Appendix A and Appendix B to these rules. (3-19-07)

301. -- 999. (RESERVED)

Appendix A - Physical Therapist Code Of Ethics

Preamble

This Code of Ethics of the American Physical Therapy Association sets forth principles for the ethical practice of physical therapy. All physical therapists are responsible for maintaining and promoting ethical practice. To this end, the physical therapist shall act in the best interest of the patient/client. This Code of Ethics shall be binding on all physical therapists.

Principle 1

A physical therapist shall respect the rights and dignity of all individuals and shall provide compassionate care.

Principle 2

A physical therapist shall act in a trustworthy manner toward patients/clients and in all other aspects of physical therapy practice.

Principle 3

A physical therapist shall comply with laws and regulations governing physical therapy and shall strive to effect changes that benefit patients/clients.

Principle 4

A physical therapist shall exercise sound professional judgment.

Principle 5

A physical therapist shall achieve and maintain professional competence.

Principle 6

A physical therapist shall maintain and promote high standards for physical therapy practice, education, and research.

Principle 7

A physical therapist shall seek only such remuneration as is deserved and reasonable for physical therapy services.

Principle 8

A physical therapist shall provide and make available accurate and relevant information to patients/clients about their care and to the public about physical therapy services.

Principle 9

A physical therapist shall protect the public and the profession from unethical, incompetent, and illegal acts.

Principle 10

A physical therapist shall endeavor to address the health needs of society.

Principle 11

A physical therapist shall respect the rights, knowledge, and skills of colleagues and other health care professionals.

APPENDIX B - PHYSICAL THERAPIST ASSISTANT CODE OF ETHICS

Preamble

This document of the American Physical Therapy Association sets forth standards for the ethical conduct of the physical therapist assistant. All physical therapist assistants are responsible for maintaining high standards of conduct while assisting physical therapists. The physical therapist assistant shall act in the best interest of the patient/client. These standards of conduct shall be binding on all physical therapist assistants.

Standard 1

A physical therapist assistant shall respect the rights and dignity of all individuals and shall provide compassionate care.

Standard 2

A physical therapist assistant shall act in a trustworthy manner toward patients/clients.

Standard 3

A physical therapist assistant shall provide selected physical therapy interventions only under the supervision and direction of a physical therapist.

Standard 4

A physical therapy assistant shall comply with laws and regulations governing physical therapy.

Standard 5

A physical therapist assistant shall achieve and maintain competence in the provision of selected physical therapy interventions.

Standard 6

A physical therapist assistant shall make judgments that are commensurate with his or her educational and legal qualifications as a physical therapist assistant.

Standard 7

A physical therapist assistant shall protect the public and the profession from unethical, incompetent, and illegal acts.

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.14.01 – RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS

DOCKET NO. 24-1401-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-3204, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 24.14.01, rules of the State Board of Social Work Examiners:

IDAPA 24.14.01

- 24.14.01, *Rules of the State Board of Social Work Examiners*: all proposed rules except 075, 150.01, 150.02, 200.01, 200.02, 201.04, 201.05, 210.04.a., 210.04.b., 210.04.d., 210.04.e., 211.03.c., 225.02.b., 225.02.d., 350.01, 350.03, 351.01.d., 351.01.i., 351.01.j., 351.04.d., and 351.04.e.

The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.14.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Rules of the State Board of Social Work Examiners was published. This pending fee rule will allow the Legislature to review for codification IDAPA 24.14.01, the Rules of the State Board of Social Work Examiners. On July 23, 2019, the State Board of Social Work Examiners held a public meeting which was noticed pursuant to the Idaho Open Meetings Law where the public and other interested parties, including industry organizations, were given the opportunity to comment as this chapter was reviewed. Changes made to the pending fee rule which differ from the proposed text were made to accomplish the Recommendations for Improvement, Modification, or Elimination of Requirements from the Licensing Freedom Act of 2017, Executive Order No. 2017-06; the directives set forth in the Licensing Freedom Act of 2019, Executive Order No. 2019-01; the directives set forth in the Red Tape Reduction Act, Executive Order No. 2019-02; and the continued efforts to clarify and streamline its rules. This pending fee rule removes outdated language and processes, reorders certain sections to improve overall organization, removes redundant language, moves fees into an easier to read tabular format, and adds the phrase “not to exceed” before fee amounts, which will allow for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity.

Further, the pending fee rule removes the term good moral character and replaces it with the defined term professionalism, clarifying the expectation of applicants and licensees. This pending fee rule removes the term any felony from the endorsement section and replaces it with the phrase any crime that is inconsistent with the profession of social work and adds criteria for the Board to evaluate the compatibility of the crime with the practice of social work. This change which will clarify what information the Board is requesting and provide notice to applicants on how the Board will evaluate a conviction. This pending fee rule also will allow for live electronic supervisions sessions between a supervisor and a supervisee, allowing licensees alternative pathways to attain the required supervised experience. This pending fee rule also clarifies the continuing education requirement for inactive licensees desiring to return to active status. Finally, to ensure all active practitioners are proficient, this pending fee rule will require licensees inactive for five or more years to show proof of competency before returning to active status as well as the criteria to determine competency.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4744 - 4756.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-3209, Idaho Code, as follows:

Application and original license fee for licensed clinical social worker or licensed masters social worker or licensed social worker: not to exceed \$70;
Endorsement and license fee for licensed clinical social worker or licensed masters social worker or licensed social worker: not to exceed \$90;
Licensed clinical social worker renewal fee: not to exceed \$90;
Licensed masters social worker: not to exceed \$80;
Licensed social worker: not to exceed \$80;
Inactive licensed clinical social worker: not to exceed \$45;
Inactive licensed masters social worker: not to exceed \$40;
Inactive licensed social worker: not to exceed \$40.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade at (208) 334-3233.

Dated this 16th day of October, 2019.

Kelley Packer
Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-3204, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.14.01, rules of the State Board of Social Work Examiners:

IDAPA 24.14

- 24.14.01, *Rules of the State Board of Social Work Examiners - All rules except Subsections/Subsection 010.01, 010.02, and 250.*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules govern the qualifications for licensed professional social workers, as well as outline the ethical responsibilities and code of professional conduct licensees must adhere to. Allowing these rules and the requirements contained within them to lapse would harm the safety and welfare of citizens, licensees, and prospective licensees.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and the immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Absent the ability to impose the licensure fees outlined in this chapter, the State Board of Social Work Examiners would not be able to remain self-sufficient, contrary to its statutory mandate.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-3209, Idaho Code, as follows: application and original license fee for licensed clinical social worker or licensed masters social worker or licensed social worker: \$70; endorsement and license fee for licensed clinical social worker or licensed masters social worker or licensed social worker: \$90; licensed clinical social worker renewal fee: \$90; licensed masters social worker: \$80; licensed social worker: \$80; inactive licensed clinical social worker: \$45; inactive licensed masters social worker: \$40; and inactive licensed social worker: \$40.

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 anticipated to have any fiscal impact on the state General Fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-1401-1900F

24.14.01 – RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS

000. LEGAL AUTHORITY.

These rules are hereby prescribed and established pursuant to the authority vested in the State Board of Social Work Examiners by the provisions of Section 54-3204, Idaho Code. (7-1-93)

001. TITLE AND SCOPE.

These rules are titled IDAPA 24.14.01, “Rules of the State Board of Social Work Examiners.” (7-1-93)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Professionalism. Behavior exhibited on the part of an applicant which is in conformity with the Social Work Code of Professional Conduct as defined in Section 450 of these rules and within the limits of state law. ()

02. Psychotherapy. Treatment methods using a specialized, formal interaction between a Clinical Social Worker and an individual, couple, family, or group in which a therapeutic relationship is established, maintained, or sustained to understand unconscious processes, intrapersonal, interpersonal, and psychosocial dynamics, and the diagnosis and treatment of mental, emotional, and behavioral disorders, conditions, and addictions. (3-20-04)

03. Relative. For the purposes of these rules, a relative is a person’s spouse, parent, child, or sibling, regardless of whether the relation is by blood, through marriage, or by law. (4-4-13)

04. Supportive Counseling. Supportive counseling by a social worker means a method used by social workers to assist individuals, couples, families, and groups in learning how to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns. This help in the maintenance of adaptive patterns is done in the interview through reassurance, advice giving, information providing, and pointing out client strengths and resources. Supportive counseling does not seek to reach unconscious material. (3-20-04)

011. -- 099. (RESERVED)

100. APPROVED COLLEGES AND UNIVERSITIES.

Any college, university, or school of social work that is accredited or is a candidate for accreditation by the Northwest Commission on Colleges and Universities or any similar accrediting body, and that offers a social work program that is accredited by the Council on Social Work Education (CSWE) or that is otherwise approved by the Board. The social work program must be a recognizable, coherent organizational entity within the institution. (3-29-12)

101. -- 149. (RESERVED)

150. BOARD MEETINGS.

The Board must meet at least three (3) times each year. ()

151. -- 199. (RESERVED)

200. LICENSING QUALIFICATIONS AND DEFINITION OF TERMS.

All applicants for licensing under the Social Work Licensing Act must meet the minimum qualifications as set forth by this act. (7-1-93)

01. Educational Requirements. Educational requirements must be verified by submission of official transcripts sent directly to the Board from the educational institution or from the repository of primary source credentialing information administered by the Association of Social Work Boards (ASWB). Applicants are responsible for arranging transmission of this information. ()

201. PRACTICE OF SOCIAL WORK.

01. Baccalaureate Social Work. The application of social work theory, knowledge, methods, and ethics to restore or enhance social or psychosocial functioning of individuals, couples, families, groups,

organizations, and communities. Baccalaureate social work is a generalist practice that includes assessment, planning, intervention, evaluation, case management, information and referral, supportive counseling, supervision, and consultation with clients. Baccalaureate social work also includes advocacy, education, community organization, and the development, implementation and administration of policies, programs, and activities. Bachelor level social workers are prohibited from performing psychotherapy. Baccalaureate social work can include independent practice, but not private practice. (4-4-13)

02. Master’s Social Work. The application of social work theory, knowledge, methods and ethics, and the professional use of self to restore or enhance social, psychosocial or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. Master’s social work requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, information and referral, supportive counseling, supervision and consultation with clients, advocacy, teaching, research, community organization, and the development, implementation, and administration of policies, programs, and activities. Master level social workers who do not hold clinical licensure may provide psychotherapy only under the supervision of a licensed clinical social worker, psychologist, or psychiatrist and in accordance with an approved supervision plan. Master’s social work can include independent practice, but not private practice. (4-4-13)

03. Clinical Social Work. The practice of clinical social work is a specialty within the practice of master’s social work and requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions. Clinical social work is based on knowledge and theory of psychosocial development, behavior, psychopathology, motivation, interpersonal relationships, environmental stress, social systems, and cultural diversity, with particular attention to person-in-environment. It shares with all social work practice the goal of enhancement and maintenance of psychosocial functioning of individuals, families, and small groups. Clinical social work includes, but is not limited to, individual, couples, family and group psychotherapy, and includes independent and private practice. (3-20-04)

04. Employment of a Social Worker. A social worker employed directly by a physician, psychologist or other social worker, or by a public or private agency, institution, hospital, nursing home, rehabilitation center, or any similar facility, is not to be considered within the definition of an independent practitioner. Furthermore, a social worker who contracts with an agency or institution that assumes full responsibility for and supervises the services provided to clients is not considered to be a private practitioner. (5-3-03)

202. -- 209. (RESERVED)

210. SUPERVISION.

01. Generally Applicable Supervision Requirements. All supervised experience, as set forth in this section, must meet the following requirements: (4-4-13)

a. Supervision must be consultative-teaching supervision which is directed toward enhancement and improvement of the individual’s social work values, knowledge, methods, and techniques. (4-4-13)

b. A minimum of one hundred (100) hours of the required supervision must be face-to-face contact with the supervisor and must occur on a regular and on-going basis. Supervision may include a face-to-face setting provided by a secure live electronic connection. The secure live electronic connection must comply with any applicable state and federal laws, rules and regulations, including the health insurance portability and accountability act (HIPAA). ()

i. A supervisee may count in full all time in a supervisory session where the ratio of supervisor to supervisees does not exceed one (1) supervisor to two (2) social workers. All one hundred (100) hours may be earned in such a one (1) to two (2) setting. (4-4-13)

ii. Group supervision may count for no more than fifty (50) hours of face-to-face contact. Group supervision may count only where the ratio of supervisor to supervisees does not exceed one (1) supervisor to six (6) supervisees, and the allowable countable time must be prorated by the following formula: total session minutes

divided by total supervisees, multiplied by two (2) equals the maximum allowable countable time per supervisee for the session. i.e. a supervisee attending a one (1) hour group supervisory session consisting of six (6) supervisees must be allowed twenty (20) minutes of group supervision credit (60 minutes/6 supervisees x 2 = 20 minutes). (4-4-13)

02. Pursuing Licensure As Independent Practitioners. Requirements for supervision of baccalaureate or master's social workers pursuing licensure as independent practitioners. (4-4-13)

a. Develop a plan for supervision that must be reviewed and approved by a designated Board member prior to commencement of supervision. (4-4-13)

b. Complete a minimum of three thousand (3,000) hours of supervised social work experience. The hours must be accumulated in not less than two (2) years but in not more than five (5) years unless an extension is approved by the Board for good cause shown. (4-4-13)

c. Supervision must be provided by a qualified and experienced licensed social worker with a current license in good standing and approved to pursue independent practice. (4-4-13)

i. For a baccalaureate social worker the supervisor must hold a license at the baccalaureate, masters, or clinical level. (4-4-13)

ii. For a masters social worker the supervisor must hold a license at the masters, or clinical level. (4-4-13)

iii. Prior to a change in supervisors, the supervisee must notify the Board and the change must be approved by a designated member of the Board prior to the commencement of supervision by the new supervisor. (4-4-13)

iv. The supervisee may not have more than two (2) supervisors at any given time. (4-4-13)

03. Pursuing Licensure As Clinical Social Worker. Requirements for supervision of master's social workers pursuing licensure as clinical social worker. (4-4-13)

a. Develop a plan for supervision that must be reviewed and approved by a designated Board member prior to commencement of supervision. (4-4-13)

b. Complete a minimum of three thousand (3,000) hours of supervised social work experience focused on clinical social work. The hours must be accumulated in not less than two (2) years but in not more than five (5) years unless an extension is approved by the Board for good cause shown. The hours must also meet the following: (4-4-13)

i. One thousand seven hundred fifty (1,750) hours of direct client contact involving treatment in clinical social work as defined; and (4-4-13)

ii. One thousand two hundred fifty (1,250) hours involving assessment, diagnosis, and other clinical social work as defined. (4-4-13)

c. Fifty percent (50%) of supervised experience must be provided by a licensed clinical social worker registered as a supervisor pursuant to Section 211 of these rules. The remaining fifty percent (50%) of supervision may be provided by one or more of the following: (4-4-13)

i. A licensed clinical social worker who is registered as a supervisor pursuant to Section 211; (4-4-13)

ii. A licensed clinical psychologist; (4-4-13)

iii. A person licensed to practice medicine and surgery who practices in the area of psychiatry; (4-4-13)

iv. A licensed clinical professional counselor registered as a supervisor by the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists; or (4-4-13)

v. A licensed marriage and family therapist registered as a supervisor by the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists. (4-4-13)

d. Prior to a change in supervisors, the supervisee must notify the Board and the change must be approved by a designated member of the Board prior to the commencement of supervision by the new supervisor. (4-4-13)

e. The supervisee may not have more than two (2) supervisors at any given time. (4-4-13)

04. Out-of-State Supervised Experience. The Board may consider supervised experience obtained outside the state of Idaho submitted for Idaho licensure purposes as proscribed under Section 210.03 and consistent with that jurisdictions laws. Such experience, whether already obtained or planned to be obtained, must be included in the plan for supervision and reviewed and approved by a designated Board member. ()

a. Previous supervised experience must have been obtained within the five (5) year period preceding the submission of the plan for supervision and must have been obtained in compliance with the law and rules of the state in which the experience was obtained. (4-4-13)

211. SOCIAL WORK SUPERVISOR REGISTRATION.

Idaho licensed social workers must be registered with the Board in order to provide postgraduate supervision for those individuals in Idaho pursuing licensure as a clinical social worker. (3-20-14)

01. Requirements for Registration. (3-14-05)

a. Document at least two-years' experience as a licensed clinical social worker. (3-20-14)

b. Have not been the subject of any disciplinary action for five (5) years prior to application for registration. (3-14-05)

c. Document fifteen (15) contact hours of education in clinical supervisor training within the past five (5) years, as approved by the Board, or if previously registered as a supervisor with the Board, document six (6) hours of education in advanced supervisor training as approved by the Board. ()

02. Registration. ()

a. Upon receipt of a completed application verifying compliance with the requirements for registration as a supervisor, the applicant must be registered as a supervisor. (3-14-05)

b. A supervisor's registration must remain valid only so long as the individual's clinical social worker license remains current and in good standing. (4-4-13)

03. Renewal. A supervisor's registration is valid for a term of five (5) years. To renew a supervisor registration, the registered supervisor must submit a renewal application and: ()

a. Hold an active Idaho clinical social worker license which has not been subject to discipline, the Board may, in its discretion, approve a supervisor who has been previously disciplined based on the nature of the discipline and the time elapsed; and ()

b. Document six (6) hours of continuing education in advanced supervisor training as approved by the Board and completed within the previous five (5) years. (4-4-13)

212. -- 224. (RESERVED)

225. INACTIVE STATUS.

01. Request for Inactive Status. Each person requesting an inactive status must submit the required form and pay the inactive license fee. ()

02. Inactive License Status. (4-9-09)

a. All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing or supervising in Idaho (4-9-09)

b. To return to active status, a licensee must complete one (1) year of continuing education requirements and submit a fee equivalent to the difference between the inactive and active renewal fee. ()

03. Return to Active Status After Five (5) Years or More of Inactive Status. Licensee must provide an account to the Board for that period of time during which the license was inactive and fulfilling requirements that demonstrate competency to resume practice. Those requirements may include, but are not limited to, education, supervised practice, and examination as determined by the Board. The Board may consider practice in another jurisdiction in determining competency. ()

226. -- 299. (RESERVED)

300. FEES.

All fees are non-refundable.

FEE TYPE	AMOUNT (Not to Exceed)	RENEWAL (Not to Exceed)	INACTIVE (Not to Exceed)
Application	\$70		
Examination	Set by testing service		
Endorsement and license	\$90		
Licensed Clinical Social Worker	\$70	\$90	\$45
Licensed Masters Social Worker	\$70	\$80	\$40
Licensed Social Worker	\$70	\$80	\$40
Reinstatement	In accordance with Section 67-2614, Idaho Code		

()

301. -- 349. (RESERVED)

350. EXAMINATIONS AND ENDORSEMENT.

Applications for examination and endorsement may be reviewed and approved by a designated Board member upon determination that the applicant meets the qualifications. Approval to sit for examination does not obligate the Board to issue a license if it is later determined that the applicant does not meet the requirements for licensure. ()

01. Exam. The Board approves the uniform, nationally standardized examination of the Association of Social Work Boards (ASWB) as the Idaho licensure examination. (4-4-13)

a. Bachelor level candidates are required to successfully pass the bachelor’s examination. (4-2-08)

b. Masters level candidates are required to successfully pass the master’s examination. (4-2-08)

c. Clinical level candidates are required to successfully pass the clinical examination. (5-3-03)

02. Graduation Date to Qualify for Exam. Candidates for examination who can satisfy the Board that they will be graduating at the end of the spring, summer, or fall terms of any given year may qualify for examination immediately preceding the date of graduation. (4-4-13)

03. Endorsement. The Board may grant a license to any person who submits an application and who: ()

a. Holds a current, active social work license, at the level for which a license is being sought, issued by the authorized regulatory entity in another state or country, the certification of which must be received directly by the Board from the issuing agency; and (3-20-04)

b. Has not been disciplined within the last five (5) years, had a license revoked, suspended, restricted, or otherwise sanctioned by any regulatory entity and has never voluntarily surrendered a license; and (5-3-03)

c. Has not been convicted, found guilty, or received a withheld judgment or suspended sentence for any crime that is inconsistent with the profession of social work. In reviewing the application, the Board may review the following factors or evidence: ()

i. The severity or nature of the crime; ()

ii. The period of time that has passed since the crime under review; ()

iii. The number or pattern of crimes or other similar incidents; ()

iv. The circumstances surrounding the crime that would help determine the risk of repetition; ()

v. The relationship of the crime to the practice of social work; and ()

vi. The applicant's activities since the crime under review, such as employment, education, participation in treatment, payment of restitution, or any other factors which may be evidence of current rehabilitation; and ()

d. Has successfully passed an examination, as referenced in Subsection 350.02, or an examination provided by the Professional Examination Service (PES) at the clinical social worker and social worker level or the Education Testing Service (ETS) examination; and (5-3-03)

e. Has certified under oath to abide by the laws and rules governing the practice of social work in Idaho and the code of professional conduct. (5-3-03)

f. The Board may waive the examination requirement in Subsection 350.05.d. for an applicant who was not required to pass such an examination at the time the applicant initially obtained a social work license, provided that the applicant meets all other requirements in this subsection and has actively practiced social work for five (5) of the last seven (7) years preceding application. (4-11-19)

351. CONTINUING EDUCATION.

01. Continuing Education Requirements. (7-1-95)

a. Continuing education is required for renewal at all levels of social work licensure in Idaho. The Board may waive this requirement upon a showing of good cause. ()

b. Each licensee must complete a minimum of twenty (20) continuing education (CE) hours, including at least one (1) hour in professional ethics. ()

c. Compliance with the continuing education (CE) requirements for licensees must be reported annually. A continuing education course taken in any renewal year, but not claimed for CE credit in that year, may be utilized for credit in the following renewal year. (5-3-03)

d. Licensees will maintain documentation verifying CE attendance and curriculum for a period of four (4) years. This documentation will be subject to audit by the board. (5-3-03)

e. Licensees are not required to comply with this requirement during the first year in which they become licensed under the social work act. (5-3-03)

f. One (1) continuing education hour equals one (1) clock hour. (7-1-95)

g. Courses that are part of the curriculum of a university, college or other educational institution are allotted CE credit at the rate of fifteen (15) CE hours for each semester hour or ten (10) CE hours for each quarter hour of school credit awarded. (7-1-95)

h. Applications for reinstatement of a canceled license must include documented proof of meeting the continuing education requirements for the previous twelve (12) months. The requirement for professional ethics training continues during any period of cancellation. (3-20-04)

02. Categories of Continuing Education. (7-1-95)

a. Category I. Category I includes formally organized learning events, ideally involving face-to-face interaction with a teacher for the purpose of accomplishing specific learning objectives. Courses, workshops, conferences, practice oriented seminars, staff development and training activities coordinated and/or taught by approved and recognized educators also are included in this category. Because of our geographic location and sparse population, closed circuit T.V., video and audio tapes, internet based courses, and correspondence courses may be substituted for face-to-face contact if the course is interactive or requires an examination. (3-14-05)

b. Category II. No more than ten (10) CE hours may be obtained from this category. Category II consists of a variety of self-directed professional study activities and growth experiences. Examples include making an initial presentation on professional issues or programs, teaching a course for the first time, presenting a lecture or conducting a workshop for the first time, editing or writing professional books or articles, and conducting professional research. ()

c. The subject matter of all approved continuing education must be germane to the practice of social work as defined in Section 54-3202, Idaho Code, and may include the specialties of Marriage and Family Therapy, Psychiatry, Psychiatric Nursing, or Psychology. (3-14-05)

03. Continuing Education Sources. (7-1-95)

a. Continuing education course providers must include: (5-3-03)

i. Professional Associations. Continuing education hours may be obtained by participating in activities sponsored by or approved by professional associations including but not limited to the Idaho Chapter of the National Association of Social Workers, Idaho Society for Clinical Social Workers. The professional association must certify the number of clock hours of educational content in each sponsored or approved activity. (5-3-03)

ii. Educational Institutions. Continuing education hours may be obtained by completing coursework not below your level of licensing or by participating in continuing education programs sponsored by or approved by educational institutions accredited by a regional body recognized by the Council on Post Secondary Accreditation. The educational institution must certify the number of clock hours of educational content in each sponsored or approved program. (7-1-95)

iii. Government Agencies, Schools and Hospitals. Continuing education hours may be obtained by participating in in-service training, courses or workshops sponsored by federal, state, or local government agencies, public school systems and licensed hospitals. The provider must certify the number of clock hours of educational

content in each approved activity. (7-1-95)

iv. Private social service agencies and other entities. Continuing education hours may be obtained by participating in continuing education programs sponsored by agencies or entities who regularly provide social work services. The provider must certify the number of clock hours of educational content in each approved activity. (3-20-04)

b. All continuing education hours must be relevant to the profession of social work at the individual's particular level of social work licensure. The presenter's level of education must be at the licensee's level or above. Continuing education for clinical licensees must be clinical in nature except that five (5) hours each year may be non-clinical but must be germane to the practice of social work. Final approval of acceptable programs rests with the Board. (3-20-04)

04. Documentation. (7-1-95)

a. Each licensee must maintain documentation verifying CE attendance and curriculum for a period of four (4) years from the date of completion. This documentation will be subject to audit by the Board. (5-3-03)

b. Licensees must attest, on their annual license renewal application, that they have satisfied the continuing education requirements. False attestation of satisfaction of the continuing education requirements on a renewal application will subject the licensee to disciplinary action, including revocation. (5-3-03)

c. Continuing education documents must be in the form of a certificate of attendance, a statement signed by the provider verifying participation in the activity, an official transcript, or other documentation such as a certificate or letter from the sponsoring entity that includes the title of the activity, the subject material covered, the dates and number of hours credited, and the presenter's full name and professional credentials, or other documentation as the Board may require. ()

352. -- 399. (RESERVED)

400. UNPROFESSIONAL CONDUCT.

"Unprofessional conduct" is further defined as any violation of the Social Work Code of Professional Conduct. (7-1-93)

401. -- 449. (RESERVED)

450. STATEMENT OF PUBLIC POLICY AND CODE OF PROFESSIONAL CONDUCT.

The profession of social work is dedicated to serving people; the professional relationship between social workers and clients thus is governed by the highest moral and ethical values. The client is in a vulnerable role that extends beyond the time frame of actual services. In both social and professional interactions, this vulnerability is taken into consideration whether the person is currently or has been a client. Following is the Code of Professional Conduct: (5-24-95)

01. The Social Worker's Ethical Responsibility to Clients. (7-1-93)

a. For the purpose of this Code of Professional Conduct, a client is anyone for whom the social worker provides social work services directly or indirectly through consultations, staffings, or supervision with other professionals. (7-1-93)

b. The social worker will not commit fraud nor misrepresent services performed. (7-1-93)

c. The social worker will not solicit the clients of an agency for which they provide services for his private practice. (7-1-93)

d. The social worker will not divide a fee or accept or give anything of value for receiving or making a referral. (7-1-93)

e. The social worker will provide clients with accurate and complete information regarding the extent and nature of the services available to them. (7-1-93)

f. The social worker will terminate service to clients, and professional relationships with them, when such service and relationships are no longer required or in which a conflict of interest arises. (7-1-93)

g. A social worker may not violate a position of trust by knowingly committing any act detrimental to a client. (7-1-93)

h. A social worker may not exploit their professional relationships with clients (or former clients), supervisees, supervisors, students, employees, or research participants, sexually or otherwise. Social workers will not condone or engage in sexual harassment. Sexual harassment is defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unwelcomed by the recipient. (7-1-93)

i. A social worker may not engage in romantic or sexual acts with a client or with a person who has been a client within the past three (3) years, with a relative of a client, or with a person with whom the client maintains a close personal relationship when it has the potential to be harmful to the client. A social worker must not provide social work services to a person with whom he/she has had a romantic or sexual relationship. (4-4-13)

02. The Social Worker's Conduct and Compartment as a Social Worker. (7-1-93)

a. In providing services, a social worker may not discriminate on the basis of age, gender, race, color, religion, national origin, mental status, physical disability, social or economic status, political belief, or any other preference or personal characteristic, condition or status. (4-2-08)

b. Social workers may not undertake any activity in which their personal problems are likely to lead to inadequate performance or harm to a client, colleague, student, or research participant. If engaged in such activity when they become aware of their personal problems, they must seek competent professional assistance to determine whether they should suspend, terminate, or limit the scope of their professional activities. (7-1-93)

c. A social worker may not practice while impaired by medication, alcohol, drugs, or other chemicals. A social worker may not practice under a mental or physical condition that impairs the ability to practice safely. (4-2-08)

d. A social worker may not repeatedly fail to keep scheduled appointments. (7-1-93)

e. The social worker who anticipates the termination or interruption of service to clients must notify clients promptly and seek the transfer, referral, or continuation of services in relation to the clients' needs and preferences. (7-1-93)

f. The social worker must attempt to make appropriate referrals as indicated by the client's need for services. (7-1-93)

g. A social worker must obtain the client's or legal guardian's informed written consent when a client is to be involved in any research project. A social worker must explain the research, including any implications. (7-1-93)

h. The social worker must obtain informed consent of clients before taping, recording, or permitting third party observation of their activities. (7-1-93)

i. A social worker must safeguard information given by clients in providing client services. Except when required by law or judicial order, a social worker must obtain the client's informed written consent before releasing confidential information from the setting or facility except for compelling reasons defined as but not limited to:

i. Consultation with another professional on behalf of the client thought to be dangerous to self or others; (7-1-93)

- ii. Duty to warn pursuant to Chapter 19, Title 6, Idaho Code; (5-24-95)
- iii. Child abuse and sexual molestation pursuant to Chapter 16, Title 16, Idaho Code; and (5-24-95)
- iv. Any other situation in accordance with statutory requirements. (7-1-93)
- j.** A social worker must report any violation of the law or rules, including Code of Professional Conduct, by a person certified under Chapter 32, Title 54, Idaho Code. (7-1-93)

03. Competent Practice for Social Workers. All social workers must practice in a competent manner consistent with their level of education, training and experience. (3-20-04)

- a.** A social worker must only represent himself and practice within the boundaries of his education, training, licensure level, supervision, and other relevant professional experience. (3-20-04)
- b.** A social worker must only practice within new areas or use new intervention techniques or approaches after engaging in appropriate study, training, consultation, or supervision. (3-20-04)
- c.** A social worker must exercise careful judgment, when generally recognized standards do not exist with respect to an emerging area of practice, and take responsible steps to ensure the competence of his practice. (3-20-04)

04. The Advertising Rules for Social Workers. No social worker may disseminate or cause the dissemination of any advertisement or advertising that is any way fraudulent, false, deceptive or misleading. Any advertisement or advertising is deemed by the board to be fraudulent, false, deceptive, or misleading if it: (7-1-93)

- a.** Contains a misrepresentation of fact; or (7-1-93)
- b.** Is misleading or deceptive because in its content or in the context in which it is presented it makes only a partial disclosure of relevant facts. More specifically, it is misleading and deceptive for a social worker to advertise free services or services for a specific charge when in fact the social worker is transmitting a higher charge for the advertised services to a third party payor for payment or charges the patient or a third party. It is misleading and deceptive for a social worker or a group of social workers to advertise a social work referral service or bureau unless the advertisement specifically names each of the individual social workers who are participating in the referral service or bureau. (7-1-93)
- c.** Creates false or unjustified expectations of beneficial treatment or successful outcomes; or (7-1-93)
- d.** Fails to identify conspicuously the social worker or social workers referred to in the advertising as a social worker or social workers; or (7-1-93)
- e.** Contains any representation or claims, as to which the social worker, referred to in the advertising, fails to perform; or (7-1-93)
- f.** Contains any representation which identifies the social worker practice being advertised by a name which does not include the terms “social worker,” “social work,” or some easily recognizable derivation thereof; or (7-1-93)
- g.** Contains any representation that the practitioner has received any license or recognition by the state of Idaho or its authorized agents, which is superior to the license and recognition granted to any social worker who successfully meets the licensing requirements of Chapter 32, Title 54, Idaho Code; or (7-1-93)
- h.** Appears in any classified directory, listing, or compendium under a heading, which when considered together with the advertisement, has the capacity or tendency to be deceptive or misleading with respect to the profession or professional status of the social worker; or (7-1-93)

- i. Contains any other representation, statement, or claim which is misleading or deceptive. (7-1-93)

05. Dual Relationships. A social worker may not engage in dual or multiple relationships with clients, with relatives of a client, or with individuals with whom clients maintain close personal relationships, in which a reasonable and prudent social worker would conclude after appropriate assessment that there is a risk of harm or exploitation to the client or of impairing a social worker's objectivity or professional judgment. A dual or multiple relationship is a relationship that occurs when a social worker interacts with a client in more than one capacity, whether it be before, during, or after the professional, social, or business relationship. Dual or multiple relationships can occur simultaneously or consecutively. After an appropriate assessment that the relationship does not create a risk of harm or exploitation to the client and will not impair a social worker's objectivity or professional judgment, the social worker must document in case records, prior to the interaction, when feasible, the rationale for such a relationship, the potential benefit to the client, and anticipated consequences for the client. (4-4-13)

06. Business Relationships. A social worker may not purchase goods or services from a client or otherwise engage in a business relationship with a client except when: (4-4-13)

- a. The client is providing necessary goods or services to the general public; (4-4-13)
- b. A reasonable and prudent social worker would determine that it is not practical or reasonable to obtain the goods or services from another provider; and (4-4-13)
- c. A reasonable and prudent social worker would determine that engaging in the business relationship will not be detrimental to the client or the professional relationship. (4-4-13)

07. Bartering. Bartering is the acceptance of goods, services, or other nonmonetary remuneration from a client in return for a social worker's services. Social workers may not barter except when such arrangement is not exploitative and: (4-4-13)

- a. Is initiated by the client and with the client's written informed consent; and (4-4-13)
- b. Has an easily determined fair market value of the goods or services received. (4-4-13)

451. -- 474. (RESERVED)

475. DISCIPLINE.

01. Civil Fine. The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensed social worker for each violation of Section 54-3211, Idaho Code. (3-18-99)

02. Costs and Fees. The Board may order a licensed social worker to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee for violation of Section 54-3211, Idaho Code. (3-18-99)

476. -- 999. (RESERVED)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.15.01 – RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

DOCKET NO. 24-1501-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-3404, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 24.15.01, rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists:

IDAPA 24.15.01

- IDAPA 24.15.01, *Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists*: all proposed rules except 002, 005, 100, 149, 150.01.a., 150.01.a.ii., 150.01.b., 150.01.c., 150.01.d., 150.02.a.i., 150.02.a.ii., 150.02.a.iii., 150.02.e., 200, 225.03, 230.03, 232, 238.05, 239.02, 239.04.a., 239.04.c.i., 239.04.c.ii., 240.01.d., 300.02, 300.03, 300.05, 260.02.b., 400, 425.04, 425.05, 450, and 500

The text of the pending fee rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4,759-4,774. The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.15.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists was published. This pending rule will allow the Legislature to review for codification IDAPA 24.15.01, the Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists. On July 25, 2019, the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists held a public meeting which was noticed pursuant to the Idaho Open Meetings Law where the public and other interested parties, including industry organizations, were given the opportunity to comment as this chapter was reviewed. Changes made to the pending fee rule which differ from the proposed text were made to accomplish the Recommendations for Improvement, Modification, or Elimination of Requirements from the Licensing Freedom Act of 2017, Executive Order No. 2017-06; the directives set forth in the Licensing Freedom Act of 2019, Executive Order No. 2019-01; the directives set forth in the Red Tape Reduction Act, Executive Order No. 2019-02; and the continued efforts to clarify and streamline its rules. This pending fee rule removes unnecessary or outdated language and processes, reorders certain sections to improve overall organization, removes redundant language, moves fees into an easier to read tabular format, and adds the phrase “not to exceed” before fee amounts, which will allow for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity. Further, these pending fee rules include language for activating inactive licenses that is aligned with the reinstatement of expired licenses to provide consistency in minimum competency requirements for a person who has not been practicing for five years or more. This pending rule also implements a two-year continuing education cycle in as recommended in the Board’s Licensing Freedom Act Report. Finally, this pending rule implements House Bill 3 from the 2019 Legislative Session and the Board’s recommendation in its Licensing Freedom Act Report for qualifications for counselors in Sections 150 and 225 to modernize and streamline

educational requirements, increase portability of education and licensure from other states, and create more flexibility for practicum requirements, and apply uniform reporting for education obtained in another country for all professions licensed by the Board.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4759 - 4774.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules, except that it changes the fee structure to set a cap. The fee caps are above the current fee level for applications by \$25; licensure by \$25; license renewal by \$20; and inactive renewal by \$10. Fee caps are established in accordance with Section 54-3411, Idaho Code, as follows:

- Application fee for professional counselor, clinical professional counselor, marriage and family therapist, and associate marriage and family therapist: not to exceed \$100;
- Application for intern registration: not to exceed \$25;
- Marriage and family therapist examination or reexamination fee: \$25;
- Original license fee cap for professional counselor, clinical professional counselor, associate marriage and family therapist, and marriage and family therapist: not to exceed \$100;
- Annual license renewal fee cap for professional counselor, clinical professional counselor, associate marriage and family therapist, and marriage and family therapist: not to exceed \$120;
- Annual inactive license renewal fee cap for professional counselor, clinical professional counselor, associate marriage and family therapist, and marriage and family therapist: not to exceed \$60;
- Annual license renewal fee cap for senior professional counselor, clinical professional counselor, associate marriage and family therapist, and marriage and family therapist: not to exceed \$60.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking. Additionally, the Board is not a general fund agency, and these rule changes have no fiscal impact on the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade at 208-334-3233.

DATED this October 16, 2019.

Kelley Packer
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700 W. State Street
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**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-3404, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.15.01, rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists:

IDAPA 24.15

- 24.15.01, *Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists*
- All rules *except Subsections 010.01 and 010.02.*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules govern the qualifications and ethical standards for professional counselors and marriage and family therapists. Allowing these rules to expire would harm public health, safety, and welfare through removing safeguards designed to protect against harm or damage to vulnerable children, adolescents, and adults.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and the immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Absent the ability to impose the licensure fees outlined in this chapter, the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists would not be able to remain self-sufficient, contrary to its statutory mandate.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-3411, Idaho Code, as follows: application fee for professional counselor, clinical professional counselor,

marriage and family therapist, and associate marriage and family therapist: \$75; application fee for intern registration: \$25; marriage and family therapist examination or reexamination fee: \$25; original license fee for professional counselor, clinical professional counselor, associate marriage and family therapist, and marriage and family therapist: \$75; annual license renewal fee for professional counselor, clinical professional counselor, associate marriage and family therapist, and marriage and family therapist: \$100; annual inactive license renewal fee for professional counselor, clinical professional counselor, associate marriage and family therapist, and marriage and family therapist: \$50; and annual license renewal fee for senior professional counselor, clinical professional counselor, associate marriage and family therapist, and marriage and family therapist: \$60.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state General Fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-1501-1900F

**24.15.01 – RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL
COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS**

000. LEGAL AUTHORITY.

These rules are hereby prescribed and established pursuant to the authority vested in the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists by the provisions of Section 54-3404, Idaho Code. (3-13-02)

001. TITLE AND SCOPE.

These rules are titled IDAPA 24.15.01, “Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists.” (3-13-02)

002. – 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

01. ACA Code of Ethics. “ACA Code of Ethics,” as published by the American Counseling Association (ACA), effective 2014, is herein incorporated by reference and is available from the Board’s office and website. ()

02. AAMFT Code of Ethics. The document titled “AAMFT Code of Ethics,” as published by the American Association for Marriage and Family Therapy (AAMFT), effective January 1, 2015, is herein incorporated by reference and is available from the Board’s office and website. ()

03. Guidelines. The document titled “Approved Supervision Designation Handbook” that provides supervision guidelines for supervisors, as published by the American Association for Marriage and Family Therapy (AAMFT), dated October 2007, is herein incorporated by reference and is available from the Board’s office and website. ()

005. -- 009. (RESERVED)

010. DEFINITIONS.

01. Accredited University or College. An accredited university or college is a college or university accredited by a regional accrediting agency as identified by the U.S. Department of Education. (4-11-19)

02. Face-to-face Setting. May include a secure live electronic face-to-face connection between the supervisor and supervisee. ()

03. Licensed Mental Health Professional Supervisor. A clinical professional counselor, marriage and family therapist, psychologist, clinical social worker, or psychiatrist, whose license in Idaho is active, current, and in good standing and who, when applicable, is registered as a supervisor with their respective licensing board. ()

04. Practicum. The term practicum includes a practicum, internship, or a combination, taken as part of the graduate level program. (4-11-19)

05. Supplemental Practicum Hours. Supplemental practicum hours are hours of direct client contact that are supervised at a ratio of one (1) hour of supervision for every ten (10) hours of direct client contact by a registered supervisor for the profession for which the applicant is seeking licensure. ()

011. -- 149. (RESERVED)

150. QUALIFICATIONS FOR PROFESSIONAL COUNSELOR LICENSURE.

Licensure as a “professional counselor” is restricted to persons who have successfully completed the required examination and each of the following: ()

01. Graduate Program. Possess a master’s degree or higher, which includes an educational specialist degree, that is primarily counseling in nature, from an accredited university or college offering a graduate program in counseling, provided that the program is either: ()

a. Approved by the Council for Accreditation of Counseling and Related Educational Programs; or ()

b. A counseling program of at least sixty (60) semester hours or ninety (90) quarter hours in length and that at a minimum includes successful completion of one (1) graduate level course unique to the eight (8) areas and an advanced counseling practicum as follows: ()

i. Human growth and development: Includes studies that provide a broad understanding of the nature and needs of individuals at all developmental levels. Emphasis is placed on psychological, sociological, and physiological approaches. Also included are areas such as human behavior (normal and abnormal), personality theory, and learning theory. (7-1-93)

ii. Social and cultural foundations: Includes studies of change, ethnic groups, subcultures, changing roles of women, sexism, urban and rural societies, population patterns, cultural mores, use of leisure time, and differing life patterns. (7-1-93)

iii. The helping relationship: Includes philosophic bases of the helping relationship: Consultation theory and/or an emphasis on the development of counselor and client (or consultee) self-awareness and self-understanding. (7-1-93)

iv. Groups: Includes theory and types of groups, as well as descriptions of group practices, methods dynamics, and facilitative skills. It includes either a supervised practice and/or a group experience. (7-1-93)

v. Life-style and career development: Includes areas such as vocational-choice theory, relationship between career choice and life-style, sources of occupational and educational information, approaches to career decision-making processes, and career-development exploration techniques. (7-1-93)

vi. Appraisal of the individual: Includes the development of a framework for understanding the individual, including methods of data gathering and interpretation, individual and group testing, case-study approaches and the study of individual differences. Ethnic, cultural, and sex factors are also considered. (7-1-93)

vii. Research and evaluation: Includes areas such as statistics, research design, and development of research and demonstration proposals. It also includes understanding legislation relating to the development of research, program development, and demonstration proposals, as well as the development and evaluation of program objectives. (7-1-93)

viii. Professional orientation: Includes goals and objectives of professional counseling organizations, codes of ethics, legal consideration, standards of preparation, certification, and licensing and role of identity of counselors. (7-1-93)

ix. Advanced counseling practicum: Complete at least two (2) semester courses of an advanced counseling practicum taken at the graduate school level, provided that the applicant completed a total of two hundred eighty hours (280) of direct client contact that is supervised at the ratio of at least one (1) hour of one-to-one supervision for every ten (10) hours of experience in the setting. An applicant may complete one (1) supplemental practicum hour for every hour in which the practicum was deficient and that meets the requirements of Subsection 230.02 of these rules. ()

02. Supervised Experience Requirement. One thousand (1,000) hours of supervised experience in counseling acceptable to the Board. (7-1-93)

a. One thousand (1,000) hours is defined as one thousand (1,000) clock hours of experience working in a counseling setting, four hundred (400) hours of which must be direct client contact. Supervised experience in practicum taken at the graduate level may be utilized. The supervised experience includes a minimum of one (1) hour of face-to-face or one-to-one (1/1) or one-to-two (1/2) supervision with the supervisor for every twenty (20) hours of job/internship experience. ()

b. Supervision must be provided in compliance with the ACA Code of Ethics that was adopted by the Board at the time the supervision and provided by a counselor education faculty member at an accredited college or university, Professional Counselor, registered with the Board as a supervisor, or a licensed mental health professional

supervisor as defined in these rules. If the applicant's supervision was provided in another state, it must have been provided by a counseling professional licensed by that state, provided the requirements for licensure in that state are substantially equivalent to the requirements in Idaho. ()

c. Experience in counseling is defined as assisting individuals or groups, through the counseling relationship, to develop an understanding of personal problems, to define goals, and to plan action reflecting interests, abilities, aptitudes, and needs as related to persona-social concerns, educational progress, and occupations and careers. Counseling experience may include the use of appraisal instruments, referral activities, and research findings. (7-1-93)

d. The Board considers the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (4-2-03)

151. -- 224. (RESERVED)

225. CLINICAL PROFESSIONAL COUNSELOR LICENSURE.

Licensure as a "clinical professional counselor" is restricted to applicants who have successfully passed the required examination and have met the following: ()

01. License. Hold a "professional counselor" license in this state or a license or other authorization in another state that has substantially similar requirements to a licensed professional counselor in this state, provided the license or authorization is current and in good standing; and ()

02. Experience. Document two thousand (2,000) hours of direct client contact experience under supervision accumulated in no less than a two (2) year period after licensure or other authorization to practice in any state. (4-11-19)

a. All applicants must provide verification of meeting at least one thousand (1,000) hours of supervised experience under the supervision of a licensed Clinical Professional Counselor registered as a supervisor with the Board. The remainder of the supervision may be provided by a licensed mental health professional supervisor as defined in these rules. If the applicant's supervision was provided in another state, it must have been provided by a counseling professional licensed by that state, provided the requirements for license and supervision are substantially equivalent to the requirements in Idaho. ()

b. One (1) hour of clinical supervision for every thirty (30) hours of direct client contact is required. Individual supervision is defined as one (1) hour of face-to-face, one-on-one (1:1) or one-to-two (1:2) supervision to every thirty (30) hours of direct client contact. Supervision must be provided in a face-to-face setting. ()

c. No more than one-half (1/2) of the required supervision hours may be group supervision. (4-11-19)

03. Recommendation of the Supervisor(s). The Board considers the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (3-29-12)

226. -- 229. (RESERVED)

230. QUALIFICATIONS FOR ASSOCIATE MARRIAGE AND FAMILY THERAPIST.

An applicant for associate marriage and family therapist licensure must pass the required examination and meet the following: ()

01. Graduate Degree. Possess a graduate degree as outlined in Subsection 238.01 of these rules or a master's degree or higher in marriage and family therapy or a related field from an accredited university or college, provided that the graduate program meets one of the following: (4-11-19)

a. Accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE); or (4-11-19)

b. Accredited by the Council for Accreditation of Counseling and Related Educational Programs-

Marriage, Couple, and Family Counseling (CACREP-MCFC); or (4-11-19)

c. The program includes, at a minimum, twenty-seven (27) semester credits or thirty-six (36) quarter credits of the graduate level coursework set forth in Subsection 238.01.b of these rules. (4-11-19)

02. Practicum. Completion of a supervised practicum in no less than a twelve (12) month period as part of the graduate program. The practicum must consist of at least three hundred (300) hours of direct client contact, of which at least one hundred fifty (150) hours must be with couples, families and other systems, provided that the Board may grant a license to an applicant who completed a practicum with fewer than the required hours and completed one (1) supplemental practicum hour for every hour in which the practicum was deficient. Supplemental practicum hours must be completed as: (4-11-19)

a. A Registered Intern under Section 245 of these rules; or (4-11-19)

b. Supervised practice in another jurisdiction that is sufficient to be considered substantially similar to the supplemental practicum hour requirements of these rules; or (4-11-19)

c. A combination of Paragraph 02.a. and 02.b. of this subsection. (4-11-19)

231. – 237. (RESERVED)

238. MARRIAGE AND FAMILY THERAPISTS.

An applicant for marriage and family therapist licensure must pass the required examination and meet the following: ()

01. Graduate Degree. Possess a master’s degree or higher in marriage and family therapy or a related field from an accredited university or college provided that the program is either: (4-11-19)

a. Accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE); or (4-11-19)

b. A program of at least sixty (60) semester hours or ninety (90) quarter hours in length and that includes at a minimum: (4-11-19)

i. Marriage and family studies – Nine (9) semester credit hours or twelve (12) quarter credit hours: includes theoretical foundations, history, philosophy, etiology and contemporary conceptual directions of marriage and family therapy or marriage and family counseling; family systems theories and other relevant theories and their application in working with a wide variety of family structures, including families in transition, nontraditional families and blended families, and a diverse range of presenting issues; and preventive approaches, including premarital counseling, parent skill training and relationship enhancement, for working with couples, families, individuals, subsystems and other systems; (4-11-19)

ii. Marriage and family therapy – Nine (9) semester credit hours or twelve (12) quarter credit hours: includes the practice of marriage and family therapy related to theory, and a comprehensive survey and substantive understanding of the major models of marriage and family therapy or marriage and family counseling; and interviewing and assessment skills for working with couples, families, individuals, subsystems and other systems, and skills in the appropriate implementation of systematic interventions across a variety of presenting clinical issues including, but not limited to, socioeconomic disadvantage, abuse and addiction; (4-11-19)

iii. Biopsychosocial health and development across the lifespan – Nine (9) semester credit hours or twelve (12) quarter credit hours: includes individual development and transitions across the life span; family, marital and couple life cycle development and family relationships, family of origin and intergenerational influences, cultural influences, ethnicity, race, socioeconomic status, religious beliefs, gender, sexual orientation, social and equity issues and disability; human sexual development, function and dysfunction, impacts on individuals, couples and families, and strategies for intervention and resolution; and issues of violence, abuse and substance use in a relational context, and strategies for intervention and resolution; (4-11-19)

iv. Psychological and mental health competency – Six (6) semester credit hours or eight (8) quarter credit hours: includes psychopathology, including etiology, assessment, evaluation and treatment of mental disorders, use of the current diagnostic and statistical manual of mental disorders, differential diagnosis and multiaxial diagnosis; standard mental health diagnostic assessment methods and instruments, including standardized tests; and psychotropic medications and the role of referral to and cooperation with other mental health practitioners in treatment planning, and case management skills for working with individuals, couples, families, and other systems and relational groups; (4-11-19)

v. Professional ethics and identity – Three (3) semester credit hours or four (4) quarter credit hours: includes professional identity, including professional socialization, professional organizations, training standards, credentialing bodies, licensure, certification, practice settings and collaboration with other disciplines; ethical and legal issues related to the practice of marriage and family therapy, legal responsibilities of marriage and family therapy and marriage and family counseling practice and research, business aspects, reimbursement, recordkeeping, family law, confidentiality issues and the relevant codes of ethics, including the code of ethics specified by the board; and the interface between therapist responsibility and the professional, social and political context of treatment; (4-11-19)

vi. Research – Three (3) semester credit hours or four (4) quarter credit hours: includes research in marriage and family therapy or marriage and family counseling and its application to working with couples and families; and research methodology, quantitative and qualitative methods, statistics, data analysis, ethics and legal considerations of conducting research, and evaluation of research. (4-11-19)

02. Practicum. Completed a supervised practicum, including any supplemental practicum hours, which meets the requirements of Subsection 230.02 of these rules. ()

03. Supervised Marriage and Family Therapy Experience. Completed at least three thousand (3,000) hours of graduate or post-graduate supervised experience in marriage and family therapy that meets the following requirements: ()

a. A minimum of two thousand (2,000) post-master’s direct client contact hours, over a period of not less than two (2) years, which must include a minimum of one thousand (1,000) direct client contact hours with couples, families, and other systems; and (4-11-19)

b. A minimum of two hundred (200) hours of post-master’s supervision. (4-11-19)

c. Other hours must support development as a marriage and family therapist, and may include: additional hours of supervision, additional practicum hours above the three hundred (300) hours required in Subsection 230.02 of these rules, writing clinical reports, writing case notes, case consultation, coordination of care, administering tests, and attending workshops, training sessions, and conferences. (4-11-19)

d. A minimum of one hundred (100) hours post-master’s supervision must be obtained from a registered marriage and family therapist supervisor. The remaining one hundred (100) hours of supervision may also be obtained from a licensed mental health professional supervisor as defined in these rules who documents: ()

i. A minimum of five (5) years of experience providing marriage and family therapy; and (3-20-04)

ii. Fifteen (15) contact hours of education in supervisor training; and (3-20-04)

iii. Has not been the subject of any disciplinary action for five (5) years immediately prior to providing supervision. (3-20-04)

e. No more than one hundred (100) hours of group supervision are allowed. Group supervision is defined as up to six (6) supervisees and one (1) supervisor; and (3-29-12)

f. Individual supervision is defined as up to two (2) supervisees per supervisor; and (3-13-02)

g. Supervision must employ observation of client contact such as the use of audio technologies or

video technologies or co-therapy, or live supervision; and (3-29-12)

h. A supervisor may not act as an applicant’s personal Professional Counselor/Therapist. ()

i. The Board considers the recommendation of the supervisor(s) when determining the acceptability of the applicant’s supervised experience. (4-2-03)

j. Supervision obtained in another jurisdiction or from a supervisor in another jurisdiction must conform with the jurisdiction’s requirements provided they are substantially equivalent to Idaho’s requirements. (4-11-19)

239. SUPERVISOR REQUIREMENTS.

Licensees in Idaho must be registered with the board to provide supervision for those individuals pursuing licensure in the state of Idaho as a counselor or marriage and family therapist. ()

01. Requirements for Registration. The board will register an applicant who: ()

a. Possesses two (2) years experience as a licensed counselor or marriage and family therapist, respective to the profession for which the applicant seeks registration as a supervisor, and document at least one thousand five hundred (1,500) hours of direct client contact as a counselor or two thousand (2,000) hours of direct client contact with couples, families, and other systems as a marriage and family therapist. ()

b. Documents fifteen (15) contact hours of education in supervisor training as approved by the Board. (3-20-04)

c. Has not been subject to discipline for five (5) years prior to registration, provided that the Board may in its discretion approve a supervisor with disciplinary action for failing to complete continuing education requirements. ()

02. Supervision. (3-20-04)

a. A registered supervisor must provide supervision in conformance with the guidelines for supervisors set forth in the ACA Code of Ethics for counselor supervisors or the American Association for Marriage and Family Therapists and the guidelines set forth in the AAMFT Code of Ethics for marriage and family therapist supervisors. ()

b. Unless the primary work role of an individual is as a clinical supervisor, a registered supervisor may not supervise more than six (6) supervisees concurrently. ()

c. Supervision must be provided in a face-to-face setting. ()

d. A registered supervisor must ensure that informed consent containing information about the roles of the supervisor and supervisee is obtained from clients of the supervisee. ()

04. Renewal. Subject to the conditions in Paragraph 239.04.c. of this rule, a supervisor’s registration is valid for a term of five (5) years, provided the supervisor’s license remains current, active, in good standing, and is not subject to discipline. To renew a supervisor registration, the licensee must submit to the Board a complete application for registration renewal prior to the expiration of the current registration and meet the following: ()

a. Document six (6) hours of continuing education in advanced supervisor training as approved by the Board and completed within the previous five (5) years. (3-25-16)

b. For supervisors registered for less than five (5) years prior to July 1, 2016 must submit a complete application for registration renewal and meet the renewal requirements by July 1, 2020. ()

240. EXAMINATION FOR LICENSURE.

Applicants must have successfully completed the required written examination. ()

01. Examination. The required written examination is: ()

a. For counselor applicants, the National Counselor Examination prepared by the National Board of Certified Counselors (NBCC). ()

b. For clinical counselor applicants, the National Clinical Mental Health Counselor Examination (NCMHCE) prepared by the National Board of Certified Counselors (NBCC). ()

c. For associate marriage and family therapist and marriage and family therapist applicants, the National Marital and Family Therapy Examination as approved by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or another recognized competency examination in marriage and family therapy that is approved by the Board. ()

02. Time and Place. The examination will be conducted at a time and place specified by the Board or the examining entity. (3-30-06)

03. Successful Passage. Successful passage of the examination is defined as achievement of the passing score set by the preparer of the examination. Reexamination consists of the entire examination. (3-30-06)

241. NON-UNITED STATES EDUCATED APPLICANTS.

Applicants with a graduate degree from a country other than the United States may be required to submit a certification from a credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or approved by the Board. The service must certify that the graduate degree is equivalent to a graduate degree from the United States. All costs for the certification are the responsibility of the applicant. All information submitted to the Board must be submitted with an English translation. ()

242. -- 244. (RESERVED)

245. REGISTERED INTERNS.

The Board may issue a registration to allow an intern to engage in the practice of counseling or marriage and family therapy while completing either the supervised experience or supplemental practicum hours required for licensure. A registered intern may only practice under the direct supervision of a person registered as a supervisor with the Board or otherwise approved to provide supervision under this chapter. (4-11-19)

01. Requirements for Registration. An applicant must meet the following requirements: ()

a. Possess a graduate degree in counseling, marriage and family therapy, or a closely related field from an accredited university or college. (4-2-03)

b. Designate a supervisor who is registered with the board as a supervisor as set forth in these rules or who is otherwise approved to provide marriage and family therapy supervision as set forth in Section 238 of these rules. (4-11-19)

02. Supervision. The designated supervisor is responsible to provide supervision and ensure that a Registered Intern is competent to practice such counseling or marriage and family therapy as may be provided. (4-11-19)

03. Designation of Intern Status. Only a Registered Intern may use the title Registered Counselor Intern or Registered Marriage and Family Therapist Intern. Registered interns must explicitly state that they are interns in their documentation and advertising, such as business cards, informed consent forms, and other disclosures. (4-11-19)

04. Expiration. An individual may not practice as an intern for more than four (4) years from the original date of registration, unless good cause is demonstrated to the board. (4-11-19)

246. -- 249. (RESERVED)

250. FEES.

01. Application, License, and Registration Fee. All fees are non refundable:

LICENSE/PERMIT/REGISTRATION	INITIAL FEE (Not to Exceed)	ANNUAL RENEWAL FEE (Not to Exceed)
Application	\$100	
License	\$100	\$120
Intern Registration	\$25	
Reinstatement Fee	As provided in Section 67-2614, Idaho Code	
Senior License		\$60
Inactive License		\$60
Inactive to Active License Fee	The difference between the current inactive and active license renewal fees	

()

02. Examination or Reexamination Fee. The examination or reexamination fees are the fees set by the provider of the approved examination plus an administration fee of twenty-five dollars (\$25) for the Marriage and Family Therapy examination. ()

251. -- 299. (RESERVED)

300. ENDORSEMENT.

The Board may grant a license to an applicant who: ()

01. Holds a Current License. Holds a current active license, in the profession and at the level for which a license is being sought, issued by the authorized regulatory entity in another state or foreign country. The state or foreign country must have substantially similar requirements for licensing as is provided for new applicants in Idaho. The certification of licensure must be received by the Board from the issuing agency; and ()

02. Has Documented Experience. Has a documented record of at least five (5) years actual practice under licensure in the seven (7) years immediately prior to application in the profession for which a license is being sought, or can demonstrate hardship or extenuating circumstances that prohibited practice during a portion of the seven (7) year period as determined by the Board. ()

301. -- 349. (RESERVED)

350. CODE OF ETHICS.

The Board adopts the American Counseling Association (ACA) Code of Ethics and the American Association for Marriage and Family Therapy (AAMFT) Code of Ethics. All licensees must adhere to the appropriate Code of Ethics pertaining to their licensure. ()

351. -- 359. (RESERVED)

360. INACTIVE STATUS.

01. Request for Inactive Status. Each person requesting an inactive status must submit a written request and pay the established fee. ()

02. Inactive License Status. (3-26-08)

a. All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license. ()

b. When the licensee desires active status, the licensee must show acceptable fulfillment of continuing education requirements for the previous twelve (12) months and submit a fee equivalent to the difference between the inactive and active renewal fee, provided that a licensee whose license has been inactive five (5) years or more must provide an account to the Board for that period of time during which the license was inactive and fulfill requirements that demonstrate competency to resume practice. Those requirements may include, but are not limited to, education, supervised practice, and examination as determined by the Board. The Board may consider practice in another jurisdiction in determining competency. ()

c. Licensees may not practice or supervise counseling or marriage and family therapy in Idaho while on inactive status. ()

361. -- 374. (RESERVED)

375. SENIOR STATUS.

01. Request for Senior Status. Each person having attained the age of sixty-five (65) and requesting a senior status during the renewal of their active license must submit a written request and pay the established fee. (3-26-08)

02. Continuing Education. Continuing education must be completed annually per Section 425 of this rule. (3-26-08)

376. -- 424. (RESERVED)

425. CONTINUING EDUCATION.

All licensees must complete in each twenty-four-month period preceding the renewal of a license, forty (40) contact hours of continuing education. A contact hour is one (1) hour of actual participation in a continuing education activity, exclusive of breaks. ()

01. Contact Hours. The contact hours of continuing education must be obtained in areas of study germane to the practice for which the license is issued as approved by the Board. No less than six (6) contact hours for each renewal period must be in ethics, which must be specific to legal issues, law, or ethics. Therapeutic workshops, retreats and other self-help activities are not considered continuing education training unless specific parts of the experience are applicable to counseling or therapy practice. ()

02. Documentation of Attendance. Each licensee must maintain documentation verifying hours of attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution. This documentation is subject to audit and must be provided upon request by the Board or its agent. ()

03. Approved Contact Hours, Limitations, and Required Documents. (3-29-10)

a. College or University Courses for Credit or Audit. There is no limit to the contact hours that a licensee may obtain in this category during each reporting period. However, all courses are subject to Board approval. For college or university courses, one (1) semester credit equals fifteen (15) contact hours; one (1) quarter credit equals ten (10) contact hours. The licensee must provide the Board with a copy of the licensee's transcript substantiating any hours attended by the licensee. (3-29-10)

b. Seminars, Workshops, Conferences. There is no limit to the contact hours that a licensee may obtain in this category during each reporting period. Verifying documentation is a copy of the certificate, or letter signed by course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee.

()

c. Publications. A maximum of eight (8) contact hours may be counted in this category during each reporting period. Publication activities are limited to articles in journals, a chapter in an edited book, or a published book or professional publication. Verifying documentation is a copy of the cover page or the article or book in which the licensee has been published. For a chapter in an edited book the licensee must submit a copy of the table of contents. ()

d. Presentations. A maximum of eight (8) contact hours may be counted in this category during each reporting period. Class, conference, or workshop presentations may be used for contact hour credit if the topic is germane to the field. A specific presentation given repeatedly can only be counted once. A particular presentation will qualify for contact hour credit one (1) time in a five (5) year period. Only actual presentation time may be counted; preparation time does not qualify for contact hour credit. Verifying documentation is a copy of the conference program or a letter from the sponsor, host organization, or professional colleague. ()

e. Clinical Supervision and Case Consultation. A maximum of ten (10) contact hours of received supervision/consultation may be counted in this category during each reporting period. In order to qualify for contact hour credit, supervision/consultation must be received on a regular basis with a set agenda. No credit will be given for the licensee's supervision of others. Verifying documentation is a letter from the supervisor or consultant listing periods of supervision or consultation. ()

f. Dissertation. A maximum of ten (10) contact hours may be counted in this category during each reporting period. Verifying documentation is a copy of the licensee's transcript and the title of the dissertation. ()

g. Leadership. A maximum of eight (8) contact hours may be counted in this category during each reporting period. Verifying documentation is a letter from a professional colleague listing the position of leadership, periods of leadership, and the name of the organization under which the leadership took place. The following leadership positions qualify for continuing education credits: ()

- i. Executive officer of a state or national counseling or therapy organization; (3-29-12)
- ii. Editor or editorial board service of a professional counseling or therapy journal; (3-29-12)
- iii. Member of a national ethics disciplinary review committee rendering licenses, certification, or professional membership; (3-29-10)
- iv. Active member of a counseling or therapy working committee producing a substantial written product; (3-29-10)
- v. Chair of a major counseling or therapy conference or convention; or (3-29-10)
- vi. Other leadership positions with justifiable professional learning experiences. (3-29-10)

h. Home Study and On-line Education. There is no limit to the contact hours that a licensee may obtain in this category during each reporting period. Home study or on-line courses qualify for contact hours, provided that the course is provided by a Board-approved continuing education provider or a course pre-approved by the Board. Verifying documentation is a copy of the certification that is verified by the authorized signatures from the course instructors, providers, or sponsoring institution and substantiates any hours completed by the licensee. A licensee seeking contact credit for reading a publication must submit results from a test on the information contained within the publication and administered by an independent third-party. ()

i. Board Meetings. Continuing education credit may be granted for a maximum of four (4) hours each renewal period for time spent attending two (2) Board meetings. ()

04. Waiver. The Board may waive continuing education requirements for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The licensee must request such waiver prior to renewal and provide any information requested by the Board to assist in substantiating hardship cases. This

waiver is granted at the sole discretion of the Board. ()

426. – 524. (RESERVED)

525. DOCUMENTATION OF INFORMED CONSENT.

In accordance with Section 54-3410A, Idaho Code, all licensees and registered interns will document the process of obtaining the informed consent of clients at the beginning of treatment and at other times as appropriate. Licensees and interns must adhere to their respective Codes of Ethics and state law in obtaining informed consent and disclosing information to clients. The receipt of the disclosure must be acknowledged in writing by both the client and the licensee or intern, and such disclosure of information concerning their practice must include: (4-4-13)

01. Name, Business Address and Phone Number of Licensee or Intern. If the licensee or intern is practicing under supervision, the statement must include the licensee or intern status as such and the designated qualified supervisor's name, business address and phone number; (4-4-13)

02. License Type and License Number, Credentials, and Certifications; (4-4-13)

03. Education. Education with the name(s) of the institution(s) attended and the specific degree(s) received; ()

04. Theoretical Orientation and Approach. Counseling or marriage and family therapy; (4-4-13)

05. Relationship. Information about the nature of the clinical relationship; fee structure and billing arrangements; cancellation policy; (4-4-13)

06. The Extent and Limits of Confidentiality. (4-4-13)

07. Written Statement. A statement that sexual intimacy is never appropriate with a client and should be reported to the board. (4-4-13)

08. Client's Rights. The client's rights to be a participant in treatment decisions, to seek a second opinion, to file a complaint without retaliation, and to refuse treatment. (4-4-13)

09. Board Information. The name, address, and phone number of the Board with the information that the practice of licensees and interns is regulated by the Board. (4-4-13)

526. -- 999. (RESERVED)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.16.01 – RULES OF THE STATE BOARD OF DENTURITRY

DOCKET NO. 24-1601-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-3309, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter under IDAPA 24.16.01, rules of the State Board of Denturitry:

IDAPA 24.16.01

- 24.16.01, *Rules of the State Board of Denturitry*

The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.16.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Rules of the State Board of Denturitry was published. This pending fee rule will allow the Legislature to review for codification IDAPA 24.16.01, the Rules of the State Board of Denturitry. The Board considered the Licensing Freedom Act of 2017, Executive Order No. 2017-06, Licensing Freedom Act of 2019, Executive Order No. 2019-01; and the Red Tape Reduction Act, Executive Order No. 2019-02 and the continued efforts to clarify and streamline its rules. This pending fee rule removes redundant language, moves fees into an easier to read tabular format, and adds the phrase “not to exceed” before fee amounts, which allows for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4777 - 4784.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-3309, Idaho Code, as follows:

License application and examination fee: not to exceed \$300;
License application and re-examination fee: not to exceed \$300;
Intern application and permit fee: not to exceed \$300;
Initial license fee: not to exceed \$300;
Annual renewal fee: not to exceed \$75;
Inactive license fee: not to exceed \$50.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade at 208-334-3233.

DATED this October 16, 2019.

Kelley Packer
Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-3309, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.16.01, rules of the State Board of Dentistry:

IDAPA 24.16

- 24.16.01, *Rules of the State Board of Dentistry* - All rules **except Subsections/Sections 010.01, 010.03, 100, 450.01.g, 450.01.k, 500, 550, and 600.**

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules govern the qualifications and facility standards for the practice of dentistry. Allowing these rules to expire would deny the Board of its ability to ensure minimum qualifications for practice are met and facility standards are maintained.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Absent the ability to impose the licensure fees outlined in this chapter, the Board would not be able to remain self-sufficient, contrary to its statutory mandate.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-3309, Idaho Code, as follows: license application and examination fee: \$300; license application and re-examination fee: \$300; intern application and permit fee: \$300; initial license fee: \$300; annual renewal fee: \$75; and inactive license fee: \$50.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-1601-1900F

24.16.01 – RULES OF THE STATE BOARD OF DENTURITRY

000. LEGAL AUTHORITY.

In accordance with Section 54-3309, Idaho Code, the State Board of Denturitry has promulgated rules implementing the provisions of Chapter 33, Title 54, Idaho Code. (7-1-93)

001. TITLE AND SCOPE.

These rules are titled IDAPA 24.16.01, “Rules of the State Board of Denturitry.” (7-1-93)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Denturist Services. For purposes of the unconditional ninety (90) day guarantee prescribed in Section 54-3320(c), Idaho Code, denturist services include any and all prosthetic dental appliances and materials and/or services related to the furnishing or supplying of such a denture, including preparatory work, construction, fitting, furnishing, supplying, altering, repairing or reproducing any prosthetic dental appliance or device. (7-1-97)

02. Denture Technician. A person who is limited to making, constructing, altering, reproducing or repairing of a full upper or lower removable prosthetic denture, the repairing of a removable partial upper or lower prosthetic denture but is not allowed to make an impression or come in direct contact with a patient. (3-10-00)

011. -- 149. (RESERVED)

150. EXAMINATIONS.

01. Date of Licensure Examination. The licensure examination will be held no less than two (2) times per year at such times and places as may be determined by the Board. (3-29-17)

02. Content. Examinations include both a written theory examination and a practical demonstration of skills. (4-2-03)

03. Grading. An applicant must obtain a score of seventy-five percent (75%) or better on each part of the examination in order to pass the examination. (4-2-03)

04. Re-Examination. (4-2-03)

a. Applicants who fail either part or all of the examination will be required to make application and pay the required fees prior to being eligible to retake the failed part of the examination. (4-2-03)

b. Applicants failing either part or all of the examination on the first attempt will not be required to complete any additional instruction prior to being eligible to make application and retake the examination. (4-2-03)

c. Applicants failing either part or all of the examination on a second attempt and all subsequent attempts are not eligible to make application and retake the examination within one (1) year of the date of the examination failure. The Board may recommend additional course work or clinical work for any applicant who has failed an examination two (2) or more times. (3-29-17)

151. -- 199. (RESERVED)

200. APPLICATIONS.

01. Application Filing Date. Licensure applications must be received in the Bureau of Occupational Licenses at least seven (7) business days prior to the next scheduled meeting of the Board. Applications received after that date may be held over for the Board’s next meeting. (3-29-17)

02. Application Form for Licensure. Applications for licensure must be made on forms approved by the Board and furnished by the Bureau of Occupational Licenses and must include all other documents necessary to establish the applicant meets the requirements for licensure except examination and is eligible to take the licensure examination. (7-1-93)

03. Application Must Be Complete. All applications must be complete in every respect and accompanied by the appropriate fees before being considered received by the Bureau of Occupational Licenses. (7-1-93)

04. Authorization for Examination. (3-29-17)

a. After the Board evaluates the applicant’s qualifications to take the examination the applicant will be notified in writing of the approval or denial, and, if denied, the reason for the denial. (3-29-17)

b. At the time the Board approves an applicant to take the examination the Board will set the date and location(s) of the next examination if it has not already been set. Approved applicants will be notified of the date and location(s) of the next examination. (3-29-17)

201. -- 249. (RESERVED)

250. FEES.

FEE TYPE	AMOUNT (Not to Exceed)
License Application and Examination	\$300
License Application and Re-examination	\$300
Intern Application and Permit	\$300
Initial License	\$300
Inactive License	\$50
Annual Renewal	\$750

()

251. -- 299. (RESERVED)

300. INTERNSHIP.

01. Requirements and Conditions for Internship. (3-10-00)

a. To be eligible for internship the applicant must have completed: (3-10-00)

i. The educational requirements set forth in Section 54-3310(b), Idaho Code; or (3-10-00)

ii. Have dentistry experience of three (3) years within the five (5) years immediately preceding application. (3-10-00)

b. Where an internship is established based on experience, the internship is valid only while the intern is actively pursuing completion of Idaho licensure requirements. (3-10-00)

c. Application must be made on forms provided by the Bureau of Occupational Licenses and must: (3-10-00)

i. Document the location of practice; (3-10-00)

ii. Include the name and address of the supervising denturist or dentist; (3-10-00)

iii. Include a sworn or affirmed statement by the supervising denturist or dentist; (3-10-00)

- iv. Include a sworn or affirmed statement by the supervisor accepting supervision of the intern; (3-10-00)
 - v. Include a sworn statement by applicant that he is knowledgeable of law and rules and will abide by all requirements of such law and rules; and (3-10-00)
 - vi. Include such other information necessary to establish applicant's qualifications for licensure as a denturist and establish compliance with pre-intern requirements. (3-10-00)
 - d. The supervising denturist or dentist must be present and directly observe any intern interaction with a patient. (3-29-10)
 - e. Two (2) years of internship under the supervision of a licensed denturist must be completed in not less than twenty-four (24) months and may not exceed thirty (30) months except as approved by the Board. (4-2-08)
- 02. Internship Equivalency.** A person is considered to have the equivalent of two (2) years internship under a licensed denturist who has met and verifies one (1) of the following within the five (5) years immediately preceding application: (3-10-00)
- a. Two (2) years internship as a denture lab technician under a licensed dentist; or (3-10-00)
 - b. Two (2) years in the military as a denture lab technician; or (3-10-00)
 - c. Three (3) years experience as a denturist under licensure in another state or Canada. (3-10-00)
- 03. Internship Not to Exceed One Year.** Internship not to exceed one (1) year acquired through a formal training program in an acceptable school will be accepted toward the two (2) year required internship for licensure. (7-1-93)
- 04. Training Requirements.** Each year of required internship consists of two thousand (2,000) clock hours of training and performance of the following minimum procedures for licensure. (7-1-93)
- a. Procedures include all steps required in constructing a finished denture but are not limited to the following: (7-1-93)
 - i. Patient charting -- thirty-six (36) minimum. (7-1-93)
 - ii. Operatory sanitation -- thirty-six (36) minimum. (7-1-93)
 - iii. Oral examination -- thirty-six (36) minimum. (7-1-93)
 - iv. Impressions, preliminary and final (pour models, custom trays) -- thirty-six (36) minimum. (7-1-93)
 - v. Bite registrations -- twelve (12) minimum. (7-1-93)
 - vi. Articulations -- twelve (12) minimum. (7-1-93)
 - vii. Set ups -- twelve (12) minimum. (7-1-93)
 - viii. Try ins -- twelve (12) minimum. (7-1-93)
 - ix. Processing (wax up, flask-boil out, packing, grind-polish) -- thirty-six (36) minimum. (7-1-93)
 - x. Delivery-post adjustment -- thirty-six (36) minimum. (7-1-93)
 - b. Processed relines (one (1) plate = one (1) unit) -- twenty-four (24) units. (7-1-93)

c. Tooth repairs -- forty-eight (48) minimum. (7-1-93)

d. Broken or fractured plates or partials -- forty-eight (48) minimum. (7-1-93)

05. Reporting Requirements. Interns must file reports, attested to by the supervisor, with the Board on forms provided by the Bureau of Occupational Licenses on a monthly basis and recapped at termination or completion of the training. (7-1-93)

06. Denture Clinic Requirements. Denture clinic requirements for approved internship training: (7-1-93)

a. There may not be more than one (1) internee per licensed denturist or dentist who is practicing at the clinic on a full time basis. (7-1-93)

b. There must be a separate work station in the laboratory area for each intern with standard equipment, i.e. lathe, torch and storage space. The intern must provide necessary hand tools to perform the duties of the denture profession. Use of the operatory facilities and other equipment will be shared with the intern. (7-1-93)

07. Internship Supervisor Requirements. (3-29-17)

a. A supervisor must: (3-29-17)

i. Be approved in advance by the Board for each internship. (3-29-17)

ii. Not have been the subject of any disciplinary action by the Board, by the Idaho Board of Dentistry or by any other jurisdiction for five (5) years immediately prior to being approved as the supervisor. (3-29-17)

b. A supervisor that is a denturist must: (3-29-17)

i. Hold an Idaho denturist license that is current and in good standing and is renewed as provided in these rules; and (3-29-17)

ii. Have actively practiced dentistry for at least three (3) of the five (5) years immediately prior to being approved as the supervisor. (3-29-17)

c. A supervisor that is a dentist must: (3-29-17)

i. Hold an Idaho dentist license that is current and in good standing and is renewed as provided in Chapter 9, Title 54, Idaho Code; and (3-29-17)

ii. Have actively practiced general dentistry, or a dental specialty accepted by the Board, for at least three (3) of the five (5) years immediately prior to being approved as a supervisor. (3-29-17)

d. Supervise only one (1) intern. A supervisor will not be approved to supervise more than one (1) intern at a time. (3-29-17)

e. Termination of supervisor approval. Approval of the supervisor immediately terminates if the supervisor is disciplined or ceases to meet supervisor requirements. (3-29-17)

301. -- 314. (RESERVED)

315. INACTIVE LICENSURE STATUS.

01. Request License be Placed on Inactive Status. A dentistry licensee may request the Board that his license be placed upon inactive status. (3-10-00)

02. License Fee for Inactive Status. A licensee is required to submit an annual renewal fee of fifty dollars (\$50) in order to remain on inactive status. (3-10-00)

03. While on Inactive Status. A licensee on inactive status may not provide or perform denturist services as defined in these rules. (3-10-00)

04. Reactivating Inactive License. A licensee on inactive status may reactivate his license to active status by paying the renewal fee for an active license and providing proof they have completed and obtained such continuing education as required by Board rule of not less than twelve (12) hours for each year of inactive licensure. (3-10-00)

05. License Inactive over Five Years. No license may remain on inactive status for more than five (5) years. (3-10-00)

316. -- 349. (RESERVED)

350. CONTINUING EDUCATION.

The Board may accredit education programs for purposes of continuing education where the subject matter of the program is determined to be pertinent to the practice of dentistry. (7-1-93)

01. Subjects. Subjects deemed pertinent to the practice of dentistry are those set forth in Section 54-3311(b), Idaho Code and may also include ethics courses. (7-1-93)

02. Request for Approval. Requests for approval of continuing education programs must be made to the Board, in writing, and provide an outline of the program which the Board is being asked to approve. The request must also address the matters set forth in Subsection 350.05 below. Requests may accompany the annual renewal form or may be made to the Board in advance of the program for which approval is sought as indicated in Subsection 350.03, below. (7-1-93)

03. Requests for Pre-Approval. Requests for pre-approval of continuing education programs must be made to the Board, in writing, and provide an outline of the program which the Board is being asked to approve. Requests for pre-approval must also address the matters set forth in Subsection 350.05 below. (7-1-93)

a. Requests for pre-approval must be received by the Bureau of Occupational Licenses no less than eleven (11) working days prior to the date of the program. (7-1-93)

b. Requests for pre-approval which are not denied within ten (10) working days from receipt by the Bureau will be deemed approved. (7-1-93)

c. Only those continuing education programs sponsored by recognized educational institutions (such as accredited colleges or universities), state or national denturist boards or associations, will be eligible for pre-approval consideration by the Board. All other programs will be considered at the time of renewal. (7-1-93)

04. Credit for Continuing Education Attendance. Continuing education credit will be given only for actual time in attendance by the licensee. No credit will be given for non-instructive time. Correspondence or Home Study courses are not eligible for continuing education credits. (3-10-00)

05. Requests for Approval of Programs. All requests for approval or pre-approval of educational programs must be accompanied by a statement that includes the name of the instructor or instructors, the date and time and location of the course, the specific agenda for the course, and a statement by the licensee of how the course is believed to be pertinent to the practice of dentistry as specified in Section 54-3311(b), Idaho Code. (7-1-93)

351. -- 399. (RESERVED)

400. INSPECTIONS.

01. Who May Examine or Inspect. The Board or its agents may examine and inspect the place of

business of any dentist at anytime during business hours or upon at least seventy-two (72) hours notice made by U.S. mail to the address of record of the dentist when the Board or its agents are unable to establish the regular business hours. (7-1-93)

02. Reason for Inspection. Inspections are made to insure compliance with the Standards of Conduct and practice set forth in Section 450. Deficiencies are a violation of Section 450 and actionable against the dentist under Section 54-3314(c), Idaho Code. (7-1-93)

401. -- 449. (RESERVED)

450. STANDARDS OF CONDUCT AND PRACTICE.

01. Sanitation. (7-1-93)

a. There must be three (3) separate rooms; a reception room, and operatory room and a laboratory. (7-1-93)

b. The operatory room must have hot and cold running water, basin with approved disposal system; disinfectant soap; single-use towels, a cuspidor with running water and a closed waste receptacle. (8-24-94)

c. The laboratory room must have hot and cold running water, and basin with approved disposal system. (8-24-94)

d. There must be a method of sterilization and disinfection evident and in use to insure the protection of the public. (8-24-94)

e. All floors, walls, ceiling and benches must be kept in a sanitary condition at all times. (8-24-94)

f. Every patient must have a separate and clean bib and a disposable cup. (7-1-93)

g. The hands of every dentist must be washed in the presence of every patient with germicidal or antiseptic soap and water. Every dentist must wear disposable gloves. (8-24-94)

h. Adequate and conveniently located toilet facilities with hot and cold running water, basin with approved disposal system, soap and single use towels will be provided within the building. (8-24-94)

i. All dentist offices are open to inspection anytime during the business hours to inspection by the Board or its agents. (7-1-93)

02. Office Standards. (7-1-93)

a. Dentists must take care to use proper sterilization and sanitation techniques in all phases of their work. (7-1-93)

b. A complete record of each patient must be kept. (7-1-93)

c. All teeth and materials used must meet ADA standards. (7-1-93)

03. Advertisements. (4-2-08)

a. No dentist may disseminate or cause the dissemination of any advertisement or advertising that is any way fraudulent, false, deceptive or misleading. (4-2-08)

04. General Conditions. (7-1-93)

a. Conditions deemed by investigators to be a menace to the public health will be brought to the attention of the Board for consideration and immediate action. (7-1-93)

b. These Standards of Conduct and Practice must be conspicuously posted in every licensed dentist's place of business. (7-1-93)

05. Patient Record. A dentist must record, update and maintain documentation for each patient relevant to health history, clinical examinations and treatment, and financial data. Documentation must be written or computerized. Records must be maintained in compliance with any applicable state and federal laws, rules and regulations, including the health insurance portability and accountability act (HIPAA), P.L. 104-191 (1996), and the health information technology for economic and clinical health act (HITECH), P.L. 111-115 (2009). Such records must be accessible to other providers and to the patient in accordance with applicable laws, rules and regulations. Records must include, but are not limited to, the following: (3-29-17)

- a.** Patient data, including name, address, date and description of examination; (3-29-17)
- b.** Evidence of informed consent; (3-29-17)
- c.** Date and description of treatment, services rendered, and any complications; (3-29-17)
- d.** Health history as applicable; and (3-29-17)
- e.** Any other information deemed appropriate to patient care. (3-29-17)

06. Record Retention. Patient documentation, written or archived electronically by computer, must be retained for a minimum of seven (7) years and available upon request by the Board. (3-29-17)

451. -- 474. (RESERVED)

475. REGISTRATION STATEMENT.

To enable the Board to examine or inspect the place of business of any licensed dentist as referred to in Section 54-3314(5)(b), Idaho Code, the filing of an annual statement is required of all licensed denturists. (7-1-97)

01. Statement. must list the name and principal place of business of the dentist who is responsible for the practice of dentistry at that location. (7-1-97)

02. Other Business Locations. Any other business locations maintained by the principal dentist and all denturists employed at the business. (7-1-97)

03. Date of Filing. must be filed with the Board annually or within ten (10) days of any change in either location, identity of principal dentist or dentist employees. (3-29-17)

04. Failure to Timely File. Failure to timely file or update this statement will constitute grounds for discipline pursuant to Section 54-3314(a), Idaho Code. (7-1-97)

476. GUARANTEE OF DENTURIST SERVICES.

As prescribed in Section 54-3320(c), Idaho Code, unconditional guarantee of dentist services will require that the licensee refund, in full, any monies received in connection with the providing of dentist services, if demanded by the purchaser within ninety (90) days of delivery of the dentures, or the providing of services for which a fee is charged. (7-1-97)

01. Ninety Day Period. The ninety (90) day period will be tolled for any period in which the dentist has taken possession or control of the dentures after original delivery. (7-1-97)

02. Written Contract. By written contract signed by the purchaser, the dentist may specify the amount of the purchase price of the dentures, if any, that is nonrefundable should the consumer choose to cancel the purchase within the guarantee period. (7-1-97)

03. Nonrefundable Amount. Under no circumstances will the nonrefundable amount exceed twenty-

five percent (25%) of the total purchase price of the dentures. (7-1-97)

04. Limitation. There is no limitation on the consumer's right to cancel. (7-1-97)

05. Cancellation of Agreement. If the licensee elects to cancel the agreement or refuses to provide adjustments or other appropriate services to the consumer, the consumer will be entitled to a complete refund. (7-1-97)

477. -- 479. (RESERVED)

480. DISCIPLINE.

01. Civil Fine. The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensed dentist for each violation of Section 54-3314(a), Idaho Code. (3-18-99)

02. Costs and Fees. The Board may order a licensed dentist to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee for violation of Section 54-3314(a), Idaho Code. (3-18-99)

481. -- 999. (RESERVED)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.17.01 – RULES OF THE STATE BOARD OF ACUPUNCTURE

DOCKET NO. 24-1701-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-4705, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 24.17.01, rules of the State Board of Acupuncture:

IDAPA 24.17.01

- 24.17.01, *Rules of the State Board of Acupuncture*: all proposed rules except 010.03, 010.04, 010.06, 200.02, 201.01, 301.01, 302.01, 402, 405.01, 405.02, 405.03, 405.04, and 405.05.

The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.17.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Rules of the State Board of Acupuncture was published. This pending rule will allow the Legislature to review for codification IDAPA 24.17.01, the Rules of the State Board of Acupuncture. On June 28, 2019, the Board of Acupuncture held a public meeting which was noticed pursuant to the Idaho Open Meetings Law where the public and other interested parties, including industry organizations, were given the opportunity to comment as this chapter was reviewed. Changes made to the pending rule which differ from the proposed text were made to accomplish the Recommendations for Improvement, Modification, or Elimination of Requirements from the Licensing Freedom Act of 2017, Executive Order No. 2017-06; the directives set forth in the Licensing Freedom Act of 2019, Executive Order No. 2019-01; the directives set forth in the Red Tape Reduction Act, Executive Order No. 2019-02; and the Board's continued efforts to clarify and streamline its rules. This pending rule removes outdated language and processes, removes redundant language, moves fees into an easier to read tabular format, and adds the phrase "not to exceed" before fee amounts, which allows for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity.

This pending rule also clarifies the requirements for a licensee to transition to active status from inactive status, establishes requirements to return to active status after five or more years in inactive status, as well as factors the Board may consider in determining whether a licensee is competent to return to active status. These changes will make it easier for licensees to understand the requirements to return to active status and will protect the public through ensuring competency to practice. This pending rule will reduce the administrative burden on licensees through removing the requirement to disclose fees for service and the required method of payment for such services. Additionally, this pending rule removes unnecessary examples of violations of the advertising requirements.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4787 - 4794.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-4710, Idaho Code, as follows:

Application fee: not to exceed \$50;
Original license fee: not to exceed \$150;
Original fee for certification not to exceed \$150;
Original fee for acupuncture trainee permit: not to exceed \$150;
Annual renewal fee for licensure: not to exceed \$75;
Annual renewal fee for certification: not to exceed \$75;
Annual renewal fee for technician certification or acupuncture trainee permit: not to exceed \$50;
Fee for inactive license or certification: not to exceed \$50.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade at (208) 334-3233.

DATED this October 16, 2019.

Kelley Packer
Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-4705, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.17.01, rules of the State Board of Acupuncture:

IDAPA 24.17

- 24.17.01, *Rules of the State Board of Acupuncture* - All rules *except Subsections/Sections 010.01, 010.02, 010.03, 010.10, 010.12, 100, and 551.*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules govern the qualifications for the practice of acupuncture and allowing the rules to expire would impede the Board's ability to ensure that acupuncture services are provided by competent individuals.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and the immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Absent the ability to impose the licensure fees outlined in this chapter, the State Board of Acupuncture would not be able to remain self-sufficient, contrary to its statutory mandate.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-4710, Idaho Code, as follows: application fee: \$50; original license fee: \$150; original fee for certification \$150; original fee for acupuncture trainee permit: \$150; annual renewal fee for licensure: \$75; annual renewal fee for certification: \$75; annual renewal fee for technician certification or acupuncture trainee permit: \$50; fee for inactive license or certification: \$50.

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 anticipated to have any fiscal impact on the state General Fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-1701-1900F

24.17.01 – RULES OF THE STATE BOARD OF ACUPUNCTURE

000. LEGAL AUTHORITY.

These rules are hereby prescribed and established pursuant to the authority vested in the State Board of Acupuncture by the provisions of Section 54-4705, Idaho Code. (3-10-00)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 24.17.01, “Rules of the State Board of Acupuncture.” (3-10-00)

02. Scope. These rules review and establish the minimum requirements for licensure/certification of acupuncturists. (3-10-00)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Accredited College or University. An accredited college or university is a college or university accredited by an accrediting organization approved by the U.S. Department of Education. (4-2-08)

02. Approved Acupuncture Program. A formal full-time acupuncture educational program that has met the standards of the Accreditation Commission for Acupuncture and Oriental Medicine or an equivalent educational body. An acupuncture program may be established as having satisfied this requirement by obtaining: (3-30-01)

a. Accreditation; or (3-30-01)

b. Candidacy for accreditation; or (3-30-01)

c. An equivalent evaluation performed by a private, state government, or foreign government agency recognized for that purpose by the NCCAOM (National Certification Commission for Acupuncture and Oriental Medicine) Eligibility Committee. (3-30-01)

03. License. Any license or certification issued to a qualified applicant pursuant to the laws and rules of the Board, permitting said applicant to practice acupuncture in the state of Idaho. ()

04. Practitioner. A person to whom a license, certification, or acupuncture trainee has been issued pursuant to Title 54, Chapter 47, Idaho Code. ()

011. -- 199. (RESERVED)

200. QUALIFICATIONS FOR LICENSURE OR CERTIFICATION.

01. Requirements for Licensure. Applicants for licensure must submit a complete application, required fee, and official certified documentation of either: (3-30-01)

a. Certification from NCCAOM; or (5-3-03)

b. Graduation from an approved formal full-time acupuncture program of at least one thousand seven hundred twenty-five (1,725) hours of entry-level acupuncture education which includes a minimum of one thousand (1000) hours of didactic course work and five hundred (500) clinical hours practice; and (3-30-01)

c. Successful completion of an acupuncture internship, or other equivalent experience as approved by the Board; and (3-30-01)

d. Receipt of a passing grade on an NCCAOM Acupuncture certification examination; or (3-30-01)

e. Other demonstration of proficiency as uniformly required by the Board for other similarly qualified applicants for licensure; and (3-30-01)

f. Successful completion of a Blood Borne Pathogen course and comprehensive examination that incorporates clean needle techniques and OSHA procedures and requirements. (3-30-01)

201. ACUPUNCTURE TRAINEE PERMIT.

The Board may issue an acupuncture trainee permit to allow a person to engage in the practice of acupuncture while actively pursuing licensure or certification. The permit will expire one (1) year from date of issue. The permit may be extended in accordance with Section 54-4708, Idaho Code. The holder of an acupuncture trainee permit may only practice under the supervision of a person licensed or certified under this chapter who meets the requirements in Section 404 of these rules. An applicant for a permit must present evidence satisfactory to the Board of meeting the following requirements: (4-11-19)

- 01. Education.** An applicant must submit documentation of either: (4-11-19)
 - a.** Current enrollment in an Approved Acupuncture Program and actively pursuing completion of the program; or (4-11-19)
 - b.** Satisfaction of the requirement for certification as set forth in Section 54-4707, Idaho Code. ()
- 02. Supervision.** Submission of a supervision plan specifying at a minimum the name of the supervisor and the setting and location where the permit holder will practice. A supervision plan may be approved by a designated Board member. (4-11-19)

202. -- 225. (RESERVED)

226. REQUEST FOR APPROVAL OF QUALIFICATION.

01. Course Review. A person or entity may request approval of a course of study in acupuncture that will be offered to qualify applicants for a credential to practice acupuncture. The request must include a complete description of the required hours, scope and extent of academic and other training and clinical experience offered through the course along with appropriate supporting documentation and course materials. The request must also designate whether approval is sought for compliance with standards for certification. ()

02. Individual Qualification. An applicant may request approval of his individual qualification for licensure or certification in acupuncture. The request must include a complete description of the number of hours, scope and extent of academic and other training and clinical experience the individual has received along with available supporting documentation. The request must also designate whether qualification is sought for licensure or certification. A demonstration of proficiency or examination may be required as a part of the determination of the individual's qualification. (3-21-12)

227. -- 299. (RESERVED)

300. FEES.

All fees are non-refundable:

License/Certification/Permit/Certification	Initial Fee (Not to Exceed)	Annual Renewal Fee (Not to Exceed)
Application	\$50	n/a
License	\$150	\$75
Certification	\$150	\$75
Acupuncture Trainee	\$150	\$50
Inactive License or Certification	n/a	\$50
Reinstatement	\$250	n/a

()

301. REINSTATEMENT OF LICENSE.

The applicant must submit proof of having met the continuing education required of licensees by Section 305 through 307 of these rules as follows: ()

01. Expired for One Year or Less. For licenses or certificates expired for one (1) year or less, one (1) year of continuing education; ()

02. Expired More than One Year. For licenses or certificates expired for more than one (1) year, two (2) years of continuing education. ()

302. INACTIVE STATUS.

A currently licensed or certified practitioner may request in writing to have their license placed on inactive status and pay the inactive status fee. Such request must be made prior to the expiration date of the license. ()

01. Waiving Continuing Education Requirements – Inactive Status. All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license. ()

02. Return to Active Status. ()

a. A licensee desiring to return to active status must complete the equivalent of one (1) year of continuing education for every year the license was inactive and submit a fee equivalent to the difference between the inactive fee and renewal fee. ()

b. For licenses inactive five (5) years or greater, the licensee shall complete forty-five (45) hours of continuing education and either provide proof that the licensee has actively engaged in the practice of acupuncture in another state or territory of the United States for at least three (3) of the immediately preceding five (5) years, or provide proof that the licensee is competent to practice acupuncture in Idaho. ()

c. The Board may consider the following factors when determining proof of competency: ()

i. Practice of acupuncture in another jurisdiction; ()

ii. Number of years of practice prior to transfer from active status; ()

iii. Completion of continuing education courses; ()

iv. Employment in a field similar to acupuncture; and ()

v. Any other factors the Board deems appropriate. ()

303. -- 304. (RESERVED)

305. CONTINUING EDUCATION REQUIREMENTS.

In order to further protect the public health and to facilitate the administration of the Acupuncture Act, the Board has adopted the following requirements: (4-4-13)

01. Requirement. All practitioners are required to complete a minimum of fifteen (15) hours of continuing education within the preceding twelve (12) months. A minimum of ten (10) hours of continuing education must be from Category I topics, and a maximum of five (5) hours of continuing education may be from Category II topics, as set forth in Sections 306 and 307 of these rules. ()

02. Verification of Attendance. Each licensee must maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any hours attended by the applicant. This verification must be maintained by the licensee for no less than four (4) years and provided to the Board upon the request of the Board or its agent. ()

03. Distance Learning and Independent Study. The Board may approve a course of study for

continuing education credit that does not include the actual physical attendance of the applicant in a face-to-face setting with the course instructor. Distance Learning or Independent Study courses are eligible for continuing education credits if approved by NCCAOM or upon approval of the Board. (4-6-05)

04. Special Exemption. The Board has authority to make exceptions for reasons of individual hardship. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. ()

05. Carryover. A continuing education course taken in a renewal year, but not claimed for continuing education credit in that year, may only be claimed for credit in the following renewal year. (4-4-13)

06. Credit for Teaching. Licensees may earn continuing education credit by teaching Board-approved courses. A licensee will earn one (1) credit hour for every two (2) hours of teaching. Credit for teaching will not exceed five (5) hours of the total continuing education hours required for a renewal period and will be credited to the category of the topic taught. (3-25-16)

306. APPROVAL OF CONTINUING EDUCATION COURSES.

Approved continuing education courses are those courses, programs, and activities that are approved or provided by the following entities or organizations, or otherwise approved by the Board: ()

01. NCCAOM; (4-4-13)

02. Accredited Schools. Acupuncture and oriental medicine; and (4-4-13)

03. Other Courses May Be Approved by the Board. Other courses may be approved based upon documentation submitted by the licensee or course provider. All requests for approval or pre-approval of educational programs must be made to the Board in writing, and must be accompanied by a statement that includes the name of the instructor or instructors, the date and time and location of the course, the specific agenda for the course, the number of continuing education credit hours requested, and a statement of how the course is believed to be pertinent to the practice of acupuncture. (4-4-13)

307. CONTENT OF CONTINUING EDUCATION COURSES.

The content of a continuing education course must be germane to the practice of acupuncture as defined in Section 54-4702, Idaho Code, and: ()

01. Category I. Category I courses relate to the following topics: (4-4-13)

a. Acupuncture and the practice of acupuncture as defined in Section 54-4702, Idaho Code including topics that directly concern the history and theory of acupuncture, oriental medicine diagnosis and treatment techniques, and techniques of adjunctive oriental medicine therapies; (4-4-13)

b. The role of acupuncture in individual and public health, such as emergencies and disasters; or (4-4-13)

c. Research and evidence-based medicine as related to acupuncture and Asian medicine; (4-4-13)

02. Category II. Category II courses relate to the following topics: (4-4-13)

a. Western biomedicine and biological sciences; (4-4-13)

b. Scientific or clinical content with a direct bearing on the quality of patient care, community or public health, or preventive medicine; (4-4-13)

c. Laws and ethics; (4-4-13)

d. Enhancement of effective communication with other medical practitioners; (4-4-13)

e. Behavioral sciences, patient counseling, and patient management and motivation when such courses are specifically oriented to the improvement of patient health; (4-4-13)

f. Practice management unrelated to clinical matters and direct patient care, including, but not limited to, administrative record keeping, insurance billing and coding, and general business organization and management; or (4-4-13)

g. Patient education including, but not limited to, patient education in East Asian therapeutic exercise techniques and Asian nutritional therapies. (4-4-13)

308. -- 400. (RESERVED)

401. RECORDS.

A practitioner must keep accurate records of each patient the practitioner treats. The records must at a minimum include the name of the patient and the indication and nature of treatment given. Records must be kept on file for a minimum of five (5) years. A patient's records will be made available to the patient within thirty (30) days of a request. ()

402. (RESERVED)

403. EMPLOYMENT OF UNLICENSED, NON-EXEMPT INDIVIDUALS.

Individuals who do not have a license and are not exempt from licensure may not perform any insertion of acupuncture needles or use similar devices and therapies, including application of moxibustion. They may only support the practitioner's professional practice by performing office and ministerial acts related to acupuncture. The practitioner is responsible for the services provided by such employees. (4-4-13)

404. SUPERVISION OF TRAINEES.

A licensed or certified acupuncturist providing supervision to trainees shall be responsible for the services provided by such individuals. Failure to adequately supervise such an individual may subject the supervisor to discipline. (4-4-13)

01. Qualifications of Supervisors. Prior to providing supervision to a trainee, a supervisor must: (4-11-19)

a. Have held a current acupuncture license or certification without restriction for a minimum of five (5) years. (4-11-19)

b. Have not been the subject of any disciplinary action within the preceding five (5) years, provided that the Board may in its discretion approve a supervisor with disciplinary action for failing to complete continuing education requirements. (4-11-19)

02. Supervision. For the first one hundred (100) hours of practice, the supervisor must provide supervision in person when the trainee is providing treatment. After the first one hundred (100) hours of practice, the supervisor may provide supervision by making themselves accessible to the trainee by telephone, or video conferencing, provided that the trainee has successfully completed the requirement in Paragraph 404.02.a. of this rule, and provided that the supervisor meets with the trainee in person on at least a monthly basis during which time the supervisor must review case studies and require the trainee to demonstrate acupuncture point location and needle placement technique. (4-11-19)

a. Before providing treatment without in-person supervision, the trainee must successfully complete a Blood Borne Pathogen course and comprehensive examination that incorporates clean needle techniques and OSHA procedures and requirements. (4-11-19)

b. The supervisor must provide the trainee with adequate training, which must include at a minimum charting, diagnosis, and treatment plans, and opportunities for the trainee to complete at least twenty-five (25) case studies. (4-11-19)

c. The supervisor and trainee must keep adequate records of supervision, which shall include at a minimum, summary of case studies in progress or completed by the trainee under supervision, treatment plan for each patient, and the dates of supervision. (4-11-19)

03. Continuing Education. A supervisor may annually count up to ten (10) hours of supervision of a trainee toward the Category I continuing education requirements. Supervision hours not claimed in the current renewal year may be claimed in the next renewal year. A maximum of ten (10) hours may be carried forward from the immediately preceding year, and may not be carried forward more than one renewal year. (4-11-19)

04. Completion of Supervision. At the conclusion of supervision of a trainee, the supervisor must verify the hours of supervision, the type of supervision provided to the trainee, and the documentation of at least twenty-five (25) case studies by the trainee. ()

05. Termination of Supervision or Change in Supervisor. A supervisor may terminate supervision at any time by submitting written notice of termination to the Board. (4-11-19)

405. ADVERTISING.

A practitioner shall not disseminate or cause the dissemination of any advertisement or advertising including offers, statements, or other representations, which is in any way fraudulent, false, deceptive, or misleading. ()

406. – 524. (RESERVED)

525. DISPLAY OF LICENSE.

The license shall be conspicuously displayed in the office of the Practitioner. (3-10-00)

526. -- 574. (RESERVED)

575. DISCIPLINE.

01. Civil Fine. The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensee for each violation of Section 54-4711, Idaho Code. (4-6-05)

02. Costs and Fees. The Board may order a licensee to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee for violation of Section 54-4711, Idaho Code. (4-6-05)

576. -- 999. (RESERVED)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.19.01 – RULES OF THE BOARD OF EXAMINERS OF RESIDENTIAL CARE FACILITY ADMINISTRATORS

DOCKET NO. 24-1901-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-4205, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 24.19.01, rules of the Board of Examiners of Residential Care Facility Administrators:

IDAPA 24.19.01

- 24.19.01, *Rules of the Board of Examiners of Residential Care Facility Administrators*

The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.19.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Rules of the Board of Examiners of Residential Care Facility Administrators was published. This pending fee rule will allow the Legislature to review for codification IDAPA 24.19.01, Rules of the Board of Examiners of Residential Care Facility Administrators. The Board considered the Licensing Freedom Act of 2017, Executive Order No. 2017-06, Licensing Freedom Act of 2019, Executive Order No. 2019-01; and the Red Tape Reduction Act, Executive Order No. 2019-02 and the continued efforts to clarify and streamline its rules. This pending fee rule removes redundant language, moves fees into an easier to read tabular format, and adds the phrase “not to exceed” before fee amounts, which allows for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 4813 - 4816](#).

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Sections 54-4205, 54-4206, and 54-4210, Idaho Code, as follows: license application fee: not to exceed \$150; annual renewal fee: not to exceed \$150; provisional permit fee: not to exceed \$150; and reissuance of lost license fee: not to exceed \$10.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade at 208-334-3233.

DATED this October 16, 2019.

Kelley Packer
Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-4205, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.19.01, rules of the Board of Examiners of Residential Care Facility Administrators:

IDAPA 24.19

- 24.19.01, *Rules of the Board of Examiners of Residential Care Facility Administrators* - All rules **except Sections 010, 500, and 700.**

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules govern the qualifications and code of ethics for individuals who run residential care facilities, which are home to residents with varying assistive needs. Allowing these rules to expire would harm the safety and welfare of the residents of residential care facilities, current licensees, and prospective licensees.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and the immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Absent the ability to impose the licensure fees outlined in this chapter, the Board of Examiners of Residential Care Facility Administrators would not be able to remain self-sufficient, contrary to its statutory mandate.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Sections 54-4205, 54-4206, and 54-4210, Idaho Code, as follows: license application fee: \$150; annual renewal fee: \$150; provisional permit fee: \$150; and reissuance of lost license fee: \$10.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state General Fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-1901-1900F

**24.19.01 – RULES OF THE BOARD OF EXAMINERS OF RESIDENTIAL
CARE FACILITY ADMINISTRATORS**

000. LEGAL AUTHORITY.

These rules are hereby prescribed and established pursuant to the authority vested in the Board of Examiners of Residential Care Facility Administrators by the provisions of Section 54-4205, Idaho Code. (7-1-93)

001. TITLE AND SCOPE.

These rules are titled IDAPA 24.19.01, “Rules of the Board of Examiners of Residential Care Facility Administrators.” (7-1-93)

002. – 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

The document titled “ACHCA Code of Ethics,” published by the American College of Health Care Administrators (ACHCA) as referenced in Section 650, is herein incorporated by reference and is available from the Board’s office and on the Board web site. (3-20-04)

005. -- 099. (RESERVED)

100. APPLICATIONS.

Applications will be on forms approved by the Board. No application will be considered for any action unless accompanied by the appropriate fees and until the required supporting documentation is received by the Bureau. If an applicant fails to respond to a Board request or an application has lacked activity for twelve (12) consecutive months, the application on file with the Board will be deemed denied and will be terminated upon thirty (30) days written notice, unless good cause is established to the Board. (3-29-10)

101. -- 149. (RESERVED)

150. QUALIFICATIONS FOR ADMINISTRATOR LICENSE.

Each applicant for an administrator’s license must submit proof, along with their application, that said individual is at least twenty-one (21) years of age and meets all the following qualifications for the issuance of a license: (3-29-12)

01. Good Moral Character. The applicant must submit a criminal background check by an entity approved by the Board establishing that the applicant has not been convicted, pled guilty or nolo contendere or received a withheld judgment for a felony or any crime involving dishonesty or the health or safety of a person. (3-30-06)

02. Education and Experience. The applicant must document one (1) of the combinations of education and experience in accordance with Section 54-4206, Idaho Code, and Subsection 400 of these rules. (3-29-12)

03. Coursework. The applicant must document completion of a specialized course or program of study as set forth in Subsection 400 of these rules. (3-29-12)

04. Examination. The applicant must submit proof of successful passage of a relevant examination as approved by the Board and defined in Subsection 300 of these rules. (3-29-12)

151. -- 159. (RESERVED)

160. NURSING HOME ADMINISTRATOR QUALIFICATIONS FOR LICENSE.

Any applicant who holds a valid Idaho nursing home administrator license must meet the requirements provided in Section 54-4211(2), Idaho Code, and must take and pass the Board-approved residential care administrator examination. This requirement may be waived if the applicant submits evidence satisfactory to the Board that he has at least one (1) year of leadership or management experience working in a residential care facility or nursing home facility within the five (5) years preceding the application. (4-11-19)

161. -- 199. (RESERVED)

200. BOARD MEETINGS -- DATES -- PLACES.

01. Board Meeting Dates. The Board meets at least semi-annually at such time and place as

determined by the Board. (3-15-02)

02. Dates and Places May be Changed. Dates and places of board meetings may be changed by the action of the majority of the Board and advance public notice given. (7-1-93)

201. -- 299. (RESERVED)

300. EXAMINATIONS.

01. Examination. The Board approves the following examinations for licensure: (5-8-09)

a. The Residential Care Facility Administrators examination developed and administered by the National Association of Boards of Examiners of Long Term Care Administrators (NAB) and an open book examination of law and rules governing residential care administrators in Idaho. The passing score for the NAB examination is determined by NAB. An applicant for examination is required to register with NAB and pay any required examination fees directly to NAB. The passing score for the open book examination is seventy-five percent (75%). (5-8-09)

b. Other examinations as approved by the Board. (5-8-09)

301. -- 399. (RESERVED)

400. EDUCATIONAL AND TRAINING REQUIREMENTS.

01. Approved Course. (5-3-03)

a. The Certification Program for Residential Care Facility Administrators course, administered by the Idaho Health Care Association (IHCA)/Idaho Center for Assisted Living (ICAL), are approved courses of study to qualify for licensure. (5-8-09)

b. Any Certification Program for Residential Care Facility Administrators provided by a state or national Residential Care Facility Administrator organization or a nationally or regionally accredited college or university must be an approved course of study to qualify for licensure. (5-3-03)

02. Approval of Other Courses. Applicants may, in lieu of completion of the Certification Program for Residential Care Facility Administrators, submit official documentation of successful completion of relevant courses. These courses must be approved by the Board before equivalency will be given. (3-30-06)

401. CONTINUING EDUCATION.

01. Minimum Hours Required. Applicants for annual renewal or reinstatement are required to complete a minimum of twelve (12) hours of continuing education courses within the preceding twelve-month (12) period. Basic First Aid, Cardio-Pulmonary Resuscitation, medication assistance, or fire safety courses will not be considered for continuing education credit. (3-24-17)

02. Course Approval. Courses of study relevant to residential care facility administration and sponsored or provided by the following entities or organizations are approved for continuing education credits: (3-30-06)

a. Accredited colleges or universities. (3-30-06)

b. Federal, state or local government entities. (3-30-06)

c. National or state associations. (3-30-06)

d. Otherwise approved by the Board based upon documentation submitted by the licensee or course provider reviewing the nature and subject of the course and its relevancy to residential care administration, name of

instructor(s) and their qualifications, date, time and location of the course and procedures for verification of attendance. (3-30-06)

03. Credit. Continuing education credit will only be given for actual time in attendance or for the time spent participating in the educational activity. One (1) hour of continuing education is equal to sixty (60) minutes. Courses taken by correspondence or by computer on-line may be approved for continuing education if the courses require an exam or other proof of successful completion. Each licensee must maintain proof of attendance or successful completion documentation of all continuing education courses for a period of three (3) years. (3-30-06)

04. Special Exemption. The Board has authority to make exceptions for reasons of individual hardship, including health, when certified by a medical doctor, or other good cause. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. (3-29-10)

402. -- 449. (RESERVED)

450. SCOPE OF PRACTICE.

A residential care facility administrator must possess the education, training, and experience necessary to insure that appropriate services and care are provided for each facility resident within any facility under the licensee's administration. Information contained within the application together with supporting documentation maintained by the licensee is prima facie evidence of the licensee's education and experience. It is the responsibility of the individual licensee to maintain adequate documentation of education and experience appropriate to the planning, organizing, directing and control of the operation of a residential care facility. (3-19-07)

451. -- 599. (RESERVED)

600. FEES.

FEE TYPE	AMOUNT (Not to Exceed)
Application	\$150
Annual Renewal	\$150
Provisional Permit	\$150
Reissuance of Lost License	\$10
Reinstatement	As provided in Section 67-2614, Idaho Code

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601. -- 649. (RESERVED)

650. DISCIPLINE.

01. Civil Fine. The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensed residential care facility administrator for each violation of Section 54-4213(1), Idaho Code. (3-18-99)

02. Costs and Fees. The Board may order a licensed residential care facility administrator to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee for violation of Section 54-4213(1), Idaho Code. (3-18-99)

03. Code of Ethics. The Board has adopted (ACHCA) Code of Ethics. Violations of the code of ethics is considered grounds for disciplinary action. (3-20-04)

651. -- 999. (RESERVED)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.23.01 – RULES OF THE SPEECH, HEARING AND COMMUNICATION SERVICES LICENSURE BOARD

DOCKET NO. 24-2301-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-2910, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 24.23.01, rules of the Speech, Hearing and Communication Services Licensure Board:

IDAPA 24.23.01

- 24.23.01, *Rules of the Speech, Hearing and Communication Services Licensure Board*: all proposed rules except 010.02, 010.04, 010.05, 010.06, 010.07, 100, 150, 200, 211.02.b., 211.02.c.ii., 211.02.c.xi., 211.03, 260.01, 300, 301, 310.02, 310.03, 310.04, 350, 400.03, 400.04, 450, 460, 470, 480, 500.05.a., 500.05.b., and 700.

The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.23.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Rules of the Speech, Hearing and Communication Services Licensure Board was published. This pending fee rule will allow the Legislature to review for codification IDAPA 24.23.01, the Rules of the Speech, Hearing and Communication Services Licensure Board. On June 27, 2019, the Idaho Speech, Hearing and Communication Services Licensure Board held a public meeting which was noticed pursuant to the Idaho Open Meetings Law where the public and other interested parties, including industry organizations, were given the opportunity to comment as this chapter was reviewed. Changes made to the pending fee rule which differ from the proposed text were made to accomplish the Recommendations for Improvement, Modification, or Elimination of Requirements from the Licensing Freedom Act of 2017, Executive Order No. 2017-06; the directives set forth in the Licensing Freedom Act of 2019, Executive Order No. 2019-01; the directives set forth in the Red Tape Reduction Act, Executive Order No. 2019-02; and the continued efforts to clarify and streamline its rules. This pending fee rule removes outdated and unnecessary language and processes, reorders certain sections to improve overall organization, removes redundant language, moves fees into an easier to read tabular format, and adds the phrase “not to exceed” before fee amounts, which will allow for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity.

Further, this pending fee rule standardizes the language in Section 205 for activating inactive licenses to align with the reinstatement of expired licenses to provide consistency in minimum competency requirements for a person who has not been practicing for five years or more. This pending fee rule adds a definition of “direct client contact” as recommended in the Board’s Licensing Freedom Act Report and clarifies the experience requirement for Audiology applicants. This pending fee rule ensures applicants demonstrate current minimum competency by requiring examination scores for an audiology application to be five years old or less and for a sign language interpreter to be ten years old or less. This pending fee rule also eliminates task-specific lists of what audiology support personnel may do to reduce any confusion between the previous permitted activity list and prohibited activity list and where relying on the supervising audiologist protects the public without creating overly intrusive burdens on licensees. This pending fee rule also clarifies that the removal of cerumen cannot be done by audiology support personnel, which is a question that frequently comes to the Board. This pending fee rule states the supervision frequency of postgraduate

experience for speech language pathologists in Section 220.03.c in terms of a total rather than a per quarter basis to reduce the burden on part-time workers and increase flexibility for supervisors and supervisees. This pending fee rule also implements House Bill 22 from the 2019 Legislative Session to remove the age requirement for sign language interpreters and also differentiates the continuing education requirements for sign language interpreters to maintain an annual reporting cycle as was required at the time licensure for sign language interpreters was added to the Board. This pending fee rule also allows continuing education credit for licensees who proctor the hearing aid dealing and fitting examination in Section 400.01.d. Finally, this pending fee rule streamlines requirements regarding provisional permits to provide more consistency between professions, provides extension of a permit for individual hardships, and provides clarity for licensees on deficient quarterly reports, cancellation of permits, and the validity of a permit when supervisor(s) are disqualified.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 4835 - 4854](#).

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules, except that the examination administrative fee when the exam administered by the Board is increased by \$50 to better reflect the actual cost of administering the examination. Fees are established in accordance with Sections 54-2912, 54-2913, 54-2914, 54-2915, 54-2916A, 54-2918, and 54-2921, Idaho Code, as follows:

- Application fee: not to exceed \$30;
- Original license fee: not to exceed \$70;
- Provisional permit: not to exceed \$100;
- Registration fee for out-of-state licenses: not to exceed \$10;
- Annual renewal fee: not to exceed \$100;
- Annual renewal fee for inactive license: not to exceed \$65;
- Examination fee when administered by the Board: \$100.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade at 208-334-3233.

DATED this October 16, 2019.

Kelley Packer
Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2910, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.23.01, rules of the Speech, Hearing and Communication Services Licensure Board:

IDAPA 24.23

- 24.23.01, *Rules of the Speech, Hearing and Communication Services Licensure Board* - All rules *except Subsections 010.01, 010.02, and 200.01.*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules govern the qualifications for speech pathologists, audiologists, hearing aid dealers and fitters, and sign language interpreters, as well as the code of ethics for sign language interpreters. Allowing these rules to expire would harm the health, safety, and welfare of Idaho citizens with speech and hearing disorders.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and the immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Absent the ability to impose the licensure fees outlined in this chapter, the of the Speech, Hearing and Communication Services Licensure Board would not be able to remain self-sufficient, contrary to its statutory mandate.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Sections 54-2912, 54-2913, 54-2914, 54-2915, 54-2916A, 54-2918, and 54-2921, Idaho Code, as follows: application

fee: \$30; original license fee: \$70; examination and reexamination administrative fee when administered by the Board: \$50; provisional permit: \$100; registration fee for out-of-state licenses: \$10; annual renewal fee: \$100; and annual renewal fee for inactive license: \$65.

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 anticipated to have any fiscal impact on the state General Fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-2301-1900F

24.23.01 – RULES OF THE SPEECH, HEARING, AND COMMUNICATION SERVICES LICENSURE BOARD

000. LEGAL AUTHORITY.

These rules are hereby prescribed and established pursuant to the authority vested in the Speech, Hearing and Communication Services Licensure Board by the provisions of Section 54-2910, Idaho Code. (3-30-06)

001. TITLE AND SCOPE.

These rules are titled IDAPA 24.23.01, “Rules of the Speech, Hearing, and Communication Services Licensure Board.” (3-30-06)

002. – 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

The document titled “National Association of the Deaf (NAD)-Registry of Interpreters for the Deaf, Inc. (RID) Code of Professional Conduct,” copyright 2005 by the Registry of Interpreters for the Deaf, is incorporated by reference into this rule and is available at the Board’s office and on the Board’s web site. (3-22-18)

005. -- 009. (RESERVED)

010. DEFINITIONS.

01. Audiology Support Personnel. Unlicensed natural persons who work under the direction and supervision of an audiologist who is licensed in accordance with Title 54, Chapter 29, Idaho Code, and is engaged in the practice of audiology. (3-24-17)

02. Direct Client Contact. Assessment, diagnosis, evaluation, screening, treatment, report writing, family or client consultation, counseling, or any combination of these activities. ()

03. Dual Licensure. The status of a person who holds more than one (1) license under Title 54, Chapter 29, Idaho Code. (3-22-18)

011. -- 174. (RESERVED)

175. FEES.

All fees are non-refundable. Fees are established in accord with Title 54, Chapter 29, Idaho Code as follows: ()

01. License, Permit, and Registration Fees.

LICENSE/PERMIT/REGISTRATION	INITIAL FEE (Not to Exceed)	ANNUAL RENEWAL FEE (Not to Exceed)
Application	\$30	
Original or Endorsement	\$70	\$100
Provisional Permit or Extension	\$100	
Registration Out-of-State Licensee	\$10	
Reinstatement fee	As provided in Section 67-2614, Idaho Code.	
Inactive license		\$65
Inactive to active license fee	The difference between the current inactive and active license renewal fees	

()

02. Examination Fees. The examination fee is that charged by the examination provider plus an administration fee of one hundred dollars (\$100) when the examination is administered by the Board. ()

176. -- 204. (RESERVED)

205. INACTIVE STATUS.

01. Request for Inactive Status. Each person requesting an inactive status of an active license must submit a written request and pay the established fee. ()

02. Inactive License Status. (3-27-13)

a. All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license. ()

b. When the licensee desires active status, the licensee must show acceptable fulfillment of ten (10) contact hours of continuing education during the previous twelve (12) months and submit a fee equivalent to the difference between the inactive and active renewal fee, provided that a licensee whose license has been inactive five (5) years or more must provide an account to the Board for that period of time during which the license was inactive and fulfill requirements that demonstrate competency to resume practice. Those requirements may include, but are not limited to, education, supervised practice, and examination as determined by the Board. The Board may consider practice in another jurisdiction in determining competency. ()

c. Licensees may not practice or supervise in Idaho as an Audiologist, Speech-Language Pathologist, Speech-Language Pathologist Aide, Speech-Language Pathologist Assistant, Hearing Aid Dealer and Fitter, or Sign Language Interpreter while on inactive status. ()

206. -- 209. (RESERVED)

210. QUALIFICATIONS FOR AUDIOLOGIST LICENSURE.

All applicants for licensure as an audiologist must comply with the following education, experience, and examination requirements: ()

01. Graduate Program Requirement. A master's or doctoral degree with emphasis in audiology or not less than seventy-five (75) semester credit hours of post-baccalaureate study that culminates in a doctoral degree from a nationally accredited school for audiology. (4-2-08)

02. Examination. Pass the audiology examination given by PRAXIS within the last five (5) years or other examination as may be approved by the Board. ()

03. Experience. Successfully complete a supervised academic clinical practicum as part of a doctoral program that satisfies Subsection 210.01 of this rule or supervised postgraduate experience that is substantially equivalent to such a practicum. An applicant who has insufficient supervised experience as part of the doctoral program may obtain the necessary experience under a provisional permit as provided in these rules. ()

211. SUPPORT PERSONNEL: AUDIOLOGY.

01. Supervising Audiologist – Responsibilities – Restrictions. (3-24-17)

a. The supervising licensed audiologist is responsible for everything audiology support personnel do or fail to do while performing their duties under the supervising audiologist's supervision. ()

b. Responsibilities of the supervising audiologist include, but are not limited to: (3-24-17)

i. Training, assessing the competency, and evaluating the performance of audiology support personnel. ()

ii. Approving or disapproving all orders and directives concerning audiology tasks issued by administrators or other managers. (3-24-17)

iii. Assigning audiology tasks to audiology support personnel and supervising the performance of those tasks. Assigned tasks must not exceed the knowledge and skills of audiology support personnel nor require the exercise of professional judgment, interpretation of test results, or the development or modification of treatment plans. (3-24-17)

iv. Assessing the abilities of audiology support personnel to perform assigned audiology tasks. (3-24-17)

v. Providing feedback to audiology support personnel to facilitate improved job performance. (3-24-17)

c. The number of audiology support personnel that an audiologist may supervise at any one time must be consistent with the delivery of appropriate, quality service, and Title 54, Chapter 29, Idaho Code. (3-24-17)

d. An audiologist must supervise audiology support personnel in the following manner: (3-24-17)

i. A supervising audiologist must directly supervise audiology support personnel no less than one (1) time for every five (5) times that support personnel provide audiology services to a patient (twenty percent (20%)). Direct supervision requires in-view real-time observation and guidance while an assigned activity is performed. This requirement can be met when the supervisor is providing supervision from a distant site using two-way video and audio transmission. The supervising audiologist will document and retain a record of all direct supervision periods. (3-24-17)

ii. When not providing direct supervision, the supervising audiologist must provide direction and supervision to audiology support personnel while support personnel are providing audiology services to a patient by making themselves accessible to the support personnel by telephone, video conferencing or in person. (3-24-17)

02. Audiology Support Personnel – Roles – Restrictions. Audiology support personnel perform only tasks that are planned, delegated, and supervised by the supervising audiologist. Duties and responsibilities are assigned based on training, certification, available supervision, and specific work setting, provided that an audiologist may not allow audiology support personnel to perform the following: ()

a. Any task prohibited by state or federal law. (3-24-17)

b. Interpreting observations or data into diagnostic statements of clinical management strategies or procedures. (3-24-17)

c. Determining case selection. (3-24-17)

d. Transmitting clinical information, either verbally or in writing, to anyone without the approval of the supervising audiologist. (3-24-17)

e. Composing clinical reports except for progress notes to be reviewed by the audiologist and held in the client's records. (3-24-17)

f. Referring a patient/client to other professionals or agencies. (3-24-17)

g. Referring to self or using in connection with audiology support person's name, any title other than one determined by the supervising audiologist that is consistent with state and federal law. (3-24-17)

h. Signing any formal documents (e.g. treatment plans, reimbursement forms, or reports). (3-24-17)

i. Discharging a patient/client from services. (3-24-17)

j. Removal of cerumen. ()

- 03. Audiology Support Personnel – Pre-Service and In-Service Instruction.** (3-24-17)
- a.** The supervising audiologist is responsible for maintaining a written record of completed training activity. ()
- b.** Training will be conducted pre-service (before tasks are assigned) and in-service (after tasks are assigned). The quality and content of training is left to the discretion of the supervising audiologist. The following guidelines apply to both pre-service and in-service training. (3-24-17)
- i.** Training should be well-defined and specific to assigned tasks. (3-24-17)
- ii.** Supervising audiologists should ensure that the scope and intensity of training is sufficient to prepare audiology support personnel to successfully perform assigned tasks. (3-24-17)
- iii.** Training should be competency-based and be provided through a variety of formal and informal instructional methods accompanied by written policies and procedures. (3-24-17)
- iv.** Supervising audiologists should provide audiology support personnel with a written description of their roles and functions. Audiologists should provide personnel with ongoing training opportunities to ensure that audiology practices are current and skills are maintained. (3-24-17)
- v.** Training should include the identification of and appropriate response to linguistic and cultural challenges which may affect the delivery of service. (3-24-17)

212. NEWBORN HEARING SCREENING TESTS.

Performing newborn hearing screening tests on infants using automated equipment that produces a pass/fail response does not, by itself, constitute the practice of audiology or convert persons performing the tests into audiology support personnel. (3-28-18)

213. -- 219. (RESERVED)

220. QUALIFICATIONS FOR SPEECH-LANGUAGE PATHOLOGIST LICENSURE.

All applicants for licensure as a speech-language pathologist must comply with the following education, experience, and examination requirements: ()

01. Graduate Program Requirement. A master's or doctoral degree from a nationally accredited school of speech-language pathology with a curriculum approved by the Board and includes a supervised academic clinical practicum. (3-27-13)

02. Examination. Pass an examination in speech-language pathology given by PRAXIS or other examination as may be approved by the Board. (4-2-08)

03. Supervised Experience. Satisfactorily complete the supervised postgraduate experience approved by the Board as follows: ()

a. One thousand two hundred sixty (1,260) hours of experience gained under the supervision of a licensed speech-language pathologist in no less than thirty-six (36) weeks of full-time (thirty-five (35) hours per week) experience or the equivalent part-time experience and in no more than forty-eight (48) months. (3-27-13)

b. One thousand ten (1,010) hours of experience must be in direct client contact as defined in these rules. ()

c. A minimum of eighteen (18) hours of direct client contact must be observed on-site by the Board-approved supervisor and provided on a regular basis throughout the hours of experience. ()

d. The nature of the supervision and contact must allow for immediate feedback and can be conducted using audio/visual, in person, electronic means, or telephone. (3-27-13)

221. -- 229. (RESERVED)

230. QUALIFICATIONS FOR SPEECH-LANGUAGE PATHOLOGIST AIDE LICENSURE.

All applicants for licensure as a speech-language pathologist aide must comply with the following education and examination requirements: ()

01. Education Program Requirement. A baccalaureate degree from a nationally accredited school of speech-language pathology with a curriculum approved by the Board. (4-2-08)

02. Examination. Pass an examination in speech-language pathology aide as approved by the Board. ()

03. Supervision. A speech-language pathologist aide must work under the supervision of a speech-language pathologist. ()

231. -- 239. (RESERVED)

240. QUALIFICATIONS FOR SPEECH-LANGUAGE PATHOLOGIST ASSISTANT LICENSURE.

All applicants for licensure as a speech-language pathologist assistant must comply with the following education and examination requirements: ()

01. Education Program Requirement. An associate degree from a nationally accredited school of speech-language pathology with a curriculum approved by the Board. (4-2-08)

02. Examination. Pass an examination in speech-language pathology assistant approved by the Board. ()

03. Supervision. A speech-language pathologist assistant must work under the supervision of a speech-language pathologist. ()

241. -- 249. (RESERVED)

250. QUALIFICATIONS FOR HEARING AID DEALER AND FITTER LICENSURE.

All applicants for licensure as a hearing aid dealer and fitter must comply with the following education, experience, and examination requirements: ()

01. Education Requirement. A high school diploma or successful passage of the General Educational Development diploma (GED). (4-2-08)

02. Examination. Pass the national International Hearing Instrument Studies examination and the practical examination approved by the Board. An applicant who fails to obtain a satisfactory score as determined by the examination provider in either the written examination or a section of the practical examination, may retake only the portion of the examination failed in order to qualify for licensure. If the applicant again fails the examination the applicant must retake the entire examination until the examination is successfully passed to qualify for licensure. ()

251. -- 259. (RESERVED)

260. QUALIFICATIONS FOR SIGN LANGUAGE INTERPRETER LICENSURE.

The Board may grant a sign language interpreter license to an applicant who meets the following: ()

01. Education. Possess a high school diploma or the equivalent; (3-22-18)

02. Examination or Certification. Pass one (1) written and one (1) practical or performance competency examination approved by the Board or hold a current certification approved by the Board. ()

a. Written examinations approved by the Board include, but are not limited to: The Educational Interpreter Performance Assessment (EIPA), any interpreting generalist written examination developed by the Registry of Interpreters for the Deaf (RID), the Center for Assessment of Sign Language Interpreters (CASLI), or any state government. ()

b. Practical or performance examinations approved by the Board include, but are not limited to: any practical or performance general interpreting examination recognized by the Registry of Interpreters for the Deaf (RID) or the Educational Interpreter Performance Assessment (EIPA) at score 4.0 or above. The practical or performance examination must have been passed within ten (10) years before the date of original application for licensure. ()

c. Certifications approved by the Board include, but are not limited to, those administered by: Registry of Interpreters for the Deaf (RID); National Association of the Deaf (NAD); Center for Assessment of Sign Language Interpreters (CASLI); Board for Evaluation of Interpreters (BEI) at basic level or above, or if certified before 2014, at intermediate level or above; Utah Interpreter Program (UIP) at professional or master level, or a Utah Certified: Deaf Interpreter (UC:DI). ()

261. TELEPRACTICE OF SIGN LANGUAGE INTERPRETING.

A person who performs sign language interpreting services through the use of electronic communications, information technology, asynchronous store and forward transfer, or synchronous interaction to persons located in Idaho are subject to the licensure, registration, or deaf interpreter requirements of Chapter 24, Title 54, Idaho Code, and these rules unless the person is located outside of Idaho and providing video relay services regulated by the Federal Communication Commission (FCC). ()

262. -- 264. (RESERVED)

265. CODE OF ETHICS AND STANDARDS FOR SIGN LANGUAGE INTERPRETERS.

All licensed sign language interpreters must follow the National Association of the Deaf (NAD)-Registry of Interpreters for the Deaf, Inc. (RID) code of professional conduct as incorporated by reference in Section 004 of these rules, and must practice competently and in a manner consistent with the licensee's training, skill, and experience. ()

266. -- 269. (RESERVED)

270. REGISTRATION FOR OUT-OF-STATE LICENSEES.

A person licensed or certified as sign language interpreter in another state, territory, or the District of Columbia may practice sign language interpreting in this state without a license issued by the board for a period not to exceed in the aggregate thirty (30) days in any calendar year provided that they fulfill the following requirements: (3-22-18)

01. Statement of Registration. Before commencing such work, the person will file with the Board on a form approved by the board a statement of registration providing the person's name, residence, sign language interpreter license or certificate of registration number, and the name, address, and phone number of the issuing authority; (3-22-18)

02. Registration Fee. Payment of one (1) registration fee for each calendar year in which they register; ()

03. Statement of Time Engaged. Within five (5) business days of completion of the work, the person will submit to the Board on a form approved by the Board a statement of the number of days in which the person engaged in that work within the state. (3-22-18)

271. -- 279. (RESERVED)

280. DEAF INTERPRETERS.

01. Letter of Endorsement. Persons who are deaf or hard-of-hearing and are not sign language interpreters may perform sign language interpreting services in the role of a deaf interpreter if they file with the Board

two (2) written endorsement letters from sign language interpreters licensed by the Board. Each letter must, at a minimum, include: ()

- a. Date letter of endorsement was written; (3-22-18)
- b. Full name, mailing address, and phone number of the deaf interpreter; (3-22-18)
- c. Name, mailing address, and phone number of the sign language interpreter; and (3-22-18)
- d. A statement endorsing the deaf interpreter to perform sign language interpreting services and an explanation as to why the sign language interpreter believes that the deaf interpreter has the skills and the knowledge to perform this role. (3-22-18)

02. Withdrawal of Endorsement. A sign language interpreter who has endorsed a deaf interpreter may withdraw their endorsement at any time upon delivery of written notice to the deaf interpreter and the Board. (3-22-18)

281. -- 309. (RESERVED)

310. ENDORSEMENT.

The Board may grant a license to any person who holds a current, active license, at the level for which a license is being sought, issued by the authorized regulatory entity in another state and has not engaged in conduct that would constitute grounds for discipline under Section 54-2918, Idaho Code, unless the applicant has demonstrated suitability for licensure as set forth in these rules. ()

311. -- 319. (RESERVED)

320. WRITTEN STATEMENT OF SUITABILITY FOR LICENSURE.

An applicant who or whose license has a conviction, finding of guilt, withheld judgment, or suspended sentence for a felony or has been subject to discipline in another state, territory, or country must submit with his application a written statement and any supplemental information establishing the applicant's current suitability for licensure. ()

01. Consideration of Factors and Evidence. The board may consider the following factors or evidence: ()

- a. The severity or nature of the crime or discipline; (3-22-18)
- b. The period of time that has passed since the crime or discipline under review; (3-22-18)
- c. The number or pattern of crimes or discipline or other similar incidents; (3-22-18)
- d. The circumstances surrounding the crime or discipline that would help determine the risk of reoccurrence; (3-22-18)
- e. The relationship of the crime or discipline to the practice of sign language interpreting; (3-22-18)
- f. The applicant's activities since the crime or discipline under review, such as employment, education, participation in treatment, payment of restitution, or any other factors which may be evidence of current rehabilitation; and (3-22-18)
- g. Any other information regarding rehabilitation or mitigating circumstances. (3-22-18)

02. Interview. The Board may, at its discretion, grant an interview of the applicant. (3-22-18)

03. Applicant Bears the Burden. The applicant bears the burden of establishing the applicant's current suitability for licensure. ()

321. -- 399. (RESERVED)

400. CONTINUING EDUCATION.

All licensees must complete the following continuing education requirements: ()

01. Requirement. For licensed sign language interpreters and up until January 1, 2021, for all other licensees, each licensee will successfully complete, in the twelve (12) months preceding each renewal of their license, a minimum of ten (10) contact hours of continuing education. ()

a. Effective January 1, 2021, for licensees other than sign language interpreters, each licensee will successfully complete, in the three (3) years prior to their license expiration date, a minimum of thirty (30) contact hours of continuing education. ()

b. A contact hour is a measurement of the licensee's participation in an area of study germane to the practice for which the license is issued as approved by the Board. One (1) contact hour requires one (1) hour of participation in a Board-approved continuing education program excluding meals and breaks. One (1) contact hour equals one (1) clock hour for purposes of obtaining continuing education credit. (3-28-18)

c. For college or university courses that are approved by the Board for continuing education credit, one (1) semester credit hour equals fifteen (15) contact hours; one (1) quarter credit hour equals ten (10) contact hours. (3-28-18)

d. For proctoring the hearing aid dealing and fitting examination administered by the Board, a licensee may claim three (3) contact hours per exam up to a total of six (6) contact hours during each year, provided that a licensee may not claim more than nine (9) contact hours during any three (3) year period. ()

e. Effective January 1, 2021, the Board will waive the continuing education requirement for the first three (3) license renewals after initial licensure for licensees other than sign language interpreters. For sign language interpreters and up until January 1, 2021, for all other licensees, the Board will waive the continuing education requirement for the first renewal after initial licensure. ()

02. Documentation. Each licensee must maintain documentation verifying hours of attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution. This documentation is subject to audit and must be provided upon request by the Board or its agent. ()

03. Waiver. The Board may waive continuing education requirements for reasons of individual hardship, including health, when certified by a medical doctor, or other good cause. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This waiver is granted at the sole discretion of the Board. ()

04. Carryover of Continuing Education Hours. Until January 1, 2021, continuing education hours not claimed in the current renewal year may be claimed in the next renewal year. A maximum of ten (10) hours may be carried forward from the immediately preceding year, and may not be carried forward more than one renewal year. ()

401. -- 449. (RESERVED)

450. PROVISIONAL PERMITS.

01. Scope and Purpose. The Board may issue a provisional permit to allow an applicant to engage in the supervised practice of a profession regulated by Title 54, Chapter 29, Idaho Code, while pursuing licensure for that profession. ()

a. A provisional permit holder for audiology or speech language may practice the respective profession while completing the supervised experience necessary for licensure set forth in Subsection 210.03 or

Subsection 220.03. ()

b. A provisional permit holder for sign language interpreting or hearing aid dealing and fitting may practice the respective profession while pursuing passage of examination(s) or certification necessary for licensure as set forth in Subsection 260.02. ()

02. Supervisor. A provisional permit holder may only practice under the supervision of a licensee(s) whose license is current, in good standing, has not had discipline in the last two (2) years, and who is not supervising more than one (1) other permit holder, and as set forth below: ()

a. A permit holder must be supervised by a licensee for the profession corresponding to the permit, except that a hearing aid dealer and fitter permit holder must be supervised by: ()

i. A hearing aid dealer and fitter who holds a current hearing instrument sciences (BC-HIS) from the National Board for Certification in Hearing Instrument Sciences or has three (3) years of active practice immediately preceding approval as a supervisor; or ()

ii. An audiologist with one (1) year of active practice immediately preceding approval as a supervisor. ()

iii. For an applicant who holds a current hearing instrument sciences (BC-HIS) from the National Board for Certification in Hearing Instrument Sciences, the Board may within its discretion approve a supervisor who is an audiologist with less than one (1) year of practice, is supervising more than one (1) other permit holder, or both. The Board's approval of such a supervisor may be rescinded in the event the permit holder fails a licensing examination or the permit holder failure to take the licensing examination within six (6) months after issuance of the permit. The Board may allow the supervisor to continue to supervise the permit holder upon adequate assurance that the supervision being provided is sufficient to ensure the safe and effective delivery of hearing aid dealing and fitting services and preparation for the examination. ()

b. A supervisor for a permit holder, except for sign language interpreter supervisor, must have an established business site in Idaho. A supervisor and permit holder for hearing aid dealing and fitting must work in the same facility. ()

c. A supervisor may terminate their supervision of a permit holder by a written notice to the Board and the permit holder by certified mail at least ten (10) calendar days prior to the termination. ()

03. Supervision. The supervisor is responsible for all practice and conduct of each permit holder under supervision. The supervisor and permit holder for hearing aid dealing and fitting must have adequate personal contact, which at a minimum includes: ()

a. Personal contact each work day to review any assignments, client contacts, and hearing aid fittings for the first sixty (60) days of practice. The nature of the supervision and contact must allow for immediate feedback and includes audio/visual, in person, or telephone contacts. ()

b. After the first sixty (60) days of practice, personal contact as described in Subsection 450.03.a. must be made no less than once in each calendar week throughout the remaining period of the permit. ()

c. In the event a permit holder fails the licensing examination two (2) consecutive times and is eligible to maintain a permit, the supervisor and permit holder must reinstate contact in person each work day as set forth in Subsection 450.03.a. ()

04. Plan of Training and Quarterly Reports. An applicant must submit a plan of training approved by the designated supervisor(s). Permit holders must submit quarterly reports signed by the supervisor(s) reflecting the progress on the plan(s) of training and any additional information required by this rule. ()

a. A plan of training for hearing aid dealing and fitting or a sign language interpreter must cover all sections of the license examination(s). ()

b. A plan of training and supervision for an audiology or speech language pathology permit holder must provide for adequate direct client contact activities which include assessment, diagnosis, evaluation, screening, treatment, and client management. ()

c. Quarterly reports must be on forms approved by the Board, attested to and signed by the permit holder and approved supervisor(s), and include: ()

i. A log of client and supervisor contacts; ()

ii. Supervisor’s statement of completed training assignments by the permit holder; ()

iii. For an audiology permit holder, documentation of all hearing aid sales or fittings made by the permit holder; ()

iv. For a sign language interpreter, certification of attendance for any workshop or training session that permit holder has attended; ()

v. For a hearing aid dealing and fitting permit holder, a copy of test results for all persons tested by the permit holder whether or not a sale occurred and a copy of each hearing aid order for all fittings including specifications of instruments ordered. ()

d. Quarterly reports are due on or before April 10th, July 10th, October 10th, and January 10th for the three (3) calendar month period preceding the month due. If the permit has not been in effect for the entire quarter, the report is due for that portion of the quarter in which the permit was in effect. If quarterly reports are not received by the specified due date, are inadequate, or document inadequate progress or incompetent practice the permit may be suspended or revoked upon notice and an opportunity to be heard. ()

05. Change in Supervisor or Plan of Training. A permit holder must notify the Board prior to changing supervisors or changing the plan of training, and the change must be approved by the Board, or a designated member of the Board, prior to the commencement of supervision by a new supervisor or implementation of the change. Any supervision obtained from a supervisor or under a plan of training prior to or without approval of the Board will only be accepted at the discretion of the Board. ()

06. Cancellation of Permit. A permit is cancelled upon any of the following: issuance of a license, expiration of the permit, or ten (10) business days after termination or disqualification of all supervision or supervisors if the permit holder has not applied for a change of supervisor. ()

07. Expiration. Following the approval of a permit holder’s original application, a provisional permit expires after: ()

a. Twenty-four (24) months for the practice of audiology or the practice of hearing aid dealing and fitting. ()

b. Forty-eight (48) months for the practice of speech language pathology. ()

c. Twelve (12) months for the practice of sign language interpreting, provided that the Board may at its discretion, and upon application of the permit holder and approval of the supervisor, extend the time period by an additional twelve (12) months. The permit holder may apply for an extension a maximum of two (2) times, such that no permit holder may practice under a permit for more than thirty-six (36) months after the approval of the original application. ()

d. The Board may extend the time period for reasons of individual hardship, including health when certified by a medical doctor, or other good cause that prevented the permit holder from completing the supervision within the stated time period. ()

451. -- 499. (RESERVED)

500. HEARING EVALUATION.

01. Purpose of Rule. The purpose of this rule is to define, “tests utilizing appropriate procedures,” as used in Section 54-2923(6), Idaho Code. This rule is intended to be consistent with and to complement FDA Rule 801.420 as it refers to hearing evaluations. ()

02. Pre-Fitting Testing. All prospective hearing aid consumers must be given calibrated pure-tone air and bone tests with masking when applicable. Speech tests must be given by appropriate equipment calibrated to current H.T.L. reference levels. (3-30-06)

03. Sound Field Testing. Before the prospective consumer purchases a hearing aid or within six (6) weeks afterward, the licensee must conduct the testing necessary to document that the fitted instrument meets industry standards and provides benefit to the consumer. This testing must be accomplished using appropriate sound field testing so as to ensure repeatability. Verification of benefit may be accomplished using any one (1) of the following tests: (3-30-06)

- a. Soundfield testing for speech discrimination in both the aided and unaided conditions; (3-30-06)
- b. Soundfield testing using warble tones or narrowband noise to evaluate functional gain; or(3-30-06)
- c. “Real ear” probe microphone measurements. (3-30-06)

04. Records. A copy of all test data must be kept on file by the licensee for two (2) years after sale. (3-30-06)

05. Exemptions. The testing requirements contained in Subsections 450.02 and 450.03 of this rule do not apply to consumers who cannot respond to acceptable audiological tests, for any reason. ()

551. -- 599. (RESERVED)

600. WRITTEN CONTRACTS.

01. Contract Form. Any person who practices the fitting and sale of hearing aids must enter into a written contract with the person to be supplied with the hearing aid, which is signed by the licensee and the consumer and contains the information required in Subsections 600.01.a. through g. The written contract must be given to the consumer at the time of the sale and must contain the following: ()

- a. License number; (3-30-06)
- b. Business address; (3-30-06)
- c. The specifications as to the make, model, and manufacture date of the hearing aid; (3-30-06)
- d. Clearly state the full terms of the sale, including the exact portion of the purchase price, not to exceed twenty-five (25%) percent of the total purchase price of the hearing instrument and fitting expenses, that is nonrefundable; ()
- e. Provide the serial number of the hearing aid upon delivery; (3-30-06)
- f. Be clearly marked as “used” or “reconditioned,” whichever is applicable, if the aid is not new; and ()
- g. In print size no smaller than ten (10) point type: ()
 - i. The address of the bureau of occupational licenses and the procedure for filing complaints against anyone licensed to dispense hearing aids. ()

ii. A nonwaivable statement that the contract is null and void and unenforceable if the hearing aid being purchased is not delivered to the consumer within thirty (30) days of the date the written contract is signed, and that in the event the hearing aid is not delivered to the consumer within thirty (30) days of the date the written contract is signed, the licensee shall promptly refund any and all moneys paid for the purchase of the hearing aid. ()

02. Cancellation and Refund. The written contract must grant the consumer a nonwaivable thirty (30) day right to cancel the purchase and obtain a refund. The thirty (30) day right to cancel commences from either the date the contract is signed or the hearing aid is originally delivered to the consumer, whichever is later. The thirty (30) day period is tolled for any period in which the licensee has taken possession or control of the hearing aid after its original delivery. ()

03. Dealer Cancellation. In the event that any licensee cancels, nullifies, or otherwise, of their own volition, refuses to honor any written contract, for any reason other than consumer cancellation as set forth in Subsection 500.02, that licensee must promptly refund any and all moneys paid for the purchase of the hearing aid, including any monies designated by the contract as nonrefundable in the event that the consumer had canceled the purchase. ()

601. -- 999. (RESERVED)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.24.01 – RULES OF THE GENETIC COUNSELORS LICENSING BOARD

DOCKET NO. 24-2401-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-5607, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 24.24.01, rules of the Genetic Counselors Licensing Board:

IDAPA 24.24

- 24.24.01, Rules of the Genetic Counselors Licensing Board—all proposed rules except 010, 011, 100.01, 100.02.a, 100.02.b, 200, 305, 306, 311.01, 311.03, 500.05, 800, 900.01.a, 900.01.b, 900.01.c, 900.01.d, and 900.01.e which have been vacated.

The text of the pending fee rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4,857-4,862. The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.24.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Rules of the Genetic Counselors Licensing Board was published. This pending fee rule will allow the Legislature to review for codification IDAPA 24.24.01, the Rules of the Genetic Counselors Licensing Board. On July 22, 2019, the Genetic Counselors Licensing Board held a public meeting which was noticed pursuant to the Idaho Open Meetings Law where the public and other interested parties, including industry organizations, were given the opportunity to comment as this chapter was reviewed. The Board considered the Licensing Freedom Act of 2017, Executive Order No. 2017-06, Licensing Freedom Act of 2019, Executive Order No. 2019-01; and the Red Tape Reduction Act, Executive Order No. 2019-02; and the continued efforts to clarify and streamline its rules. This pending fee rule reorganizes and combines sections for clarity, removes redundant language, moves fees into an easier to read tabular format, and adds the phrase “not to exceed” before fee amounts, which allows for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity. Additionally, this pending rule adds an inactive license status, a less burdensome alternative to licensees desiring to maintain a license.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-5613, Idaho Code, as follows: application fee: not to exceed \$200; original license fee: not to exceed \$200; annual renewal fee: not to exceed \$200; provisional license fee: not to exceed \$200; and license by endorsement fee: not to exceed \$200.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade at 208-334-3233.

Dated this 16th day of October, 2019.

Kelley Packer
Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-5607, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.24.01, rules of the Genetic Counselors Licensing Board:

IDAPA 24.24

- 24.24.01, *Rules of the Genetic Counselors Licensing Board* - All rules **except Subsections/Sections 010.01, 010.02, 010.05, 010.06, 010.11, 010.12, 010.13, 010.14, 010.15, 011.02, 011.03, 301, and 400.**

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules govern the qualifications, code of ethics, and standards of practice for genetic counselors. Allowing these rules to expire would harm the public health, safety, and welfare of those citizens who utilize genetic services.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and the immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Absent the ability to impose the licensure fees outlined in this chapter, the Genetic Counselors Licensing Board would not be able to remain self-sufficient, contrary to its statutory mandate.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-5613, Idaho Code, as follows: application fee: \$200; original license fee: \$200; annual renewal fee: \$200; provisional license fee: \$200; license by endorsement fee: \$200; and duplicate license fee: \$10.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state General Fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-2401-1900F

24.24.01 – RULES OF THE GENETIC COUNSELORS LICENSING BOARD

000. LEGAL AUTHORITY.

These rules are hereby prescribed and established pursuant to the authority vested in the Genetic Counselors Licensing Board by the provisions of Title 54, Chapter 56, Idaho Code. (3-24-16)

001. TITLE AND SCOPE.

01. Title. The rules are titled IDAPA 24.24.01, “Rules of the Genetic Counselors Licensing Board.” (3-24-16)

02. Scope. These rules implement the purposes and intent of Chapter 56, Title 54, Idaho Code, to regulate the profession of genetic counseling in the interest of the public health, safety, and welfare. (3-24-16)

002. INCORPORATION BY REFERENCE.

The document titled “National Society of Genetic Counselors Code of Ethics,” adopted January 1992 and revised December 2004 and January 2006, is incorporated by reference into this rule and is available at the Board’s office and on the Board’s web site. (3-24-16)

005. -- 099. (RESERVED)

100. ORGANIZATION OF THE BOARD.

At the first meeting of each fiscal year, the Board will elect from its members a Chairman, who will assume the duties of the office at the direction of the Board. ()

101. -- 249. (RESERVED)

250. FEES.

All fees are non-refundable except that, if a license fee is tendered but the Board does not issue a license, the respective license fee will be returned. Fees are established in accord with Section 54-5613, Idaho Code as follows:

FEE TYPE	AMOUNT (Not to Exceed)
Application	\$200
Original License	\$200
Annual Renewal	\$200
Provisional License	\$200
License by Endorsement	\$200
Examination	Determined by third-party examination administrator
Reinstatement	As provided in Section 67-2614, Idaho Code

()

251. -- 299. (RESERVED)

300. REQUIREMENTS FOR ORIGINAL LICENSURE.

01. General. An applicant who in any state, territory or country has had a license revoked or suspended or has been otherwise disciplined by a Board, a government agency, or any other disciplinary body, or has been found guilty, convicted, received a withheld judgment or suspended sentence for a felony or a lesser crime conviction must submit with his application a written statement and any supplemental information establishing his current suitability for licensure. ()

02. Consideration of Factors and Evidence. The Board will consider the following factors or evidence: ()

a. The severity or nature of the crime or discipline; ()

- b. The period of time that has passed since the crime or discipline under review; ()
 - c. The number or pattern of crimes or discipline or other similar incidents; ()
 - d. The circumstances surrounding the crime or discipline that would help determine the risk of repetition; ()
 - e. The relationship of the crime or discipline to the practice of genetic counseling; ()
 - f. The applicant's activities since the crime or discipline under review, such as employment, education, participation in treatment, payment of restitution, or any other factors which may be evidence of current rehabilitation; and ()
 - g. Any other information regarding rehabilitation or mitigating circumstances. ()
- 03. Interview.** The Board may, at its discretion, grant an interview of the applicant. ()
- 04. Applicant Bears the Burden.** The applicant will bear the burden of establishing his current suitability for licensure. ()
- 05. Education.** An applicant must hold a master's degree or higher in genetics from an American Board of Genetic Counseling (ABGC), American Board of Medical Genetics (ABMG), Accreditation Council for Genetic Counseling (ACGC), or National Society of Genetic Counselors (NSGC) accredited program or master's degree or higher in a related field of study as approved by the Board. ()
- 06. Examination.** An applicant must pass an ABGC or ABMG administered genetic counselor certification exam. The passage of the exam may have occurred prior to the effective date of these rules. ()
- 07. Certification.** An applicant must provide proof of current certification from the ABGC or ABMG. (3-24-16)

301. -- 309. (RESERVED)

310. REQUIREMENTS FOR LICENSURE BY ENDORSEMENT.

The Board may grant a license to an applicant for licensure by endorsement who meets the following requirements: ()

- 01. General.** Meets the requirements prescribed in Subsection 300.01 of these rules; and (3-24-16)
- 02. Holds a Current License.** The applicant must be the holder of a current active license in the profession and at the level for which a license is being sought, issued by the authorized regulatory entity of another state, territory, or jurisdiction. The state, territory, or jurisdiction must have licensing requirements substantially equivalent to or higher than those required for new applicants in Idaho. The certification of licensure must be received by the Board from the issuing agency. ()

311. REQUIREMENTS FOR PROVISIONAL LICENSE.

The Board may issue a provisional license to allow a person who has been granted active candidate status to engage in the practice of genetic counseling. The holder of a provisional license may only practice under the general supervision of a person fully licensed under this chapter or a physician licensed in this state. ()

- 01. General.** Meets the requirements prescribed in Subsection 300.01 of these rules; and ()
- 02. Supervision.** While the provisional licensee is providing genetic counseling services, the licensee's supervisor need not be physically present; however, the supervisor must be readily accessible to the provisional licensee by telephone or by electronic means for consultation and assistance. (3-24-16)

312. INACTIVE STATUS.

01. Request for Inactive Status. Licensees requesting an inactive status during the renewal of their active license must submit a written request and pay the established fee. ()

02. Inactive License Status. All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing in Idaho. ()

03. Reinstatement to Full Licensure from Inactive Status. An inactive licensee may reinstate to active status by submitting a completed, board-approved application and paying the appropriate fee, provide proof of ABGC certification and one (1) year of continuing education immediately preceding application. ()

313. -- 499. (RESERVED)

500. CONTINUING EDUCATION.

All licensees must comply with the following continuing education requirements: (3-24-16)

01. Requirement. Beginning with the second renewal of their license, a licensee will be required to complete a minimum of two (2) Continuing Education Units (CEUs) within the preceding twelve (12) months or one (1) CEU and one (1) Professional Activity Credit (PAC) within the preceding twelve (12) months. ()

02. Documentation. Each licensee will maintain documentation verifying continuing education course attendance and curriculum, or completion of the educational activity for a period of five (5) years from the date of completion. This documentation will be subject to audit by the Board. (3-24-16)

a. Documented evidence of meeting the continuing education course requirement must be in the form of a certificate or letter from the sponsoring entity that includes verification of attendance by the licensee, the title of the activity, the subject material covered, the dates and number of hours credited, and the presenter's full name and professional credentials. Documented evidence of completing a continuing education activity must be in such form as to document both completion and date of the activity. (3-24-16)

b. A licensee must submit the verification documentation to the Board, if requested by the Board. If a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the licensee may be subject to disciplinary action. (3-24-16)

03. Waiver. The Board may for good cause waive the requirements of this rule. The licensee should request the waiver in advance of renewal and must provide any information requested by the Board to assist in substantiating hardship cases. This waiver is granted at the sole discretion of the Board. ()

04. Carryover of Continuing Education Hours. CEUs and PACs not claimed in the current renewal year may be claimed in the next renewal year. A maximum of two (2) CEUs or one (1) PAC and one (1) CEU may be carried forward from the immediately preceding year, and may not be carried forward more than one renewal year. (3-24-16)

501. -- 699. (RESERVED)

700. UNPROFESSIONAL AND UNETHICAL CONDUCT.

Unprofessional and unethical conduct is conduct that does not conform to the guidelines for genetic counseling contained within the (NSGC) Code of Ethics, incorporated by reference into Section 004 of these rules and approved by the Board as the Idaho Code of Ethics. ()

701. -- 899. (RESERVED)

900. DISCIPLINE.

01. Disciplinary Action. If the Board determines that grounds for discipline exist for violations of Title 54, Chapter 56, Idaho Code, violations of these rules, or both, it may impose disciplinary sanctions against the licensee. ()

901. -- 999. (RESERVED)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.26.01 – RULES OF THE IDAHO BOARD OF MIDWIFERY

DOCKET NO. 24-2601-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-5504, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 24.26.01, rules of the Idaho State Board of Midwifery:

IDAPA 24.26.01

- 24.26.01, *Rules of the Idaho State Board of Midwifery*: all proposed rules except 010, 020.01, 020.02.a., 020.02.b., 200.01, 200.02, 200.03, 325.01.a., 325.01.b., 325.01.e., 325.01.f., 325.01.g., 356.02.a., 356.02.b., 356.03.a. through 356.03.o., 356.04.a. through 356.04.o., 356.05.a.iii. through 356.05.a.xvi., 356.05.b.i. through 356.05.b.iv., and 450.01.a through 450.01.e.

The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.26.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Rules of the Idaho State Board of Midwifery was published. This pending fee rule will allow the Legislature to review for codification IDAPA 24.26.01, “Rules of the Idaho State Board of Midwifery.” On July 1, 2019, the Idaho State Board of Midwifery held a public meeting, which was noticed pursuant to the Idaho Open Meetings Law, where the public and other interested parties, including industry organizations, were given the opportunity to comment as this chapter was reviewed. The Board considered the Licensing Freedom Act of 2017, Executive Order No. 2017-06, Licensing Freedom Act of 2019, Executive Order No. 2019-01; and the Red Tape Reduction Act, Executive Order No. 2019-02; and the Board’s continued efforts to clarify and streamline its rules. This pending fee rule removes redundant and unnecessary language, moves fees into an easier to read tabular format, and adds the phrase “not to exceed” before fee amounts, which allows for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity. Additionally, this pending fee rule will reflect the enactment of House Bill 8 from the 2019 Legislative Session through updating certain drugs listed in the formulary.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 4880 - 4894](#).

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-5504, Idaho Code, as follows:

Initial application fee: not to exceed \$200;
Initial license fee: not to exceed \$800;
Annual renewal fee: not to exceed \$850;
Reinstatement fee: not to exceed \$50.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade at (208) 334-3233.

Dated this 16th of October, 2019.

Kelley Packer
Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-5504, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.26.01, rules of the Idaho Board of Midwifery:

IDAPA 24.26

- 24.26.01, *Rules of the Idaho Board of Midwifery*—All rules *except Subsections 010.01 and 010.02*.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and

processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules govern the qualifications, formulary, and certain standards of practice of midwives in Idaho. Allowing these rules to expire would harm licensees and would impose a barrier to care, harming the public health, safety, and welfare of the citizens of Idaho.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and the immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Absent the ability to impose the licensure fees outlined in this chapter, the Idaho Board of Midwifery would not be able to remain self-sufficient, contrary to its statutory mandate.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-5504, Idaho Code, as follows: initial application fee \$200; initial license fee: \$800; annual renewal fee: \$850; and reinstatement fee: \$50.

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 anticipated to have any fiscal impact on the state General Fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-2601-1900F

24.26.01 – RULES OF THE IDAHO BOARD OF MIDWIFERY

000. LEGAL AUTHORITY.

In accordance with Section 54-5504, Idaho Code, the Idaho Board of Midwifery has promulgated rules that implement the provisions of Chapter 55, Title 54, Idaho Code. (3-29-10)

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 24.26.01, “Rules of the Idaho Board of Midwifery.” (3-29-10)

02. **Scope.** These rules establish the framework for licensure of midwives and the provisions for what midwives are allowed to do, what they may not do, when they must advise their clients to seek other medical advice and when to transport a client. (3-29-10)

002. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules, and are available at the Board’s office and through the Board’s website: (3-29-10)

01. **Prevention of Perinatal Group B Streptococcal Disease.** Published by the Centers for Disease Control and Prevention, MMWR 2010;59 (No. RR 10), dated November 19, 2010, referenced in Paragraph 350.01.d. (4-11-19)

02. **Essential Documents of the National Association of Certified Professional Midwives.** Copyright date 2004, referenced in Subsection 356.01. (3-29-10)

03. **2016 Job Analysis Survey.** Published by the North American Registry of Midwives (NARM). (4-11-19)

003. -- 019. (RESERVED)

020. ORGANIZATION.

At the first meeting of each fiscal year, the Board elects from its members a Chairman, who assumes the duty of the office immediately upon such selection. (3-29-10)

021. -- 099. (RESERVED)

100. QUALIFICATIONS FOR LICENSURE.

01. **Applications.** Applications for licensure must be submitted on Board-approved forms. (3-29-10)

02. **Qualifications.** Applicants for licensure must submit a completed application, required application and licensing fees, and documentation, acceptable to the Board, establishing that the applicant: (3-29-10)

a. Currently is certified as a CPM by NARM or a successor organization. (3-29-10)

b. Has successfully completed Board-approved, MEAC-accredited courses in pharmacology, the treatment of shock/IV therapy, and suturing specific to midwives. (3-29-10)

03. **Incomplete or Stalled Applications.** The applicant must provide or facilitate the provision of any supplemental third party documents that may be required by the Board. If an applicant fails to respond to a Board request or an application has lacked activity for twelve (12) consecutive months, the application on file with the Board is deemed denied and it will be terminated upon thirty (30) days written notice, unless good cause is established to the Board. (3-29-10)

101. -- 174. (RESERVED)

175. FEES.

Unless otherwise provided for, all fees are non-refundable.

APPLICATION	FEE (Not to Exceed)
Initial Application	\$200
Initial License	\$800 (amount will be refunded if license not issued)
Renewal	\$850 (amount will be refunded if license not renewed)
Reinstatement	\$50

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176. -- 199. (RESERVED)

200. RENEWAL OF LICENSE.

01. Complete Practice Data. The information submitted by the licensed midwife must include complete practice data for the calendar year preceding the date of the renewal application. Such information includes:

()

- a.** The number of clients to whom the licensed midwife has provided care; (3-29-10)
- b.** The number of deliveries, including; (3-29-10)
 - i.** The number of cesareans; (3-29-10)
 - ii.** The number of vaginal births after cesarean (VBACs); (3-29-10)
- c.** The average, oldest, and youngest maternal ages; (3-29-10)
- d.** The number of primiparae; (3-29-10)
- e.** All APGAR scores below five (5) at five (5) minutes; (3-29-10)
- f.** The number of prenatal transfers and transfers during labor, delivery and immediately following birth, including; (3-29-10)
 - i.** Transfers of mothers; (3-29-10)
 - ii.** Transfers of babies; (3-29-10)
 - iii.** Reasons for transfers; (3-29-10)
 - iv.** Transfers of all newborns being admitted to the neonatal intensive care unit (NICU) for more than twenty four (24) hours. (3-29-10)
- g.** Any perinatal deaths occurring up to six weeks post-delivery, broken out by: (3-29-10)
 - i.** Weight; (3-29-10)
 - ii.** Gestational Age; (3-29-10)
 - iii.** Age of the baby; (3-29-10)
 - iv.** Stillbirths, if any; (3-29-10)
- h.** Any significant neonatal or perinatal problem, not listed above, during the six (6) weeks following birth. (3-29-10)

02. Current Cardiopulmonary Resuscitation Certification. A licensed midwife to renew their license must certify on their renewal application that they possess a current certification in adult, infant, and child cardiopulmonary resuscitation and in neonatal resuscitation obtained through completion of American Heart Association or the Health and Safety Institute approved cardiopulmonary resuscitation courses and American Academy of Pediatrics approved neonatal resuscitation courses. (4-11-19)

03. Continuing Education Verification. When a licensed midwife submits a renewal application, the licensed midwife must certify by signed affidavit that the annual continuing education requirements set by the Board have been met. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with continuing education requirements. (3-29-10)

201. -- 299. (RESERVED)

300. CONTINUING EDUCATION REQUIREMENT.

01. Annual Continuing Education Requirement. A licensed midwife must successfully complete a minimum of ten (10) continuing education hours per year for the year preceding renewal. Two (2) of these hours must be in peer review participation as described in Subsection 300.06. One (1) continuing education hour equals one (1) clock hour. A licensed midwife is considered to have satisfied the annual continuing education requirement for the first renewal of the initial license. ()

02. Subject Material. The subject material of the continuing education must be germane to the practice of midwifery and either acceptable to NARM as counting towards recertification of a licensed midwife as a CPM or otherwise approved by the Board. (3-29-10)

03. Verification of Attendance. Each licensed midwife must maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any hours attended. This verification must be maintained by the licensed midwife for no less than seven (7) years and provided to the Board upon request by the Board or its agent. (3-29-10)

04. Distance Learning and Independent Study. The Board may approve a course of study for continuing education credit that does not include the actual physical attendance of the licensed midwife in a face-to-face setting with the course instructor. Distance Learning or Independent Study courses will be eligible for continuing education credits if approved by NARM or upon approval of the Board. (3-29-10)

05. Requests for Board Approval. All requests for Board approval of educational programs must be made to the Board in writing at least sixty (60) days before the program is scheduled to occur. Requests must be accompanied by a statement that includes: (3-29-10)

- a.** The name of the instructor or instructors; (3-29-10)
- b.** The date and time and location of the course; (3-29-10)
- c.** The specific agenda for the course; (3-29-10)
- d.** The number of continuing education credit hours requested; and (3-29-10)
- e.** A statement of how the course is believed to be germane to the practice of midwifery. (3-29-10)

06. Peer Review System. As part of the Board's annual continuing education requirement, each licensed midwife must participate in peer review activities for a minimum of two (2) hours per year. (3-29-10)

a. The purpose of peer review is to enable licensed midwives to retrospectively present and review cases in an effort to further educate themselves about the appropriateness, quality, utilization, and ethical performance of midwifery care. (3-29-10)

b. Licensed midwives are responsible for organizing their own peer review sessions. At least three (3) licensed midwives or CPMs must participate in a peer review session in order for the session to count towards a licensed midwife's annual two-hour peer review activity requirement. (3-29-10)

c. Each licensed midwife must make a presentation that must include, without limitation, the following information: (3-29-10)

- i.** Total number of clients currently in the licensed midwife's care; (3-29-10)
- ii.** The number of upcoming due dates for clients in the licensed midwife's practice; (3-29-10)
- iii.** The number of women in the licensed midwife's practice that are postpartum; (3-29-10)
- iv.** The number of births the licensed midwife has been involved with since the last peer review session; and (3-29-10)

v. One (1) or more specific cases arising since the licensed midwife's last peer review session. The licensed midwife must present any cases involving serious complications or the transport of a mother or baby to the hospital. (3-29-10)

d. The information presented in a peer review session is confidential. The identities of the client, other health care providers, and other persons involved in a case may not be divulged during the peer review session. (3-29-10)

07. Carryover Hours. A licensed midwife may carryover a maximum of five (5) hours of continuing education to meet the next year's continuing education requirement. (3-29-10)

08. Hardship Waiver. The Board may waive the continuing education requirement for good cause. The licensed midwife must request the waiver and provide the Board with any information requested to assist the Board in substantiating the claimed hardship. ()

301. -- 324. (RESERVED)

325. INFORMED CONSENT.

01. Informed Consent Required. A licensed midwife must obtain and document informed consent from a client before caring for that client. The informed consent must be documented on an informed consent form, signed and dated by the client, in which the client acknowledges, at a minimum, the provisions listed in Section 54-5511, Idaho Code and the following: ()

a. Instructions for obtaining a copy of the Essential Documents of the NACPM and 2016 Job Analysis Survey, published by NARM; ()

b. Instructions for filing complaints with the Board; (3-29-10)

02. Record of Informed Consent. All licensed midwives must maintain a record of all signed informed consent forms for each client for a minimum of nine (9) years after the last day of care for such client. (3-29-10)

326. -- 349. (RESERVED)

350. FORMULARY.

01. Midwifery Formulary. A licensed midwife may obtain and administer, during the practice of midwifery, the following: (3-29-10)

a. Oxygen; (3-29-10)

- b. Oxytocin, misoprostol, and methylergonovine as postpartum antihemorrhagic agents; ()
- c. Injectable local anesthetic for the repair of lacerations that are no more extensive than second degree; (3-29-10)
- d. Antibiotics to the mother for group b streptococcus prophylaxis consistent with the guidelines set forth in Prevention of Perinatal Group B Streptococcal Disease, published by the Centers for Disease Control and Prevention; (7-1-14)
- e. Epinephrine to the mother administered for anaphylactic shock; ()
- f. Intravenous fluids for stabilization of the woman; (3-29-10)
- g. Rho (d) immune globulin; (3-29-10)
- h. Phytonadione; and ()
- i. Eye prophylactics to the baby. (3-29-10)

02. Other Legend Drugs. During the practice of midwifery a licensed midwife may not obtain or administer legend drugs that are not listed in the midwifery formulary. Drugs of a similar nature and character may be used if determined by the Board to be consistent with the practice of midwifery and provided that at least one hundred twenty (120) days' advance notice of the proposal to allow the use of such drugs is given to the Board of Pharmacy and the Board of Medicine and neither Board objects to the addition of such drugs to the midwifery formulary. (3-29-10)

351. USE OF FORMULARY DRUGS.

A licensed midwife may use the drugs described in the midwifery formulary according to the following protocol describing the indication for use, dosage, route of administration and duration of treatment:

Drug	Indication	Dose	Route of Administration	Duration of Treatment
Oxygen	Maternal/Fetal Distress	10-12 L/min. 10 L/min.	Bag and mask Mask	Until maternal/fetal stabilization is achieved or transfer to hospital is complete
	Neonatal Resuscitation	10-12 L/min. 10 L/min.	Bag and mask Mask	Until stabilization is achieved or transfer to a hospital is complete
Oxytocin (Pitocin)	Postpartum hemorrhage only	10 Units/ml	Intramuscularly only	1-2 doses Transport to hospital required if more than two doses are administered
Lidocaine HCl 2%	Local anesthetic for use during postpartum repair of lacerations or episiotomy	Maximum 50 ml	Percutaneous infiltration only	Completion of repair

Drug	Indication	Dose	Route of Administration	Duration of Treatment
Penicillin G (Recommended)	Group B Strep Prophylaxis	5 million units initial dose, then 2.5 million units every 4 hours until birth	IV in \geq 100 ml LR, NS or D ₅ LR	Birth of baby
Ampicillin Sodium (Alternative)	Group B Strep Prophylaxis	2 grams initial dose, then 1 gram every 4 hours until birth	IV in \geq 100 ml NS or LR	Birth of baby
Cefazolin Sodium (drug of choice for penicillin allergy with low risk for anaphylaxis)	Group B Strep Prophylaxis	2 grams initial dose, then 1 gram every 8 hours	IV in \geq 100 ml LR, NS or D ₅ LR	Birth of baby
Clindamycin Phosphate (drug of choice for penicillin allergy with high risk for anaphylaxis)	Group B Strep Prophylaxis	900 mg every 8 hours	IV in \geq 100 ml NS (not LR)	Birth of baby
Epinephrine HCl 1:1000	Treatment or post-exposure prevention of severe allergic reactions	0.3 ml	Subcutaneously or intramuscularly	Every 20 minutes or until emergency medical services arrive Administer first dose then immediately request emergency services
Lactated Ringer's (LR) 5% Dextrose in Lactated Ringer's solution (D ₅ LR) 0.9% Sodium Chloride (NS) Sterile Water	To achieve maternal stabilization Reconstitution of antibiotic powder	1 - 2 liter bags First liter run in at a wide-open rate, the second liter titrated to client's condition As directed	Intravenously with \geq 18 gauge catheter As directed	Until maternal stabilization is achieved or transfer to a hospital is complete Birth of Baby
Cytotec (Misoprostol)	Postpartum hemorrhage only	800 mcg	Rectally is the preferred method Orally is allowed	1-2 doses Transport to hospital required if more than one dose is administered

Drug	Indication	Dose	Route of Administration	Duration of Treatment
Rho(d) Immune Globulin	Prevention of Rho (d) sensitization in Rho (d) negative women	300 mcg	Intramuscularly	Single dose at any gestation for Rho (d) negative, antibody negative women within 72 hours of spontaneous bleeding or abdominal trauma. Single dose at 26-28 weeks gestation for Rho (d) negative, antibody negative women Single dose for Rho (d) negative, antibody negative women within 72 hours of delivery of Rho (d) positive infant, or infant with unknown blood type
Phytonadione	Prophylaxis for Vitamin K Deficiency Bleeding	1 mg	Intramuscularly	1 dose
0.5% Erythromycin Ophthalmic Ointment	Prophylaxis of Neonatal Ophthalmia	1 cm ribbon in each eye	Topical	1 dose

()

352. OBTAINING, STORING, AND DISPOSING OF FORMULARY DRUGS.

A licensed midwife must adhere to the following protocol for obtaining, storing, and disposing of formulary drugs during the practice of midwifery. (3-29-10)

01. Obtaining Formulary Drugs. A licensed midwife may obtain formulary drugs as allowed by law, including, without limitation, from: (3-29-10)

a. A person or entity that is licensed as a Wholesale Distributor by the Idaho State Board of Pharmacy; and (3-29-10)

b. A retail pharmacy, in minimal quantities for office use. (3-29-10)

02. Storing Formulary Drugs. A licensed midwife must store all formulary drugs in secure areas suitable for preventing unauthorized access and for ensuring a proper environment for the preservation of the drugs. However, licensed midwives may carry formulary drugs to the home setting while providing care within the course and scope of the practice of midwifery. ()

03. Disposing of Formulary Drugs. A licensed midwife must dispose of formulary drugs using means that are reasonably calculated to guard against unauthorized access by persons and harmful excretion of the drugs into the environment. The means that may be used include, without limitation: (3-29-10)

a. Transferring the drugs to a reverse distributor who is registered to destroy drugs with the U.S. Drug Enforcement Agency; (3-29-10)

b. Removing the drugs from their original containers, mixing them with an undesirable substance such as coffee grounds or kitty litter, putting them in impermeable, non-descript containers such as empty cans or

sealable bags, and throwing the containers in the trash; or (3-29-10)

c. Flushing the drugs down the toilet if the accompanying patient information instructs that it is safe to do so. (3-29-10)

353. -- 354. (RESERVED)

355. MEDICAL WASTE.

A licensed midwife must dispose of medical waste during the practice of midwifery according to the following protocol: (3-29-10)

01. Containers for Non-Sharp, Medical Waste. Medical waste, except for sharps, must be placed in disposable containers/bags which are impervious to moisture and strong enough to preclude ripping, tearing or bursting under normal conditions of use. The bags must be securely tied so as to prevent leakage or expulsion of solid or liquid waste during storage, handling or transport. The containment system must have a tight-fitting cover and be kept clean and in good repair. All bags used for containment of medical waste must be clearly identified by label or color, or both. (3-29-10)

02. Containers for Sharps. Sharps must be placed in impervious, rigid, puncture-resistant containers immediately after use. Needles must not be bent, clipped or broken by hand. Rigid containers of discarded sharps must either be labeled or colored like the disposable bags used for other medical waste, or placed in such labeled or colored bags. (3-29-10)

03. Storage Duration. Medical waste may not be stored for more than seven (7) days, unless the storage temperature is below thirty-two (32) degrees Fahrenheit. Medical waste must never be stored for more than ninety (90) days. (3-29-10)

04. Waste Disposal. Medical waste must be disposed of by persons knowledgeable in handling of medical waste. (3-29-10)

356. SCOPE AND PRACTICE STANDARDS.

A licensed midwife must adhere to the following scope and practice standards when providing antepartum, intrapartum, postpartum, and newborn care. (3-29-10)

01. NACPM Scope and Practice Standards. The Board adopts the Essential Documents of the National Association of Certified Professional Midwives as scope and practice standards for licensed midwives. All licensed midwives must adhere to these scope and practice standards during the practice of midwifery to the extent such scope and practice standards are consistent with the Board's enabling law, Chapter 55, Title 54, Idaho Code. (3-29-10)

02. Conditions for Which a Licensed Midwife May Not Provide Care. A licensed midwife may not provide care for a client with conditions listed in Section 54-5505(1)(e)(i), Idaho Code. ()

03. Conditions for Which a Licensed Midwife May Not Provide Care Without Health Care Provider Involvement. A licensed midwife may not provide care for a client with a history of the disorders, diagnoses, conditions, or symptoms listed in Section 54-5505(1)(e)(ii), Idaho Code, unless such disorders, diagnoses, conditions or symptoms are being treated, monitored or managed by a licensed health care provider. For purposes of this Paragraph, in Section 54-5505(1)(e)(ii), Idaho Code, "history" means a "current history" and "illegal drug use" means "illegal drug abuse or addiction." Before providing care to such a client, the licensed midwife must notify the client in writing that the client must obtain the described physician care as a condition to the client's eligibility to obtain maternity care from the licensed midwife. The licensed midwife must, additionally, obtain the client's signed acknowledgment that the client has received the written notice. ()

04. Conditions for Which a Licensed Midwife Must Recommend Physician Involvement. Before providing care for a client with a history of any of the disorders, diagnoses, conditions or symptoms listed in Section 54-5505(1)(e)(iii), Idaho Code, a licensed midwife must provide written notice to the client that the client is advised to see a physician licensed under Chapter 18, Title 54, Idaho Code, or under an equivalent provision of the law of a

state bordering Idaho, during the client's pregnancy. Additionally, the licensed midwife must obtain the client's signed acknowledgment that the client has received the written notice.

05. Conditions for which a Licensed Midwife must Facilitate Hospital Transfer. (3-29-10)

a. Conditions. A licensed midwife must facilitate the immediate transfer of a client to a hospital for emergency care if the client has any of the disorders, diagnoses, conditions or symptoms listed in Section 54-5505(1)(e)(iv), Idaho Code, and the following: ()

i. Maternal fever in labor of more than 100.4 degrees Fahrenheit, in the absence of environmental factors; (7-1-14)

ii. Suggestion of fetal jeopardy, such as frank bleeding before delivery, any abnormal bleeding (with or without abdominal pain), evidence of placental abruption, meconium with non-reassuring fetal heart tone patterns where birth is not imminent, or abnormal fetal heart tones with non-reassuring patterns where birth is not imminent; (3-29-10)

b. Plan for Emergency Transfer and Transport. When facilitating a transfer under Subsection 356.05, the licensed midwife must notify the hospital when the transfer is initiated, accompany the client to the hospital, if feasible, or communicate by telephone with the hospital if the licensed midwife is unable to be present personally. The licensed midwife must also ensure that the transfer of care is accompanied by the client's medical record, which must include items defined in Section 54-5505(1)(e)(v), Idaho Code, and if feasible, the licensed midwife's assessment of the client's current medical condition and description of the care provided by the licensed midwife before transfer. ()

c. Transfer or Termination of Care. A midwife who deems it necessary to transfer or terminate care pursuant to the laws and rules of the Board or for any other reason must transfer or terminate care and will not be regarded as having abandoned care or wrongfully terminated services. ()

357. -- 359. (RESERVED)

360. NEWBORN TRANSFER OF CARE OR CONSULTATION.

01. Newborn Transfer of Care. Conditions for which a licensed midwife must facilitate the immediate transfer of a newborn to a hospital for emergency care: (4-11-15)

a. Respiratory distress defined as respiratory rate greater than eighty (80) or grunting, flaring, or retracting for more than one (1) hour. (4-11-15)

b. Any respiratory distress following delivery with moderate to thick meconium stained fluid. (4-11-15)

c. Central cyanosis or pallor for more than ten (10) minutes. (4-11-15)

d. Apgar score of six (6) or less at five (5) minutes of age. (4-11-15)

e. Abnormal bleeding. (4-11-15)

f. Any condition requiring more than six (6) hours of continuous, immediate postpartum evaluation. (4-11-15)

g. Any vesicular skin lesions. (4-11-15)

h. Seizure-like activity. (4-11-15)

i. Any bright green emesis. (4-11-15)

j. Poor feeding effort due to lethargy or disinterest in nursing for more than two (2) hours immediately following birth. (4-11-15)

02. Newborn Consultation Required. Conditions for which a licensed midwife must consult a Pediatric Provider (Neonatologist, Pediatrician, Family Practice Physician, Advanced Practice Registered Nurse, or Physician Assistant): (4-11-15)

a. Temperature instability, defined as a rectal temperature less than ninety-six point eight (96.8) degrees Fahrenheit or greater than one hundred point four (100.4) degrees Fahrenheit documented two (2) times more than fifteen (15) minutes apart. (4-11-15)

b. Murmur lasting more than twenty-four (24) hours immediately following birth. (4-11-15)

c. Cardiac arrhythmia. (4-11-15)

d. Congenital anomalies. (4-11-15)

e. Birth injury. (4-11-15)

f. Clinical evidence of prematurity, including but not limited to, low birth weight of less than two thousand five hundred (2,500) grams, smooth soles of feet, or immature genitalia. (4-11-15)

g. Any jaundice in the first twenty-four (24) hours after birth or significant jaundice at any time. (4-11-15)

h. No stool for more than twenty-four (24) hours immediately following birth. (4-11-15)

i. No urine output for more than twenty-four (24) hours. (4-11-15)

j. Development of persistent poor feeding effort at any time. (4-11-15)

361. -- 449. (RESERVED)

450. UNPROFESSIONAL CONDUCT.

01. Standards of Conduct. If a licensed midwife or an applicant for licensure, renewal, or reinstatement has engaged in unprofessional conduct, the Board may refuse to issue, renew, or reinstate the applicant's license and may discipline the licensee. Unprofessional conduct includes, without limitation, those actions defined in Section 54-5510, Idaho Code, and any of the following: ()

a. Having a license suspended, revoked, or otherwise disciplined in this or any other state or jurisdiction; (4-7-11)

b. Having been convicted of any felony, or of a lesser crime that reflects adversely on the person's fitness to be a licensed midwife. Such lesser crimes include, but are not limited to, any crime involving the delivery of health care services, dishonesty, misrepresentation, theft, or an attempt, conspiracy or solicitation of another to commit a felony or such lesser crimes. (4-7-11)

c. Violating any standards of conduct set forth in these rules, whether or not specifically labeled as such, and including without limitation any scope and practice standards, record-keeping requirements, notice requirements, or requirements for documenting informed consent. (3-29-10)

02. Discipline. If the Board determines that a licensed midwife has engaged in unprofessional conduct, it may impose discipline against the licensed midwife that includes, without limitation, the following: (4-7-11)

a. Require that a licensed midwife practice midwifery under the supervision of another health care provider. The Board may specify the nature and extent of the supervision and may require the licensed midwife to enter into a consultation, collaboration, proctoring, or supervisory agreement, written or otherwise, with the other

health care provider; (3-29-10)

b. Suspend or revoke a license; (3-29-10)

c. Impose a civil fine not to exceed one thousand dollars (\$1,000) for each violation of the Board's laws and rules; and (3-29-10)

d. Order payment of the costs and fees incurred by the Board for the investigation and prosecution of the violation of the Board's laws and rules. (3-29-10)

451. -- 999. (RESERVED)

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES
24.27.01 – RULES OF THE IDAHO STATE BOARD OF MASSAGE THERAPY
DOCKET NO. 24-2701-1900F
NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-4007, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 24.27.01, rules of the Idaho State Board of Massage Therapy:

IDAPA 24.27.01

- 24.27.01, *Rules of the Idaho State Board of Massage Therapy*: all proposed rules except 011, 100.02.a., 100.02.b., 200.03, and 200.04.

The Idaho Administrative Code expired on June 30, 2019, including IDAPA 24.27.01. In order to protect the public health, safety, and welfare a temporary and proposed version of the Rules of the Idaho State Board of Massage Therapy was published. This pending fee rule will allow the Legislature to review for codification IDAPA 24.27.01, the Rules of the Idaho State Board of Massage Therapy. The Board considered the Licensing Freedom Act of 2017, Executive Order No. 2017-06, Licensing Freedom Act of 2019, Executive Order No. 2019-01; and the Red Tape Reduction Act, Executive Order No. 2019-02 and the continued efforts to clarify and streamline its rules. This pending fee rule removes redundant language, moves fees into an easier to read tabular format, and adds the phrase “not to exceed” before fee amounts, which allows for flexibility in decreasing and increasing board fees within authorized limits to maintain Board liquidity.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4897 - 4908.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-4008, Idaho Code, as follows:

Application fee: not to exceed \$50;
Original license fee: not to exceed \$65;
Annual renewal fee: not to exceed \$65;
License by endorsement fee: not to exceed \$75;
Temporary license fee: not to exceed \$25; p
Provisional permit fee: not to exceed \$25;
Duplicate license fee: not to exceed \$10.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Rob McQuade at (208) 332-3433.

Dated this 16th day of October, 2019.

Kelley Packer
Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 334-3233
Fax: (208) 334-3945

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-4007, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 24.27.01, rules of the Idaho State Board of Massage Therapy:

IDAPA 24.27

- 24.27.01, *Rules of the Idaho State Board of Massage Therapy* - All rules **except Subsections 010.02, 010.03, 300.02, and 300.03.**

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules protect the health, safety, and welfare of the public through ensuring

massage therapy services are provided by those have met minimum qualifications to perform massage therapy. Allowing these rules to expire would harm current licensees, applicants, and the public because the minimum standards of competency would lapse.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Without the ability to impose licensure fees prescribed in this chapter, the Idaho State Board of Massage Therapy would not be able to remain self-sufficient, in violation of its statutory mandate.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Fees are established in accordance with Section 54-4008, Idaho Code, as follows: application fee: \$50; original license fee: \$65; annual renewal fee: \$65; license by endorsement fee: \$75; temporary license fee: \$25; provisional permit fee: \$25; and duplicate license fee: \$10.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 24-2701-1900F

24.27.01 – RULES OF THE IDAHO STATE BOARD OF MASSAGE THERAPY

000. LEGAL AUTHORITY.

These rules are hereby prescribed and established pursuant to the authority vested in the Idaho State Board of Massage Therapy by the provisions of Section 54-4007, Idaho Code. (3-27-13)

001. TITLE AND SCOPE.

01. **Title.** The rules are titled IDAPA 24.27.01, “Rules of the Idaho State Board of Massage Therapy.” (3-27-13)

02. **Scope.** These rules implement the purposes and intent of Title 54, Chapter 40, Idaho Code, to regulate the profession of massage therapy in the interest of the public health, safety, and welfare. (3-27-13)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Approved Massage Program.** A massage therapy program conducted by an entity that is registered with the Idaho State Board of Education pursuant to Chapter 24, Title 33, Idaho Code, or with a comparable authority in another state, and that meets the entry-level educational requirements as set forth in Section 600 of these rules. (3-27-13)

02. **Clinical Work.** Supervised, hands-on training in a classroom setting. (3-27-13)

03. **Code of Ethics.** The Idaho Code of Ethics for Massage Therapy attached to these rules as Appendix A. (3-27-13)

04. **CPR.** Cardiopulmonary resuscitation. (3-27-13)

05. **Standards of Practice.** The Standards of Practice of Massage Therapy attached to these rules as Appendix B. (3-27-13)

011. -- 099. (RESERVED)

100. ORGANIZATION AND OPERATIONS OF THE BOARD.

01. **Meetings.** The Board meets at least annually and at other such times and places as designated by the Chairman or upon the written request of any three (3) members of the Board. (3-27-13)

a. A minimum of three (3) Board members constitutes a quorum and shall be required for the transaction of business. A majority vote of the quorum present at a meeting is considered the action of the Board as a whole. (3-27-13)

b. The Chairman is a voting member. (3-27-13)

02. **Organization.** At the first meeting of each fiscal year, the Board elects from its members a Chairman, who assumes the duty of the office immediately upon such selection. (3-27-13)

101. -- 199. (RESERVED)

200. APPLICATION.

01. **Filing an Application.** Applicants for licensure must submit a complete application, verified under oath, to the Board at its official address. The application must be on the forms approved by the Board and submitted together with the appropriate fee(s) and supporting documentation. (3-27-13)

02. **Supplemental Documents.** The applicant must provide or facilitate the provision of any supplemental third party documents that may be required under the qualifications for the license being sought. (3-27-13)

201. -- 249. (RESERVED)

250. FEES.

All fees are non-refundable except that, if a license is not issued, the license fee will be refunded

FEE TYPE	AMOUNT (Not to Exceed)
Application	\$50
Original License	\$65
Annual Renewal	\$65
License by Endorsement	\$75
Temporary License	\$25
Provisional Permit	\$25
Reinstatement	As provided in Section 67-2614, Idaho Code
Examination	Established by Administrator

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251. -- 299. (RESERVED)

300. REQUIREMENTS FOR ORIGINAL LICENSURE.

The Board may grant a license to an applicant for licensure who completes an application as set forth in Section 200 of these rules and meets the following general, education, and examination requirements: (3-27-13)

01. General. (3-27-13)

a. An applicant must provide evidence of being at least eighteen (18) years of age. (3-27-13)

b. An applicant must certify that he/she has not been found guilty, convicted, received a withheld judgment, or suspended sentence for a felony or a crime involving moral turpitude, or if the applicant has been found guilty, convicted, received a withheld judgment, or suspended sentence for such a crime, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules. (3-27-13)

c. An applicant must certify that he/she has not been convicted of a crime under any municipal, state, or federal narcotic or controlled substance law, or if the applicant has been convicted of such a crime, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules. (3-27-13)

d. An applicant must certify that their license has not been subject to any disciplinary action by a regulatory entity in another state, territory or country including, but not limited to, having an application for licensure denied. If the applicant or their license has been subject to discipline, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules. (3-27-13)

301. -- 304. (RESERVED)

305. APPROVED EXAMINATIONS.

Approved examinations are the following examinations or another nationally recognized competency examination in massage therapy that is approved by the Board. (3-27-13)

01. Approved Examinations. (3-27-13)

a. Massage and Bodywork Licensing Examination (MBLEx) as administered by the Federation of State Massage Therapy Boards (FSMTB); (3-27-13)

b. National Certification Examination for Therapeutic Massage and Bodywork (NCETMB) or

National Certification Examination for Therapeutic Massage (NCETM) as administered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB), if taken before February 1, 2015. (3-24-17)

c. Other nationally recognized competency examinations in massage therapy that are approved by the Board. A written request for approval must be submitted to the Board together with supporting documentation as may be requested by the Board. (3-27-13)

02. Successful Passage. A passing score, or successful passage of the exam, will be determined by the entity administering the exam. (3-27-13)

03. Date of Exam. The passage of the exam may have occurred prior to the effective date of these rules. (3-27-13)

306. WRITTEN STATEMENT OF SUITABILITY FOR LICENSURE.

An applicant who or whose license has a conviction, finding of guilt, withheld judgment, or suspended sentence for a felony or crime involving moral turpitude, has a conviction for any crime under any municipal, state, or federal narcotic or controlled substance law, or has been subject to discipline in another state, territory or country must submit with his application a written statement and any supplemental information establishing his current suitability for licensure. (3-27-13)

01. Consideration of Factors and Evidence. The Board considers the following factors or evidence: (3-27-13)

a. The severity or nature of the crime or discipline; (3-27-13)

b. The period of time that has passed since the crime or discipline under review; (3-27-13)

c. The number or pattern of crimes or discipline or other similar incidents; (3-27-13)

d. The circumstances surrounding the crime or discipline that would help determine the risk of repetition; (3-27-13)

e. The relationship of the crime or discipline to the practice of massage therapy; (3-27-13)

f. The applicant's activities since the crime or discipline under review, such as employment, education, participation in treatment, payment of restitution, or any other factors that may be evidence of current rehabilitation; and (3-27-13)

g. Any other information regarding rehabilitation or mitigating circumstances. (3-27-13)

02. Interview. The Board may, at its discretion, grant an interview of the applicant. (3-27-13)

03. Applicant Bears the Burden. The applicant bears the burden of establishing his current suitability for licensure. (3-27-13)

307. -- 309. (RESERVED)

310. REQUIREMENTS FOR LICENSURE BY ENDORSEMENT.

The Board may grant a license to an applicant for licensure by endorsement who completes an application as set forth in Section 200 and meets the following requirements: (3-27-13)

01. Holds a Current License. The applicant must be the holder of a current active license or certificate in good standing in the profession, and at the level for which a license is being sought, issued by the authorized regulatory entity in another state. The state must have licensing or certification requirements substantially equivalent to or higher than those required for new applicants in Idaho. The certification of licensure or certification must be received by the Board from the issuing agency; (3-27-13)

02. Has Not Been Disciplined. The applicant or his/her license must have not been voluntarily surrendered, revoked, or suspended by any regulatory entity. The Board may consider an applicant who, or whose license, has been restricted, denied, sanctioned, or otherwise disciplined. If the applicant or his/her license has been subject to discipline, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules; (3-27-13)

03. Is of Good Moral Character. The applicant must not have been found guilty, convicted, received a withheld judgment, or suspended sentence for any felony or any crime involving moral turpitude. If the applicant has been found guilty, convicted, received a withheld judgment, or suspended sentence for such a crime the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules; and (3-27-13)

04. Has Not Been Convicted of a Drug Offense. The applicant must not have been convicted of any crime under any municipal, state, or federal narcotic or controlled substance law. If the applicant has been convicted of such a crime, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules. (3-27-13)

311. -- 319. (RESERVED)

320. TEMPORARY LICENSE.

01. General. Any person who has submitted to the Board a complete application for licensure by examination under Section 54-4009, Idaho Code, or by endorsement under Section 54-4010, Idaho Code, together with the required fees, may apply for a temporary license to practice massage therapy while their application is being processed by the Board. (3-24-17)

02. Duration. An applicant will be issued only one (1) temporary license that will be valid for a period not to exceed four (4) months or until the Board acts upon the licensure application, whichever occurs first. (3-24-17)

321. -- 329. (RESERVED)

330. PROVISIONAL PERMIT.

Upon application to the Board and payment of the required fees, an applicant may be issued a provisional permit to practice massage therapy if the applicant meets all the requirements for licensure under section 54-4009, Idaho Code, except for having successfully passed a nationally recognized competency examination in massage therapy that is approved by the Board as described in Subsection 305.01. (3-24-17)

01. General. A provisional permit will be issued subject to the following conditions: (3-24-17)

a. The applicant must certify that the applicant will take the next scheduled examination for licensure approved by the Board, and that the applicant has not failed two (2) previous examinations for licensure; and (3-24-17)

b. A licensed massage therapist certifies to the Board that the applicant will practice massage therapy only under the supervision of the licensed massage therapist while both are in the same location. (3-24-17)

02. Duration and Renewal. An applicant will be issued only one (1) provisional permit that is valid for a period not to exceed six (6) months or until the applicant is issued a temporary license or the Board acts upon the massage therapist license application, whichever occurs first. A provisional permit may only be renewed once upon a showing of good cause. (3-24-17)

331. -- 399. (RESERVED)

400. RENEWAL OR EXPIRATION OF LICENSE.

A license expires on the license holder's birth date. The individual must annually renew the license before the license holder's birth date. Licenses not so renewed will be immediately canceled in accordance with Section 67-2614, Idaho Code. (3-27-13)

01. Renewal. A license must be renewed before it expires by submitting a complete application for renewal on forms approved by the Board together with the renewal fee. As part of a complete renewal application, the licensee will attest to completion of the required continuing education pursuant to Section 500 of these rules. False attestation of satisfaction of the continuing education requirements on a renewal application subjects the licensee to disciplinary action, including revocation. (3-27-13)

02. Reinstatement. A license that has been canceled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. (3-27-13)

a. Within five (5) years of cancellation, an applicant seeking reinstatement must submit to the Board evidence that the applicant has completed the required continuing education together with a complete renewal application and appropriate fee(s). (3-27-13)

i. The applicant must submit evidence of completion of continuing education hours totaling the hours required at the time of cancellation and for each year the license was canceled. (3-27-13)

ii. The applicant must pay a reinstatement fee as set forth in Section 250 of these rules. (3-24-16)

b. After five (5) years of cancellation, the applicant will be treated as a new applicant, and application must be made on the same forms and in the same manner as an application for an original license in accordance with Section 200 of these rules. (3-27-13)

401. -- 499. (RESERVED)

500. CONTINUING EDUCATION.

All licensees must comply with the following continuing education requirements: (3-27-13)

01. Requirement. Beginning with the second renewal of their license, a licensee is required to complete a minimum of six (6) hours of continuing education, which includes one (1.0) hour in ethics, within the preceding twelve (12) months that meet the requirements in Sections 501, 502 and 503 of these rules. (3-27-13)

a. An hour is defined as fifty (50) minutes out of each sixty (60) minute segment. (3-27-13)

b. Continuing education credit will only be given for actual time in attendance or for the time spent participating in the educational activity. (3-27-13)

c. The educational course setting may include a classroom, conference, seminar, on-line or a virtual classroom. (3-27-13)

d. If the licensee completes two (2) or more courses having substantially the same content during any one (1) renewal period, the licensee will only receive continuing education credit for one (1) of the courses. (3-27-13)

02. Documentation. Each licensee must maintain documentation verifying continuing education course attendance and curriculum, or completion of the educational activity for a period of five (5) years from the date of completion. This documentation will be subject to audit by the Board. (3-27-13)

a. Documented evidence of meeting the continuing education course requirement must be in the form of a certificate or letter from the sponsoring entity that includes verification of attendance by the licensee, the title of the activity, the subject material covered, the dates and number of hours credited, and the presenter's full name and professional credentials. Documented evidence of completing a continuing education activity must be in such form as to document both completion and date of the activity. (3-27-13)

b. A licensee must submit the verification documentation to the Board, if requested by the Board. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the licensee may be subject to disciplinary action. (3-27-13)

03. Waiver. The Board may waive the requirements of this rule for reasons of individual hardship, including health or other good cause. The licensee should request the waiver in advance of renewal and must provide any information requested by the Board to assist in substantiating hardship cases. This waiver is granted at the sole discretion of the Board. (3-27-13)

04. Carryover of Continuing Education Hours. Continuing education hours not claimed in the current renewal year may be claimed in the next renewal year. A maximum of six (6) hours may be carried forward from the immediately preceding year, and may not be carried forward more than one renewal year. (3-27-13)

05. Exemption. A licensee is exempt from the continuing education requirements under this Section for the period between the initial issuance of the original license and the first expiration date of that license. (3-27-13)

501. APPROVAL OF CONTINUING EDUCATION COURSES.

Approved continuing education courses are those courses and programs that meet the requirements of these rules, and are approved, sponsored, or provided by the following entities or organizations, or otherwise approved by the Board: (3-27-13)

01. A College or University. Accredited by a nationally recognized accrediting agency as recognized by the United States Secretary of Education; (3-27-13)

02. Federal, State or Local Governmental Entities; and (3-27-13)

03. National and State Massage Therapy Associations. (3-27-13)

04. Provider Course Approval. Other courses may be approved by the Board based upon documentation submitted by a continuing education provider. Requests for approval of courses made by the provider must be submitted on a form approved by the Board that includes: (3-27-13)

a. The nature and subject of the course and its relevancy to the practice of massage therapy; (3-27-13)

b. The name of instructor(s) and their qualifications; (3-27-13)

c. The date, time and location of the course; (3-27-13)

d. The specific agenda for the course; (3-27-13)

e. The number of continuing education hours requested; (3-27-13)

f. The procedures for verification of attendance; and (3-27-13)

g. Other information as may be requested by the Board. (3-27-13)

h. Upon review of all information requested, the Board may deny any request for a course that does not meet the requirements of Idaho law or rule. Board approval of a course will be granted for a period not to exceed five (5) years, or until the course materials or instructors are changed, whichever may occur first. (3-27-13)

05. Licensee Course Approval. Other courses may be approved by the Board based upon documentation submitted by the licensee. All requests for approval must be made to the Board in writing and include the nature and subject of the course and its relevancy to the practice of massage therapy, name of instructor(s) and their qualifications, date, time and location of the course, and procedures for verification of attendance. (3-27-13)

502. CONTINUING EDUCATION ACTIVITIES.

The following educational activities qualify for continuing education as set forth: (3-27-13)

01. Teaching a Course For The First Time, Not to Exceed Six Hours. A report must be submitted,

including the name of the course, course outline, qualifications for teaching, number of hours taught, number of participants taught, date and location of the training. (3-27-13)

02. Publishing Articles or Books. The hours awarded as determined at the discretion of the Board. (3-27-13)

03. Self Study. Using books, audio tapes, video tapes, DVD's, research materials, professional publications, online sources, and/or other electronic sources/methods documented by a type-written two-page report summarizing the study content. (3-27-13)

503. CONTENT OF CONTINUING EDUCATION.

The content of continuing education activities and course content must be germane to the practice of massage therapy as defined in Section 54-4002, Idaho Code, and courses in ethics must also be specific to legal issues, law, standards of practice, or ethics. (3-27-13)

01. Continuing Education. Content germane to the practice of massage therapy includes, but is not limited to: (3-27-13)

a. Applications of massage and bodywork therapy for specific needs, conditions, or client populations. (3-27-13)

b. Client assessment protocols, skills for client record keeping, strategies for interfacing with other health care providers. (3-27-13)

c. Use of external agents such as water, sound, heat, cold, or topical applications of plant or mineral-based substances. (4-11-15)

d. Body-centered or somatic psychology, psychophysiology, or interpersonal skills which may include communication skills, boundary functions, dual relationships, transference, counter-transference, and projection. (3-27-13)

e. Standards of practice, professional ethics, or state laws. (3-27-13)

f. Strategies for the marketing of massage and bodywork therapy practices. (3-27-13)

g. Theory or practice of ergonomics as applied to therapists or clients. (3-27-13)

h. Hygiene, methods of infectious disease control, organization and management of the treatment environment. (3-27-13)

i. Body sciences, which may include anatomy, physiology, kinesiology or pathology, as they apply to massage therapy. (3-27-13)

j. Certified CPR or first aid training. (3-27-13)

504. -- 599. (RESERVED)

600. EDUCATIONAL PROGRAM STANDARDS.

Approved educational programs are those programs conducted by an entity that meet the definition in Section 010 and that consist of a minimum of five hundred (500) hours of in-class supervised hours of coursework and clinical work that meets the following entry-level educational standards: (3-27-13)

01. Coursework Content and Hours. Coursework must include the following content areas and minimum hours: (3-27-13)

a. Two hundred (200) hours in massage and bodywork assessment, theory, and application; (3-27-13)

- b.** One hundred twenty-five (125) hours in body systems including anatomy, physiology, and kinesiology; (3-27-13)
- c.** Forty (40) hours in pathology; (3-27-13)
- d.** Twenty-five (25) hours in business and ethics; and (3-27-13)
- 02. Clinical Work.** A minimum of one hundred ten (110) hours must be clinical work. (3-27-13)
- a.** Students are not permitted to render any clinical services to clients until students have completed at least twenty percent (20%) of the required hours of instruction. ()
- b.** All clinical services must be performed under the supervision of a person fully licensed. (3-27-13)

601. SUPERVISION.

- 01. Supervision of Clinical Work.** The supervising massage therapist must consult with the student, evaluate student performance and be physically present and available to render direction in person and on the premises where massage therapy is being provided. (4-11-15)
- 02. Supervision of Fieldwork.** The supervising massage therapist must be available to render direction either in person or by means of telecommunications but is not required to be physically present on the premises where massage therapy is being provided. (4-11-15)

602. -- 699. (RESERVED)

700. SCOPE OF PRACTICE.

All licensees must practice in a competent manner consistent with their level of education, training, and experience. (3-27-13)

701. -- 749. (RESERVED)

750. STANDARDS OF PRACTICE.

All licensees must comply with the Idaho Standards of Practice for Massage Therapy as approved by the Board and attached as Appendix B. (3-27-13)

751. -- 799. (RESERVED)

800. CODE OF ETHICS.

All licensees must comply with the Code of Ethics for Massage Therapy as approved by the Board and attached to these rules as Appendix A. (3-27-13)

801. -- 899. (RESERVED)

900. DISCIPLINE.

If the Board determines that grounds for discipline exist for violations of Title 54, Chapter 40, Idaho Code, violations of these rules, or both, it may impose disciplinary sanctions against the licensee including, without limitation, any or all of the following: (3-27-13)

- 01. Refuse License.** Refuse to issue, renew, or reinstate a license; (3-27-13)
- 02. Revoke License.** Revoke or suspend the licensee's license(s); (3-27-13)
- 03. Restrict License.** Condition, restrict, or limit the licensee's practice, license, or both; (3-27-13)
- 04. Administrative Fine.** Impose an administrative fine not to exceed one thousand dollars (\$1,000) for each violation of the Board's laws or rules; and (3-27-13)

05. Licensee Costs. Order a licensee to pay the costs and fees incurred by the Board in the investigation, prosecution, or both, of the licensee for violation(s) of the Board's laws, rules, or both. (3-27-13)

901. -- 999. (RESERVED)

IDAHO BOARD OF MASSAGE THERAPY CODE OF ETHICS -- APPENDIX A

Preamble: This Code of Ethics is a summary statement of the standards of conduct that define ethical practice of massage therapy. All licensees are responsible for maintaining and promoting ethical practice.

A licensee shall:

- 1.** Conduct all business and professional activities honestly and within their scope of practice and all applicable legal and regulatory requirements.
- 2.** Inform clients of the limitations of the licensee's practice, the limitations of massage therapy, and the contraindications for massage therapy.
- 3.** Refer the client to other professionals or services if the treatment or service is beyond the licensee's scope of practice.
- 4.** Not engage in any sexual conduct, sexual activities, or sexualizing behavior involving a client, even if the client attempts to sexualize the relationship. Sexual activity includes any verbal and/or nonverbal behavior for the purpose of soliciting, receiving, or giving sexual gratification.
- 5.** Be truthful in advertising and marketing, and not misrepresent services, charges for services, credentials, training, experience or results.
- 6.** Safeguard the confidentiality of all client information, unless disclosure is requested by the client in writing or as allowed or required by law.
- 7.** Obtain informed and voluntary consent from clients.
- 8.** Allow a client the right to refuse, modify or terminate treatment regardless of prior consent given.
- 9.** Provide draping and treatment in a way that ensures the safety, comfort, and privacy of the client.
- 10.** Possess the right to refuse to treat any person or part of the body.
- 11.** Refuse any gifts or benefits that are intended to influence a referral, decision, treatment or the professional relationship between the licensee and the client.
- 12.** Report to the Idaho Board of Massage Therapy any unlicensed practice of massage therapy, and any evidence indicating unethical, incompetent or illegal acts committed by a licensee or individual.
- 13.** Do no harm to the physical, mental, and emotional well being of clients.

IDAHO BOARD OF MASSAGE THERAPY STANDARDS OF PRACTICE -- APPENDIX B

Standard I: Professionalism

In his/her professional role the licensee shall:

1. Cooperate with any Board investigation regarding any alleged violation of the Massage Therapy law or rules.
2. Use professional verbal, nonverbal, and written communications.
3. Provide an environment that is safe for the client and which meets all legal requirements for health and safety.
4. Use standard precautions to ensure professional hygienic practices and maintain a level of personal hygiene appropriate for practitioners in the therapeutic setting.
5. Wear clothing that is clean and professional.
6. Obtain voluntary and informed consent from the client, or written informed consent from client's legal guardian, prior to initiating the treatment plan.
7. If applicable, conduct an accurate needs assessment, develop a plan of care with the client, and update the plan as needed.
8. Use appropriate draping to protect the client's physical and emotional privacy. When clients remain dressed for seated massage or sports massage, draping is not required.
9. Not practice under the influence of alcohol, drugs, or any illegal substances, with the exception of legal or prescribed dosage of medication which does not impair the licensee.

Standard II: Legal and Ethical Requirements

In his/her professional role the licensee shall:

1. Maintain accurate and complete client billing and records. Client Records includes notes written by a licensee and kept in a separate client file that indicates the date of the session, areas of complaint as stated by client, and observations made and actions taken by the licensee.
2. Report within thirty (30) days to the Idaho Board of Massage Therapy any felony or misdemeanor criminal convictions of the licensee.

Standard III: Confidentiality

In his/her professional role the licensee shall:

1. Protect the confidentiality of the client's identity in conversations, all advertisements, and any and all other matters unless disclosure of identifiable information is requested or permitted by the client in writing or is required or allowed by law.
2. Protect the interests of clients who are minors or clients who are unable to give voluntary and informed consent by securing written informed consent from an appropriate third party or guardian.
3. Solicit only information that is relevant or reasonable to the professional relationship.
4. Maintain the client files for a minimum period of seven (7) years.
5. Store and dispose of client files in a secure manner.

Standard IV: Business Practices

In his/her professional role the licensee shall:

1. Not use sensational, sexual, or provocative language and/or pictures to advertise or promote their business.
2. Display/discuss a schedule of fees in advance of the session that is clearly understood by the client or potential client.
3. Make financial arrangements in advance that are clearly understood by, and safeguard the best interests of, the client or consumer.

Standard V: Roles and Boundaries

In his/her professional role the licensee shall:

1. Not participate in client relationships that could impair professional judgment or result in exploitation of the client.

Standard VI: Prevention of Sexual Misconduct

In his/her professional role the licensee shall:

1. Not engage in any behavior that sexualizes, or appears to sexualize, the client/licensee relationship.
2. Not participate in a sexual relationship or sexual conduct with the client, whether consensual or otherwise, from the beginning of the client/licensee relationship and for a minimum of twelve (12) months after the termination of the client/licensee relationship.
3. In the event that the client initiates sexual behavior, clarify the purpose of the therapeutic session and, if such conduct does not cease, terminate or refuse the session.

IDAPA 27 – IDAHO BOARD OF PHARMACY

DOCKET NO. 27-0000-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to the Uniform Controlled Substances Act, Title 37, Chapter 27, Idaho Code; the Idaho Pharmacy Act, the Idaho Wholesale Drug Distribution Act, and the Idaho Legend Drug Donation Act, Title 54, Chapter 17, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter promulgated as a proposed rule under this docket number under IDAPA 27, rules of the Board of Pharmacy:

IDAPA 27

- 27.01.01, *Rules of the Idaho State Board of Pharmacy*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 5067–5095](#).

These proposed rule changes were prompted by recommendations in the Licensing Freedom Act and the Red Tape Reduction Act and the Board's continued efforts to clarify and streamline its rules. These proposed rule changes are also intended to make the Board's rules consistent with recent statutory changes, clarify and simplify existing language, and reduce or eliminate unnecessary restrictions.

FEE SUMMARY: The following section provides a specific description of the fee or charge imposed by this rulemaking. This fee or charge is being imposed pursuant to Section 54-1701, Idaho Code.

No changes were made to the fee section of the rule. The fee or charge imposed by the rule(s) are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. [These fees are necessary for a self-governing agency].

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Nicki Chopski at (208) 334-2356.

Dated this 4th day of September, 2019.

Nicki Chopski, Executive Director
Phone: (208) 334-2356
Fax: (208) 334-3536

Idaho Board of Pharmacy
1199 W Shoreline Lane, Suite 303
Boise, ID 83702-9103

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections Uniform Controlled Substances Act, Title 37, Chapter 27, Idaho Code; the Idaho Pharmacy Act, the Idaho Wholesale Drug Distribution Act, and the Idaho Legend Drug Donation Act, Title 54, Chapter 17, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 27, rules of the Board of Pharmacy:

IDAPA 27

27.01.01, renamed as “*Rules of the Idaho State Board of Pharmacy*”, which consolidates content that was previously found in 27.01.01, 27.01.02, 27.01.03, 27.01.04, and 27.01.05, and makes some technical updates and streamlines content. Content from 27.01.04 was updated in accordance with House Bill 182, which passed the 2019 legislature unanimously and was signed into law.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. Section 54-1702, Idaho Code, states the practice of pharmacy in the state of Idaho is declared a professional practice affecting the health, safety and welfare of the public and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of pharmacy, as defined in this chapter, merits and receives the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy in or into the state of Idaho.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. The Board of Pharmacy's budget is derived primarily from the fees established in these rules; without these fees, the approved FY2020 budget is not feasible. This would deprive the Board of Pharmacy from providing its critical functions such as administration of its opioid tracking database.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Section 023. establishes the fee schedule for the following licenses/registrations: pharmacist, nonresident pharmacist, pharmacist intern, technician, practitioner controlled substance registration, drug outlet, wholesaler, central drug outlet, mail service pharmacy, durable medical equipment outlet, outsourcing facility, manufacturer, and veterinary drug outlet. Additional fees are establish for late fees and reinstatements as well as administrative services.

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 anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Nicole Chopski, Executive Director, (208) 334-2356.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 27-0000-1900F

IDAPA 27 – BOARD OF PHARMACY

27.01.01 – RULES OF THE IDAHO STATE BOARD OF PHARMACY

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of the Uniform Controlled Substances Act, Title 37, Chapter 27, Idaho Code; the Idaho Pharmacy Act, the Idaho Wholesale Drug Distribution Act, and the Idaho Legend Drug Donation Act, Title 54, Chapter 17, Idaho Code; and specifically pursuant to Sections 37-2702, 37-2715, 54-1717, 54-1753, and 54-1755, Idaho Code. (7-1-18)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules of the Idaho State Board of Pharmacy,” IDAPA 27, Title 01, Chapter 01. (7-1-18)

02. Scope. The scope of this chapter includes, but is not limited to, provision for, and clarification of, the Board’s assigned responsibility to: (7-1-18)

a. Regulate and control the manufacture, distribution, and dispensing of controlled substances within or into the state, pursuant to the Uniform Controlled Substances Act, Section 37-2715, Idaho Code; and (7-1-18)

b. Regulate and control the practice of pharmacy, pursuant to the Idaho Pharmacy Act, Title 54, Chapter 17, Idaho Code. ()

002. – 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS (A – D).

The definitions set forth in Sections 54-1705 and 37-2701, Idaho Code, are applicable to these rules. In addition, the following terms have the meanings set forth below: (7-1-18)

01. ACCME. Accreditation Council for Continuing Medical Education. (7-1-18)

02. Accredited School or College of Pharmacy. A school or college that meets the minimum standards of the ACPE and appears on its list of accredited schools or colleges of pharmacy. (7-1-18)

03. ACPE. Accreditation Council for Pharmacy Education. (7-1-18)

04. ADS – Automated Dispensing and Storage. A mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, dispensing, or distribution of drugs and that collects, controls, and maintains transaction information. (7-1-18)

05. Change of Ownership. A change of majority ownership or controlling interest of a drug outlet licensed or registered by the Board. (7-1-18)

06. CME. Continuing medical education. (7-1-18)

07. Collaborative Pharmacy Practice. A pharmacy practice whereby one (1) or more pharmacists or pharmacies jointly agree to work under a protocol authorized by one (1) or more prescribers to provide patient care and DTM services not otherwise permitted to be performed by a pharmacist under specified conditions or limitations. (7-1-18)

08. CPE. Continuing pharmacy education. (7-1-18)

09. CPE Monitor. An NABP service that allows pharmacists to electronically keep track of CPE credits from ACPE-accredited providers. (7-1-18)

10. DEA. United States Drug Enforcement Administration. (7-1-18)

11. Distributor. A supplier of drugs manufactured, produced, or prepared by others to persons other

than the ultimate consumer. (7-1-18)

12. DME Outlet. A registered outlet that may hold for sale at retail durable medical equipment (DME) and the following prescription drugs: pure oxygen for human application, nitrous oxide, sterile sodium chloride, and sterile water for injection. (4-11-19)

13. DTM – Drug Therapy Management. Selecting, initiating, or modifying drug treatment pursuant to a collaborative pharmacy practice agreement. (7-1-18)

011. DEFINITIONS AND ABBREVIATIONS (E – N).

The definitions set forth in Sections 54-1705 and 37-2701, Idaho Code, are applicable to these rules. In addition, the following terms have the meanings set forth below: (7-1-18)

01. FDA. United States Food and Drug Administration. (7-1-18)

02. Flavoring Agent. An additive in food or drugs in the minimum quantity necessary to produce its intended effect. ()

03. Floor Stock. Drugs or devices not labeled for a specific patient that are maintained at a nursing station or other department of an institutional facility, excluding the pharmacy, for the purpose of administering to patients of the facility. (7-1-18)

04. FPGEC Certification. Foreign Pharmacy Graduate Examination Committee Certification. (7-1-18)

05. Hazardous Drug. Any drug listed as such by the National Institute for Occupational Safety and Health or any drug identified by at least one (1) of the following criteria: carcinogenicity; teratogenicity or developmental toxicity; reproductive toxicity in humans; organ toxicity at low doses in humans or animals; genotoxicity; or new drugs that mimic existing hazardous drugs in structure or toxicity. ()

06. HIPAA. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191). (7-1-18)

07. Limited Service Outlet. Limited service outlets include, but are not limited to, sterile product pharmacies, remote dispensing pharmacies, facilities operating narcotic treatment programs, DME outlets, prescriber drug outlets, outsourcing facilities, nuclear pharmacies, cognitive service pharmacies, correctional facilities, offsite ADSs for non-emergency dispensing, reverse distributors, mobile pharmacies, and analytical or research laboratories. (4-11-19)

08. NABP. National Association of Boards of Pharmacy. (7-1-18)

09. NAPLEX. North American Pharmacists Licensure Examination. (7-1-18)

10. NDC. National Drug Code. (7-1-18)

012. DEFINITIONS AND ABBREVIATIONS (O – Z).

The definitions set forth in Sections 54-1705 and 37-2701, Idaho Code, are applicable to these rules. In addition, the following terms have the meanings set forth below: (7-1-18)

01. Parenteral Admixture. The preparation and labeling of sterile products intended for administration by injection. (7-1-18)

02. Pharmaceutical Care Services. A broad range of pharmacist-provided cognitive services, activities and responsibilities intended to optimize drug-related therapeutic outcomes for patients. Pharmaceutical care services may be performed independent of, or concurrently with, the dispensing or administration of a drug or device and also encompasses services provided by way of DTM under a collaborative practice agreement. Pharmaceutical care services are not limited to, but may include one (1) or more of the following: (7-1-18)

- a. Performing or obtaining necessary assessments of the patient’s health status, including the performance of health screening activities that may include, but are not limited to, obtaining finger-stick blood samples; (7-1-18)
- b. Reviewing, analyzing, evaluating, formulating or providing a drug utilization plan; (7-1-18)
- c. Monitoring and evaluating the patient’s response to drug therapy, including safety and effectiveness; (7-1-18)
- d. Providing counseling education, information, support services, and resources applicable to a drug, disease state, or a related condition or designed to enhance patient compliance with therapeutic regimens; (7-1-18)
- e. Coordinating and integrating pharmaceutical care services within the broader health care management services being provided to the patient; and (7-1-18)
- f. Ordering and interpreting laboratory tests. (7-1-18)
- 03. **PDMP.** Prescription Drug Monitoring Program. (7-1-18)
- 04. **Prepackaging.** The act of transferring a drug, manually or using an automated system, from a manufacturer’s original container to another container prior to receiving a prescription drug order. (7-1-18)
- 05. **Prescriber.** An individual currently licensed, registered, or otherwise authorized to prescribe and administer drugs in the course of professional practice. (7-1-18)
- 06. **Purple Book.** The list of licensed biological products with reference product exclusivity and biosimilarity or interchangeability evaluations published by the FDA under the Public Health Service Act. (7-1-18)
- 07. **Readily Retrievable.** Records are considered readily retrievable if they are able to be completely and legibly produced upon request within seventy-two (72) hours. (7-1-18)
- 08. **Reconstitution.** The process of adding a diluent to a powdered medication to prepare a solution or suspension, according to the product’s labeling or the manufacturer’s instructions. (7-1-18)
- 09. **Restricted Drug Storage Area.** The area of a drug outlet where prescription drugs are prepared, compounded, distributed, dispensed, or stored. (7-1-18)
- 10. **Technician.** A term to indicate an individual authorized by registration with the Board to perform pharmacy support services under the direction of a pharmacist. ()
- 11. **Therapeutic Equivalent Drugs.** Products assigned an “A” code by the FDA in the Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book) and animal drug products published in the FDA Approved Animal Drug Products (Green Book). (7-1-18)
- 12. **USP.** United States Pharmacopeia. (7-1-18)
- 13. **USP-NF.** United State Pharmacopeia-National Formulary. (7-1-18)
- 14. **VAWD – Verified Accredited Wholesale Distributor.** An accreditation program for wholesale distributors offered through NABP. (7-1-18)
- 013. – 099. **(RESERVED)**

SUBCHAPTER A - GENERAL PROVISIONS
(Rules 100 through 199 - Standard Provisions)

100. PRACTICE OF PHARMACY: GENERAL APPROACH.

To evaluate whether a specific act is within the scope of pharmacy practice in or into Idaho, or whether an act can be delegated to other individuals under their supervision, a licensee or registrant of the Board must independently determine whether: (7-1-18)

- 01. Express Prohibition.** The act is expressly prohibited by: (7-1-18)
 - a.** The Idaho Pharmacy Act, Title 54, Chapter 17, Idaho Code; (7-1-18)
 - b.** The Uniform Controlled Substances Act, Title 37, Chapter 27, Idaho Code; (7-1-18)
 - c.** The rules of the Idaho State Board of Pharmacy; or (7-1-18)
 - d.** Any other applicable state or federal laws, rules or regulations. (7-1-18)

02. Education, Training, and Experience. The act is consistent with licensee or registrant's education, training, and experience. (4-11-19)

03. Standard of Care. Performance of the act is within the accepted standard of care that would be provided in a similar setting by a reasonable and prudent licensee or registrant with similar education, training and experience. (7-1-18)

101. PRESCRIBER PERFORMANCE OF PHARMACY FUNCTIONS.

For the purposes of this chapter, any function that a pharmacist may perform may similarly be performed by an Idaho prescriber or may be delegated by an Idaho prescriber to appropriate support personnel, in accordance with the prescriber's practice act. (7-1-18)

102. WAIVERS OR VARIANCES.

01. Criteria. The board may grant or deny, in whole or in part, a waiver of, or variance from, specified rules if the granting of the waiver or variance is consistent with the Board's mandate to promote, preserve and protect public health, safety and welfare. (7-1-18)

02. Emergency Waiver. In the event of an emergency declared by the President of the United States, the Governor of the State of Idaho, or by any other person with legal authority to declare an emergency, the Board may waive any requirement of these rules for the duration of the emergency. (7-1-18)

103. BOARD INSPECTIONS AND INVESTIGATIONS.

01. Records Subject to Board Inspection. Records created, maintained, or retained by Board licensees or registrants in compliance with statutes or rules enforced by the Board must be made available for inspection upon request by Board inspectors or authorized agents. It is unlawful to refuse to permit or to obstruct a Board inspection. (7-1-18)

02. Inspections. Prior to the commencement of business, as applicable, and thereafter at regular intervals, registrants and licensees must permit the Board or its compliance officers to enter and inspect the premises and to audit the records of each drug outlet for compliance with laws enforced by or under the Board's jurisdiction. (7-1-18)

03. Inspection Deficiencies. Deficiencies noted must be promptly remedied, and if requested, the Board office notified of corrective measures. One (1) follow-up inspection may be performed by the Board at no cost. For additional follow-up inspections, the drug outlet will be charged actual travel and personnel costs incurred in the inspection to be paid within ninety (90) days of inspection. (7-1-18)

04. Inspection Reports. Inspection reports must be reviewed with the Board inspector and signed by an agent of the drug outlet upon completion of the exit interview. (7-1-18)

05. Investigations. Licensees or registrants must fully cooperate with Board investigations conducted to confirm compliance with laws enforced by the Board, to gather information pertinent to a complaint received by the Board, or to enforce disciplinary actions. (7-1-18)

104. UNPROFESSIONAL CONDUCT.

The following acts or practices by any licensee or registrant are declared to be specifically, but not by way of limitation, unprofessional conduct and conduct contrary to the public interest. (7-1-18)

01. Unethical Conduct. Conduct in the practice of pharmacy or in the operation of a pharmacy that may reduce the public confidence in the ability and integrity of the profession of pharmacy or endangers the public health, safety, and welfare. A violation of this section includes committing fraud, misrepresentation, negligence, concealment, or being involved in dishonest dealings, price fixing, or breaching the public trust with respect to the practice of pharmacy. (7-1-18)

02. Lack of Fitness. A lack of fitness for professional practice due to incompetency, personal habits, drug or alcohol dependence, physical or mental illness, or for any other cause that endangers public health, safety, or welfare. (7-1-18)

03. On-Duty Intoxication or Impairment. Intoxication, impairment, or consumption of alcohol or drugs while on duty, including break periods after which the individual is expected to return to work, or prior to reporting to work. (7-1-18)

04. Diversion of Drug Products and Devices. Supplying or diverting drugs, biologicals, and other medicines, substances, or devices legally sold in pharmacies that allows the circumvention of laws pertaining to the legal sale of these articles. (7-1-18)

05. Unlawful Possession or Use of Drugs. Possessing or using a controlled substance without a lawful prescription drug order. A failed drug test creates a rebuttable presumption of a violation of this rule. (7-1-18)

06. Prescription Drug Order Noncompliance. Failing to follow the instructions of the person writing, making, or ordering a prescription as to its refills, contents, or labeling except as provided in these rules. (7-1-18)

07. Failure to Confer. Failure to confer with the prescriber when necessary or appropriate or filling a prescription if necessary components of the prescription drug order are missing or questionable. (7-1-18)

08. Excessive Provision of Controlled Substances. Providing an excessive amount of controlled substances. Evidentiary factors of a clearly excessive amount include, but are not limited to, the amount of controlled substances furnished and previous ordering patterns (including size and frequency of orders). (7-1-18)

09. Failure to Counsel or Offer Counseling. Failing to counsel or offer counseling, unless specifically exempted or refused. (7-1-18)

10. Substandard, Misbranded, Adulterated, or Expired Products. Manufacturing, compounding, delivering, distributing, dispensing, or permitting to be manufactured, compounded, delivered, distributed or dispensed substandard, misbranded, or adulterated drugs or preparations or those made using secret formulas. Failing to remove expired drugs from stock. (4-11-19)

11. Prescriber Incentives. Allowing a commission or rebate to be paid, or personally paying a commission or rebate, to a person writing, making, or otherwise ordering a prescription. (7-1-18)

12. Exclusive Arrangements. Participation in a plan or agreement that compromises the quality or extent of professional services or limits access to provider facilities at the expense of public health or welfare. (7-1-18)

13. Failure to Report. Failing to report to the Board any violation of statutes or rules pertaining to the practice of pharmacy or any act that endangers the health, safety, or welfare of patients or the public. (7-1-18)

- 14. Failure to Follow Board Order.** Failure to follow an order of the Board. (7-1-18)
- 15. Use of False Information.** Knowingly using false information in connection with the prescribing, delivering, administering, or dispensing of a controlled substance or other drug product. ()
- 16. Standard of Care.** Acts or omissions within the practice of pharmacy which fail to meet the standard provided by other qualified licensees or registrants in the same or similar setting. (4-11-19)
- 17. Unnecessary Services or Products.** Directly promoting or inducing for the provisions of health care services or products that are unnecessary or not medically indicated. (7-1-18)
- 18. Controlled Substance Non-Compliance.** Violating provisions of the federal Controlled Substances Act or Title 37, Chapter 27, Idaho Code. ()

105. – 199. (RESERVED)

SUBCHAPTER B - RULES GOVERNING LICENSURE AND REGISTRATION
(Rules 200 through 299 - Standard Provisions)

200. BOARD OF PHARMACY LICENSURE AND REGISTRATION.

The Board will issue or renew a license or certificate of registration upon application and determination that the applicant has satisfied the requirements of applicable statutes, and any additional criteria specified by these rules. Licenses or registrations must be obtained prior to engaging in these practices or their supportive functions. ()

201. LICENSURE AND REGISTRATION: GENERAL REQUIREMENTS.

- 01. Board Forms.** Initial licensure and registration applications, annual renewal applications, and other forms used for licensure, registration, or other purposes must be in such form as designated by the Board. (7-1-18)
- 02. Incomplete Applications.** Information requested on the application or other form must be provided and submitted to the Board office with the applicable fee or the submission will be considered incomplete and will not be processed. Applications that remain incomplete after six (6) months from the date of initial submission will expire. (7-1-18)
- 03. On-Time Annual Renewal Application.** Licenses and registrations must be renewed annually prior to expiration to remain valid. Timely submission of the renewal application is the responsibility of each licensee or registrant. Licenses and certificates of registration issued to individuals will expire annually on the last day of the individual's birth month, and on December 31 for facilities, unless an alternate expiration term or date is stated in these rules. (7-1-18)
- 04. Late Renewal Application.** Failure to submit a renewal application prior to the expiration date will cause the license or registration to lapse and will result in the assessment of a late fee and possible disciplinary action. A lapsed license or registration is invalid until renewal is approved by the Board and if not renewed within thirty (30) days after its expiration will require reinstatement. (7-1-18)
- 05. Exemption.** New licenses and registrations issued ten (10) weeks or less prior to the renewal due date are exempt from the renewal requirements that year only. (7-1-18)
- 06. Cancellation and Registration.** Failure to maintain the requirements for any registration will result in the cancellation of the registration. (7-1-18)
- 07. Reinstatement of License or Registration.** Unless otherwise specified in Board rule, consideration of a request for reinstatement of a license or registration will require a completed application on a Board form, submission of a completed fingerprint card, as applicable, and payment of any applicable fees due or delinquent at the time reinstatement is requested. (7-1-18)

08. Parent or Legal Guardian Consent. No person under the age of eighteen (18), unless an emancipated minor, may submit an application for licensure or registration without first providing the Board with written consent from a parent or legal guardian. (7-1-18)

202. BOARD FEES.

01. Fee Determination and Collection. Pursuant to the authority and limitations established by Sections 37-2715 and 54-1720(5)(a), Idaho Code, the Board has determined and will collect fees for the issuance, annual renewal, or reinstatement of licenses and certificates of registration to persons and drug outlets engaged in acts or practices regulated by the Board. (7-1-18)

02. Time and Method of Payment. Fees are due at the time of application, submission, or request. Fees are payable to the “Idaho State Board of Pharmacy,” are non-refundable, and will not be prorated. (7-1-18)

03. Fee for Dishonored Payment. A reasonable administrative fee may be charged for a dishonored check or other form of payment. If a license or registration application has been approved or renewed by the Board and payment is subsequently dishonored, the approval or renewal is immediately canceled on the basis of the submission of an incomplete application. The board may require subsequent payments to be made by cashier’s check, money order, or other form of guaranteed funds. (7-1-18)

04. Overpayment of Fees. “Overpayment” refers to the payment of any fee in excess of the listed amount. Refunds issued will be reduced by a reasonable processing fee. (7-1-18)

05. Fee Exemption for Controlled Substance Registrations. Persons exempt pursuant to federal law from fee requirements applicable to controlled substance registrations issued by the DEA are also exempt from fees applicable to controlled substance registrations issued by the Board. (7-1-18)

203. FEE SCHEDULE.

01. Licenses and Registrations -- Professionals.

License/Registration	Initial Fee	Annual Renewal Fee
Pharmacist License	\$140	\$130
Nonresident PIC Registration	\$290	\$290
Pharmacist Intern	\$50	\$50
Technician	\$35	\$35
Practitioner Controlled Substance Registration	\$60	\$60

(4-1-19)

02. Certificates of Registration and Licensure -- Facilities.

License/Registration	Initial Fee	Annual Renewal Fee
Drug Outlet (unless otherwise listed)	\$100	\$100
Wholesale License	\$180	\$180
Wholesale Registration	\$150	\$150
Central Drug Outlet (Nonresident)	\$500	\$250
Mail Service Pharmacy	\$500	\$250

License/Registration	Initial Fee	Annual Renewal Fee
Durable Medical Equipment Outlet	\$50	\$50
Outsourcing Facility (Nonresident)	\$500	\$250
Manufacturer	\$150	\$150
Veterinary Drug Outlet	\$35	\$35

(7-1-18)

03. Late Fees and Reinstatements.

Category	Fee
Late payment processing fee	\$50
License or registration reinstatement fee	One-half (1/2) of the amount of the annual renewal

(7-1-18)

04. Administrative Services.

Category	Fee
Experiential hours certification	\$25
Duplicate pharmacist certificate of licensure	\$35

(7-1-18)

204. – 209. (RESERVED)

210. DETERMINATION OF NEED FOR NONRESIDENT LICENSURE OR REGISTRATION.

01. Independent Practice. Nonresident pharmacists must be licensed if engaged in the independent practice of pharmacy across state lines and not practicing for an Idaho registered drug outlet. (7-1-18)

02. Practice for an Idaho Registered Drug Outlet. A nonresident pharmacist serving as the PIC for an Idaho registered nonresident drug outlet must be registered to practice into Idaho. All other nonresident pharmacists who are employed by, or affiliated with, and practicing for the Idaho registered nonresident drug outlet, but who are not the PIC, are exempt from license and registration requirements for practice into Idaho. (7-1-18)

03. Multistate Pharmacists. Multistate pharmacists, as defined in Section 54-1723B, Idaho Code, are exempt from separate licensure or registration in Idaho. (7-1-18)

04. Exemption from Separate Controlled Substance Registration. All pharmacists who are practicing in or into Idaho are exempt from obtaining a separate controlled substance registration, but are subject to compliance with all requirements under Title 37, Chapter 27, Idaho Code. (7-1-18)

211. PHARMACIST LICENSURE BY EXAMINATION.

To be considered for licensure, a person must satisfy the requirements of Section 54-1722(1)(a) through (e), Idaho Code, submit to the Board an application for licensure by examination, and meet the following: (7-1-18)

01. Graduates of U.S. Pharmacy Schools. Graduate from an ACPE-accredited school or college of pharmacy within the United States. (7-1-18)

02. Graduates of Foreign Pharmacy Schools. Graduate from a school or college of pharmacy located

outside of the United States, submit certification by the FPGEC, and complete a minimum of seventeen hundred forty (1,740) experiential hours as verified on an employer's affidavit signed by a pharmacist licensed and practicing in the United States. The Board may request verifiable business records to document the hours. (7-1-18)

03. Licensure Examinations. Qualified applicants must pass the NAPLEX in accordance with NABP standards. A candidate who fails the NAPLEX three (3) times must complete at least thirty (30) hours of continuing education accredited by an ACPE-accredited provider prior to being eligible to sit for each subsequent reexamination. Candidates are limited to five (5) total NAPLEX attempts. (4-1-19)

212. PHARMACIST LICENSURE BY RECIPROCITY.

An applicant for pharmacist licensure by reciprocity must satisfy the requirements of Section 54-1723, Idaho Code, and submit a preliminary application for licensure transfer through NABP. An applicant whose pharmacist license is currently restricted by a licensing entity in another state must appear before the Board to petition for licensure by reciprocity. An applicant not actively engaged in the practice of pharmacy during the year preceding the date of application may have to complete intern hours for each year away from the practice of pharmacy. (7-1-18)

213. PHARMACIST LICENSE RENEWAL: CPE REQUIREMENTS.

Each pharmacist applicant for license renewal must complete fifteen (15) CPE hours each calendar year between January 1 and December 31. (7-1-18)

01. ACPE. At least twelve (12) of the CPE hours obtained must be from programs by an ACPE that have a participant designation of "P" (for pharmacist) as the suffix of the ACPE universal program number. ACPE credits must be reported to and documented in CPE Monitor in order to be accepted. (7-1-18)

02. CME. A maximum of three (3) of the hours may be obtained from CME, if the credits are: (7-1-18)

a. Obtained from an ACCME accredited provider; and (7-1-18)

b. A certificate is furnished that identifies the name of the ACCME accredited provider and a clear reference to its accreditation status, the title of the CME program, the completed hours of instruction, the date of completion, and the name of the individual obtaining the credit. Upon audit, all CME certificates must be submitted to the Board. ()

03. Alternative to CPE. If audited, a pharmacist may substitute a current certification by a nationally accredited pharmacy practice-specific specialty certification program. ()

214. PHARMACIST LICENSE: REINSTATEMENT.

The Board may, at its discretion, consider reinstatement of a pharmacist license upon receipt of a completed application, background check, and payment of the reinstatement and other fees due or delinquent at the time reinstatement is requested. (7-1-18)

01. Satisfactory Evidence. Reinstatement applicants must provide satisfactory evidence of completion of a minimum of thirty (30) CPE hours within the twenty-four (24) months prior to reinstatement and compliance with any direct orders of the Board. (7-1-18)

02. Additional Requirements. A pharmacist reinstatement applicant may be required to appear before the Board. The Board may also, at its discretion, impose additional requirements on a pharmacist reinstatement applicant who has not practiced as a pharmacist for the preceding twelve (12) months or longer that may include taking and passing an examination, completion of intern hours, completion of additional CPE hours, or other requirements determined necessary to acquire or demonstrate professional competency. (4-1-19)

215. NONRESIDENT PIC REGISTRATION TO PRACTICE PHARMACY INTO IDAHO.

To be registered as a nonresident PIC, an applicant must submit an application on a Board form including, but not limited to: (4-1-19)

01. Individual License Information. Current pharmacist licensure information in all other states,

including each state of licensure and each license number; (7-1-18)

02. Facility License Information. The license or registration number of the facility for which the applicant will be practicing. (7-1-18)

216. PHARMACIST INTERN REGISTRATION.

01. Registration Requirements. To be approved for and maintain registration as a pharmacist intern, the applicant must: (7-1-18)

a. Currently be enrolled and in good standing in an accredited school or college of pharmacy, pursuing a professional degree in pharmacy; or (7-1-18)

b. Be a graduate of an accredited school or college of pharmacy within the United States and awaiting examination for pharmacist licensure; or (7-1-18)

c. Be a graduate of a school or college of pharmacy located outside the United States, obtain certification by the FPGEC, and be awaiting finalization of pharmacist licensure. (7-1-18)

02. Renewal. (7-1-18)

a. Current Students. A pharmacist intern registration must be renewed annually by July 15; however, the renewal fee will be waived, if renewed on time, for the duration of the student's enrollment in the school or college of pharmacy. Following graduation, if a pharmacist license application has been submitted, the pharmacist intern license will be extended at no cost for up to six (6) additional months from the date of application as a pharmacist, after which time the individual will need to submit a new application to continue to be a pharmacist intern. (7-1-18)

b. Pharmacy Graduates. A graduate pharmacist intern registration may be obtained and renewed once within one (1) year from the date of issuance. The Board may, at its discretion, grant additional time to complete internship experience if unique circumstances present. (7-1-18)

217. – 219. (RESERVED)

220. CERTIFIED TECHNICIAN REGISTRATION.

To be approved for registration as a certified technician, a person must satisfy the following requirements: (7-1-18)

01. Age. Be at least sixteen (16) years of age; (7-1-18)

02. Education. Be a high school graduate or the recipient of a high school equivalency diploma; and (7-1-18)

03. Certification. Have obtained and maintained certified pharmacy technician (CPhT) status through the Pharmacy Technician Certification Board (PTCB), the National Healthcareer Association (NHA), or their successors. (7-1-18)

221. TECHNICIAN REGISTRATION.

A person who has not obtained or maintained technician certification may apply for registration as a technician if the person satisfies the following requirements: ()

01. Age. Be at least sixteen (16) years of age; ()

02. Education. Be a high school graduate or the recipient of a high school equivalency diploma or currently enrolled and in good standing in a high school or college supervised program. ()

03. Exemption from Criminal Background Check. Technician candidates under the age of eighteen (18) are exempt from the fingerprint-based criminal history check requirement of Idaho Code. ()

222. – 223. (RESERVED)

224. PRACTITIONER CONTROLLED SUBSTANCE REGISTRATION.

Any practitioner in Idaho who intends to prescribe, administer, dispense, or conduct research with a controlled substance must first obtain an Idaho practitioner controlled substance registration and: ()

01. State License. Hold a valid license or registration to prescribe medications from a licensing entity established under Title 54, Idaho Code. ()

02. DEA Registration. Hold a valid federal DEA registration, if required under federal law. ()

225. – 229. (RESERVED)

230. DRUG OUTLET LICENSURE AND REGISTRATION: GENERAL REQUIREMENTS.

A license or a certificate of registration is required for drug outlets prior to doing business in or into Idaho. A license or certificate of registration will be issued by the Board to drug outlets pursuant to, and in the general classifications defined by, Section 54-1729, Idaho Code. (7-1-18)

01. New Drug Outlet Inspections. Prior to approving the issuance of a new license or registration, each drug outlet may be inspected to confirm that the facility is compliant with applicable law. Prescription drugs may not be delivered to a new drug outlet location prior to satisfactory completion of an opening inspection. A change of ownership of a currently registered pharmacy will not require an onsite inspection prior to issuance of a new pharmacy registration unless a structural remodel occurs. (7-1-18)

02. License and Registration Transferability. Drug outlet licenses and registrations are location and owner specific and are nontransferable as to person or place. If the ownership or location of an outlet changes, any registration or license issued to it by the Board is void. (7-1-18)

03. Nonresident Drug Outlet. The Board may license or register a drug outlet licensed or registered under the laws of another state if the other state's standards are comparable to those in Idaho and acceptable to the Board, evidenced by an inspection report. (7-1-18)

04. Change of Ownership. The registrant must notify the Board of a drug outlet's change of ownership at least ten (10) days prior to the event on a Board form. (7-1-18)

05. Permanent Closing. A registrant must notify the Board and the general public of the pharmacy's permanent closing at least ten (10) days prior to closing. The notice must include the proposed date of closure, the new location of the prescription files, and the location where the closing inventory record of controlled substances is retained. ()

06. Exemption from Separate Controlled Substance Registration. All drug outlets doing business in or into Idaho who hold a valid license or registration from the Board are exempt from obtaining a separate controlled substance registration, but are subject to compliance with all requirements under Title 37, Chapter 27, Idaho Code. (7-1-18)

07. Sterile Preparation Endorsement. A drug outlet engaged in sterile preparation must obtain a single endorsement for one (1) or more hood or aseptic environmental control devices. (7-1-18)

231. -- 239. (RESERVED)

240. WHOLESALE LICENSURE AND REGISTRATION.

01. Wholesaler Licensure. In addition to the information provided in Section 54-1753, Idaho Code, the following information must be provided under oath by each applicant for wholesaler licensure as part of the initial licensing procedure and for each renewal on a Board form: ()

a. Any felony conviction or any conviction of the applicant relating to wholesale or retail prescription drug distribution or distribution of controlled substances. (7-1-18)

b. Any discipline of the applicant by a regulatory agency in any state for violating any law relating to wholesale or retail prescription drug distribution or distribution of controlled substances. (7-1-18)

02. VAWD Accreditation. The Board will recognize a wholesaler's VAWD accreditation by NABP for purposes of reciprocity and satisfying the new drug outlet inspection requirements of these rules. (7-1-18)

03. Wholesaler Registration. Except when licensed pursuant to the Idaho Wholesale Drug Distribution Act and these rules, a wholesaler that engages in wholesale distribution of DME supplies, prescription medical devices, or non-prescription drugs in or into Idaho must be registered by the Board. (7-1-18)

241. – 249. (RESERVED)

250. MANUFACTURER REGISTRATION. Manufacturers must be registered as follows: (7-1-18)

01. Mail Service Pharmacy. Those that ship, mail, or deliver dispensed prescription drugs or devices to an Idaho resident will be registered by the Board as a mail service pharmacy. ()

02. Manufacturer. Those engaged in wholesale distribution will be registered as a manufacturer and comply with the Idaho Wholesale Drug Distribution Act and rules, as applicable. ()

251. – 299. (RESERVED)

SUBCHAPTER C - DRUG OUTLET PRACTICE STANDARDS
(Rules 300 through 399 - Drug Outlet Practice Standards)

300. DRUG OUTLETS: MINIMUM FACILITY STANDARDS. A resident drug outlet that dispenses prescription drugs to patients in Idaho must meet the following minimum requirements: (7-1-18)

01. Security and Privacy. A drug outlet must be constructed and equipped with adequate security to protect its equipment, records and supply of drugs, devices and other restricted sale items from unauthorized access, acquisition or use. All protected health information must be stored and maintained in accordance with HIPAA. (7-1-18)

02. Controlled Substance Storage. Drug outlets that dispense prescription drugs must store controlled substances in accordance with federal law. (7-1-18)

03. Authorized Access to the Restricted Drug Storage Area. Access to the restricted drug storage area must be limited to authorized personnel. (7-1-18)

04. Staffing. A drug outlet must be staffed sufficiently to allow for appropriate supervision, to otherwise operate safely and, if applicable, to remain open during the hours posted as open to the public for business. (7-1-18)

05. Electronic Recordkeeping System. A drug outlet that dispenses more than twenty (20) prescriptions per day must use an electronic recordkeeping system to establish and store patient medication records and prescription drug order, refill, transfer information, and other information necessary to provide safe and appropriate patient care. The electronic recordkeeping system must have audit trail functionality that documents for each prescription drug order the identity of each individual involved at each step of its processing, filling, and dispensing or, alternatively, the identity of the pharmacist or prescriber responsible for the accuracy of these processes. (7-1-18)

301. DRUG OUTLETS THAT DISPENSE PRESCRIPTION DRUGS: MINIMUM PRESCRIPTION FILLING REQUIREMENTS.

Unless exempted by these rules, each drug outlet that dispenses prescription drugs to patients in Idaho must meet the following minimum requirements either at the drug outlet or through offsite pharmacy services: (7-1-18)

01. Valid Prescription Drug Order. Prescription drugs may only be dispensed pursuant to a valid prescription drug order as set forth in Subchapter E of these rules. ()

02. Prospective Drug Review. Prospective drug review, as defined in Section 54-1705, Idaho Code, must be provided as set forth in Section 54-1739, Idaho Code. (7-1-18)

03. Labeling. Each drug must bear a complete and accurate label as set forth in these rules. (7-1-18)

04. Verification of Dispensing Accuracy. Verification of dispensing accuracy must be performed to compare the drug stock selected to the drug prescribed. If not performed by a pharmacist or prescriber, an electronic verification system must be used that confirms the drug stock selected to fill the prescription is the same as indicated on the prescription label. A compounded drug may only be verified by a pharmacist or prescriber. ()

05. Patient Counseling. Counseling, as defined in Section 54-1705, Idaho Code, must be provided as set forth in Section 54-1739, Idaho Code. (7-1-18)

302. DRUG OUTLETS THAT DISPENSE DRUGS TO PATIENTS WITHOUT AN ONSITE PHARMACIST OR PRESCRIBER.

A drug outlet that dispenses drugs to patients in Idaho that does not have a pharmacist or prescriber onsite to perform or supervise pharmacy operations must comply with the following requirements: (7-1-18)

01. Security and Access. (7-1-18)

a. Maintain video surveillance with an adequate number of views of the full facility and retain a high quality recording for a minimum of ninety (90) days. ()

b. Utilize proper identification controls of individuals accessing the restricted drug storage area to ensure access is limited, authorized, and regularly monitored. ()

02. Technology. The video and audio communication system used to counsel and interact with each patient or patient's caregiver, must be clear, secure, and HIPAA-compliant. (7-1-18)

03. Controlled Substances Inventories. (7-1-18)

a. Keep a perpetual inventory for all Schedule II controlled substances; and ()

b. If a perpetual inventory is not kept for all Schedule III through V substances, the pharmacist or prescriber must inventory and audit at least three (3) random controlled substances quarterly. (7-1-18)

04. Self-Inspection. Complete and retain a monthly in-person self-inspection of the drug outlet by a pharmacist or prescriber using a form designated by the Board. ()

05. Technical Limitation Closure. The drug outlet must be, or remain, closed to the public if any component of the surveillance or video and audio communication system is malfunctioning, until system corrections or repairs are completed. ()

06. Exemption for Self-Service Systems. A self-service ADS that is operating as a drug outlet is exempt from the video surveillance requirement and the self-inspection requirement of this rule. In addition, if counseling is provided by an onsite prescriber or pharmacist, a self-service ADS is exempt from the video and audio communication system requirements of this rule. (7-1-18)

07. Exemption for Veterinarians. Veterinarians practicing in accordance with their Idaho practice act

are exempt from this rule. (7-1-18)

303. DRUGS STORED OUTSIDE OF A DRUG OUTLET FOR RETRIEVAL BY A LICENSED HEALTH PROFESSIONAL.

Drugs may be stored in an alternative designated area outside the drug outlet, including, but not limited to, floor stock, in an emergency cabinet, in an emergency kit, or as emergency outpatient drug delivery from an emergency room at a registered institutional facility, provided the following conditions are met: (7-1-18)

01. Supervising Drug Outlet. Drugs stored in such a manner must remain under the control of, and be routinely monitored by, the supervising drug outlet. (7-1-18)

02. Secure Storage. The area is appropriately equipped to ensure security and protection from diversion or tampering. (7-1-18)

03. Controlled Substances. Controlled substances may only be stored in an alternative designated area as permitted by, and in accordance with, federal law. (7-1-18)

04. Stocking and Replenishing. Stocking or replenishing drugs in an alternative designated area may be performed by a pharmacist or prescriber, or by appropriate support personnel using either an electronic verification system or a two (2) person checking system. (7-1-18)

304. – 349. (RESERVED)

SUBCHAPTER D - RULES GOVERNING PHARMACIST PRESCRIPTIVE AUTHORITY
(Rules 350 through 399 - Rules Governing Pharmacist Prescriptive Authority)

350. PHARMACIST PRESCRIBING: GENERAL REQUIREMENTS.

In accordance with Section 54-1704, Idaho Code, a pharmacist may independently prescribe drugs, drug categories and devices provided the following general requirements are met: (7-1-18)

01. Education. The pharmacist may only prescribe drugs or devices for conditions for which the pharmacist is educationally prepared and for which competence has been achieved and maintained. (7-1-18)

02. Patient-Prescriber Relationship. The pharmacist may only issue a prescription for a legitimate medical purpose arising from a patient-prescriber relationship as defined in Section 54-1733, Idaho Code. (7-1-18)

03. Patient Assessment. The pharmacist must obtain adequate information about the patient's health status to make appropriate decisions based on the applicable standard of care. The pharmacist must maintain an updated patient assessment protocol with evidence-based inclusion, exclusion and referral criteria. (7-1-18)

04. Collaboration with Other Health Care Professionals. The pharmacist must recognize the limits of the pharmacist's own knowledge and experience and consult with and refer to other health care professionals as appropriate. (7-1-18)

05. Follow-Up Care Plan. The pharmacist must develop and implement an appropriate follow-up care plan, including any monitoring parameters, in accordance with clinical guidelines. (7-1-18)

06. Notification. The pharmacist must inquire about the identity of the patient's primary care provider; and, if one is identified by the patient, provide notification within five (5) business days following the prescribing of a drug. In the instance in which the pharmacist is prescribing to close a gap in care or to supplement a valid prescription drug order, the pharmacist must alternatively notify the provider of record. (7-1-18)

07. Documentation. The pharmacist must maintain documentation adequate to justify the care provided, including, but not limited to the information collected as part of the patient assessment, the prescription record, and the follow-up care plan. (7-1-18)

08. Prescribing Exemption. The general requirements set forth in this section do not apply to

collaborative pharmacy practice agreements, nonprescription drugs and devices, and the individually named drug products listed in Section 54-1704, Idaho Code. (7-1-18)

351. COLLABORATIVE PHARMACY PRACTICE.

Collaborative pharmacy practice may be performed in accordance with an agreement that contains the following elements: ()

01. Identification. Identification of the parties to the agreement; (7-1-18)

02. Scope. The pharmacist's scope of practice authorized by the agreement, including a description of the types of permitted activities and decisions; and (7-1-18)

03. Monitoring. A described method for a prescriber to monitor compliance with the agreement and clinical outcomes of patients and to intercede where necessary. (7-1-18)

352. -- 399. (RESERVED)

SUBCHAPTER E – FILLING AND DISPENSING PRESCRIPTION DRUGS
(Rules 400 through 499 - Filling and Dispensing Prescription Drugs)

400. PRESCRIPTION DRUG ORDER: VALIDITY.

Prior to filling or dispensing a prescription drug order, a pharmacist must verify its validity. (7-1-18)

01. Invalid Prescription Drug Orders. A prescription drug order is invalid if not issued by a licensed prescriber for a legitimate medical purpose, and within the course and scope of the prescriber's professional practice and prescriptive authority. (7-1-18)

02. Antedating or Postdating. A prescription drug order is invalid if antedated or postdated. (7-1-18)

03. Tampering. A prescription drug order is invalid if, at the time of presentation, it shows evidence of alteration, erasure, or addition by any person other than the person who wrote it. (7-1-18)

04. Prescriber Self-Use. A prescription drug order written for a controlled substance is invalid if written for the prescriber's own use. (7-1-18)

05. Digital Image Prescriptions. A digital image of a prescription drug order is invalid if it is for a controlled substance or if the patient intends to pay cash for the drug in whole. (4-11-19)

401. PRESCRIPTION DRUG ORDER: MINIMUM REQUIREMENTS.

A prescription drug order must comply with applicable requirements of federal law and, except as differentiation is permitted for an institutional drug order, include at least the following: ()

01. Patient's Name. The patient's or authorized entity's name and: (7-1-18)

a. If for a controlled substance, the patient's full name and address; and (7-1-18)

b. If for an animal, the species. (7-1-18)

02. Date. The date issued. (7-1-18)

03. Drug Information. The drug name, strength, quantity and, if for a controlled substance, the dosage form. (7-1-18)

04. Directions. The directions for use. (7-1-18)

05. Prescriber Information. The name and, if for a controlled substance, the address and DEA registration number of the prescriber. (7-1-18)

06. Signature. A signature sufficient to evidence a valid prescription of either the prescriber or, if a renewal of a previous prescription, the prescriber's agent, when authorized by the prescriber. (4-11-19)

07. Institutional Drug Order Exemptions. An institutional drug order may exempt the patient's address, the dosage form, quantity, prescriber's address, and prescriber's DEA registration number. (7-1-18)

08. Exemptions for Non-Controlled Substances. A prescriber may omit drug information and directions if the prescriber makes a clear indication that the pharmacist is to finalize the patient's drug therapy plan. ()

402. FILLING PRESCRIPTION DRUG ORDERS: PRACTICE LIMITATIONS.

01. Drug Product Selection. Drug product selection is allowed only between therapeutic equivalent drugs. If a prescriber orders by any means that a brand name drug must be dispensed, then no drug product selection is permitted. (7-1-18)

02. Partial Filling. A prescription drug order may be partially filled within the limits of federal law. The total quantity dispensed in partial fillings must not exceed the total quantity prescribed. (7-1-18)

03. Refill Authorization. A prescription drug order may be refilled when permitted by state and federal law and only as specifically authorized by the prescriber, except that a pharmacist may refill a prescription for a non-controlled drug when the prescriber is not available for authorization. In such cases, a pharmacist may dispense a refill up to the quantity on the most recent fill or a thirty (30)-day supply, whichever is less. (4-11-19)

403. FILLING PRESCRIPTION DRUG ORDERS: ADAPTATION.

Upon patient consent, a pharmacist may adapt drugs as specified in this rule, provided that the prescriber has not indicated that adaptation is not permitted. (7-1-18)

- 01. Change Quantity.** A pharmacist may change the quantity of medication prescribed if: (7-1-18)
- a.** The prescribed quantity or package size is not commercially available; (7-1-18)
 - b.** The change in quantity is related to a change in dosage form or therapeutic interchange; (4-11-19)
 - c.** The change is intended to dispense up to the total amount authorized by the prescriber including refills; or (4-11-19)
 - d.** The change extends a maintenance drug for the limited quantity necessary to coordinate a patient's refills in a medication synchronization program. (4-11-19)

02. Change Dosage Form. A pharmacist may change the dosage form of the prescription if it is in the best interest of patient care, so long as the prescriber's directions are also modified to equate to an equivalent amount of drug dispensed as prescribed. (7-1-18)

03. Complete Missing Information. A pharmacist may complete missing information on a prescription if there is evidence to support the change. (7-1-18)

04. Documentation. A pharmacist who adapts a prescription in accordance with these rules must document the adaptation in the patient's record. (7-1-18)

404. FILLING PRESCRIPTION DRUG ORDERS: DRUG PRODUCT SUBSTITUTION.

Drug product substitutions in which a pharmacist dispenses a drug product other than that prescribed are allowed only as follows: ()

01. Hospital. Pursuant to a formulary or drug list prepared by the pharmacy and therapeutics committee of a hospital; (7-1-18)

02. Institutional Facility. At the direction of the quality assessment and assurance committee of an institutional facility; (4-11-19)

03. Drug Shortage. Upon a drug shortage, a pharmacist may exercise professional judgment, without contacting the prescriber, and may substitute an alternative dose of a prescribed drug, so long as the prescriber's directions are also modified, to equate to an equivalent amount of drug dispensed as prescribed; or (7-1-18)

04. Biosimilars. A pharmacist may substitute an interchangeable biosimilar product for a prescribed biological product if: (7-1-18)

a. The biosimilar has been determined by the FDA to be interchangeable and published in the Purple Book; (7-1-18)

b. The prescriber does not indicate by any means that the prescribed biological product must be dispensed; and (7-1-18)

c. The name of the drug and the manufacturer or the NDC number is documented in the patient medical record. (7-1-18)

05. Therapeutic Interchange. A pharmacist may substitute a drug with another drug in the same therapeutic class provided the patient opts-in and the substitution is intended to ensure formulary compliance with the patient's health insurance plan, or, in the case of a patient without insurance, to lower the cost to the patient while maintaining safety. Therapeutic interchange does not apply to biological products, narrow therapeutic index drugs, or psychotropic drugs. (7-1-18)

405. FILLING PRESCRIPTION DRUG ORDERS: TRANSFERS.

A prescription drug order may be transferred within the limits of federal law. Drug outlets using a common electronic file are exempt from transfer limits. (7-1-18)

406. LABELING STANDARDS.

All prescription drugs must be in an appropriate container and bear information that identifies the drug product, any additional components as appropriate, and the individual responsible for its final preparation. (7-1-18)

01. Standard Prescription Drug. A prescription drug for outpatient dispensing must be labeled in accordance with federal law. (7-1-18)

02. Parenteral Admixture. If one (1) or more drugs are added to a parenteral admixture, the admixture's container must include the date and time of the addition, or alternatively, the beyond use date. (7-1-18)

03. Prepackaged Product. The containers of prepackaged drugs must include an expiration date that is the lesser of the manufacturer's original expiration date, one (1) year from the date the drug is prepackaged, or a shorter period if warranted. (7-1-18)

04. Repackaged Drug. If a previously dispensed drug is repackaged, it must contain the serial number and contact information for the original dispensing pharmacy, as well as a statement that indicates that the drug has been repackaged, and the contact information of the repackaging pharmacy. (7-1-18)

05. Distributed Compounded Drug Product. Compounded and sterile prepackaged drug product distributed in the absence of a patient specific prescription must be labeled as follows: (7-1-18)

a. If from a pharmacy, the statement: "not for further dispensing or distribution." (7-1-18)

b. If from an outsourcing facility, the statement: "not for resale." (7-1-18)

407. PRESCRIPTION DELIVERY: RESTRICTIONS.

01. Acceptable Delivery. A drug outlet that dispenses drugs to patients in Idaho may deliver filled prescriptions in accordance with federal law, as long as appropriate measures are taken to ensure product integrity and safety. (4-11-19)

02. Pick-up or Return by Authorized Personnel. Filled prescriptions may be picked up for or returned from delivery by authorized personnel from a secured delivery area. (4-11-19)

408. DESTRUCTION OR RETURN OF DRUGS OR DEVICES: RESTRICTIONS.

A drug outlet registered with the DEA as a collector may collect controlled and non-controlled drugs for destruction in accordance with applicable federal law. Otherwise a dispensed drug or prescription device may only be accepted for return as follows: (7-1-18)

01. Potential Harm. When the pharmacist determines that harm could result if the drug is not returned. (7-1-18)

02. Did Not Reach Patient. Non-controlled drugs that have been maintained in the custody and control of the institutional facility, dispensing pharmacy, or their related clinical facilities may be returned if product integrity can be assured. Controlled substances may only be returned from a hospital daily delivery system under which a pharmacy dispenses no more than a seventy-two (72) hour supply for a drug order. ()

03. Donation. Those that qualify for return under the provisions of the Idaho Legend Drug Donation Act as specified in Section 54-1762, Idaho Code. (7-1-18)

409. DISPENSING CONTROLLED SUBSTANCES: POSITIVE IDENTIFICATION.

If a controlled substance is picked up by an individual other than the patient, the potential recipient must first present a valid government-issued identification or the controlled substance may not be dispensed. The pharmacy must document the recipient's identification, or an exception as permitted under this rule, and link it to the record of the dispensed controlled substance. Identification is not necessary if the individual receiving the controlled substance is personally and positively known by a drug outlet staff member who is present. ()

410. -- 499. (RESERVED)

SUBCHAPTER F – REPORTING REQUIREMENTS AND DRUG OUTLET RECORDKEEPING
(Rules 500 through 599 - Reporting Requirements and Drug Outlet Recordkeeping)

500. RECORDKEEPING: MAINTENANCE AND INVENTORY REQUIREMENTS.

01. Records Maintenance and Retention Requirement. Unless an alternative standard is stated for a specified record type, form, or format, records required to evidence compliance with statutes or rules enforced by the Board must be maintained and retained in a readily retrievable form and location for at least three (3) years from the date of the transaction. (7-1-18)

02. Prescription Retention. A prescription drug order must be retained in a readily retrievable manner by each drug outlet and maintained in accordance with federal law: (7-1-18)

03. Inventory Records. Each drug outlet must maintain a current, complete and accurate record of each controlled substance manufactured, imported, received, ordered, sold, delivered, exported, dispensed or otherwise disposed of by the registrant. Drug outlets must maintain inventories and records in accordance with federal law. An annual inventory must be conducted at each registered location no later than seven (7) days after the date of the most recent inventory in a form and manner that satisfies the inventory requirements of federal law. Drugs stored outside a drug outlet in accordance with these rules must be regularly inventoried and inspected to ensure that they are properly stored, secured, and accounted for. Additional inventories are necessary when required by federal law. (7-1-18)

04. Rebuttal Presumption of Violation. Evidence of an amount of a controlled substance that differs from the amount reflected on a record or inventory required by state or federal law creates a rebuttable presumption that the registrant has failed to keep records or maintain inventories in conformance with the recordkeeping and

inventory requirements of state and federal law. (7-1-18)

05. Drug Distributor Records. Wholesalers and other entities engaged in wholesale drug distribution must maintain inventories and records or transactions pertaining to the receipt and distribution or other disposition of drugs in accordance with federal law that include at least: ()

a. The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped; (4-11-19)

b. The identity and quantity of the drugs received and distributed or disposed of; (4-11-19)

c. The dates of receipt and distribution or other disposition of the drugs; and (4-11-19)

d. Controlled substance distribution invoices, in the form and including the requirements of federal law. (4-11-19)

06. Central Records Storage. Records may be retained at a central location in compliance with federal law. (7-1-18)

07. Electronic Records Storage. Records may be electronically stored and maintained if they remain legible and are in a readily retrievable format, and if federal law does not require them to be kept in a hard copy format. (7-1-18)

501. REPORTING REQUIREMENTS.

01. Theft or Loss of Controlled Substances. A registrant must report to the Board on the same day reported to the DEA a theft or loss of a controlled substance that includes the information required by federal law. (7-1-18)

02. Individual Information Changes. Changes in employment or changes to information provided on or with the initial or renewal application must be reported to the Board within ten (10) days of the change. (7-1-18)

03. Drug Distributor Monthly Reports. An authorized distributor must report specified data on drugs distributed at least monthly to the Board in a form and manner prescribed by the Board. (4-11-19)

502. -- 599. (RESERVED)

SUBCHAPTER G – PRESCRIPTION DRUG MONITORING PROGRAM REQUIREMENTS
(Rules 600 through 699 – Prescription Drug Monitoring Program Requirements)

600. CONTROLLED SUBSTANCES: PDMP.

Specified data on controlled substances must be reported by the end of the next business day by all drug outlets that dispense controlled substances in or into Idaho and prescribers that dispense controlled substances to humans. (7-1-18)

01. Online Access to PDMP. To obtain online access, a prescriber or pharmacist, or their delegate must complete and submit a registration application and agree to adhere to the access restrictions and limitations established by law. (7-1-18)

02. Use Outside Scope of Practice. Information obtained from the PDMP must not be used for purposes outside the prescriber's or pharmacist's scope of professional practice. A delegate may not access the PDMP outside of their supervisor's scope of professional practice. (7-1-18)

03. Profile Requests. Authorized persons without online access may obtain a profile by completing a Board form and submitting it to the Board office with proof of identification and other credentials necessary to confirm the requestor's authorized status pursuant to Section 37-2726, Idaho Code. (7-1-18)

601. – 699. (RESERVED)

SUBCHAPTER H - RULES GOVERNING DRUG COMPOUNDING
(Rules 700 through 799 - Rules Governing Drug Compounding)

700. COMPOUNDING DRUG PREPARATIONS.

Any compounding that is not permitted herein is considered manufacturing. (7-1-18)

01. Application. This rule applies to any person, including any business entity, authorized to engage in the practice of non-sterile compounding, sterile compounding, and sterile prepackaging of drug products in or into Idaho, except these rules do not apply to: (7-1-18)

- a. Compound positron emission tomography drugs; (7-1-18)
- b. Radiopharmaceuticals; (7-1-18)
- c. The reconstitution of a non-sterile drug or a sterile drug for immediate administration; (7-1-18)
- d. The addition of a flavoring agent to a drug product; and (7-1-18)
- e. Product preparation of a non-sterile, non-hazardous drug according to the manufacturer's FDA approved labeling. (7-1-18)

02. General Compounding Standards. (7-1-18)

a. Active Pharmaceutical Ingredients. All active pharmaceutical ingredients must be obtained from an FDA registered manufacturer. FDA registration as a foreign manufacturer satisfies this requirement. (7-1-18)

b. Certificate of Analysis (COA). Unless the active pharmaceutical ingredient complies with the standards of an applicable USP-NF monograph, a COA must be obtained for all active pharmaceutical ingredients procured for compounding and retained for a period of not less than three (3) years from the date the container is emptied, expired, returned, or disposed of. The following minimum information is necessary on the COA: product name, lot number, expiration date, and assay. ()

c. Equipment. Equipment and utensils must be of suitable design and composition and cleaned, sanitized, or sterilized as appropriate prior to use. (7-1-18)

d. Disposal of Compromised Drugs. When the correct identity, purity, strength, and sterility of ingredients and components cannot be confirmed (in cases of, for example, unlabeled syringes, opened ampoules, punctured stoppers of vials and bags, and containers of ingredients with incomplete labeling) or when the ingredients and components do not possess the expected appearance, aroma, and texture, they must be removed from stock and isolated for return, reclamation, or destruction. (7-1-18)

03. Prohibited Compounding. Compounding any drug product for human use that the FDA has identified as presenting demonstrable difficulties in compounding or has withdrawn or removed from the market for safety or efficacy reasons is prohibited. (7-1-18)

04. Limited Compounding. (7-1-18)

a. Triad Relationship. A pharmacist may compound a drug product in the usual course of professional practice for an individual patient pursuant to an established prescriber/patient/pharmacist relationship and a valid prescription drug order. (7-1-18)

b. Commercially Available Products. A drug product that is commercially available may only be compounded if not compounded regularly or in inordinate amounts and if: (7-1-18)

- i. It is medically warranted to provide an alternate ingredient, dosage form, or strength of

significance; or (7-1-18)

ii. The commercial product is not reasonably available in the market in time to meet the patient's needs. (7-1-18)

c. Anticipatory Compounding. Limited quantities of a drug product may be compounded or sterile prepackaged prior to receiving a valid prescription drug order based on a history of receiving valid prescription drug orders for the compounded or sterile prepackaged drug product. (7-1-18)

05. Drug Compounding Controls. (7-1-18)

a. Policies and Procedures. In consideration of the applicable provisions of USP Chapter 795 concerning pharmacy compounding of non-sterile preparations, USP Chapter 797 concerning sterile preparations, Chapter 1075 of the USP-NF concerning good compounding practices, and Chapter 1160 of the USP-NF concerning pharmaceutical calculations, policies and procedures for the compounding or sterile prepackaging of drug products must ensure the safety, identity, strength, quality, and purity of the finished product, and must include any of the following that are applicable to the scope of compounding practice being performed: (7-1-18)

i. Appropriate packaging, handling, transport, and storage requirements; (7-1-18)

ii. Accuracy and precision of calculations, measurements, and weighing; (7-1-18)

iii. Determining ingredient identity, quality, and purity; (7-1-18)

iv. Labeling accuracy and completeness; (7-1-18)

v. Beyond use dating; (7-1-18)

vi. Auditing for deficiencies, including routine environmental sampling, quality and accuracy testing, and maintaining inspection and testing records; (7-1-18)

vii. Maintaining environmental quality control; and (7-1-18)

viii. Safe limits and ranges for strength of ingredients, pH, bacterial endotoxins, and particulate matter. (7-1-18)

b. Accuracy. Components including, but not limited to, bulk drug substances, used in the compounding or sterile prepackaging of drug products must be accurately weighed, measured, or subdivided, as appropriate. The amount of each active ingredient contained within a compounded drug product must not vary from the labeled potency by more than the drug product's acceptable potency range listed in the USP-NF monograph for that product. If USP-NF does not publish a range for a particular drug product, the active ingredients must not contain less than ninety percent (90%) and not more than one hundred ten percent (110%) of the potency stated on the label. (7-1-18)

c. Non-Patient Specific Records. Except for drug products that are being compounded or sterile prepackaged for direct administration, a production record of drug products compounded or sterile prepackaged in anticipation of receiving prescription drug orders or distributed in the absence of a patient specific prescription drug order ("office use") solely as permitted in these rules, must be prepared and kept for each drug product prepared, including: (7-1-18)

i. Production date; (7-1-18)

ii. Beyond use date; (7-1-18)

iii. List and quantity of each ingredient; (7-1-18)

iv. Internal control or serial number; and (7-1-18)

v. Initials or unique identifier of all persons involved in the process or the compounder responsible for the accuracy of these processes. (7-1-18)

701. STERILE PREPARATION.

01. Application. In addition to all other applicable rules in this chapter, including the rules governing Compounding Drug Preparations, these rules apply to all persons, including any business entity, engaged in the practice of sterile compounding and sterile prepackaging in or into Idaho. (7-1-18)

02. Dosage Forms Requiring Sterility. The sterility of compounded biologics, diagnostics, drugs, nutrients, and radiopharmaceuticals must be maintained or the compounded drug preparation must be sterilized when prepared in the following dosage forms: (7-1-18)

- a. Aqueous bronchial and nasal inhalations, except sprays and irrigations intended to treat nasal mucosa only; (4-11-19)
- b. Baths and soaks for live organs and tissues; (7-1-18)
- c. Injections (for example, colloidal dispersions, emulsions, solutions, suspensions); (7-1-18)
- d. Irrigations for wounds and body cavities; (7-1-18)
- e. Ophthalmic drops and ointments; and (7-1-18)
- f. Tissue implants. (7-1-18)

03. Compounder Responsibilities. Compounders and sterile prepackagers are responsible for ensuring that sterile products are accurately identified, measured, diluted, and mixed and are correctly purified, sterilized, packaged, sealed, labeled, stored, dispensed, and distributed, as well as prepared in a manner that maintains sterility and minimizes the introduction of particulate matter; (7-1-18)

- a. Unless following manufacturer's guidelines or another reliable literature source, opened or partially used packages of ingredients for subsequent use must be properly stored as follows; (7-1-18)
 - i. Opened or entered (such as needle-punctured) single-dose containers, such as bags, bottles, syringes, and vials of sterile products and compounded sterile preparations are to be used within one (1) hour if opened in non-sterile conditions, and any remaining contents must be discarded; (7-1-18)
 - ii. Single-dose vials needle-punctured in a sterile environment may be used up to six (6) hours after initial needle puncture; (7-1-18)
 - iii. Opened single-dose ampules may not be stored for any time period; and (7-1-18)
 - iv. Multiple-dose containers (for example, vials) that are formulated for removal of portions on multiple occasions because they contain antimicrobial preservatives, may be used for up to twenty-eight (28) days after initial opening or entering, unless otherwise specified by the manufacturer; (7-1-18)
- b. Water-containing compounded sterile products that are non-sterile during any phase of the compounding procedure must be sterilized within six (6) hours after completing the preparation in order to minimize the generation of bacterial endotoxins; (7-1-18)

c. No food, drinks, or materials exposed in patient care and treatment areas may enter ante-areas, buffer areas, or segregated areas where components and ingredients of sterile preparations are prepared. (7-1-18)

04. Environmental Controls. Except when prepared for immediate administration, the environment for the preparation of sterile preparations in a drug outlet must be in an isolated area, designed to avoid unnecessary

traffic and airflow disturbances, and equipped to accommodate aseptic techniques and conditions. (7-1-18)

a. Hoods and aseptic environmental control devices must be certified for operational efficiency as often as recommended by the manufacturer or at least every six (6) months or if relocated. (7-1-18)

b. Filters must be inspected and replaced in accordance with the manufacturer's recommendations. (7-1-18)

05. Sterile Preparation Equipment. A drug outlet in which sterile preparations are prepared must be equipped with at least the following: (7-1-18)

a. Protective apparel including gowns, masks, and sterile (or the ability to sterilize) non-vinyl gloves, unless written documentation can be provided from the aseptic isolator manufacturer that any component of garbing is not necessary; (7-1-18)

b. A sink; (4-11-19)

c. A refrigerator for proper storage of additives and finished sterile preparations prior to delivery when necessary; and (7-1-18)

d. An appropriate laminar airflow hood or other aseptic environmental control device such as a laminar flow biological safety cabinet, or a comparable compounding area when authorized by USP Chapter 797. (4-11-19)

06. Documentation Requirements. The following documentation must also be maintained by a drug outlet in which sterile preparations are prepared: (7-1-18)

a. Justification of beyond use dates assigned, pursuant to direct testing or extrapolation from reliable literature sources; (7-1-18)

b. Training records, evidencing that personnel are trained on a routine basis and are adequately skilled, educated, and instructed; (7-1-18)

c. Audits appropriate for the risk of contamination for the particular sterile preparation including: (7-1-18)

i. Visual inspection to ensure the absence of particulate matter in solutions, the absence of leakage from bags and vials, and the accuracy of labeling with each dispensing; (7-1-18)

ii. Periodic hand hygiene and garbing competency; (7-1-18)

iii. Media-fill test procedures (or equivalent), aseptic technique, and practice related competency evaluation at least annually by each compounder or sterile prepackager; (7-1-18)

iv. Environmental sampling testing at least upon registration of a new drug outlet, following the servicing or re-certification of facilities and equipment, or in response to identified problems with end products, staff techniques or patient-related infections, or every six (6) months. ()

v. Gloved fingertip sampling testing at least annually for personnel who compound low- and medium-risk level compounded sterile preparations and every six (6) months for personnel who compound high-risk level compounded sterile preparations. (4-11-19)

vi. Sterility testing of high risk batches of more than twenty-five (25) identical packages (ampules, bags, vials, etc.) before dispensing or distributing; (7-1-18)

d. Temperature, logged daily; (7-1-18)

- e. Beyond use date and accuracy testing, when appropriate; and (7-1-18)
 - f. Measuring, mixing, sterilizing, and purification equipment inspection, monitoring, cleaning, and maintenance to ensure accuracy and effectiveness for their intended use. (7-1-18)
- 07. Policy and Procedures Manual.** Maintain a policy and procedures manual to ensure compliance with this rule. ()

702. HAZARDOUS DRUGS PREPARATION.

In addition to all other applicable rules in this chapter, including the rules governing Compounding Drug Preparations and Sterile Preparation, these rules apply to all persons, including any business entity, engaged in the practice of compounding or sterile prepackaging with hazardous drugs. Such persons must: (7-1-18)

- 01. Ventilation.** Ensure the storage and compounding areas have sufficient general exhaust ventilation to dilute and remove any airborne contaminants. (7-1-18)
- 02. Ventilated Cabinet.** Utilize a ventilated cabinet designed to reduce worker exposures while preparing hazardous drugs. (7-1-18)
 - a. Sterile hazardous drugs must be prepared in a dedicated Class II biological safety cabinet or a barrier isolator of appropriate design to meet the personnel exposure limits described in product material safety data sheets; (7-1-18)
 - b. When asepsis is not required, a Class I BSC, powder containment hood or an isolator intended for containment applications may be sufficient. (7-1-18)
 - c. A ventilated cabinet that re-circulates air inside the cabinet or exhausts air back into the room environment is prohibited, unless: (7-1-18)
 - i. The hazardous drugs in use will not volatilize while they are being handled; or (7-1-18)
 - ii. Written documentation from the manufacturer attesting to the safety of such ventilation. (7-1-18)
- 03. Clear Identification.** Clearly identify storage areas, compounding areas, containers, and prepared doses of hazardous drugs. (7-1-18)
- 04. Labeling.** Label hazardous drugs with proper precautions, and dispense them in a manner to minimize risk of hazardous spills. (7-1-18)
- 05. Protective Equipment and Supplies.** Provide and maintain appropriate personal protective equipment and supplies necessary for handling hazardous drugs, spills and disposal. (7-1-18)
- 06. Contamination Prevention.** Unpack, store, prepackage, and compound hazardous drugs separately from other inventory in a restricted area in a manner to prevent contamination and personnel exposure until hazardous drugs exist in their final unit-of-use packaging. (7-1-18)
- 07. Compliance With Laws.** Comply with applicable local, state, and federal laws including for the disposal of hazardous waste. (7-1-18)
- 08. Training.** Ensure that personnel working with hazardous drugs are trained in hygiene, garbing, receipt, storage, handling, transporting, compounding, spill control, clean up, disposal, dispensing, medical surveillance, and environmental quality and control. (7-1-18)
- 09. Policy and Procedures Manual.** Maintain a policy and procedures manual to ensure compliance with this rule. (7-1-18)

703. OUTSOURCING FACILITY.

01. Federal Act Compliance. An outsourcing facility must ensure compliance with 21 U.S.C. Section 353b of the Federal Food, Drug and Cosmetic Act. (7-1-18)

02. Adverse Event Reports. Outsourcing facilities must submit to the Board a copy of all adverse event reports submitted to the secretary of Health and Human Services in accordance with Section 310.305 of Title 21 of the Code of Federal Regulations. (7-1-18)

704. – 999. (RESERVED)

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 – RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1904

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Idaho §§ 39-105, 107, 114(4), 115(3), and 116B.

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

This pending rule adopts and re-publishes the following existing and previously approved and codified chapter under IDAPA 58 rules of the Department of Environmental Quality:

IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho

The proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages 387 through 588](#). DEQ received no public comments, and the rule has been adopted as initially proposed. The proposed rule includes non-substantive clerical revisions made by the Administrative Rules Coordinator using his authority under Idaho Code § 67-5202. “The coordinator shall have the authority to make clerical revisions or to correct manifest typographical or grammatical errors to both proposed and existing rules that do not alter the sense, meaning or effect of such rules.” Idaho Code § 67-5202(2). The revisions are consistent with [Executive Order No. 2019-02](#), and did not alter the sense, meaning or effect of the rules (i.e., elimination of restrictive words such as “shall”).

More information regarding this rule docket is available at www.deq.idaho.gov/58-0101-1904.

FEE SUMMARY: The rules provide a specific description of the fee or charge imposed by this rulemaking. This rulemaking does not impose a fee or charge beyond what was previously approved and codified in the prior rules. The fee category and statutory authority for imposition of the fees are listed below.

Idaho Code § 39-114(4), crop residue burn fee

Idaho Code § 39-115(3), application fee for industrial or commercial air pollution source permits

Idaho Code § 39-116B, motor vehicle inspection fee

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, please contact the undersigned.

Dated this 14th day of November, 2019.

Paula J. Wilson
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THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized pursuant to Idaho §§ 39-105, 107, 114(4), 115(3), and 116B.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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

This rulemaking adopts and re-publishes the following existing and previously approved and codified fee rule chapter under IDAPA 58 rules of the Department of Environmental Quality:

IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho

A temporary rule was adopted by the Idaho Board of Environmental Quality in May 2019, effective June 30, 2019, and published in the Idaho Administrative Bulletin, July 3, 2019, **Vol. 19-7, pages 284–481**. More information regarding this rule docket is available at www.deq.idaho.gov/58-0101-1904.

FEE SUMMARY: The attached rules provide a specific description of the fee or charge imposed by this rulemaking. This rulemaking does not impose a fee or charge beyond what was previously approved and codified in the prior rules. The fee categories and statutory authority for imposition of the fees are listed below.

Idaho Code § 39-114(4), crop residue burn fee
Idaho Code § 39-115(3), application fee for industrial or commercial air pollution source permits
Idaho Code § 39-116B, motor vehicle inspection fee

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

IDAHO CODE SECTION 39-107D STATEMENT: (1) The legislature directs that any rule formulated and recommended by the department to the board which is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government, is subject to the following additional requirements: the notice of proposed rulemaking and rulemaking record requirements under Chapter 52, title 67, Idaho Code, must clearly specify that the proposed rule, or portions of the proposed rule, are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government, and delineate which portions of the proposed rule are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government.

IDAPA 58.01.01.161, 210, 585, and 586 – Regulation of Toxic Air Pollutants (TAPs)

IDAPA 58.01.01.161, 210, 585, and 586 regulate toxic air pollutants (TAPs) in Idaho. The department first implemented a TAPs rule with section 161, which gave broad authority to protect human health against toxics. In order to effectively implement 161, the department developed a policy that set emission limits for certain toxic air pollutants. Idaho industry requested that the policy be implemented in rule (instead of a policy) to provide greater certainty and transparency for industry. Through many discussions with industry and the public, a rule was developed that was responsibly protective of environmental quality while being reasonably permissive of industrial activity. As noted in Section 203.03, by complying with the TAPs rules developed in sections 210, 585 and 586, a facility adequately demonstrated compliance with 161.

Because TAPs are generally known to be hazardous to human health (EPA 1991), the federal government also implemented rules to control emissions of TAPs through National Emission Standards for Hazardous Air Pollutants (NESHAPs). EPA first tried to implement risk based standards according to the Clean Air Act (CAA) amendments of 1970. Between 1970 and 1990, EPA was only able to implement standards for 8 pollutants (asbestos, benzene, beryllium, coke oven emissions, inorganic arsenic, mercury, radionuclides, and vinyl chloride). Because of EPA's inability to address air toxics in a timely and efficient manner, Congress revised the CAA in 1990 to develop a program to control a list of hazardous air pollutants (HAPs) through technology standards for specific industries. Congress itself developed the list of 188 HAPs. They also prescribed maximum achievable control (MACT) standards for large (major) sources of HAPs and generally achievable control technology (GACT) standards for smaller (area) sources. The area source NESHAPs also only focused on a subset of 30 HAPs that were identified as being the most problematic in urban areas. Congress's intent was to address the major risks associated with TAPs by focusing on the most toxic pollutants and most significant source categories. The original list of 188 HAPs was based on the list of pollutants subject to the Emergency Planning and Community Right-to-Know Act (EPCRA). After the HAPs list was created in the early 1990's, the list of pollutants subject to EPCRA has doubled, while the list of HAPs has remained essentially unchanged.

The Idaho TAPs rules were developed to complement the federal NESHAPs, thus the rules are not more stringent than federal law. IDAPA 58.01.01.210.20 specifically states that if a facility is subject to a federal NESHAP, they have met the requirements of our state air toxics rules. These rules do regulate an activity not regulated by the federal government. They are a uniquely Idaho solution of addressing air toxics emissions. An argument could be made that the rules are broader in scope than federal law, as they do regulate an activity not regulated by federal law.

(2) To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize:

(a) The best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and

The Idaho TAPs rules were developed to protect public health by developing risk based standards that would apply to new or modified industrial sources only. There are two lists of pollutants that facilities need to consider, but only if the facility is not subject to a federal air toxics standard.

The first list of pollutants are non-carcinogens (do not cause cancer) in IDAPA 58.01.01.585. They may cause adverse health effects based on short term (24-hour) exposures. Examples include methyl isocyanate, chlorine, cyanide and xylene. The acceptable ambient levels for non-carcinogens are based on occupational exposure levels from the American Conference of Government Industrial Hygienists (ACGIH) threshold limit values (TLV).

(ACGIH 2019). The TLV is typically an 8 hour time weighted average concentration and it is the concentration to which workers may be repeatedly exposed during a 40 hour work week without adverse effect. Two safety factors were applied to the TLV value: 1) to extrapolate the 8 hour exposure level to a 24 hour public exposure, and 2) to extrapolate from the relatively healthy mostly male working population to a general population that included women, children and the elderly. Thus the TAP increment values are 1/20th the TLV values.

Because ambient monitoring values can sometimes be difficult to determine, the department also developed stack emission screening levels (ELs) for easier analysis (in pounds/hour). These were based on a conservative stack modeling analysis.

The second list of pollutants are carcinogens (i.e., have been determined to cause cancer over a lifetime of exposure) in IDAPA 58.01.01.586. Examples include formaldehyde, benzene, and polycyclic aromatic hydrocarbons. The acceptable ambient levels for carcinogens are based on the cancer unit risk values from the Environmental Protection Agency and correspond to a one in a million cancer risk. (EPA 2019). An EL was also determined for carcinogens based on the same conservative stack modeling analysis used for non-carcinogens.

(b) Data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justify use of the data.

Facilities demonstrate compliance with TAPs levels by calculating their emission rates in pounds per hour or by calculating ambient concentrations at their property levels using air modeling.

3) Any proposed rule subject to this section which proposes a standard necessary to protect human health and the environment shall also include in the rulemaking record requirements under chapter 52, title 67, Idaho Code, the following additional information:

(a) Identification of each population or receptor addressed by an estimate of public health effects or environmental effects;

The effected population includes anyone in the public that may live near a facility that emits TAPs.

(b) Identification of the expected risk or central estimate of risk for the specific population or receptor;

The increment values outlined in this section are based on safety factors applied to occupational exposure levels for noncarcinogens and a one in a million cancer risk for carcinogens.

(c) Identification of each appropriate upper bound or lower bound estimate of risk; and

For non-carcinogens, as described above, safety factors are applied to occupational exposure levels to develop limits. Originally a more conservative safety factor was used (1/100), but due to industry concerns, the safety factor was reduced (to 1/20) to strike a balance of protecting human health and not be overly burdensome for industry.

For carcinogens, the acceptable risk level is based on a one in a million cancer risk for a lifetime (70 year) exposure. (EPA 2006). The TAPs rules provide flexibility to facilities that demonstrate TRACT (toxic reasonably available control technology) who can obtain an additional factor of 10 safety margin and thus only have to meet a one in a hundred thousand risk level.

(d) Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty; and

The TLV (basis for 585) development guidelines are outlined on the ACGIH website. (ACGIH 2019).

The IRIS database (basis for 586) follows EPA's guidelines for carcinogenic risk assessment (EPA 2006).

(e) Identification of studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.

Calabrese and Kenyon outline the most appropriate means to develop ambient air levels for air toxics (i.e., the levels in 585 and 586). (Calabrese and Kenyon 1991). The use of occupational exposure values to develop air emission limits (as is done in 585) was not considered the ideal approach but an acceptable health based approach. The list in 586 which uses EPA's risk assessments for carcinogens from IRIS is considered the most appropriate method for determining carcinogenic levels. As discussed above, the development of the Idaho TAPs rules were made through negotiations with the public and industry to develop a solution that was responsibly protective of environmental quality while being reasonably permissive of industrial activity.

References:

ACGIH 2019. "TLV/BEI Guidelines." Accessed June 06, 2019.

Calabrese, EJ and EM Kenyon. 1991. Air Toxics and Risk Assessment. Chelsea, MI: Lewis Publishers, Inc.

EPA 2019. "Integrated Risk Information System." Accessed June 06, 2019.

EPA 2006. "Guidelines for Carcinogen Risk Assessment." Washington DC, Report EPA/630/P-03/001F.

EPA 1991. "Risk Assessment for Toxic Air Pollutants: A Citizen's Guide. Washington DC. Report EPA 450/3-90-024.

IDAPA 58.01.01.577, 750, and 751 – Regulation of Fluoride Emissions

IDAPA 58.01.01.577, 750, and 751 regulate fluoride emissions that can deposit near the emission source that result in fluoride content in feed and forage above certain concentrations known to be harmful to cattle. There are no federal rules that specifically control the fluoride content in forage. Thus, the rule, while regulating an activity that is not regulated by the federal government, does not propose a more stringent standard than the Environmental Protection (EPA).

While EPA does not have a fluoride in forage standard, as part of the CERCLA cleanup efforts at the Eastern Michaud Flats in Eastern Idaho, EPA evaluated the ecological risks of fluoride contamination. After reviewing all available scientific studies, they issued a technical memorandum proposing an action level of 40 ppm of fluoride in forage. (Booz Allen Hamilton 2013). That proposed action level is identical to the value used in IDAPA 58.01.01.

(2) To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize:

(a) The best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and

The Idaho standard is based on scientific studies from the late 1960's and early 1970's. In 1969, JW Suttie proposed an air quality standard: 40 ppm annual average, 60 ppm for 2 months, and 80 ppm for 1 month. (Suttie 1969). The levels were confirmed in reports by the National Academy of Sciences in 1971 and 1974. (NRC 1971, NRC 1974).

Industry also agrees that the state fluoride in forage rules are science based. In a comment letter from the J.R. Simplot Company on a proposed EPA fluorosis Study Design for the Easter Michaud Flats Superfund Site Offplant Operable Unit, Simplot states: "(the) fluoride grazing standard adopted by the State of Idaho is based on sound science and provides the best predictor for fluorosis exposure to grazing animals" and "compliance with the state standard is, therefore, the most effective way to assess the risk of fluorosis to grazing livestock." (JR Simplot 2010).

(b) Data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justify use of the data.

The JR Simplot Company has implemented a comprehensive sampling plan that samples biweekly during the growing season. The JR Simplot Company believes that it "is sufficient to identify areas in which forage vegetation

have fluoride concentrations greater than the standard.” (Koulermos, 2005).

3) Any proposed rule subject to this section which proposes a standard necessary to protect human health and the environment shall also include in the rulemaking record requirements under chapter 52, title 67, Idaho Code, the following additional information:

(a) Identification of each population or receptor addressed by an estimate of public health effects or environmental effects;

These rules are focused on eliminating the risk to grazing cattle near facilities that have significant fluoride emissions.

(b) Identification of the expected risk or central estimate of risk for the specific population or receptor;

At the levels included in this rule, there should only be slight fluoride toxicosis observed in cattle.

(c) Identification of each appropriate upper bound or lower bound estimate of risk; and

Based on numerous studies of cattle exposure to fluoride, Shupe and Olson identified thresholds for dental fluorosis and other adverse health effects in cattle. (Shupe and Olson, 1982). See table below:

Table 1. Thresholds for fluoride effects in cattle

Measurement Endpoint	Normal conditions	No adverse effects	Onset of chronic fluoride toxicosis		
			Slight to moderate	Moderate	Severe
Fluoride in vegetation ppm	<15	15-30	30	40	60

Surrounding states also have fluoride in forage rules:

State	Averaging Time		
	1 year	60 day	30 day
Idaho	40 ppm	60 ppm	80 ppm
Wyoming	30 ppm	60 ppm	80 ppm
Montana	35 ppm	--	50 ppm
Washington	40 ppm	60 ppm	80 ppm

Wyoming and Montana have more restrictive one year averaging periods than Idaho. Washington’s program is identical to Idaho’s.

(d) Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty; and

Numerous controlled experiments have indicated that long-term ingestion of fluoride leads to severe dental fluorosis, severe osteofluorosis, intermittent lameness, and appreciable deleterious effect on feed intake, growth, or milk production in dairy cattle. A lower bound of 30 ppm of when effects start to occur has been documented in multiple sources. (Shupe 1980, Shupe and Olson, 1982, NRC 1974).

(e) Identification of studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.

It is well known that fluoride in forage can have negative health impacts on cattle. See the references below and works cited in them:

References:

Booz Allen Hamilton, "Final Technical Memorandum Proposed Action Level and Monitoring for Fluoride for the Off-Plant Operable Unit". Repa5-0101-002. March 2013.

JR Simplot Company, letter to EPA, "Easter Michaud Flats Superfund Site Offplant Operable Unit Simplot General Comments on the EPA's Fluorosis Study Design." September 28, 2010.

Koulermos, Andy, 2005, Memorandum to JR Simplot Company: Fluoride in Forage Sampling Plan, Boulder CO, NewFields.

National Research Council, 1971, Biologic Effects of Atmospheric Pollutants: Fluorides, Washington DC, National Academy of Sciences.

National Research Council, 1974, Effects of Fluorides in Animals, Washington DC, National Academy of Sciences.

Shupe, James L, 1980, "Clinicopathologic Features of Fluoride Toxicosis in Cattle," Journal of Animal Science, 51: 746-758.

Shupe, James L. and Olson, Arland E, 1982, "Clinical and pathological aspects of fluoride toxicosis in animals." Proceedings of the International Fluoride Symposium held at Utah State University, Logan, UT.

Suttie, J.W., 1969, "Air Quality Standards for the Protection of Farm Animals from Fluorides," Journal of the Air Pollution Association, 19(4): 239-242.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact the undersigned. Anyone may submit written comments regarding the proposed rulemaking by mail, fax, or email. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 4th day of September, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 58-0101-1904

58.01.01 – RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

000. LEGAL AUTHORITY.

The Board of Environmental Quality is authorized to promulgate rules for the Department of Environmental Quality governing air pollution pursuant to Sections 39-105 and 39-107, Idaho Code. (5-1-94)

001. TITLE AND SCOPE.

These rules are titled IDAPA 58.01.01, Rules of the Department of Environmental Quality, IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho." These rules provide for the control of air pollution in Idaho. (5-1-94)

002. WRITTEN INTERPRETATIONS.

The Department of Environmental Quality has written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. The written statements are available for public inspection and copying at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (5-1-94)

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under this chapter pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

004. (RESERVED)

005. DEFINITIONS.

The purpose of Sections 005 through 008 is to assemble definitions used throughout this chapter. (5-1-94)

006. GENERAL DEFINITIONS.

01. Accountable. Any SIP emission trading program must account for the aggregate effect of the emissions trades in the demonstration of reasonable further progress, attainment, or maintenance. (4-5-00)

02. Act. The Environmental Protection and Health Act of 1972 as amended (Sections 39-101 through 39-130, Idaho Code). (5-1-94)

03. Actual Emissions. The actual rate of emissions of a pollutant from an emissions unit as determined in accordance with the following: (4-5-00)

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. (4-5-00)

b. The Department may presume that the source-specific allowable emissions for the unit are equivalent to actual emissions of the unit. (4-5-00)

c. For any emissions unit (other than an electric utility steam generating unit as specified below) which has not yet begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date. (4-5-00)

d. For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the Department, on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years may be required by the Department if it determines such a period to be more representative of normal source post-change operations. (4-5-00)

04. Adverse Impact on Visibility. Visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I Area. This

determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with: (3-30-07)

- a. Times of visitor use of the Federal Class I Area; and (3-30-07)
- b. The frequency and timing of natural conditions that reduce visibility. (3-30-07)
- c. This term does not include affects on integral vistas when applied to 40 CFR 51.307. (3-30-07)

05. Air Pollutant/Air Contaminant. Any substance, including but not limited to, dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon or particulate matter or any combination thereof. (4-5-00)

06. Air Pollution. The presence in the outdoor atmosphere of any air pollutant or combination thereof in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property. (4-5-00)

07. Air Quality. The specific measurement in the ambient air of a particular air pollutant at any given time. (5-1-94)

08. Air Quality Criterion. The information used as guidelines for decisions when establishing air quality goals and air quality standards. (5-1-94)

09. Allowable Emissions. The allowable emissions rate of a stationary source or facility calculated using the maximum rated capacity of the source or facility (unless the source or facility is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following: (4-5-00)

- a. The applicable standards set forth in 40 CFR part 60 and 61; (4-5-00)
- b. Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or (4-5-00)
- c. The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date. (4-5-00)

10. Ambient Air. That portion of the atmosphere, external to buildings, to which the general public has access. (5-1-94)

11. Ambient Air Quality Violation. Any ambient concentration that causes or contributes to an exceedance of a national ambient air quality standard as determined by 40 CFR Part 50. (4-11-06)

12. Atmospheric Stagnation Advisory. An air pollution alert declared by the Department when air pollutant impacts have been observed and/or meteorological conditions are conducive to additional air pollutant buildup. (4-11-06)

13. Attainment Area. Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as having ambient concentrations equal to or less than national primary or secondary ambient air quality standards for a particular air pollutant or air pollutants. (4-11-06)

14. BART-Eligible Source. Any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit two hundred fifty (250) tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted. (3-30-07)

- a. Fossil-fuel fired steam electric plants of more than two hundred fifty (250) million BTU's per hour heat input; (3-30-07)

- b. Coal cleaning plants (thermal dryers); (3-30-07)
- c. Kraft pulp mills; (3-30-07)
- d. Portland cement plants; (3-30-07)
- e. Primary zinc smelters; (3-30-07)
- f. Iron and steel mill plants; (3-30-07)
- g. Primary aluminum ore reduction plants; (3-30-07)
- h. Primary copper smelters; (3-30-07)
- day; i. Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per (3-30-07)
- j. Hydrofluoric, sulfuric, and nitric acid plants; (3-30-07)
- k. Petroleum refineries; (3-30-07)
- l. Lime plants; (3-30-07)
- m. Phosphate rock processing plants; (3-30-07)
- n. Coke oven batteries; (3-30-07)
- o. Sulfur recovery plants; (3-30-07)
- p. Carbon black plants (furnace process); (3-30-07)
- q. Primary lead smelters; (3-30-07)
- r. Fuel conversion plants; (3-30-07)
- s. Sintering plants; (3-30-07)
- t. Secondary metal production facilities; (3-30-07)
- u. Chemical process plants; (3-30-07)
- v. Fossil-fuel boilers of more than two hundred fifty (250) million BTU's per hour heat input; (3-30-07)
- (300,000) barrels; w. Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand (3-30-07)
- x. Taconite ore processing facilities; (3-30-07)
- y. Glass fiber processing plants; and (3-30-07)
- z. Charcoal production facilities. (3-30-07)
- 15. **Baseline (Area, Concentration, Date).** See Section 579. (5-1-94)
- 16. **Best Available Retrofit Technology (BART).** Means an emission limitation based on the degree

of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. (3-30-07)

17. **Board.** Idaho Board of Environmental Quality. (5-1-94)
18. **Breakdown.** An unplanned failure of any equipment or emissions unit which may cause excess emissions. (4-5-00)
19. **BTU.** British thermal unit. (5-1-94)
20. **Clean Air Act.** The federal Clean Air Act, 42 U.S.C. Sections 7401 through 7671q. (5-1-94)
21. **Collection Efficiency.** The overall performance of the air cleaning device in terms of ratio of materials collected to total input to the collector unless specific size fractions of the contaminant are stated or required. (5-1-94)
22. **Commence Construction or Modification.** In general, this means initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change. (4-5-00)
23. **Complete.** A determination made by the Department that all information needed to process a permit application has been submitted for review. (5-1-94)
24. **Construction.** Fabrication, erection, installation, or modification of a stationary source or facility. (5-1-94)
25. **Control Equipment.** Any method, process or equipment which removes, reduces or renders less noxious, air pollutants discharged into the atmosphere. (5-1-94)
26. **Controlled Emission.** An emission which has been treated by control equipment to remove all or part of an air pollutant before release to the atmosphere. (5-1-94)
27. **Criteria Air Pollutant.** Any of the following: PM₁₀; PM_{2.5}; sulfur oxides; ozone, nitrogen dioxide; carbon monoxide; lead. (4-11-15)
28. **Deciview.** A measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements): Deciview Haze Index = $10 \ln_e (b_{\text{ext}}/10\text{Mm}^{-1})$ where b_{ext} = the atmospheric light extinction coefficient, expressed in inverse megameters (Mm^{-1}). (3-30-07)
29. **Department.** The Department of Environmental Quality. (5-1-94)
30. **Designated Facility.** Any of the following facilities: (5-1-94)
 - a. Fossil-fuel fired steam electric plants of more than two hundred fifty (250) million BTU's per hour heat input; (5-1-94)
 - b. Coal cleaning plants (thermal dryers); (5-1-94)

- c. Kraft pulp mills; (5-1-94)
- d. Portland cement plants; (5-1-94)
- e. Primary zinc smelters; (5-1-94)
- f. Iron and steel mill plants; (5-1-94)
- g. Primary aluminum ore reduction plants; (5-1-94)
- h. Primary copper smelters; (5-1-94)
- i. Municipal incinerators capable of charging more than two hundred and fifty (250) tons of refuse per day; (5-1-94)
- j. Hydrofluoric, sulfuric, and nitric acid plants; (5-1-94)
- k. Petroleum refineries; (5-1-94)
- l. Lime plants; (5-1-94)
- m. Phosphate rock processing plants; (5-1-94)
- n. Coke oven batteries; (5-1-94)
- o. Sulfur recovery plants; (5-1-94)
- p. Carbon black plants (furnace process); (5-1-94)
- q. Primary lead smelters; (5-1-94)
- r. Fuel conversion plants; (5-1-94)
- s. Sintering plants; (5-1-94)
- t. Secondary metal production facilities; (5-1-94)
- u. Chemical process plants; (5-1-94)
- v. Fossil-fuel boilers (or combination thereof) of more than two hundred and fifty (250) million BTU's per hour heat input; (5-1-94)
- w. Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand (300,000) barrels; (5-1-94)
- x. Taconite ore processing facilities; (5-1-94)
- y. Glass fiber processing plants; and (5-1-94)
- z. Charcoal production facilities. (5-1-94)
- 31. Director.** The Director of the Department of Environmental Quality or his designee. (5-1-94)
- 32. Effective Dose Equivalent.** The sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man. The unit of the effective dose equivalent is the rem. It is generally calculated as an annual dose. (5-1-94)

- 33. Emission.** Any controlled or uncontrolled release or discharge into the outdoor atmosphere of any air pollutants or combination thereof. Emission also includes any release or discharge of any air pollutant from a stack, vent, or other means into the outdoor atmosphere that originates from an emission unit. (5-1-94)
- 34. Emission Standard.** A permit or regulatory requirement established by the Department or EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction. (4-5-00)
- 35. Emissions Unit.** An identifiable piece of process equipment or other part of a facility which emits or may emit any air pollutant. This definition does not alter or affect the term “unit” for the purposes of 42 U.S.C. Sections 7651 through 7651o. (5-1-94)
- 36. EPA.** The United States Environmental Protection Agency and its Administrator or designee. (5-1-94)
- 37. Environmental Remediation Source.** A stationary source that functions to remediate or recover any release, spill, leak, discharge or disposal of any petroleum product or petroleum substance, any hazardous waste or hazardous substance from any soil, ground water or surface water, and shall have an operational life no greater than five (5) years from the inception of any operations to the cessation of actual operations. Nothing in this definition shall be construed so as to actually limit remediation projects to five (5) years or less of total operation. (5-1-95)
- 38. Excess Emissions.** Emissions that exceed an applicable emissions standard established for any facility, source or emissions unit by statute, regulation, rule, permit, or order. (4-11-06)
- 39. Existing Stationary Source or Facility.** Any stationary source or facility that exists, is installed, or is under construction on the original effective date of any applicable provision of this chapter. (5-1-94)
- 40. Facility.** All of the pollutant-emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual. The fugitive emissions shall not be considered in determining whether a permit is required unless required by federal law. (4-11-06)
- 41. Federal Class I Area.** Any federal land that is classified or reclassified “Class I.” (3-30-07)
- 42. Federal Land Manager.** The Secretary of the department with authority over the Federal Class I Area (or the Secretary's designee). (3-30-07)
- 43. Federally Enforceable.** All limitations and conditions which are enforceable by EPA and the Department under the Clean Air Act, including those requirements developed pursuant to 40 CFR Parts 60 and 61 requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Parts 51, 52, 60, or 63. (3-30-07)
- 44. Fire Hazard.** The presence or accumulation of combustible material of such nature and in sufficient quantity that its continued existence constitutes an imminent and substantial danger to life, property, public welfare or adjacent lands. (5-1-94)
- 45. Fuel-Burning Equipment.** Any furnace, boiler, apparatus, stack and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer. (5-1-94)
- 46. Fugitive Dust.** Fugitive emissions composed of particulate matter. (5-1-94)

- 47. Fugitive Emissions.** Those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. (5-1-94)
- 48. Garbage.** Any waste consisting of putrescible animal and vegetable materials resulting from the handling, preparation, cooking and consumption of food including, but not limited to, waste materials from households, markets, storage facilities, handling and sale of produce and other food products. (5-1-94)
- 49. Gasoline.** Any mixture of volatile hydrocarbons suitable as a fuel for the propulsion of motor vehicles or motor boats. Gasoline also means aircraft engine fuels when used for the operation or propulsion of motor vehicles or motor boats and includes gasohol, but does not include special fuels. (3-29-10)
- 50. Gasoline Cargo Tank.** Any tank or trailer used for the transport of gasoline from sources of supply to underground gasoline storage tanks. (3-29-10)
- 51. Gasoline Dispensing Facility (GDF).** Any facility with underground gasoline storage tanks used for dispensing gasoline. (3-29-10)
- 52. Grain Elevator.** Any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded. (5-1-94)
- 53. Grain Storage Elevator.** Any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean extraction plant which has a permanent grain storage capacity of thirty five thousand two hundred (35,200) cubic meters (ca. 1 million bushels). (5-1-94)
- 54. Grain Terminal Elevator.** Any grain elevator which has a permanent storage capacity of more than eighty-eight thousand one hundred (88,100) cubic meters (ca. 2.5 million bushels), except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots. (5-1-94)
- 55. Hazardous Air Pollutant (HAP).** Any air pollutant listed pursuant to Section 112(b) of the Clean Air Act. Hazardous Air Pollutants are regulated air pollutants. (4-11-06)
- 56. Hazardous Waste.** Any waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological) may:
- a.** Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible, or incapacitating reversible illnesses; or (5-1-94)
 - b.** Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties; provided that such wastes do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are allowed under a national pollution discharge elimination system permit, or source, special nuclear, or by-product material as defined by 42 U.S.C. Sections 2014(e),(z) or (aa). (5-1-94)
- 57. Hot-Mix Asphalt Plant.** Those facilities conveying proportioned quantities or batch loading of cold aggregate to a drier, and heating, drying, screening, classifying, measuring and mixing the aggregate and asphalt for the purpose of paving, construction, industrial, residential or commercial use. (5-1-94)
- 58. Incinerator.** Any source consisting of a furnace and all appurtenances thereto designed for the destruction of refuse by burning. "Open Burning" is not considered incineration. For purposes of these rules, the destruction of any combustible liquid or gaseous material by burning in a flare stack shall be considered incineration. (5-1-94)
- 59. Indian Governing Body.** The governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

(5-1-94)

60. Integral Vista. A view perceived from within the mandatory Class I Federal Area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal Area. (3-30-07)

61. Kraft Pulping. Any pulping process which uses, for a cooking liquor, an alkaline sulfide solution containing sodium hydroxide and sodium sulfide. (5-1-94)

62. Least Impaired Days. The average visibility impairment (measured in deciviews) for the twenty percent (20%) of monitored days in a calendar year with the lowest amount of visibility impairment. (3-30-07)

63. Lowest Achievable Emission Rate (LAER). For any source, the more stringent rate of emissions based on the following: (4-5-00)

a. The most stringent emissions limitation which is contained in any State Implementation Plan for such class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or (4-5-00)

b. The most stringent emissions limitation which is achieved in practice by such class or category of facilities. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the facility. In no event shall the application of the term permit a proposed new or modified facility to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance. (4-5-00)

64. Mandatory Class I Federal Area. Any area identified in 40 CFR 81.400 through 81.437. (3-30-07)

65. Member of the Public. For purposes of Subsection 006.108.a.xvi., a person located at any off-site point where there is a residence, school, business or office. (3-30-07)

66. Mercury. Total mercury including elemental mercury and mercury compounds. (4-7-11)

67. Mercury Best Available Control Technology (MBACT). An emission standard for mercury based on the maximum degree of reduction practically achievable as specified by the Department on an individual case-by-case basis taking into account energy, economic and environmental impacts, and other relevant impacts specific to the source. A Department approved MBACT shall be valid until the source subject to the MBACT is modified. If the proposed modification to the source subject to MBACT occurs within ten (10) years of the MBACT determination, a new MBACT review shall not be triggered as long as the source can meet the existing MBACT requirements. If the proposed modification occurs more than ten (10) years after the MBACT determination, then the proposed modification shall be subject to a new MBACT review. (4-7-11)

68. Modification. (4-11-06)

a. Any physical change in, or change in the method of operation of, a stationary source or facility which results in an emission increase as defined in Section 007 or which results in the emission of any regulated air pollutant not previously emitted. (4-11-06)

b. Any physical change in, or change in the method of operation of, a stationary source or facility which results in an increase in the emissions rate of any state only toxic air pollutant, or emissions of any state only toxic air pollutant not previously emitted. (4-11-06)

c. Fugitive emissions shall not be considered in determining whether a permit is required for a modification unless required by federal law. (4-11-06)

d. For purposes of this definition of modification, routine maintenance, repair and replacement shall not be considered physical changes and the following shall not be considered a change in the method of operation: (3-30-07)

i. An increase in the production rate if such increase does not exceed the operating design capacity of the affected stationary source, and if a more restrictive production rate is not specified in a permit; (5-1-94)

ii. An increase in hours of operation if more restrictive hours of operation are not specified in a permit; and (5-1-94)

iii. Use of an alternative fuel or raw material if the stationary source is specifically designed to accommodate such fuel or raw material before January 6, 1975 and use of such fuel or raw material is not specifically prohibited in a permit. (4-4-13)

69. Monitoring. Sampling and analysis, in a continuous or noncontinuous sequence, using techniques which will adequately measure emission levels and/or ambient air concentrations of air pollutants. (5-1-94)

70. Most Impaired Days. The average visibility impairment (measured in deciviews) for the twenty percent (20%) of monitored days in a calendar year with the highest amount of visibility impairment. (3-30-07)

71. Multiple Chamber Incinerator. Any article, machine, equipment, contrivance, structure or part of a structure used to dispose of combustible refuse by burning, consisting of three (3) or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned. (5-1-94)

72. Natural Conditions. Includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration. (3-30-07)

73. New Stationary Source or Facility. (5-1-94)

a. Any stationary source or facility, the construction or modification of which is commenced after the original effective date of any applicable provision of this chapter; or (5-1-94)

b. The restart of a nonoperating facility shall be considered a new stationary source or facility if: (5-1-94)

i. The restart involves a modification to the facility; or (5-1-94)

ii. After the facility has been in a nonoperating status for a period of two (2) years, and the Department receives an application for a Permit to Construct in the area affected by the existing nonoperating facility, the Department will, within five (5) working days of receipt of the application notify the nonoperating facility of receipt of the application for a Permit to Construct. Upon receipt of this Departmental notification, the nonoperating facility will comply with the following restart schedule or be considered a new stationary source or facility when it does restart: Within thirty (30) working days after receipt of the Department's notification of the application for a Permit to Construct, the nonoperating facility shall provide the Department with a schedule detailing the restart of the facility. The restart must begin within sixty (60) days of the date the Department receives the restart schedule. (5-1-94)

74. Nonattainment Area. Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as not meeting (or contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant. (5-1-94)

75. Noncondensibles. Gases and vapors from processes that are not condensed at standard temperature and pressure unless otherwise specified. (5-1-94)

76. Odor. The sensation resulting from stimulation of the human sense of smell. (5-1-94)

77. Opacity. A state which renders material partially or wholly impervious to rays of light and causes obstruction of an observer's view, expressed as percent. (5-1-94)

- 78. Open Burning.** The burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through a stack, duct or chimney. (5-1-94)
- 79. Operating Permit.** A permit issued by the Director pursuant to Sections 300 through 386 and/or 400 through 461. (4-5-00)
- 80. Particulate Matter.** Any material, except water in uncombined form, that exists as a liquid or a solid at standard conditions. (5-1-94)
- 81. Particulate Matter Emissions.** All particulate matter emitted to the ambient air as measured by an applicable reference method, or any equivalent or alternative method in accordance with Section 157. (4-5-00)
- 82. Permit to Construct.** A permit issued by the Director pursuant to Sections 200 through 228. (7-1-02)
- 83. Person.** Any individual, association, corporation, firm, partnership or any federal, state or local governmental entity. (5-1-94)
- 84. PM₁₀.** All particulate matter in the ambient air with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53. (5-1-94)
- 85. PM₁₀ Emissions.** All particulate matter, including condensible particulates, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method in accordance with Section 157. (4-5-00)
- 86. PM_{2.5}.** All particulate matter in the ambient air with an aerodynamic diameter less than or equal to a nominal two point five (2.5) micrometers measured by a reference method based on Appendix L of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53. (4-11-15)
- 87. PM_{2.5} Emissions.** All particulate matter, including condensible particulates, with an aerodynamic diameter less than or equal to a nominal two point five (2.5) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method in accordance with Section 157. (4-11-15)
- 88. Potential to Emit/Potential Emissions.** The maximum capacity of a facility or stationary source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the facility or source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state or federally enforceable. Secondary emissions do not count in determining the potential to emit of a facility or stationary source. (3-30-07)
- 89. Portable Equipment.** Equipment which is designed to be dismantled and transported from one (1) job site to another job site. (5-1-94)
- 90. PPM (parts per million).** Parts of a gaseous contaminant per million parts of gas by volume. (5-1-94)
- 91. Prescribed Fire Management Burning.** The controlled application of fire to wildland fuels in either their natural or modified state under such conditions of weather, fuel moisture, soil moisture, etc., as will allow the fire to be confined to a predetermined area and at the same time produce the intensity of heat and rate of spread required to accomplish planned objectives, including: (5-1-94)
- a.** Fire hazard reduction; (5-1-94)

- b.** The control of pests, insects, or diseases; (5-1-94)
- c.** The promotion of range forage improvements; (5-1-94)
- d.** The perpetuation of natural ecosystems; (5-1-94)
- e.** The disposal of woody debris resulting from a logging operation, the clearing of rights of way, a land clearing operation, or a driftwood collection system; (5-1-94)
- f.** The preparation of planting and seeding sites for forest regeneration; and (5-1-94)
- g.** Other accepted natural resource management purposes. (5-1-94)
- 92. Primary Ambient Air Quality Standard.** That ambient air quality which, allowing an adequate margin of safety, is requisite to protect the public health. (5-1-94)
- 93. Process or Process Equipment.** Any equipment, device or contrivance for changing any materials whatever or for storage or handling of any materials, and all appurtenances thereto, including ducts, stack, etc., the use of which may cause any discharge of an air pollutant into the ambient air but not including that equipment specifically defined as fuel-burning equipment or refuse-burning equipment. (5-1-94)
- 94. Process Weight.** The total weight of all materials introduced into any source operation which may cause any emissions of particulate matter. Process weight includes solid fuels charged, but does not include liquid and gaseous fuels charged or combustion air. Water which occurs naturally in the feed material shall be considered part of the process weight. (5-1-94)
- 95. Process Weight Rate.** The rate established as follows: (5-1-94)
- a.** For continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof; (4-5-00)
- b.** For cyclical or batch source operations, the total process weight for a period that covers a complete cycle of operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply. (4-5-00)
- 96. Quantifiable.** The Department must be able to determine the emissions impact of any SIP trading programs requirement(s) or emission limit(s). (4-5-00)
- 97. Radionuclide.** A type of atom which spontaneously undergoes radioactive decay. (5-1-94)
- 98. Regional Haze.** Visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographic area. Such sources include, but are not limited to, major and minor stationary sources, mobile sources, and area sources. (3-30-07)
- 99. Regulated Air Pollutant.** (4-11-06)
- a.** For purposes of determining applicability of major source permit to operate requirements, issuing, and modifying permits pursuant to Sections 300 through 397, and in accordance with Title V of the federal Clean Air Act amendments of 1990, 42 U.S.C. Section 7661 et seq., “regulated air pollutant” shall have the same meaning as in Title V of the federal Clean Air Act amendments of 1990, and any applicable federal regulations promulgated pursuant to Title V of the federal Clean Air Act amendments of 1990, 40 CFR Part 70; (4-11-06)
- b.** For purposes of determining applicability of any other operating permit requirements, issuing, and modifying permits pursuant to Sections 400 through 410, the federal definition of “regulated air pollutant” as defined

in Subsection 006.99.a. shall also apply; (3-30-07)

c. For purposes of determining applicability of permit to construct requirements, issuing, and modifying permits pursuant to Sections 200 through 228, except Section 214, and in accordance with Part D of Subchapter I of the federal Clean Air Act, 42 U.S.C. Section 7501 et seq., “regulated air pollutant” shall mean those air contaminants that are regulated in non-attainment areas pursuant to Part D of Subchapter I of the federal Clean Air Act and applicable federal regulations promulgated pursuant to Part D of Subchapter I of the federal Clean Air Act, 40 CFR 51.165; and (4-11-06)

d. For purposes of determining applicability of any other major or minor permit to construct requirements, issuing, and modifying permits pursuant to 200 through 228, except Section 214, “regulated air pollutant” shall mean those air contaminants that are regulated in attainment and unclassifiable areas pursuant to Part C of Subchapter I of the federal Clean Air Act, 40 CFR 52.21, and any applicable federal regulations promulgated pursuant to Part C of Subchapter I of the federal Clean Air Act, 42 U.S.C. Section 7470 et seq. (4-11-06)

100. Replicable. Any SIP procedures for applying emission trading shall be structured so that two (2) independent entities would obtain the same result when determining compliance with the emission trading provisions. (4-5-00)

101. Responsible Official. One (1) of the following: (5-1-94)

a. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either: (5-1-94)

i. The facilities employ more than two hundred fifty (250) persons or have gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars); or (4-5-00)

ii. The delegation of authority to such representative is approved in advance by the Department. (5-1-94)

b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively. (5-1-94)

c. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of Section 123, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA). (4-5-00)

d. For Phase II sources: (5-1-94)

i. The designated representative in so far as actions, standards, requirements, or prohibitions under 42 U.S.C. Sections 7651 through 7651o or the regulations promulgated thereunder are concerned; and (5-1-94)

ii. The designated representative for any other purposes under 40 CFR Part 70. (5-1-94)

102. Safety Measure. Any shutdown (and related startup) or bypass of equipment or processes undertaken to prevent imminent injury or death or severe damage to equipment or property which may cause excess emissions. (4-5-00)

103. Salvage Operation. Any source consisting of any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers, or drums, and specifically including automobile graveyards and junkyards. (5-1-94)

104. Scheduled Maintenance. Planned upkeep, repair activities and preventative maintenance on any

air pollution control equipment or emissions unit, including process equipment, and including shutdown and startup of such equipment. (3-20-97)

105. Secondary Ambient Air Quality Standard. That ambient air quality which is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of air pollutants in the ambient air. (5-1-94)

106. Secondary Emissions. Emissions which would occur as a result of the construction, modification, or operation of a stationary source or facility, but do not come from the stationary source or facility itself. Secondary emissions must be specific, well defined, quantifiable, and affect the same general area as the stationary source, facility, or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the primary stationary source, facility or modification. Secondary emissions do not include any emissions which come directly from a mobile source regulated under 42 U.S.C. Sections 7521 through 7590. (3-30-07)

107. Shutdown. The normal and customary time period required to cease operations of air pollution control equipment or an emissions unit beginning with the initiation of procedures to terminate normal operation and continuing until the termination is completed. (5-1-94)

108. Significant. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following: (4-11-06)

- a. Pollutant and emissions rate: (4-11-06)
 - i. Carbon monoxide, one hundred (100) tons per year; (5-1-94)
 - ii. Nitrogen oxides, forty (40) tons per year; (5-1-94)
 - iii. Sulfur dioxide, forty (40) tons per year; (5-1-94)
 - iv. Particulate matter: (4-4-13)
 - (1) Twenty-five (25) tons per year of particulate matter emissions; (4-4-13)
 - (2) Fifteen (15) tons per year of PM₁₀ emissions; or (4-4-13)
 - (3) Ten (10) tons per year of direct PM_{2.5} emissions; or forty (40) tons per year of sulfur dioxide emissions; or forty (40) tons per year of nitrogen oxide emissions; (4-4-13)
 - v. Ozone, forty (40) tons per year of volatile organic compounds; (4-11-06)
 - vi. Lead, six-tenths (0.6) of a ton per year; (5-1-94)
 - vii. Fluorides, three (3) tons per year; (5-1-94)
 - viii. Sulfuric acid mist, seven (7) tons per year; (5-1-94)
 - ix. Hydrogen sulfide (H₂S), ten (10) tons per year; (5-1-94)
 - x. Total reduced sulfur (including H₂S), ten (10) tons per year; (5-1-94)
 - xi. Reduced sulfur compounds (including H₂S), ten (10) tons per year; (5-1-94)
 - xii. Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans), thirty-five ten-millionths (0.0000035) tons per year; (5-1-94)

- xiii. Municipal waste combustor metals (measured as particulate matter), fifteen (15) tons per year; (5-1-94)
 - xiv. Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride), forty (40) tons per year; or (4-11-19)
 - xv. Municipal solid waste landfill emissions (measured as nonmethane organic compounds), fifty (50) tons per year. (4-11-19)
 - b.** In reference to a net emissions increase or the potential of a source or facility to emit a regulated air pollutant not listed in Subsection 006.108.a. above and not a toxic air pollutant, any emission rate; or (3-30-07)
 - c.** For a major facility or major modification which would be constructed within ten (10) kilometers of a Class I area, the emissions rate which would increase the ambient concentration of an emitted regulated air pollutant in the Class I area by one (1) microgram per cubic meter, twenty-four (24) hour average, or more. (4-5-00)
- 109. Significant Contribution.** Any increase in ambient concentrations which would exceed the following: (5-1-94)
- a.** Sulfur dioxide: (5-1-94)
 - i. One (1.0) microgram per cubic meter, annual average; (5-1-94)
 - ii. Five (5) micrograms per cubic meter, twenty-four (24) hour average; (5-1-94)
 - iii. Twenty-five (25) micrograms per cubic meter, three (3) hour average; (5-1-94)
 - b.** Nitrogen dioxide, one (1.0) microgram per cubic meter, annual average; (5-1-94)
 - c.** Carbon monoxide: (5-1-94)
 - i. One-half (0.5) milligrams per cubic meter, eight (8) hour average; (5-1-94)
 - ii. Two (2) milligrams per cubic meter, one (1) hour average; (5-1-94)
 - d.** PM₁₀: (5-1-94)
 - i. One (1.0) microgram per cubic meter, annual average; (5-1-94)
 - ii. Five (5.0) micrograms per cubic meter, twenty-four (24) hour average; (4-4-13)
 - e.** PM_{2.5}: (4-4-13)
 - i. Three-tenths (0.3) microgram per cubic meter, annual average; (4-4-13)
 - ii. One point two (1.2) micrograms per cubic meter, twenty-four (24) hour average. (4-4-13)
- 110. Small Fire.** A fire in which the material to be burned is not more than four (4) feet in diameter nor more than three (3) feet high. (5-1-94)
- 111. Smoke.** Small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon and other combustible material. (5-1-94)
- 112. Smoke Management Plan.** A document issued by the Director to implement Sections 606 through 616, Categories of Allowable Burning. (5-1-94)
- 113. Smoke Management Program.** A program whereby meteorological information, fuel conditions,

fire behavior, smoke movement and atmospheric dispersal conditions are used as a basis for scheduling the location, amount and timing of open burning operations so as to minimize the impact of such burning on identified smoke sensitive areas. (5-1-94)

114. Source. A stationary source. (5-1-94)

115. Source Operation. The last operation preceding the emission of air pollutants, when this operation: (5-1-94)

a. Results in the separation of the air pollutants from the process materials or in the conversion of the process materials into air pollutants, as in the case of fuel combustion; and (5-1-94)

b. Is not an air cleaning device. (5-1-94)

116. Special Fuels. All fuel suitable as fuel for diesel engines; a compressed or liquefied gas obtained as a by-product in petroleum refining or natural gasoline manufacture, such as butane, isobutane, propane, propylene, butylenes, and their mixtures; and natural gas, either liquid or gas, and hydrogen, used for the generation of power for the operation or propulsion of motor vehicles. (3-29-10)

117. Stack. Any point in a source arranged to conduct emissions to the ambient air, including a chimney, flue, conduit, or duct but not including flares. (5-1-94)

118. Stage 1 Vapor Collection. Used during the refueling of underground gasoline storage tanks to reduce hydrocarbon emissions. Vapors in the tank, which are displaced by the incoming gasoline, are routed through a hose into the gasoline cargo tank and returned to the terminal for processing. Two (2) types of Stage 1 systems exist: coaxial and dual point. (3-29-10)

a. Coaxial System. A Stage 1 vapor collection system that requires only one (1) tank opening. The tank opening is usually four (4) inches in diameter with a three (3) inch diameter product fill tube inserted into the opening. Fuel flows through the inner tube while vapors are displaced through the annular space between the inner and outer tubes. (3-29-10)

b. Dual Point System. A Stage 1 vapor collection system that consists of two (2) separate tank openings, one (1) for delivery of the product and the other for the recovery of vapors. (3-29-10)

119. Standard Conditions. Except as specified in Subsection 576.02 for ambient air quality standards, a dry gas temperature of twenty degrees Celsius (20C) sixty-eight degrees Fahrenheit (68F) and a gas pressure of seven hundred sixty (760) millimeters of mercury (14.7 pounds per square inch) absolute. (4-5-00)

120. Startup. The normal and customary time period required to bring air pollution control equipment or an emissions unit, including process equipment, from a nonoperational status into normal operation. (5-1-94)

121. Stationary Source. Any building, structure, facility, emissions unit, or installation which emits or may emit any air pollutant. The fugitive emissions shall not be considered in determining whether a permit is required unless required by federal law. (4-11-06)

122. Tier I Source. Any of the following: (5-1-94)

a. Any source located at any major facility as defined in Section 008; (4-5-00)

b. Any source, including an area source, subject to a standard, limitation, or other requirement under 42 U.S.C. Section 7411 or 40 CFR Part 60, and required by EPA to obtain a Part 70 permit; (4-11-06)

c. Any source, including an area source, subject to a standard or other requirement under 42 U.S.C. Section 7412, 40 CFR Part 61 or 40 CFR Part 63, and required by EPA to obtain a Part 70 permit, except that a source is not required to obtain a permit solely because it is subject to requirements under 42 U.S.C. Section 7412(r); (4-11-06)

- d. Any Phase II source; and (5-1-94)
- e. Any source in a source category designated by the Department. (5-1-94)
- 123. Total Suspended Particulates.** Particulate matter as measured by the method described in 40 CFR 50 Appendix B. (4-5-00)
- 124. Toxic Air Pollutant.** An air pollutant that has been determined by the Department to be by its nature, toxic to human or animal life or vegetation and listed in Section 585 or 586. (5-1-94)
- 125. Toxic Air Pollutant Carcinogenic Increments.** Those ambient air quality increments based on the probability of developing excess cancers over a seventy (70) year lifetime exposure to one (1) microgram per cubic meter (1 ug/m³) of a given carcinogen and expressed in terms of a screening emission level or an acceptable ambient concentration for a carcinogenic toxic air pollutant. They are listed in Section 586. (5-1-94)
- 126. Toxic Air Pollutant Non-carcinogenic Increments.** Those ambient air quality increments based on occupational exposure limits for airborne toxic chemicals expressed in terms of a screening emission level or an acceptable ambient concentration for a non-carcinogenic toxic air pollutant. They are listed in Section 585. (5-1-94)
- 127. Toxic Substance.** Any air pollutant that is determined by the Department to be by its nature, toxic to human or animal life or vegetation. (5-1-94)
- 128. Trade Waste.** Any solid, liquid or gaseous material resulting from the construction or demolition of any structure, or the operation of any business, trade or industry including, but not limited to, wood product industry waste such as sawdust, bark, peelings, chips, shavings and cull wood. (5-1-94)
- 129. TRS (Total Reduced Sulfur).** Hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide and any other organic sulfide present. (5-1-94)
- 130. Unclassifiable Area.** An area which, because of a lack of adequate data, is unable to be classified pursuant to 42 U.S.C. Section 7407(d) as either an attainment or a nonattainment area. (5-1-94)
- 131. Uncontrolled Emission.** An emission which has not been treated by control equipment. (5-1-94)
- 132. Upset.** An unplanned disruption in the normal operations of any equipment or emissions unit which may cause excess emissions. (4-5-00)
- 133. Visibility Impairment.** Any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions. (3-30-07)
- 134. Visibility in Any Mandatory Class I Federal Area.** Includes any integral vista associated with that area. (3-30-07)
- 135. Wigwam Burner.** Wood waste burning devices commonly called teepee burners, silos, truncated cones, and other such burners commonly used by the wood product industry for the disposal by burning of wood wastes. (5-1-94)
- 136. Wood Stove Curtailment Advisory.** An air pollution alert issued through local authorities and/or the Department to limit wood stove emissions during air pollution episodes. (5-1-94)
- 007. DEFINITIONS FOR THE PURPOSES OF SECTIONS 200 THROUGH 228 AND 400 THROUGH 461.**
- 01. Agricultural Activities and Services.** For the purposes of Subsection 222.02.f., the usual and customary activities of cultivating the soil, producing crops and raising livestock for use and consumption. Agricultural activities and services do not include manufacturing, bulk storage, handling for resale or the formulation

of any agricultural chemical listed in Sections 585 or 586. (5-1-94)

02. Baseline Actual Emissions. The rate of emissions, in tons per year, of a regulated air pollutant as determined by the following provisions: (4-11-06)

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the regulated air pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding when the owner or operator begins actual construction of the project. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. (4-11-06)

i. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions. (4-11-06)

ii. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four (24) month period. (4-11-06)

iii. For a regulated air pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated air pollutant. (4-11-06)

iv. The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subsection 007.02.a.ii. (3-30-07)

b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the regulated air pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Director for a permit required under these rules, whichever is earlier, except that the ten (10) year period shall not include any period earlier than November 15, 1990. (4-11-06)

i. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions. (4-11-06)

ii. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period. (4-11-06)

iii. The average rate shall be adjusted downward to exclude any emission limitation with which the source must currently comply, had such source been required to comply with such limitations during the consecutive twenty-four (24) month period; however, if an emission limitation is part of a standard or other requirement under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the Department has taken credit for such emissions reductions in an attainment demonstration or maintenance plan. (4-11-06)

iv. For a regulated air pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated air pollutant. (4-11-06)

v. The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subsections 007.02.b.ii. and 007.02.b.iii. (4-11-06)

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions

increase that will result from the initial construction and operation of such unit shall equal zero (0); and, thereafter, for all other purposes, shall equal the unit's potential to emit. (4-11-06)

d. For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Subsection 007.02.a, for other existing emissions units in accordance with the procedures contained in Subsection 007.02.b, and for a new emissions unit in accordance with the procedures contained in Subsection 007.02.c. (3-30-07)

03. Begin Actual Construction. Commence construction. (4-11-06)

04. Emissions Increase. The amount by which projected actual emissions exceed baseline actual emissions of an emissions unit. (4-11-06)

05. Innovative Control Technology. Any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice, or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental effects. (5-1-94)

06. Net Emissions Increase. For purposes of Sections 204 and 205, a net emissions increase shall be defined by the federal regulations incorporated by reference. For purposes of Section 210, a net emissions increase shall be an emissions increase from a particular modification plus any other increases and decreases in actual emissions at the facility that are creditable and contemporaneous with the particular modification, where: (4-11-06)

a. A creditable increase or decrease in actual emissions is contemporaneous with a particular modification if it occurs between the date five (5) years before the commencement of construction or modification on the particular change and the date that the increase from the particular modification occurs. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred and eighty (180) days; (4-5-00)

b. A decrease in actual emissions is creditable only if it satisfies the requirements for emission reduction credits (Section 460) and has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular modification, and is federally enforceable at and after the time that construction of the modification commences. (4-5-00)

c. The increase in toxic air pollutant emissions from an already operating or permitted source is not included in the calculation of the net emissions increase for a proposed new source or modification if: (5-1-95)

i. The already operating or permitted source commenced construction or modification prior to July 1, 1995; or (5-1-95)

ii. The uncontrolled emission rate from the already operating or permitted source is ten per cent (10%) or less of the applicable screening emissions level listed in Section 585 or 586; or (6-30-95)

iii. The already operating or permitted source is an environmental remediation source subject to or regulated by the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901-6992k) and IDAPA 58.01.05, "Idaho Rules and Standards for Hazardous Waste," (IDAPA 58.01.05.000 et seq.) or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 6901-6992k) or a consent order. (6-30-95)

07. Pilot Plant. A stationary source located at least one quarter (1/4) mile from any sensitive receptor that functions to test processing, mechanical, or pollution control equipment to determine full-scale feasibility and which does not produce products that are offered for sale except in developmental quantities. (5-1-94)

08. Projected Actual Emissions. (4-11-06)

a. The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated air pollutant in any one (1) of the five (5) years (twelve (12) month period) following the date the unit

resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated air pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at an existing major stationary source. (4-11-06)

b. In determining the projected actual emissions, the owner or operator of the stationary source: (4-11-06)

i. Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with state or federal regulatory authorities, and compliance plans under the approved state implementation plan; and (4-11-06)

ii. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and (4-11-06)

iii. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or (4-11-06)

iv. In lieu of using the method set out in Subsections 007.08.b.i. through 007.08.b.iii., may elect to use the emissions unit's potential to emit, in tons per year. (4-11-06)

09. Reasonable Further Progress (RFP). Annual incremental reductions in emissions of the applicable air pollutant as identified in the SIP which are sufficient to provide for attainment of the applicable ambient air quality standard by the required date. (4-11-06)

10. Sensitive Receptor. Any residence, building or location occupied or frequented by persons who, due to age, infirmity or other health based criteria, may be more susceptible to the deleterious effects of a toxic air pollutant than the general population including, but not limited to, elementary and secondary schools, day care centers, playgrounds and parks, hospitals, clinics and nursing homes. (5-1-94)

11. Short Term Source. Any new stationary source or modification to an existing source, with an operational life no greater than five (5) years from the inception of any operations to the cessation of actual operations. (5-1-94)

12. Toxic Air Pollutant Reasonably Available Control Technology (T-RACT). An emission standard based on the lowest emission of toxic air pollutants that a particular source is capable of meeting by the application of control technology that is reasonably available, as determined by the Department, considering technological and economic feasibility. If control technology is not feasible, the emission standard may be based on the application of a design, equipment, work practice or operational requirement, or combination thereof. (5-1-94)

008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 386.

01. Affected States. All States: (5-1-94)

a. Whose air quality may be affected by the emissions of the Tier I source and that are contiguous to Idaho; or (5-1-94)

b. That are within fifty (50) miles of the Tier I source. (5-1-94)

02. Allowance. An authorization allocated to a Phase II source by the EPA to emit during or after a specified calendar year, one (1) ton of sulfur dioxide. (5-1-94)

03. Applicable Requirement. All of the following if approved or promulgated by EPA as they apply to emissions units in a Tier I source (including requirements that have been promulgated through rulemaking at the

time of permit issuance but which have future-effective compliance dates): (5-1-94)

a. Any standard or other requirement provided for in the applicable state implementation plan, including any revisions to that plan that are specified in 40 CFR Parts 52.670 through 52.690. (5-1-94)

b. Any term or condition of any permits to construct issued by the Department pursuant to Sections 200 through 223 or by EPA pursuant to 42 U.S.C. Sections 7401 through 7515; provided that terms or conditions relevant only to toxic air pollutants are not applicable requirements. (4-5-00)

c. Any standard or other requirement under 42 U.S.C. Section 7411 including 40 CFR Part 60; (5-1-94)

d. Any standard or other requirement under 42 U.S.C. Section 7412 including 40 CFR Part 61 and 40 CFR Part 63; (5-1-94)

e. Any standard or other requirement of the acid rain program under 42 U.S.C. Sections 7651 through 7651o; (5-1-94)

f. Any requirements established pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section 7661c(b) or Sections 120 through 128 of these rules; (3-23-98)

g. Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Section 7429; (5-1-94)

h. Any standard or other requirement for consumer and commercial products and tank vessels, under 42 U.S.C. Sections 7511b(e) and (f); and (5-1-94)

i. Any standard or other requirement under 42 U.S.C. Sections 7671 through 7671q including 40 CFR Part 82. (5-1-94)

j. Any ambient air quality standard or increment or visibility requirement provided in 42 U.S.C. Sections 7470 through 7492, but only as applied to temporary sources receiving Tier I operating permits under Section 324. (5-1-94)

04. Designated Representative. A responsible person or official authorized by the owner or operator of a Phase II unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a Phase II unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Phase II unit. (5-1-94)

05. Draft Permit. The version of a Tier I operating permit that is made available by the Department for public participation and affected State review. (5-1-94)

06. Emergency. For the purposes of Section 332, an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the Tier I source to exceed a technology-based emission limitation under the Tier I operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. (4-5-00)

07. Final Permit. The version of a Tier I permit issued by the Department that has completed all review procedures required in Sections 364 and 366. (5-1-94)

08. General Permit. A Tier I permit issued pursuant to Section 335. (3-23-98)

09. Insignificant Activity. Those activities that qualify as insignificant in accordance with Section 317. (3-23-98)

10. Major Facility. A facility (as defined in Section 006) is major if the facility meets any of the following criteria: (3-23-98)

a. For hazardous air pollutants: (3-23-98)

i. The facility emits or has the potential to emit ten (10) tons per year (tpy) or more of any hazardous air pollutant, other than radionuclides, which has been listed pursuant to 42 U.S.C. Section 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

ii. The facility emits or has the potential to emit twenty-five (25) tpy or more of any combination of any hazardous air pollutants, other than radionuclides, which have been listed pursuant to 42 U.S.C. 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

b. For non-attainment areas: (3-23-98)

i. The facility is located in a “serious” particulate matter (PM-10) nonattainment area and the facility has the potential to emit seventy (70) tpy or more of PM-10. (5-1-94)

ii. The facility is located in a “serious” carbon monoxide nonattainment area in which stationary sources are significant contributors to carbon monoxide levels and the facility has the potential to emit fifty (50) tpy or more of carbon monoxide. (5-1-94)

iii. The facility is located in an ozone transport region established pursuant to 42 U.S.C. Section 7511c and the facility has the potential to emit fifty (50) tpy or more of volatile organic compounds. (5-1-94)

iv. The facility is located in an ozone nonattainment area and, depending upon the classification of the nonattainment area, the facility has the potential to emit the following amounts of volatile organic compounds or oxides of nitrogen; provided that oxides of nitrogen shall not be included if the facility has been identified in accordance with 42 U.S.C. Section 7411a(f)(1) or (2) if the area is “marginal” or “moderate,” one hundred (100) tpy or more, if the area is “serious,” fifty (50) tpy or more, if the area is “severe,” twenty-five (25) tpy or more, and if the area is “extreme,” ten (10) tpy or more. (3-23-98)

c. The facility emits or has the potential to emit one hundred (100) tons per year or more of any regulated air pollutant. The fugitive emissions shall not be considered in determining whether the facility is major unless the facility belongs to one (1) of the following categories: (4-11-06)

i. Designated facilities. (3-23-98)

ii. All other source categories regulated by 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, but only with respect to those air pollutants that have been regulated for that category and only if determined by rule by the Administrator of EPA pursuant to Section 302(j) of the Clean Air Act. (4-5-00)

009. DEFINITIONS FOR THE PURPOSES OF 40 CFR PART 60.

Notwithstanding the definitions listed in Sections 006 through 008, the definitions in 40 CFR Part 60 shall have the meaning given in that Part, except that the term “Administrator” shall mean “Department.” (5-1-94)

010. DEFINITIONS FOR THE PURPOSES OF 40 CFR PART 61 AND 40 CFR PART 63.

Notwithstanding the definitions listed in Sections 006 through 008, the definitions in 40 CFR Part 61 and 40 CFR Part 63 shall have the meaning given in those Parts, except that the term “Administrator” shall mean “Department.” (5-1-94)

011. DEFINITIONS FOR THE PURPOSES OF SECTIONS 790 THROUGH 799.

01. Best Management Practice. The best management practice (BMP) employed within an industry to control fugitive emissions. (3-15-02)

02. Control Strategy Trigger. An event or condition that indicates that a control action is needed to prevent violation of a standard or a provision of the rule. (3-15-02)

03. Nonmetallic Mineral Processing Plant. Any combination of equipment that is used to crush or grind any nonmetallic mineral or rock wherever it may be located, including equipment located at lime plants, power plants, steel mills, asphalt concrete plants, portland cement plants, or any other facility or location processing nonmetallic minerals. (3-15-02)

04. NSPS Regulated Facility or Plant. A facility or processing plant that is subject to a standard, limitation, or other requirement of 40 CFR 60, Standards for the Performance of New Stationary Sources. (3-15-02)

05. Permit by Rule. A provision of the rules under which a facility or source registers with the Department and meets the specific requirements for that type of source. The source is then deemed to have a permit, thereby authorizing construction and operation without first obtaining a "Permit to Construct" as required in Section 201. Operating in accordance with a "Permit by Rule" (PBR) does not relieve the owner or operator from complying with all applicable federal, state, and local rules and regulations. (3-15-02)

06. Progressive Control Strategy. A sequence of control actions that when progressively employed can reduce the potential for violation of a standard or a provision of the rules. Control actions, beginning with those early in the sequence, shall be progressively applied until an adequate level of control is achieved. (3-15-02)

07. Site of Operations. The specific operating location of a nonmetallic mineral processing plant. (3-15-02)

012. -- 105. (RESERVED)

106. ABBREVIATIONS.

- 01. AAC.** Acceptable Ambient Concentration. (5-1-94)
- 02. AACC.** Acceptable Ambient Concentration for a Carcinogen. (5-1-94)
- 03. ACGIH.** American Conference of Government Industrial Hygienists. (5-1-94)
- 04. CAS.** Chemical Abstract Service. (5-1-94)
- 05. CL.** Derived from ACGIH ceiling Limit UF = 10. (5-1-94)
- 06. EL.** Emissions Screening Level. (5-1-94)
- 07. ID.** Idaho Division of Environmental Quality. Not OEL based. (5-1-94)
- 08. LA.** From LA Dept. of Environmental Quality. Not OEL based eight (8) hour TWA. (5-1-94)
- 09. MA.** From MA Dept. of Environmental Protection, Div. of Air Quality Control. Not OEL based, annual averaging time, no uf. (5-1-94)
- 10. MI.** From MI Dept. of Natural Resources, Air Quality Div. Based on toxicological data, annual av. time, no uf. (5-1-94)
- 11. NY.** From New York Dept. of Conservation, Div. of Air Quality. Not OEL based, one (1) yr. Av. time no uncertainty factor (uf). (5-1-94)
- 12. OEL.** Reference Occupational Exposure Level. (5-1-94)

- uf. 13. PL. From Phil. Dept. of Air Management Services. Not OEL based, one (1) yr. averaging time no (5-1-94)
- time, uf=10. 14. PL1. From Phil. Dept. of Air Management Services. Unspecified OEL based, one (1) yr. averaging (5-1-94)
15. PL2. From Phil. Dept. of Air Management Services. Not OEL based one (1) yr. Av. time, uf=10. (5-1-94)
16. PL3. From Phil. Dept. of Air Management Services. Not OEL based, one (1) yr. av. time, uf=1000. (5-1-94)
17. TWA. Time Weighted Average. (5-1-94)
18. UF. Uncertainty Factor. (5-1-94)
19. URF. Unit Risk Factor from the US Environmental Protection Agency. (5-1-94)
20. WA. From Washington Dept. of Ecology, Air Programs. Acceptable Source Impact Level based. (5-1-94)

107. INCORPORATIONS BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

02. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

- and; a. All federal publications: U.S. Government Printing Office at <http://www.ecfr.gov/cgi-bin/ECFR>; (3-25-16)
- b. Statutes of the state of Idaho: <http://legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm>; and (3-20-14)
- c. All documents herein incorporated by reference: (7-1-97)
0502. i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373- (7-1-97)
- ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)

03. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-1-94)

a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, [40 CFR Part 51](#) revised as of July 1, 2018. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: (4-11-19)

- i. All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)

- ii. Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)
- b. National Primary and Secondary Ambient Air Quality Standards, [40 CFR Part 50](#), revised as of July 1, 2018. (4-11-19)
- c. Approval and Promulgation of Implementation Plans, [40 CFR Part 52](#), Subparts A and N and Appendices D and E, revised as of July 1, 2018. (4-11-19)
- d. Ambient Air Monitoring Reference and Equivalent Methods, [40 CFR Part 53](#), revised as of July 1, 2018. (4-11-19)
- e. Ambient Air Quality Surveillance, [40 CFR Part 58](#), revised as of July 1, 2018. (4-11-19)
- f. Standards of Performance for New Stationary Sources, [40 CFR Part 60](#), revised as of July 1, 2018. (4-11-19)
- g. National Emission Standards for Hazardous Air Pollutants, [40 CFR Part 61](#), revised as of July 1, 2018. (4-11-19)
- h. Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before December 1, 2008, [40 CFR Part 62, Subpart HHH](#), revised as of July 1, 2018. (4-11-19)
- i. National Emission Standards for Hazardous Air Pollutants for Source Categories, [40 CFR Part 63](#), revised as of July 1, 2018. (4-11-19)
- j. Compliance Assurance Monitoring, [40 CFR Part 64](#), revised as of July 1, 2018. (4-11-19)
- k. State Operating Permit Programs, [40 CFR Part 70](#), revised as of July 1, 2018. (4-11-19)
- l. Permits, [40 CFR Part 72](#), revised as of July 1, 2018. (4-11-19)
- m. Sulfur Dioxide Allowance System, [40 CFR Part 73](#), revised as of July 1, 2018. (4-11-19)
- n. Protection of Stratospheric Ozone, [40 CFR Part 82](#), revised as of July 1, 2018. (4-11-19)
- o. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)
- p. Medical Waste Combustors, [Section 39-128, Idaho Code \(1992\)](#). (3-20-14)

108. -- 120. (RESERVED)

121. COMPLIANCE REQUIREMENTS BY DEPARTMENT.

Any person engaged in an activity which may violate the air quality provisions of the Act, violate an air quality order issued or entered in accordance with the Act or these rules, or violate any of these rules, may be required by the Department to do any of the following: (5-1-94)

- 01. Schedule.** Prepare a proposed schedule whereby the unlawful activity will be brought into compliance over a specified period of time. (5-1-94)
- 02. Report.** Submit periodic reports to the Department indicating progress in achieving compliance. (5-1-94)
- 03. Records.** Submit, keep and maintain appropriate records. (5-1-94)
- 04. Monitoring.** Monitor air pollutants at the source, in the ambient air, or in vegetation to demonstrate

compliance. (5-1-94)

05. Episode Plans. Develop emergency episode plans to help prevent ambient air pollution concentrations from reaching levels which would cause substantial endangerment to health or the environment. (5-1-94)

122. INFORMATION ORDERS BY THE DEPARTMENT.

The Department may issue information orders as follows: (5-1-94)

01. Purpose. For the purpose of: (5-1-94)

a. Developing or assisting in the development of any implementation plan, any standard of performance, any emission standard or any rule; (5-1-94)

b. Determining whether any person is in violation of any standard of performance, any emission standard, any implementation plan or any rule; or (5-1-94)

c. Carrying out any air quality provisions of the Act, any air quality order issued or entered in accordance with the Act or rules, or any of these rules. (5-1-94)

02. Persons. The Department may issue an information order to any person who: (5-1-94)

a. Owns or operates any emission source; (5-1-94)

b. Manufactures emission control equipment; (5-1-94)

c. The Department believes may have information necessary to meet the intent of these rules; or (5-1-94)

d. Is subject to any requirement of these rules. (5-1-94)

03. Requirements. The information order may require the person to perform the following on a one-time, periodic or continuous basis: (5-1-94)

a. Establish, maintain and submit records; (5-1-94)

b. Make reports; (5-1-94)

c. Install, use, and maintain monitoring equipment, and use audit procedures or methods; (5-1-94)

d. Sample emissions in accordance with procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Department shall prescribe; (5-1-94)

e. Keep records on control equipment parameters, production variables or other indirect data when the Department determines that direct monitoring of emissions is impractical; (5-1-94)

f. Submit compliance certifications including: (5-1-94)

i. Identification of the applicable requirement that is the basis of the certification; (5-1-94)

ii. The method(s) or other means used by the owner or operator for determining the compliance status for each applicable requirement, and whether such methods or other means provide continuous or intermittent data; and (4-5-00)

iii. The status of compliance with each applicable requirement, based on the method or means designated in Subsection 122.03.f.ii. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during

which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and (4-5-00)

g. Provide such other information as the Department may require. (5-1-94)

123. CERTIFICATION OF DOCUMENTS.

All documents, including but not limited to, application forms for permits to construct, application forms for operating permits, progress reports, records, monitoring data, supporting information, requests for confidential treatment, testing reports or compliance certifications submitted to the Department shall contain a certification by a responsible official. The certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. (5-1-94)

124. TRUTH, ACCURACY AND COMPLETENESS OF DOCUMENTS.

All documents submitted to the Department shall be truthful, accurate and complete. (5-1-94)

125. FALSE STATEMENTS.

No person shall knowingly make any false statement, representation, or certification in any form, notice, or report required under any permit, or any applicable rule or order in force pursuant thereto. (3-23-98)

126. TAMPERING.

No person shall knowingly render inaccurate any monitoring device or method required under any permit, or any applicable rule or order in force pursuant thereto. (3-23-98)

127. FORMAT OF RESPONSES.

All responses and information submitted to the Department shall be provided in a format approved by the Department. (5-1-94)

128. CONFIDENTIAL INFORMATION.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code and Section 39-111, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment by the Department as provided in Section 74-114, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Department of Environmental Quality." If the information for which the person is requesting confidential treatment is submitted to the Department under Sections 300 through 386 or the terms or conditions of a Tier I operating permit, the person shall also submit the same information directly to the EPA. (4-5-00)

129. (RESERVED)

130. STARTUP, SHUTDOWN, SCHEDULED MAINTENANCE, SAFETY MEASURES, UPSET AND BREAKDOWN.

The purpose of Sections 130 through 136 is to establish procedures and requirements to be implemented in all excess emissions events and to establish criteria to be applied by the Department in determining whether to take enforcement action to impose penalties for an excess emissions event where the excess emissions are caused by startup, shutdown, scheduled maintenance, upset, or breakdown of any emissions unit or which occur as a direct result of the implementation of any safety measure. (4-5-00)

131. EXCESS EMISSIONS.

01. Applicability. The owner or operator of a facility or emissions unit generating excess emissions shall comply with Sections 131, 132, 133.01, 134.01, 134.02, 134.03, 135, and 136, as applicable. If the owner or operator anticipates requesting consideration under Subsection 131.02, then the owner or operator shall also comply with the applicable provisions of Subsections 133.02, 133.03, 134.04, and 134.05. (4-5-00)

02. Enforcement Action Criteria. Where an excess emissions event occurs as a direct result of startup, shutdown, or scheduled maintenance, or an unavoidable upset or unavoidable breakdown, or the implementation of a safety measure, the Department shall consider the sufficiency of the information submitted and the following criteria to determine if an enforcement action to impose penalties is warranted: (4-5-00)

a. Whether prior to the excess emissions event, the owner or operator submitted and implemented procedures pursuant to Subsections 133.02 and 133.03 or Subsections 134.04 and 134.05, as applicable; (4-5-00)

b. Whether the owner or operator complied with all relevant portions of Subsections 131, 132, 133.01, 134.01, 134.02, 134.03, 135, and 136; (4-5-00)

c. Whether the excess emissions event was part of a recurring pattern of excess emissions events indicative of inadequate design, operation or maintenance of the facility or emissions unit; and (4-5-00)

d. Where appropriate, whether the excess emissions event was caused by an activity necessary to prevent loss of life, personal injury or severe property damage. (4-5-00)

03. Effect of Determination. Any decision by the Department under Subsection 131.02 shall not excuse the owner or operator from compliance with the relevant emission standard and shall not preclude the Department from taking an enforcement action to enjoin the activity causing the excess emissions. Any decision made by the Department under Subsection 131.02 shall not preclude the Department from taking an enforcement action for future or other excess emission events. The affirmative defense for emergencies under Section 332 of these Rules may be applied in addition to the provisions of Sections 130 through 136. (4-5-00)

132. CORRECTION OF CONDITION.

The person responsible for, or in charge of a facility during, an excess emissions event shall, with all practicable speed, initiate and complete appropriate and reasonable action to correct the conditions causing such excess emissions event; to reduce the frequency of occurrence of such events; to minimize the amount by which the emission standard is exceeded; and shall, as provided below or upon request of the Department, submit a full report of such occurrence, including a statement of all known causes, and of the scheduling and nature of the actions to be taken. (4-5-00)

133. STARTUP, SHUTDOWN AND SCHEDULED MAINTENANCE REQUIREMENTS.

The requirements in Subsection 133.01 shall apply in all cases where startup, shutdown, or scheduled maintenance of any equipment or emissions unit is expected to result or results in an excess emissions event. The owner or operator of the facility or emissions unit generating the excess emissions shall demonstrate compliance with all of the requirements of Subsection 133.01, as well as the development and implementation of procedures pursuant to Subsections 133.02 and 133.03 as a prerequisite to any consideration under Subsection 131.02. (4-5-00)

01. General Provisions. The following shall pertain to all startup, shutdown, and scheduled maintenance activities expected to result or resulting in excess emissions: (4-5-00)

a. No scheduled startup, shutdown, or maintenance resulting in excess emissions shall occur during any period in which an Atmospheric Stagnation Advisory and/or a Wood Stove Curtailment Advisory has been declared by the Department within an area designated by the Department as a PM-10 nonattainment area, unless the permittee demonstrates that such is reasonably necessary to facility operations and cannot be reasonably avoided and the Department approves such activity in advance, to the extent advance approval by the Department is feasible. This prohibition on scheduled startup, shutdown or maintenance activities during Advisories does not apply to situations where shutdown is necessitated by urgent situations, such as imminent equipment failure, power curtailment, worker safety concerns or similar situations. (3-20-97)

b. The owner or operator of a source of excess emissions shall notify the Department of any startup, shutdown, or scheduled maintenance event that is expected to cause an excess emissions event. Such notification shall identify the time of the excess emissions, specific location, equipment involved, and type of excess emissions event (i.e. startup, shutdown, or scheduled maintenance). The notification shall be given as soon as reasonably possible, but no later than two (2) hours prior to the start of the excess emissions event unless the owner or operator demonstrates to the Department's satisfaction that a shorter advanced notice was necessary. The Department may prohibit or postpone any scheduled startup, shutdown, or maintenance activity upon consideration of the factors listed in Subsection 134.03. (4-5-00)

c. The owner or operator of a source of excess emissions shall report and record the information

required pursuant to Sections 135 and 136 for each excess emissions event due to startup, shutdown, or scheduled maintenance. (3-20-97)

d. The owner or operator of a source of excess emissions must make the maximum reasonable effort, including off-shift labor where practicable to accomplish maintenance during periods of nonoperation of any related source operations or equipment. (4-5-00)

02. Excess Emissions Procedures. For all equipment or emissions unit from which excess emissions may occur during startup, shutdown, or scheduled maintenance, the facility owner or operator shall prepare, implement and file with the Department specific procedures which will be used to minimize excess emissions during such events. Specific information for each of the types of excess emissions events (i.e. startup, shutdown and scheduled maintenance) shall be established or documented for each piece of equipment or emissions unit and shall include all of the following (which may be based upon the facility owner or operator's knowledge of the process or emissions where measured data is unavailable): (4-5-00)

- a.** Identification of the specific equipment or emissions unit and the type of event anticipated. (4-5-00)
- b.** Identification of the specific emissions in excess of applicable emission standards during the startup, shutdown, or scheduled maintenance period. (4-11-06)
- c.** The estimated amount of excess emissions expected to be released during each event. (3-20-97)
- d.** The expected duration of each excess emissions event. (3-20-97)
- e.** An explanation of why the excess emissions are reasonably unavoidable for each of the types of excess emissions events (i.e. startup, shutdown, and scheduled maintenance). (3-20-97)
- f.** Specification of the frequency at which each of the types of excess emissions events (i.e. startup, shutdown, and scheduled maintenance) are expected to occur. (3-20-97)
- g.** For scheduled maintenance, the owner or operator shall also document detailed explanations of: (4-5-00)
 - i.** Why the maintenance is needed. (3-20-97)
 - ii.** Why it is impractical to reduce or cease operation of the equipment or emissions unit during the scheduled maintenance period. (4-5-00)
 - iii.** Why the excess emissions are not reasonably avoidable through better scheduling of the maintenance or through better operation and maintenance practices. (3-20-97)
 - iv.** Why, where applicable, it is necessary to by-pass, take off line, or operate equipment or emissions unit at reduced efficiency while the maintenance is being performed. (4-5-00)
- h.** Justification to explain why the piece of equipment or emissions unit cannot be modified or redesigned to eliminate or reduce the excess emissions which occur during startup, shutdown, and scheduled maintenance. (4-5-00)
- i.** Detailed specification of the procedures to be followed by the owner or operator which will minimize excess emissions at all times during startup, shutdown, and scheduled maintenance. These procedures may include such measures as preheating or otherwise conditioning the emissions unit prior to its use or the application of auxiliary equipment or emissions unit to reduce the excess emissions. (4-5-00)

03. Amendments to Procedures. The owner or operator shall amend, and the Department may require amendments to, the procedures established pursuant to Section 133 from time to time and as deemed reasonably necessary to ensure that the procedures are and remain consistent with good pollution control practices. (4-5-00)

04. Filing of Excess Emissions Procedures. (4-5-00)

a. Unless otherwise required by the Department, the failure to prepare or file procedures pursuant to Subsection 133.02 shall not be a violation of these Rules in and of itself. (4-5-00)

b. To the extent procedures or plans for excess emissions resulting from startup, shutdown, or scheduled maintenance are required to be or are otherwise submitted to the Department with any permit application, such submission, if deemed adequate by the Department, shall fulfill the requirement under this Section to file plans and procedures with the Department. (4-5-00)

134. UPSET, BREAKDOWN AND SAFETY REQUIREMENTS.

The requirements in Subsections 134.01, 134.02, and 134.03 shall apply in all cases where upset or breakdown of equipment or an emissions unit, or the initiation of safety measures, result or may result in an excess emissions event. The owner or operator of the facility or emissions unit generating the excess emissions shall demonstrate compliance with all of the requirements of Subsections 134.01, 134.02 and 134.03 as well as the development and implementation of procedures pursuant to Subsections 134.04 and 134.05 as a prerequisite to any consideration under Subsection 131.02. Where the owner or operator demonstrates that because of the unforeseeable nature of the excess emissions event it is impractical to develop procedures pursuant to Subsection 134.04, the Department shall exercise its enforcement discretion on a case by case basis. (4-5-00)

01. Routine Maintenance and Repairs. For all equipment or emissions units from which excess emissions may occur during upset conditions or breakdowns or implementation of safety measures, the facility owner or operator shall: (4-5-00)

a. Implement routine preventative maintenance and operating procedures consistent with good pollution control practices for minimizing upsets and breakdowns or events requiring implementation of safety measures, and (3-20-97)

b. Make routine repairs in an expeditious fashion when the owner or operator knew or should have known that an excess emissions event was likely to occur. Off-shift labor and overtime shall be utilized, to the extent practicable, to ensure that such repairs are made expeditiously. (3-20-97)

02. Excess Emissions Minimization and Notification. For all equipment or emissions units from which excess emissions result during upset or breakdown conditions, or for other situations that may necessitate the implementation of safety measures which cause excess emissions, the facility owner or operator shall comply with the following: (4-5-00)

a. The owner or operator shall immediately undertake all appropriate measures to reduce and, to the extent possible, eliminate excess emissions resulting from the event and to minimize the impact of such excess emissions on the ambient air quality and public health. (4-5-00)

b. The owner or operator shall notify the Department of any upset/breakdown/safety event that results in excess emissions. Such notification shall identify the time, specific location, equipment or emissions unit involved, and (to the extent known) the cause(s) of the occurrence. The notification shall be given as soon as reasonably possible, but no later than twenty-four (24) hours after the event, unless the owner or operator demonstrates to the Department's satisfaction that the longer reporting period was necessary. (4-5-00)

c. The owner or operator shall report and record the information required pursuant to Sections 135 and 136 for each excess emissions event caused by an upset, breakdown, or safety measure. (3-20-97)

03. Discretionary Reduction or Cessation Provisions. During any period of excess emissions caused by upset, breakdown, or operation under facility safety measures, the Department may require the owner or operator to immediately reduce or cease operation of the equipment or emissions unit causing the excess emissions until such time as the condition causing the excess emissions has been corrected or brought under control. Such action by the Department shall be taken upon consideration of the following factors and after consultation with the facility owner or operator: (4-5-00)

- a. Potential risk to the public or the environment. (3-20-97)
- b. Whether ceasing operations could result in physical damage to the equipment, emissions unit or facility, or cause injury to employees. (4-5-00)
- c. Whether continued excess emissions were reasonably unavoidable as determined by the Department. (4-5-00)
- d. The effect of the increase in pollution resulting from the shutdown and subsequent restart of the equipment or emissions unit or facility. (4-5-00)
- e. The owner or operator shall not be required to reduce or cease operations at the entire facility if reducing or ceasing operations at a portion of the facility eliminates or adequately reduces the excess emissions. (4-5-00)

04. Excess Emissions Procedures. For equipment or emissions units and process upsets and breakdowns and situations that require implementation of safety measures, which events can reasonably be anticipated to occur periodically but which cannot be reasonably avoided or predicted with certainty, the owner or operator shall prepare, implement, and file with the Department specific procedures which will be used to minimize such events and excess emissions during such events. To the extent possible and reasonably practicable (and based upon knowledge of the process or emissions where measured data is not available), specify the following information for each type of anticipated upset/ breakdown/safety event: (4-5-00)

- a. The specific air pollution control equipment or emissions unit and the type of event anticipated. (3-20-97)
- b. The specific emissions in excess of applicable emission standards during the event. (4-11-06)
- c. The estimated amount of excess emissions expected to be released during each event. (3-20-97)
- d. The expected duration of each excess emissions event. (3-20-97)
- e. An explanation of why the excess emissions are reasonably unavoidable. (3-20-97)
- f. The frequency of the type of event, based on historic occurrences. (3-20-97)
- g. Justification to explain why the piece of control equipment or emissions unit cannot be modified or redesigned to eliminate or reduce the particular type of event. (3-20-97)
- h. Detailed specification of the procedures to be followed by the owner or operator which will minimize excess emissions at all times during such events, including without limitation those procedures listed under Subsection 134.05. (3-20-97)

05. Amendments to Procedures. The owner or operator shall amend, and the Department may require amendments to, the procedures established pursuant to Section 134 from time to time and as deemed reasonably necessary to ensure that the procedures are and remain consistent with good pollution control practices. (4-5-00)

06. Filing of Excess Emissions Procedures. (4-5-00)

- a. Failure to follow procedures filed with the Department shall not preclude the Department from making a determination under Subsection 131.02 if the owner or operator demonstrates to the Department's satisfaction that alternate and equivalent procedures were used and were necessitated by the exigency of the circumstances. (4-5-00)
- b. Unless otherwise required by the Department, the failure to prepare or file procedures pursuant to Subsection 134.04 shall not be a violation of these Rules in and of itself. (4-5-00)

c. To the extent procedures or plans for excess emissions resulting from upsets, breakdowns or safety measures are required to be or are otherwise submitted to the Department with any permit application, such submission, if deemed adequate by the Department, shall fulfill the requirement under this Section to file plans and procedures with the Department. (4-5-00)

135. EXCESS EMISSIONS REPORTS.

01. Deadline for Excess Emissions Reports. A written report for each excess emissions event shall be submitted to the Department by the owner or operator no later than fifteen (15) days after the beginning of each such event. (3-20-97)

02. Contents of Excess Emissions Reports. Each report shall contain the following information: (3-20-97)

a. The time period during which the excess emissions occurred; (3-20-97)

b. Identification of the specific equipment or emissions unit which caused the excess emissions; (3-20-97)

c. An explanation of the cause, or causes, of the excess emissions and whether the excess emissions occurred as a result of startup, shutdown, scheduled maintenance, upset, breakdown or a safety measure; (3-20-97)

d. An estimate of the emissions in excess of any applicable emission standard (based on knowledge of the process and facility where emissions data is unavailable); (4-11-06)

e. A description of the activities carried out to eliminate the excess emissions; and (3-20-97)

f. Certify compliance status with the requirements of Sections 131, 132, 133.01, 134.01 through 134.03, 135, and 136. (4-5-00)

g. If requesting consideration under Subsection 131.02, certify compliance status with Sections 131, 132, 133.01 through 133.03, 134.01 through 134.05, 135, and 136. (4-5-00)

136. EXCESS EMISSIONS RECORDS.

01. Maintenance of Excess Emissions Records. The owner or operator shall maintain excess emissions records at the facility for the most recent five (5) calendar year period. (3-20-97)

02. Availability of Excess Emissions Records. The excess emissions records shall be made available to the Department upon request. (3-20-97)

03. Contents of Excess Emissions Records. The excess emissions records shall include the following: (3-20-97)

a. An excess emissions log book for each emissions unit or piece of equipment containing copies of all reports that have been submitted to the Department pursuant to Section 135 for the particular emissions unit or equipment; and (4-5-00)

b. Copies of all startup, shutdown, and scheduled maintenance procedures and upset/breakdown/safety preventative maintenance plans which have been developed by the owner or operator in accordance with Sections 133 and 134, and facility records as necessary to demonstrate compliance with such procedures and plans. (3-20-97)

04. Protections Under Section 128. The protections under Section 128 for confidential information shall be available for excess emissions reports and records upon proper request of the owner or operator in accordance with Section 128. (3-23-98)

137. -- 139. (RESERVED)

140. VARIANCES.

The purpose of Sections 140 through 149 is to establish procedures for obtaining variances. (5-1-94)

141. PETITION.

A variance proceeding shall be commenced by filing three (3) copies of a petition for variance with the Department. The complaint may be accompanied by such affidavits or other proof as the petitioner may submit in order to make it possible for the Department, if it so desires, to dispose of the matter without a hearing. The petition shall contain the following: (5-1-94)

01. Statement of Facts. A concise statement of the facts upon which the variance is requested, including a description of the business or activity in question; the quantity and type of raw materials processed; an estimate of the quantity and type of contaminants discharged; a description of existing and proposed equipment for the control of discharges; and a time schedule for bringing the activity into compliance. (5-1-94)

02. Statement of Reasons. A concise statement of why the petitioner believes that compliance with the provision from which variance is sought would impose an arbitrary or unreasonable hardship, including a description of the costs that compliance would impose on the petitioner and others, and of the injury that the grant of the variance would impose on the public. (5-1-94)

03. Requested Relief. A clear statement of the precise extent of the relief sought. (5-1-94)

142. NOTICE.

The Department shall give notice of all variance petitions as required by law. (5-1-94)

143. INVESTIGATION AND RECOMMENDATION.

After investigating the variance petition and considering the views of persons who might be adversely affected by the grant of the variance, the Department staff shall, within twenty-one (21) days after the filing of the petition, make a recommendation to the Department as to the disposition of the petition. The recommendation, a copy of which shall be served on the petitioner, shall include: (5-1-94)

01. Efforts. A description of the efforts made by the staff to investigate the facts as alleged and to ascertain the views of persons who might be affected, and a summary of the views so ascertained. (5-1-94)

02. Disputed Facts. A statement of the degree to which, if at all, the staff disagrees with the facts as alleged in the petition. (5-1-94)

03. Other Facts. Allegations of any other facts the staff believes relevant to the disposition of the petition. (5-1-94)

04. Costs. The staff's assessment of the costs that compliance would impose on the petitioner and on others and of the injury that the grant of the variance would impose on the public. (5-1-94)

05. Recommendations. The staff's reasoned recommendations as to what disposition should be made of the petition. (5-1-94)

144. OBJECTIONS TO PETITION.

Any person may file with the Department, within twenty-one (21) days after the filing of the petition, a written objection to the grant of the variance. A copy of such objection shall be provided by the Department to the petitioner. (5-1-94)

145. AUTHORIZATION OF HEARING.

01. No Objection. If no objection is made by the staff or by any other person to the grant of the variance within twenty-one (21) days after the filing of the petition, the Department shall authorize a hearing unless it

determines either: (5-1-94)

a. That even if all the facts alleged in the petition are true, the petitioner is not entitled to variance; or (5-1-94)

b. That the petitioner has shown from affidavits or other proof that compliance with the provision from which variance is sought would impose an arbitrary or unreasonable hardship. (5-1-94)

02. No Hearing. If the Department decides not to hold a hearing, it shall pass upon the petition and shall prepare an opinion stating its reasons both for the grant or denial of the petition and for its decision not to hold a hearing. (5-1-94)

03. Early Hearing. The Department may authorize a hearing without waiting for the expiration of the twenty-one (21) days during which objections may be filed; provided that if a hearing is not held the Department shall not rule upon the petition until the twenty-one (21) days have elapsed. (5-1-94)

146. NOTICE OF HEARING.

The Hearing Officer, after appropriate consultation with the parties, shall set a time and place for hearing and give notice to the petitioner, the EPA, and anyone who has filed an objection to the petition at least twenty-one (21) days prior to the date of the hearing. The hearing shall be set for a date no later than sixty (60) days after the filing of the petition. Any request by the petitioner for a continuance shall constitute a waiver of the right to a decision within ninety (90) days for the period of the continuance. (5-1-94)

147. DECISION.

The Department shall render a final decision upon the petition within ninety (90) days after the filing of the petition, except that time included in a continuance granted at the request of the petitioner shall not be counted. When exigencies of time require, the Department may delay the filing of an opinion until not more than thirty (30) days after the filing of its final order. (5-1-94)

148. PROOF OF HARDSHIP.

No variance shall be granted, with or without hearing, without adequate proof by the petitioner that compliance would impose an arbitrary or unreasonable hardship. (5-1-94)

149. VARIANCE FROM NEW RULE.

If any person files a petition for variance from a rule within twenty (20) days after the original effective date of such a rule, the operation of such rule shall be stayed as to such person, pending the disposition of the petition. The Department may hold a hearing upon said petition within five (5) days from the notice of such hearing, but in all other respects, the rules in Sections 140 through 149 shall apply to the extent they are consistent with the hearing date set by the hearing officer. (5-1-94)

150. -- 154. (RESERVED)

155. CIRCUMVENTION.

No person shall willfully cause or permit the installation or use of any device or use of any means that conceals emissions of pollutants that would otherwise violate the provisions of this chapter without resulting in a reduction in the total amount of emissions. (4-11-06)

156. TOTAL COMPLIANCE.

Where more than one (1) section of these rules applies to a particular situation, all such rules must be met for total compliance, unless otherwise provided for in these rules. (5-1-94)

157. TEST METHODS AND PROCEDURES.

The purpose of this Section is to establish procedures and requirements for test methods and results. Unless otherwise specified in these rules, permit, order, consent decree, or prior written approval by the Department: (4-5-00)

01. General Requirements. If a source test is performed to satisfy a performance test requirement or a compliance test requirement imposed by state or federal regulation, rule, permit, order or consent decree, then the test

methods and procedures shall be conducted in accordance with the requirements of Section 157. (4-5-00)

a. Prior to conducting any emission test, owners or operators are strongly encouraged to submit to the Department in writing, at least thirty (30) days in advance, the following for approval: (4-5-00)

i. The type of method to be used; (4-5-00)

ii. Any extenuating or unusual circumstances regarding the proposed test; and (4-5-00)

iii. The proposed schedule for conducting and reporting the test. (4-5-00)

b. Without prior Department approval, any alternative testing is conducted solely at the owner's or operator's risk. If the owner or operator fails to obtain prior written approval by the Department for any testing deviations, the Department may determine the test does not satisfy the testing requirements. (4-5-00)

02. Test Requirements. Tests shall be conducted in accordance with the following requirements. (4-5-00)

a. The test must be conducted under operational conditions specified in the applicable state or federal regulation, rule, permit, order, consent decree or by Department approval. If the operational requirements are not specified, the source should test at worst-case normal operating conditions. Worst-case normal conditions are those conditions of fuel type, and moisture, process material makeup and moisture and process procedures which are changeable or which could reasonably be expected to be encountered during the operation of the facility and which would result in the highest pollutant emissions from the facility. (4-5-00)

b. The Department may impose operational limitations or require additional testing in a permit, order or consent decree if the test is conducted under conditions other than worst-case normal. (4-5-00)

c. The Department will accept the methods approved for the applicable pollutants, source type and operating conditions found in 40 CFR Parts 51, 60, 61, and 63 in determining the appropriate test method for an emission limit where one is not otherwise specified. (4-5-00)

d. The following requirements apply to owners or operators requesting minor changes in the test method. As stated in Subsection 157.01 above, without prior Department approval, other changes may result in rejection of the test results by the Department. (4-5-00)

i. For federal emission standards codified at 40 CFR Parts 60, 61, and 63, the Department will accept those minor changes which have received written approval of the U.S. EPA Administrator so long as the Department determines they are appropriate for the specific application. (4-5-00)

ii. For all other emission standards in these rules or for permit requirements, the Department will accept those minor changes that the Department determines are appropriate for the specific application. (4-5-00)

e. An owner or operator proposing to use an alternative test method not considered a minor change in Subsection 157.02.d. above, must: (4-5-00)

i. Demonstrate to the Department by comparative testing or sufficient analysis, that the alternative method is comparable and equivalent to the designated test method. (4-5-00)

ii. Submit the request for approval to use an alternative test method to the Department at least thirty (30) days in advance of a scheduled test. (4-5-00)

iii. Obtain, and submit to the Department, EPA approval for use of the alternative test method for emission standards in these rules (except for state only toxic air pollutant standards) or for federal emission standards codified at 40 CFR Parts 60, 61, and 63. (4-5-00)

iv. Obtain verification that any prior approval of an alternative test method by the Department

continues to be acceptable. Alternative methods may cease to be acceptable if new or different information indicates that the alternative test method is less accurate, less reliable, or not comparable with any current state or federal regulation, rule order, permit, or consent decree. (4-5-00)

f. Prior approval by the Department may not constitute Department approval for subsequent tests if new or different information indicates that a previously Department approved test method is less accurate, less reliable or not comparable with any current state or federal regulation, rule, order, permit or consent decree. (4-5-00)

03. Observation of Tests by Department Staff. The owner or operator shall provide notice of intent to test to the Department at least fifteen (15) days prior to the scheduled test, or shorter time period as provided in a permit, order, consent decree or by Department approval. The Department may, at its option, have an observer present at any emissions tests conducted on a source. (4-5-00)

04. Reporting Requirements. If the source test is performed to satisfy a performance test requirement imposed by state or federal regulation, rule, permit, order, or consent decree, a written report shall be submitted to the Department within sixty (60) days of the completion of the test. The written report shall: (4-11-15)

a. Meet the format and content requirements specified by the Department in any applicable rule, regulation, guidance, permit, order, or consent decree. Any deviations from the format and contents specified require prior written approval from the Department. Failure to obtain such approval may result in the rejection of the test results. (4-5-00)

b. Include all data required to be noted or recorded in any referenced test method. (4-5-00)

05. Test Results Review Criteria. The Department will make every effort to review test results within a reasonable time. The Department may reject tests as invalid for: (4-5-00)

a. Failure to adhere to the approved/required method; (4-5-00)

b. Using a method inappropriate for the source type or operating conditions; (4-5-00)

c. An incomplete written report; (4-5-00)

d. Computational or data entry errors; (4-5-00)

e. Clearly unreasonable results; (4-5-00)

f. Failure to comply with the certification requirements of Section 123 of these rules; or (4-5-00)

g. Failure of the source to conform to operational requirements in orders, permits, or consent decrees at the time of the test. (4-5-00)

158. -- 159. (RESERVED)

160. PROVISIONS GOVERNING SPECIFIC ACTIVITIES AND CONDITIONS.

Sections 160 through 164 establish provisions governing specific activities and conditions. Test methods and procedures shall comply with Section 157. (4-5-00)

161. TOXIC SUBSTANCES.

Any contaminant which is by its nature toxic to human or animal life or vegetation shall not be emitted in such quantities or concentrations as to alone, or in combination with other contaminants, injure or unreasonably affect human or animal life or vegetation. (6-30-95)

162. MODIFYING PHYSICAL CONDITIONS.

When physical conditions such as tall adjacent buildings, valley and mountain terrain, etc., are such as to limit the normal dispersion of air pollutants, the Board may set more restrictive emission limitations on those sources affected by the unusual conditions when air quality standards would reasonably be expected to be exceeded. (5-1-94)

163. SOURCE DENSITY.

Should areas develop where each individual source is meeting the requirements of this chapter, yet the ambient air quality standards are being exceeded or might reasonably be expected to be exceeded, the Board may set more restrictive emission limits than are contained in this chapter. (5-1-94)

164. POLYCHLORINATED BIPHENYLS (PCBS).

01. Prohibition on Burning. Burning any material containing greater than five (5) parts per million of polychlorinated biphenyls (PCBs) is prohibited, except for incineration for the purpose of disposal. Incineration for disposal shall comply with the following provisions: (5-1-94)

a. No person shall commence construction or modification of a PCB incinerator without a permit issued according to Sections 200 through 225. (5-1-94)

b. The Department must provide opportunity for public comments prior to a final decision for a permit to construct or modify a new PCB incinerator. (5-1-94)

c. A permit issued according to Sections 200 through 225 for construction or modification of a PCB incinerator shall require, as a minimum, best available control technology and monitoring instrumentation. (5-1-94)

d. No permit to operate, construct or modify a PCB incinerator shall be processed or issued prior to March 16, 1987, or such earlier date as shall be determined by the State Board of Environmental Quality. (5-1-94)

02. Prohibition on Sales. No person shall sell, distribute or provide any materials containing greater than five (5) parts per million PCBs for home or commercial heating equipment. (5-1-94)

165. -- 174. (RESERVED)

175. PROCEDURES AND REQUIREMENTS FOR PERMITS ESTABLISHING A FACILITY EMISSIONS CAP.

The purpose of Sections 176 through 181 is to establish uniform procedures to obtain a Facility Emissions Cap (FEC) for stationary sources or facilities (hereinafter referred to as facility or facilities). A permit establishing a FEC will be issued pursuant to Sections 200 through 228 or Sections 400 through 410. (4-11-06)

176. FACILITY EMISSIONS CAP.

01. Optional Facility Emissions Cap. An owner or operator of a facility may request a FEC to establish an enforceable facility-wide emission limitation. (4-11-06)

02. Applicability. (4-11-06)

a. The owner or operator of any facility, which is not a major facility as defined in Sections 204 or 205, may apply to the Department for a permit to establish a FEC. (4-11-06)

b. FECs are available for new and existing facilities that are not major as defined in Section 204 or 205 or existing facilities undergoing a modification that does not make the facility a major facility as defined in Section 204 or 205. (4-11-15)

c. Facilities that become major facilities as defined in Section 204 or 205 are no longer eligible for a FEC under Section 176. (4-11-15)

03. Definitions. For the purposes of Sections 175 through 181, the following terms shall be defined as below. (4-11-06)

a. Baseline actual emissions. As defined in Section 007. (4-11-06)

- b.** Design concentration. The ambient concentration used in establishing the FEC. (4-11-06)
- c.** Facility emissions cap (FEC). A facility-wide emission limitation expressed in tons per year, for any criteria pollutant or hazardous air pollutant established in accordance with Sections 176 through 181. A FEC is calculated using baseline actual emissions plus an operational variability component and a growth component. A FEC, which is defined in tons per year on a twelve (12) month rolling basis, must be set below major facility thresholds as defined in Sections 204 and 205. (4-11-15)
- d.** FEC pollutant. The pollutant for which a FEC is established. (4-11-06)
- e.** Growth component. The level of emissions requested by the applicant and approved by the Department to allow for potential future business growth or facility changes that may increase emissions above baseline actual emissions plus the operational variability component. (4-11-06)
- f.** Operational variability component. The level of emissions up to the significant emission rate (SER) minus one (1) ton per year but no more than the facility's potential to emit (PTE). If the proposed FEC pollutant does not have a SER listed in Section 006 or has a SER less than or equal to ten (10) tons per year, the operational variability component is the level of emissions requested by the applicant and approved by the Department. The operational variability component cannot be more than the facility's PTE. (4-11-15)

177. APPLICATION PROCEDURES.

In addition to the information required pursuant to Sections 202 or 402, whichever is applicable, applications requesting a FEC must include the information required under Sections 176 through 181 and Subsections 177.01 through 177.03. (4-11-06)

- 01. Estimates of Emissions.** A proposed FEC for each pollutant requested by the facility, including the basis for calculating the FEC. (4-11-06)
- 02. Estimates of Ambient Concentrations.** (4-11-06)

 - a.** Estimates of ambient concentrations will be determined as described in Subsection 202.02. (4-11-15)
 - b.** Estimates of ambient concentrations may include projections of alternative future changes within the proposed FEC. (4-11-06)
 - c.** For a new, existing, or modified facility, a demonstration that for each FEC pollutant, the FEC will not cause or significantly contribute to a violation of any ambient air quality standard. (4-11-06)
 - d.** For renewal of terms and conditions establishing a FEC, it is presumed that the previous permitting analysis is satisfactory, unless the Department determines otherwise. (4-11-06)

03. Monitoring and Recordkeeping. The application must include proposed means for the facility to determine facility emissions on a rolling twelve (12) month consecutive basis. (4-11-06)

178. STANDARD CONTENTS OF PERMITS ESTABLISHING A FACILITY EMISSIONS CAP.

In addition to the elements required by Sections 203 and 211 or Sections 403 and 405, whichever is applicable, the Department shall have the authority to impose, implement and enforce the terms in Subsections 178.01 through 178.05 and conditions establishing a FEC. (4-11-06)

- 01. Emission Limitations and Standards.** All permits establishing use of a FEC shall contain annual facility wide emissions limitations for each FEC pollutant. (4-11-06)
- 02. Monitoring.** All permits establishing a FEC shall contain sufficient monitoring to ensure compliance with the FEC on a rolling twelve (12) month consecutive basis. (4-11-06)
- 03. Recordkeeping.** All permits establishing a FEC shall include the following: (4-11-06)

- a.** Sufficient recordkeeping to assure compliance with the FEC. (4-11-06)
- b.** Retention of required monitoring records and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report or application. Supporting information includes, but is not limited to, calibration and maintenance records and original strip-chart recordings for continuous monitoring instrumentation and copies of all reports required by the permit. (4-11-06)
- 04. Reporting.** All permits establishing a FEC shall include the following: (4-11-06)

 - a.** Sufficient reporting to assure compliance with the permit establishing the FEC. (4-11-06)
 - b.** Submittal of an annual report each year on or before the anniversary date of permit issuance. All required reports must be certified in accordance with Section 123. (4-11-06)
- 05. Duration.** Each permit establishing a FEC shall state that the terms and conditions establishing the FEC are effective for a fixed term of five (5) years. (4-11-06)

179. PROCEDURES FOR ISSUING PERMITS ESTABLISHING A FACILITY EMISSIONS CAP.

- 01. General Procedures.** Procedures for issuing permits establishing a FEC will follow Sections 209 or 404, whichever is applicable. (4-11-06)
- 02. Renewal.** The renewal of the terms and conditions establishing a FEC are subject to the same procedural requirements for issuing permits (Subsection 179.01) and Subsections 179.02.a. through 179.02.d.: (4-11-06)

 - a.** The permittee shall submit a complete application to the Department for a renewal of the terms and conditions establishing the FEC at least six (6) months before, but no earlier than eighteen (18) months before, the expiration date of the existing permit. To ensure that the term of the permit does not expire before the terms and conditions are renewed, the permittee is encouraged to submit the application nine (9) months prior to expiration. (4-11-06)
 - b.** If a timely and complete application for a renewal of the terms and conditions establishing the FEC is submitted, but the Department fails to issue or deny the renewal permit before the end of the term of the previous permit, then all the terms and conditions of the previous permit shall remain in effect until the renewal permit has been issued or denied. (4-11-06)
 - c.** Expiration of the terms and conditions establishing a FEC may be grounds to terminate the facility's right to operate pursuant to Sections 176 through 181, unless a timely and complete renewal application has been submitted. (4-11-06)
 - d.** On renewal, the Department may adjust a FEC with an unused growth component in accordance with the Idaho Environmental Protection and Health Act, Chapter 1, Title 39, Idaho Code, and these rules. (4-11-06)
- 03. Reopening the FEC.** The Department may reopen a FEC to: (4-11-06)

 - a.** Reduce the FEC to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the issuance of the permit establishing the FEC. (4-11-06)
 - b.** Reduce the FEC consistent with any other requirement that is enforceable as a practical matter, and that the state may impose on the facility under the Idaho Environmental Protection and Health Act, Chapter 1, Title 39, Idaho Code, and these rules. (4-11-06)
- 04. FEC Termination.** The Director may approve a revision of a permit establishing a FEC to terminate the FEC, provided the permittee complies with Subsections 209.04 or 404.04, as applicable, and Subsections 179.04.a. through 179.04.c.: (4-11-06)

a. The permittee may request a revision of the permit establishing the FEC to terminate the FEC at anytime prior to the expiration of the permit. The permittee is encouraged to submit an application for a permit to construct or Tier I operating permit, as applicable, six (6) months prior to the time the permittee wishes to terminate the FEC. (4-11-06)

b. The FEC established in the permit shall remain in effect until the Department issues a new permit to construct or Tier I operating permit, as applicable. (4-11-06)

c. Nothing in Section 179 prohibits a permittee from requesting a permit revision to terminate the FEC during the permit renewal process. (4-11-06)

180. REVISIONS TO PERMITS ESTABLISHING A FACILITY EMISSIONS CAP.

Section 180 requires revisions to terms and conditions establishing a FEC. The permittee is exempt from Sections 200 through 228 unless the permittee chooses to use those rules to process any change to the permit, except as provided in Subsection 180.02. (4-11-06)

01. Criteria. A permit revision is required for the following: (4-11-06)

a. A change to existing monitoring, reporting or recordkeeping requirements in the permit establishing the FEC; (4-11-06)

b. A change to the FEC; or (4-11-06)

c. A change to the facility that would impose new requirements not included in the permit establishing the FEC. (4-11-06)

02. Permit Revision Application Procedures. A permittee may initiate a permit revision by submitting a permit revision application to the Department or by complying with other applicable sections (Sections 200 or 400). For revision of terms and conditions establishing the FEC, it is presumed that the previous permitting analysis is satisfactory unless the Department determines otherwise. A permit revision application shall: (4-11-06)

a. Meet the standard application requirements of Section 177; (4-11-06)

b. Describe the proposed permit revision; (4-11-06)

c. Describe and quantify the change in emissions above the FEC permit limit; and (4-11-06)

d. Identify new requirements resulting from the change. (4-11-06)

03. Permit Revisions. The Department will process permit revisions pursuant to Section 209 or Section 404. (4-11-06)

181. NOTICE AND RECORD-KEEPING OF ESTIMATES OF AMBIENT CONCENTRATIONS.

Section 181 authorizes facility changes that comply with the terms and conditions establishing the FEC, but that are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC. No permit revision shall be required for facility changes implemented in accordance with Section 181. (4-11-06)

01. Notice. For facility changes that comply with the terms and conditions establishing the FEC, but are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee shall review the estimate of ambient concentration analysis. (4-11-06)

a. In the event that the facility change would result in a significant contribution above the design concentration determined by the estimate of ambient concentration analysis approved for the permit establishing the FEC, but does not cause or significantly contribute to a violation to any ambient air quality standard, the permittee shall provide notice to the Department in accordance with Subsection 181.01.b. (4-11-06)

b. Notice procedures. The permittee may make a facility change under Section 181 if the permittee provides written notification to the Department so that the notification is received at least seven (7) days in advance of the proposed change or, in the event of an emergency, the permittee provides the notification so that it is received at least twenty-four (24) hours in advance of the proposed change. For each such change, the written notification shall: (4-11-06)

- i. Describe the proposed change; (4-11-06)
- ii. Describe and quantify expected emissions; and (4-11-06)
- iii. Provide the estimated ambient concentration analysis. (4-11-06)

02. Recordkeeping. For facility changes that comply with the terms and conditions establishing the FEC, but are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee shall review the estimate of ambient concentration analysis. In the event the facility change would not result in a significant contribution above the design concentration determined by the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee shall record and maintain documentation on-site of the review. (4-11-06)

03. Estimates of Ambient Concentrations. Estimates of ambient concentrations shall be determined during the term of this permit using the same model and model parameters as used with the estimate of ambient concentration analysis approved for the permit establishing the FEC. The permittee shall include any changes to the facility that are not included in the originally approved estimate of ambient concentration analysis. (4-11-15)

182. -- 199. (RESERVED)

200. PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT.

The purposes of Sections 200 through 228 is to establish uniform procedures and requirements for the issuance of "Permits to Construct." As used throughout Sections 200 through 228 and 578 through 581, major facility shall be defined as major stationary source in 40 CFR 52.21(b) and 40 CFR 51.165, incorporated by reference into these rules at Section 107, and major modification shall be defined as in 40 CFR 52.21(b) and 40 CFR 51.165, incorporated by reference into these rules at Section 107. These CFR sections have been codified in the electronic CFR which is available at www.ecfr.gov. (3-25-16)

201. PERMIT TO CONSTRUCT REQUIRED.

No owner or operator may commence construction or modification of any stationary source, facility, major facility, or major modification without first obtaining a permit to construct from the Department which satisfies the requirements of Sections 200 through 228 unless the source is exempted in any of Sections 220 through 223, or the owner or operator complies with Section 213 and obtains the required permit to construct, or the owner or operator complies with Sections 175 through 181, or the source operates in accordance with all of the applicable provisions of a permit by rule. (4-11-06)

202. APPLICATION PROCEDURES.

Application for a permit to construct must be made using forms furnished by the Department, or by other means prescribed by the Department. The application shall be certified by the responsible official in accordance with Section 123 and shall be accompanied by all information necessary to perform any analysis or make any determination required under Sections 200 through 228. (7-1-02)

01. Required Information. Depending upon the proposed size and location of the new or modified stationary source or facility, the application for a permit to construct shall include all of the information required by one or more of the following provisions: (5-1-94)

- a. For any new or modified stationary source or facility: (5-1-94)
 - i. Site information, plans, descriptions, specifications, and drawings showing the design of the stationary source, facility, or modification, the nature and amount of emissions (including secondary emissions), and

- the manner in which it will be operated and controlled. (5-1-94)
- ii. A schedule for construction of the stationary source, facility, or modification. (5-1-94)
- b.** For any new major facility or major modification in a nonattainment area which would be major for the nonattainment regulated air pollutant(s): (4-5-00)
- i. A description of the system of continuous emission control proposed for the new major facility or major modification, emission estimates, and other information as necessary to determine that the lowest achievable emission rate would be applied. (5-1-94)
 - ii. A description of the emission offsets proposed for the new major facility or major modification, including information on the stationary sources, mobile sources, or facilities providing the offsets, emission estimates, and other information necessary to determine that a net air quality benefit would result. (4-5-00)
 - iii. Certification that all other facilities in Idaho, owned or operated by (or under common ownership of) the proposed new major facility or major modification, are in compliance with all local, state or federal requirements or are on a schedule for compliance with such. (5-1-94)
 - iv. An analysis of alternative sites, sizes, production processes, and environmental control techniques which demonstrates that the benefits of the proposed major facility or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. (5-1-94)
 - v. An analysis of the impairment to visibility of any federal Class I area, Class I area designated by the Department, or integral vista of any mandatory federal Class I area that the new major facility or major modification would impact (including the monitoring of visibility in any Class I area near the new major facility or major modification, if requested by the Department). (4-6-05)
- c.** For any new major facility or major modification in an attainment or unclassifiable area for any regulated air pollutant. (4-6-05)
- i. A description of the system of continuous emission control proposed for the new major facility or major modification, emission estimates, and other information as necessary to determine that the best available control technology would be applied. (5-1-94)
 - ii. An analysis of the effect on air quality by the new major facility or major modification, including meteorological and topographical data necessary to estimate such effects. (5-1-94)
 - iii. An analysis of the effect on air quality projected for the area as a result of general commercial, residential, industrial, and other growth associated with the new major facility or major modification. (5-1-94)
 - iv. A description of the nature, extent, and air quality effects of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the new major facility or major modification would affect. (5-1-94)
 - v. An analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the new major facility or major modification and general commercial, residential, industrial, and other growth associated with establishment of the new major facility or major modification. The owner or operator need not provide an analysis of the impact on vegetation or soils having no significant commercial or recreational value. (5-1-94)
 - vi. An analysis of the impairment to visibility of any federal Class I area, Class I area designated by the Department, or integral vista of any mandatory federal Class I area that the new major facility or major modification would affect. (5-1-94)
 - vii. An analysis of the existing ambient air quality in the area that the new major facility or major modification would affect for each regulated air pollutant that a new major facility would emit in significant amounts or for which a major modification would result in a significant net emissions increase. (4-5-00)

viii. Ambient analyses as specified in Subsections 202.01c.vii., 202.01c.ix., 202.01c.x., and 202.01c.xii., may not be required if the projected increases in ambient concentrations or existing ambient concentrations of a particular regulated air pollutant in any area that the new major facility or major modification would affect are less than the amounts listed under 40 CFR 52.21(i)(5)(i), or the regulated air pollutant is not listed therein. (4-11-15)

ix. For any regulated air pollutant which has an ambient air quality standard, the analysis shall include continuous air monitoring data, gathered over the year preceding the submittal of the application, unless the Department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year, but not less than four (4) months, which is adequate for determining whether the emissions of that regulated air pollutant would cause or contribute to a violation of the ambient air quality standard or any prevention of significant deterioration (PSD) increment. (4-5-00)

x. For any regulated air pollutant which does not have an ambient air quality standard, the analysis shall contain such air quality monitoring data that the Department determines is necessary to assess ambient air quality for that air pollutant in any area that the emissions of that air pollutant would affect. (4-5-00)

xi. If requested by the Department, monitoring of visibility in any Class I area the proposed new major facility or major modification would affect. (5-1-94)

xii. Operation of monitoring stations shall meet the requirements of Appendix B to 40 CFR Part 58 or such other requirements as extensive as those set forth in Appendix B as may be approved by the Department. (5-1-94)

02. Estimates of Ambient Concentrations. All estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR 51, Appendix W (Guideline on Air Quality Models). (4-5-00)

a. Where an air quality model specified in the "Guideline on Air Quality Models," is inappropriate, the model may be modified or another model substituted, subject to written approval of the Administrator of the U.S. Environmental Protection Agency and public comment pursuant to Subsection 209.01.c.; provided that modifications and substitutions of models used for toxic air pollutants will be reviewed by the Department. (4-5-00)

b. Methods like those outlined in the U.S. Environmental Protection Agency's "Interim Procedures for Evaluating Air Quality Models (Revised)" (September 1984) should be used to determine the comparability of air quality models. (5-1-94)

03. Additional Information. Any additional information, plans, specifications, evidence or documents that the Department may require to make the determinations required under Sections 200 through 225 shall be furnished upon request. (5-1-94)

203. PERMIT REQUIREMENTS FOR NEW AND MODIFIED STATIONARY SOURCES.

No permit to construct shall be granted for a new or modified stationary source unless the applicant shows to the satisfaction of the Department all of the following: (5-1-94)

01. Emission Standards. The stationary source or modification would comply with all applicable local, state or federal emission standards. (5-1-94)

02. NAAQS. The stationary source or modification would not cause or significantly contribute to a violation of any ambient air quality standard. (5-1-94)

03. Toxic Air Pollutants. Using the methods provided in Section 210, the emissions of toxic air pollutants from the stationary source or modification would not injure or unreasonably affect human or animal life or vegetation as required by Section 161. Compliance with all applicable toxic air pollutant carcinogenic increments and toxic air pollutant non-carcinogenic increments will also demonstrate preconstruction compliance with Section 161

with regards to the pollutants listed in Sections 585 and 586.

(6-30-95)

204. PERMIT REQUIREMENTS FOR NEW MAJOR FACILITIES OR MAJOR MODIFICATIONS IN NONATTAINMENT AREAS.

New major facilities or major modifications proposed for location in a nonattainment area and which would be major for the nonattainment regulated air pollutant are considered nonattainment new source review (NSR) actions and are subject to the requirements in Section 204. Section 202 contains application requirements and Section 209 contains processing requirements for nonattainment NSR permitting actions. The intent of Section 204 is to incorporate the federal nonattainment NSR rule requirements. (4-6-05)

01. Incorporated Federal Program Requirements. Requirements contained in the following subparts of 40 CFR 51.165 are incorporated by reference into these rules at Section 107. Requirements contained in the following subparts of 40 CFR 52.21, are incorporated by reference at Section 107 of these rules. These CFR sections have been codified in the electronic CFR at www.ecfr.gov.

40 CFR Reference	40 CFR Reference Title
40 CFR 51.165(a)(1)	Definitions
40 CFR 51.165(a)(2)(ii) - 51.165(a)(3)	Applicability Provisions
40 CFR 51.165(a)(6)(i) - (v)	Applicability Provisions
40 CFR 52.21(aa)	Actual PALs

(4-2-08)

02. Additional Requirements. The applicant must demonstrate to the satisfaction of the Department the following: (4-6-05)

a. LAER. Except as otherwise provided in Section 204, the new major facility or major modification would be operated at the lowest achievable emission rate (LAER) for the nonattainment regulated air pollutant, specifically: (4-6-05)

i. A new major facility would meet the lowest achievable emission rate at each new emissions unit which emits the nonattainment regulated air pollutant; and (4-5-00)

ii. A major modification would meet the lowest achievable emission rate at each new or modified emissions unit which has a net emissions increase of the nonattainment regulated air pollutant. (4-5-00)

b. Required offsets. Allowable emissions from the new major facility or major modification are offset by reductions in actual emissions from stationary sources, facilities, and/or mobile sources in the nonattainment area so as to represent reasonable further progress. All offsetting emission reductions must satisfy the requirements for emission reduction credits (Section 460) and provide for a net air quality benefit which satisfies the requirements of Section 208. If the offsets are provided by other stationary sources or facilities, a permit to construct shall not be issued for the new major facility or major modification until the offsetting reductions are made enforceable through the issuance of operating permits. The new major facility or major modification may not commence operation, and an operating permit for the new major facility or major modification shall not be effective before the date the offsetting reductions are achieved. (4-5-00)

c. Compliance status. All other sources in the State owned or operated by the applicant, or by any entity controlling, controlled by or under common control with such person, are in compliance with all applicable emission limitations and standards or subject to an enforceable compliance schedule. (5-1-94)

d. Effect on visibility. The effect on visibility of any federal Class I area, Class I area designated by the Department, or integral vista of a mandatory Class I Federal Area, by the new major facility or major modification, is consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR 51.300(a). The Department may take into account the costs of compliance, the time necessary for compliance, the

energy and non-air quality environmental impacts of compliance and the useful life of the source. Any integral vista which the Federal Land Manager has not identified at least six (6) months prior to the submittal of a complete application, or which the Department determines was not identified in accordance with the criteria adopted pursuant to 40 CFR 51.304(a), may be exempted from Section 204 by the Department. (3-30-07)

03. Nonmajor Requirements. If the proposed action meets the requirements of an exemption or exclusion under the provisions of 40 CFR 51.165 or 40 CFR 52.21 incorporated in Section 204, the nonmajor facility or stationary source permitting requirements of Sections 200 through 228 apply, including the exemptions in Sections 220 through 223. (4-6-05)

205. PERMIT REQUIREMENTS FOR NEW MAJOR FACILITIES OR MAJOR MODIFICATIONS IN ATTAINMENT OR UNCLASSIFIABLE AREAS.

The prevention of significant deterioration (PSD) program is a construction permitting program for new major facilities and major modifications to existing major facilities located in areas in attainment or in areas that are unclassifiable for any criteria air pollutant. Section 202 contains application requirements and Section 209 contains processing requirements for PSD permit actions. The intent of Section 205 is to incorporate the federal PSD rule requirements. (4-6-05)

01. Incorporated Federal Program Requirements. Requirements contained in the following subparts of 40 CFR 52.21 are incorporated by reference into these rules at Section 107. These CFR sections have been codified in the electronic CFR which is available at www.ecfr.gov.

40 CFR Reference	40 CFR Reference Title
40 CFR 52.21(a)(2)	Applicability Procedures
40 CFR 52.21(b)	Definitions
40 CFR 52.21(i)	Review of Major Stationary Sources and Major Modifications - Source Applicability and Exempting
40 CFR 52.21(j)	Control Technology Review
40 CFR 52.21(k)	Source Impact Analysis
40 CFR 52.21(r)	Source Obligation
40 CFR 52.21(v)	Innovative Control Technology
40 CFR 52.21(w)	Permit Rescission
40 CFR 52.21(aa)	Actual PALS

(4-2-08)

02. Effect on Visibility. The applicant must demonstrate that the effect on visibility of any federal Class I area, Class I area designated by the Department, or integral vista of a mandatory Class I Federal Area, by the new major facility or major modification, is consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR 51.300(a). The Department may take into account the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance and the useful life of the source. Any integral vista which the Federal Land Manager has not identified at least six (6) months prior to the submittal of a complete application, or which the Department determines was not identified in accordance with the criteria adopted pursuant to 40 CFR 51.304(a), may be exempted from this requirement by the Department. (3-30-07)

03. Exception to Incorporation by Reference of 40 CFR 52.21. Every use of the word Administrator in 40 CFR 52.21 means the Department except for the following: (4-6-05)

a. In 40 CFR 52.21(b)(17), the definition of federally enforceable, Administrator means the EPA Administrator. (4-6-05)

- b.** In 40 CFR 52.21(l)(2), air quality models, Administrator means the EPA Administrator. (4-6-05)
- c.** In 40 CFR 52.21(b)(43), permit program approved by the Administrator, Administrator means the EPA Administrator. (4-6-05)
- d.** In 40 CFR 52.21(b)(48)(ii)(c), MACT standard that is proposed or promulgated by the Administrator, Administrator means the EPA Administrator. (4-6-05)
- e.** In 40 CFR 52.21(b)(50)(i), regulated NSR pollutant as defined by Administrator, Administrator means the EPA Administrator. (4-6-05)

04. Nonmajor Requirements. If the proposed action meets the requirements of an exemption or exclusion under the provisions of 40 CFR 52.21 incorporated in Section 205, the nonmajor facility or stationary source permitting requirements of Sections 200 through 228 apply, including the exemptions in Sections 220 through 223. (4-6-05)

206. OPTIONAL OFFSETS FOR PERMITS TO CONSTRUCT.

The owner or operator of any proposed new or modified stationary source, new major facility, or major modification, which cannot meet the requirements of Subsections 202.01.c.vi., 203.02, 203.03, 204.02.d., 205.01 (40 CFR 52.21(k)), and 209.02.b.vi., may propose the use of an emission offset in order to meet those requirements and thereby obtain a permit to construct. Any proposed emission offset must satisfy the requirements for emission reduction credits, Section 460, and demonstrate, through appropriate dispersion modeling, that the offset will reduce ambient concentrations sufficiently to meet the requirements at all modeled receptors which could not otherwise have met the requirements. (4-6-05)

207. REQUIREMENTS FOR EMISSION REDUCTION CREDIT.

In order to be credited in a permit to construct, any emission reduction credit must satisfy the requirements of Section 460. (5-1-94)

208. DEMONSTRATION OF NET AIR QUALITY BENEFIT.

The demonstration of net air quality benefit shall: (5-1-94)

01. VOCs. For trades involving volatile organic compounds, show that total emissions are reduced for the air basin in which the stationary source or facility is located; (5-1-94)

02. Other Regulated Air Pollutants. For trades involving any other regulated air pollutant, show through appropriate dispersion modeling that the trade will not cause an increase in ambient concentrations at any modeled receptor; (4-5-00)

03. Mobile Sources. For trades involving mobile sources, show a reduction in the ambient impact of emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for adverse ambient impact where the major facility or major modification would otherwise cause or significantly contribute to a violation of any national ambient air quality standard. (4-5-00)

209. PROCEDURE FOR ISSUING PERMITS.

01. General Procedures. General procedures for permits to construct. (5-1-94)

a. Within thirty (30) days after receipt of the application for a permit to construct, the Department shall determine whether the application is complete or whether more information must be submitted and shall notify the applicant of its findings in writing. (5-1-94)

b. Within sixty (60) days after the application is determined to be complete the Department shall: (5-1-94)

i. Upon written request of the applicant, provide a draft permit for applicant review. Agency action on the permit under this Section may be delayed if deemed necessary to respond to applicant comments. (4-5-00)

ii. Notify the applicant in writing of the approval, conditional approval, or denial of the application if an opportunity for public comment is not required pursuant to Subsection 209.01.c. The Department shall set forth reasons for any denial; or (5-1-94)

iii. Issue a proposed approval, proposed conditional approval, or proposed denial. (5-1-94)

c. An opportunity for public comment will be provided on all applications requiring a permit to construct. Public comment shall be provided on an application for any new major facility or major modification, any new facility or modification which would affect any Class I area, any application which uses fluid modeling or a field study to establish a good engineering practice stack height pursuant to Sections 510 through 516, any application which uses an interpollutant trade pursuant to Subsection 210.17, any application which the Director determines an opportunity for public comment should be provided, and any application upon which the applicant so requests. (5-3-03)

i. The Department's proposed action, together with the information submitted by the applicant and the Department's analysis of the information, shall be made available to the public in at least one (1) location in the region in which the stationary source or facility is to be located. (5-1-94)

ii. The availability of such materials shall be made known by notice published in a newspaper of general circulation in the county(ies) in which the stationary source or facility is to be located. (5-1-94)

iii. A copy of such notice shall be sent to the applicant and to appropriate federal, state and local agencies. (5-1-94)

iv. There shall be a thirty (30) day period after initial publication for comment on the Department's proposed action, such comment to be made in writing to the Department. (5-1-94)

v. After consideration of comments and any additional information submitted during the comment period, and within forty-five (45) days after initial publication of the notice, or notice of public hearing if one is requested under Subsections 209.02.b.iv. or 209.02.a.ii., unless the Director deems that additional time is required to evaluate comments and information received, the Department shall notify the applicant in writing of approval, conditional approval, or denial of the permit. The Department shall set forth the reasons for any denial. (5-1-94)

vi. All comments and additional information received during the comment period, together with the Department's final determination, shall be made available to the public at the same location as the preliminary determination. (5-1-94)

d. A copy of each permit will be sent to the U.S. Environmental Protection Agency. (5-1-94)

02. Additional Procedures for Specified Sources. (5-1-94)

a. For any new major facility or major modification in an attainment or unclassifiable area for any regulated air pollutant. (4-6-05)

i. The public notice issued pursuant to Subsection 209.01.c.ii. shall indicate the degree of increment consumption that is expected from the new major facility or major modification; and (5-1-94)

ii. The public notice issued pursuant to Subsection 209.01.c.ii. shall indicate the opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality effects of the new major facility or major modification, alternatives to it, the control technology required, and other appropriate considerations. All requests for public hearings during a comment period with an opportunity for a hearing must be requested in writing by interested persons within fourteen (14) days of the publication of the legal notice of the proposed permit to construct or within fourteen (14) days prior to the end of the comment period, whichever is later. (3-23-98)

b. For any new major facility or major modification which would affect a federal Class I area or an

integral vista of a mandatory federal Class I area. (5-1-94)

i. If the Department is notified of the intent to apply for a permit to construct, it shall notify the appropriate Federal Land Manager within thirty (30) days; (5-1-94)

ii. A copy of the permit application and all relevant information, including an analysis of the anticipated effects on visibility in any federal Class I area, shall be sent to the Administrator of the U.S. Environmental Protection Agency and the Federal Land Manager within thirty (30) days of receipt of a complete application and at least sixty (60) days prior to any public hearing on the application; (5-1-94)

iii. Notice of every action related to the consideration of the permit shall be sent to the Administrator of the U.S. Environmental Protection Agency; (5-1-94)

iv. The public notice issued pursuant to Subsection 209.01.c.ii. shall indicate the opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality effect of the new major facility or major modification, alternatives to it, the control technology required, and other appropriate considerations. All requests for public hearings during a comment period with an opportunity for a hearing must be requested in writing by interested persons within fourteen (14) days of the publication of the legal notice of the proposed permit to construct or within fourteen (14) days prior to the end of the comment period, whichever is later. (3-23-98)

v. The notice of public hearing, if required, shall explain any differences between the Department's preliminary determination and any visibility analysis performed by the Federal Land Manager and provided to the Department within thirty (30) days of the notification pursuant to Subsection 209.02.b.ii. (5-1-94)

vi. Upon a sufficient showing by the Federal Land Manager that a proposed new major facility or major modification will have an adverse impact upon the air quality related values (including visibility) of any federal mandatory Class I area, the Director may deny the application notwithstanding the fact that the concentrations of regulated air pollutants would not exceed the maximum allowable increases for a Class I area. (4-5-00)

03. Establishing a Good Engineering Stack Height. The Department will notify the public of the availability of any fluid model or field study used to establish a good engineering practice stack height and provide an opportunity for a public hearing before issuing a permit or setting an emission standard based thereon. (5-1-94)

04. Revisions of Permits to Construct. The Director may approve a revision of any permit to construct provided the stationary source or facility continues to meet all applicable requirements of Sections 200 through 228. Revised permits will be issued pursuant to procedures for issuing permits (Section 209), except that the requirements of Subsections 209.01.c., 209.02.a., and 209.02.b., shall only apply if the permit revision results in an increase in emissions authorized by the permit or if deemed appropriate by the Director. (7-1-02)

05. Permit to Construct Procedures for Tier I Sources. For Tier I sources that require a permit to construct, the owner or operator shall either: (5-1-94)

a. Submit only the information required by Sections 200 through 219 for a permit to construct, in which case: (3-23-98)

i. A permit to construct or denial will be issued in accordance with Subsections 209.01.a. and 209.01.b. (5-1-94)

ii. The owner or operator may construct the source after permit to construct issuance or in accordance with Subsection 213.02.c. (3-23-98)

iii. The owner or operator may operate the source after permit to construct issuance so long as it does not violate any terms or conditions of the existing Tier I operating permit and complies with Subsection 380.02. (4-5-00)

iv. Unless a different time is prescribed by these rules, the applicable requirements contained in a

permit to construct will be incorporated into the Tier I operating permit during renewal (Section 369). Where an existing Tier I permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation. Tier I sources required to meet the requirements under Section 112(g) of the Clean Air Act (Section 214), or to have a permit under the preconstruction review program approved into the applicable implementation plan under Part C (Section 205) or Part D (Section 204) of Title I of the Clean Air Act, shall file a complete application to obtain a Tier I permit revision within twelve (12) months after commencing operation. (4-11-06)

v. The application or minor or significant permit modification request shall be processed in accordance with timelines: Section 361 and Subsections 367.02 through 367.05. (3-19-99)

vi. The final Tier I operating permit action shall incorporate the relevant terms and conditions from the permit to construct; or (4-5-00)

b. Submit all information required by Sections 200 through 219 for a permit to construct and Sections 300 through 386 for a Tier I operating permit, or Tier I operating permit modification, in which case: (4-5-00)

i. Completeness of the application shall be determined within thirty (30) days. (5-1-94)

ii. The Department shall prepare a proposed permit to construct or denial in accordance with Sections 200 through 219 and a draft Tier I operating permit or Tier I operating permit modification in accordance with Sections 300 through 386 within sixty (60) days. (4-5-00)

iii. The Department shall provide for public comment and affected state review in accordance with Sections 209, 364 and 365 on the proposed permit to construct or denial and draft Tier I operating permit or Tier I operating permit modification. (4-5-00)

iv. Except as otherwise provided by these rules, the Department shall prepare and issue to the owner or operator a final permit to construct or denial within fifteen (15) days of the close of the public comment period. The owner or operator may construct the source after permit to construct issuance or in accordance with Subsection 213.02.c. (4-5-00)

v. The final permit to construct will be sent to EPA, along with the proposed Tier I operating permit or modification. The proposed Tier I operating permit or modification shall be sent for review in accordance with Section 366. (4-5-00)

vi. The Tier I operating permit, or Tier I operating permit modification, will be issued in accordance with Section 367. The owner or operator may operate the source after permit to construct issuance so long as it does not violate any terms or conditions of the existing Tier I operating permit and complies with Subsection 380.02; or (4-5-00)

c. Submit all information required by Sections 200 through 219 for a permit to construct and Sections 300 through 381 for a Tier I operating permit, or Tier I operating permit modification, in which case: (4-5-00)

i. Completeness of the application shall be determined within thirty (30) days. (4-5-00)

ii. The Department shall prepare a draft permit to construct or denial in accordance with Sections 200 through 219 and that also meets the requirements of Sections 300 through 381 within sixty (60) days. (4-5-00)

iii. The Department shall provide for public comment and affected state review in accordance with Sections 209, 364, and 365 on the draft permit to construct or denial. (4-5-00)

iv. The Department shall prepare and send a proposed permit to construct or denial to EPA for review in accordance with Section 366. EPA review of the proposed permit to construct or denial in accordance with Section 366 can occur concurrently with public comment and affected state review of the draft permit, as provided in Subsection 209.05.c.iii. above, except that if the draft permit or denial is revised in response to public comment or affected state review, the Department must send the revised proposed permit to construct or denial to EPA for review

in accordance with Section 366. (4-5-00)

v. Except as otherwise provided by these rules, the Department shall prepare and issue to the owner or operator a final permit to construct or denial in accordance with Section 367. The owner or operator may construct the source after permit to construct issuance or in accordance with Subsection 213.02.c. (4-5-00)

vi. The permittee may, at any time after issuance, request that the permit to construct requirements be incorporated into the Tier I operating permit through an administrative amendment in accordance with Section 381. The owner or operator may operate the source or modification upon submittal of the request for an administrative amendment. (4-5-00)

06. Transfer of Permits to Construct. (4-11-06)

a. Transfers by Revision. A permit to construct may be transferred to a new owner or operator in accordance with Subsection 209.04. (4-11-06)

b. Automatic Transfers. Any permit to construct, with or without transfer prohibition language, may be automatically transferred if: (4-11-06)

i. The current permittee notifies the Department at least thirty (30) days in advance of the proposed transfer date; (4-11-06)

ii. The notice provides written documentation signed by the current and proposed permittees containing a date for transfer of permit responsibility, designation of the proposed permittee's responsible official, and certification that the proposed permittee has reviewed and intends to operate in accordance with the permit terms and conditions; and (4-11-06)

iii. The Department does not notify the current permittee and the proposed permittee within thirty (30) days of receipt of the notice of the Department's determination that the permit must be revised pursuant to Subsection 209.04. If the Department does not issue such notice, the transfer is effective on the date provided in the notice described in Subsection 209.06.b.ii. (4-11-06)

210. DEMONSTRATION OF PRECONSTRUCTION COMPLIANCE WITH TOXIC STANDARDS.

In accordance with Subsection 203.03, the applicant shall demonstrate preconstruction compliance with Section 161 to the satisfaction of the Department. The accuracy, completeness, execution and results of the demonstration are all subject to review and approval by the Department. (6-30-95)

01. Identification of Toxic Air Pollutants. The applicant may use process knowledge, raw materials inputs, EPA and Department references and commonly available references approved by EPA or the Department to identify the toxic air pollutants emitted by the stationary source or modification. (6-30-95)

02. Quantification of Emission Rates. (6-30-95)

a. The applicant may use standard scientific and engineering principles and practices to estimate the emission rate of any toxic air pollutant at the point(s) of emission. (6-30-95)

i. Screening engineering analyses use unrefined conservative data. (6-30-95)

ii. Refined engineering analyses utilize refined and less conservative data including, but not limited to, emission factors requiring detailed input and actual emissions testing at a comparable emissions unit using EPA or Department approved methods. (6-30-95)

b. The uncontrolled emissions rate of a toxic air pollutant from a source or modification is calculated using the maximum capacity of the source or modification under its physical and operational design without the effect of any physical or operational limitations. (6-30-95)

i. Examples of physical and operational design include but are not limited to: the amount of time

equipment operates during batch operations and the quantity of raw materials utilized in a batch process. (6-30-95)

ii. Examples of physical or operational limitations include but are not limited to: shortened hours of operation, use of control equipment, and restrictions on production which are less than design capacity. (6-30-95)

c. The controlled emissions rate of a toxic air pollutant from a source or modification is calculated using the maximum capacity of the source or modification under its physical and operational design with the effect of any physical or operational limitation that has been specifically described in a written and certified submission to the Department. (6-30-95)

d. The T-RACT emissions rate of a toxic air pollutant from a source or modification is calculated using the maximum capacity of the source or modification under its physical and operational design with the effect of: (6-30-95)

i. Any physical or operational limitation other than control equipment that has been specifically described in a written and certified submission to the Department; and (6-30-95)

ii. An emission standard that is T-RACT. (6-30-95)

03. Quantification of Ambient Concentrations. (6-30-95)

a. The applicant may use the modeling methods provided in Subsection 202.02 to estimate the ambient concentrations at specified receptor sites for any toxic air pollutant emitted from the point(s) of emission. (6-30-95)

b. The point of compliance is the receptor site that is estimated to have the highest ambient concentration of the toxic air pollutant of all the receptor sites that are located either at or beyond the facility property boundary or at a point of public access; provided that, if the toxic air pollutant is listed in Section 586, the receptor site is not considered to be at a point of public access if the receptor site is located on or within a road, highway or other transportation corridor transecting the facility. (6-30-95)

c. The uncontrolled ambient concentration of the source or modification is estimated by modeling the uncontrolled emission rate. (6-30-95)

d. The controlled ambient concentration of the source or modification is estimated by modeling the controlled emission rate. (6-30-95)

e. The approved net ambient concentration from a modification for a toxic air pollutant at each receptor is calculated by subtracting the estimated decreases in ambient concentrations for all sources contributing an approved creditable decrease at the receptor site from the estimated ambient concentration from the modification at the receptor. (6-30-95)

f. The approved offset ambient concentration from a source or modification for a toxic air pollutant at each receptor is calculated by subtracting the estimated decreases in ambient concentrations for all sources contributing an approved offset at the receptor from the estimated ambient concentration for the source or modification at the receptor. (6-30-95)

g. The T-RACT ambient concentration of the source or modification is estimated by using refined modeling and the T-RACT emission rate. (6-30-95)

h. The approved interpollutant ambient concentration from a source or modification for a toxic air pollutant at each receptor is calculated as follows: (6-30-95)

i. Step 1: Calculate the estimated decrease in ambient concentrations for each toxic air pollutant from each source contributing an approved interpollutant trade at the receptor by multiplying the approved interpollutant ratio by the overall decrease in the ambient concentration of the toxic air pollutant at the receptor site. (6-30-95)

ii. Step 2: Calculate the total estimated decrease at the receptor by summing all of the individual estimated decreases calculated in Subsection 210.03.h.i. for that receptor. (6-30-95)

iii. Step 3: Calculate the approved interpollutant ambient concentration by subtracting the total estimated decrease at the receptor from the estimated ambient concentration for the source or modification at the receptor. (6-30-95)

04. Preconstruction Compliance Demonstration. The applicant may use any of the Department approved standard methods described in Subsections 210.05 through 210.08, and may use any applicable specialized method described in Subsections 210.09 through 210.12 to demonstrate preconstruction compliance for each identified toxic air pollutant. (6-30-95)

05. Uncontrolled Emissions. (6-30-95)

a. Compare the source's or modification's uncontrolled emissions rate for the toxic air pollutant to the applicable screening emission level listed in Sections 585 or 586. (6-30-95)

b. If the source's or modification's uncontrolled emission rate is less than or equal to the applicable screening emission level, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

06. Uncontrolled Ambient Concentration. (6-30-95)

a. Compare the source's or modification's uncontrolled ambient concentration at the point of compliance for the toxic air pollutant to the applicable acceptable ambient concentration listed in Sections 585 or 586. (6-30-95)

b. If the source's or modification's uncontrolled ambient concentration at the point of compliance is less than or equal to the applicable acceptable ambient concentration, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

07. Controlled Emissions. (4-11-19)

a. Compare the source's or modification's controlled emissions rate for the toxic air pollutant to the applicable screening emission level listed in Sections 585 or 586. (4-11-19)

b. If the source's or modification's controlled emission rate is less than or equal to the applicable screening emission level, no further procedure for demonstrating preconstruction compliance is required for that toxic air pollutant as part of the application process. (4-11-19)

08. Controlled Ambient Concentration. (6-30-95)

a. Compare the source's or modification's controlled ambient concentration at the point of compliance for the toxic air pollutant to the applicable acceptable ambient concentration listed in Sections 585 or 586. (6-30-95)

b. If the source's or modification's controlled ambient concentration at the point of compliance is less than or equal to the applicable acceptable ambient concentration, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

c. The Department shall include an emission limit for the toxic air pollutant in the permit to construct that is equal to or, if requested by the applicant, less than the emission rate that was used in the modeling. (6-30-95)

09. Net Emissions. (6-30-95)

a. As provided in Section 007 (definition of net emissions increase) and Sections 460 and 461, the owner or operator may net emissions to demonstrate preconstruction compliance. (4-5-00)

b. Compare the modification's approved net emissions increase (expressed as an emission rate) for the toxic air pollutant to the applicable screening emission level listed in Sections 585 or 586. (6-30-95)

c. If the modification's approved net emissions increase is less than or equal to the applicable screening emission level, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

d. The Department shall include emission limits and other permit terms for the toxic air pollutant in the permit to construct that assure that the facility will be operated in the manner described in the preconstruction compliance demonstration. (6-30-95)

10. Net Ambient Concentration. (6-30-95)

a. As provided in Section 007 (definition of net emission increase) and Sections 460 and 461, the owner or operator may net ambient concentrations to demonstrate preconstruction compliance. (4-5-00)

b. Compare the modification's approved net ambient concentration at the point of compliance for the toxic air pollutant to the applicable acceptable ambient concentration listed in Sections 585 or 586. (6-30-95)

c. If the modification's approved net ambient concentration at the point of compliance is less than or equal to the applicable acceptable ambient concentration, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

d. The Department shall include emission limits and other permit terms for the toxic air pollutant in the permit to construct that assure that the facility will be operated in the manner described in the preconstruction compliance demonstration. (6-30-95)

11. Toxic Air Pollutant Offset Ambient Concentration. (6-30-95)

a. As provided in Sections 206 and 460, the owner or operator may use offsets to demonstrate preconstruction compliance. (6-30-95)

b. Compare the source's or modification's approved offset ambient concentration at the point of compliance for the toxic air pollutant to the applicable acceptable ambient concentration listed in Sections 585 or 586. (6-30-95)

c. If the source's or modification's approved offset ambient concentration at the point of compliance is less than or equal to the applicable acceptable ambient concentration, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

d. The Department shall include emission limits and other permit terms for the toxic air pollutant in the permit to construct that assure that the facility will be operated in the manner described in the preconstruction compliance demonstration. (6-30-95)

12. T-RACT Ambient Concentration for Carcinogens. (6-30-95)

a. As provided in Subsections 210.12 and 210.13, the owner or operator may use T-RACT to demonstrate preconstruction compliance for toxic air pollutants listed in Section 586. (6-30-95)

i. This method may be used in conjunction with netting (Subsection 210.09), and offsets (Subsection 210.11). (6-30-95)

ii. This method is not to be used to demonstrate preconstruction compliance for toxic air pollutants listed in Section 585. (6-30-95)

b. Compare the source's or modification's approved T-RACT ambient concentration at the point of compliance for the toxic air pollutant to the amount of the toxic air pollutant that would contribute an ambient air

cancer risk probability of less than one to one hundred thousand (1:100,000) (which amount is equivalent to ten (10) times the applicable acceptable ambient concentration listed in Section 586). (6-30-95)

c. If the source's or modification's approved T-RACT ambient concentration at the point of compliance is less than or equal to the amount of the toxic air pollutant that would contribute an ambient air cancer risk probability of less than one to one hundred thousand (1:100,000), no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

d. The Department shall include emission limits and other permit terms for the toxic air pollutant in the permit to construct that assure that the facility will be operated in the manner described in the preconstruction compliance demonstration. (6-30-95)

13. T-RACT Determination Processing. (6-30-95)

a. The applicant may submit all information necessary to the demonstration at the time the applicant submits the complete initial application or the applicant may request the Department to review a complete initial application to determine if Subsection 210.12 may be applicable to the source or modification. (6-30-95)

b. Notwithstanding Subsections 209.01.a. and 209.01.b., if the applicant requests the Department to review a complete initial application and Subsection 210.12 is determined to be applicable, the completeness determination for the initial application will be revoked until a supplemental application is submitted and determined complete. When the supplemental application is determined complete, the timeline for agency action shall be reinitiated. (6-30-95)

14. T-RACT Determination. T-RACT shall be determined on a case-by-case basis by the Department as follows: (6-30-95)

a. The applicant shall submit information to the Department identifying and documenting which control technologies or other requirements the applicant believes to be T-RACT. (5-1-94)

b. The Department shall review the information submitted by the applicant and determine whether the applicant has proposed T-RACT. (5-1-94)

c. The technological feasibility of a control technology or other requirements for a particular source shall be determined considering several factors including, but not limited to: (5-1-94)

i. Process and operating procedures, raw materials and physical plant layout. (5-1-94)

ii. The environmental impacts caused by the control technology that cannot be mitigated, including, but not limited to, water pollution and the production of solid wastes. (5-1-94)

iii. The energy requirements of the control technology. (5-1-94)

d. The economic feasibility of a control technology or other requirement, including the costs of necessary mitigation measures, for a particular source shall be determined considering several factors including, but not limited to: (5-1-94)

i. Capital costs. (5-1-94)

ii. Cost effectiveness, which is the annualized cost of the control technology divided by the amount of emission reduction. (5-1-94)

iii. The difference in costs between the particular source and other similar sources, if any, that have implemented emissions reductions. (5-1-94)

e. If the Department determines that the applicant has proposed T-RACT, the Department shall determine which of the options, or combination of options, will result in the lowest emission of toxic air pollutants,

develop the emission standards constituting T-RACT and incorporate the emission standards into the permit to construct. (5-1-94)

f. If the Department determines that the applicant has not proposed T-RACT, the Department shall disapprove the submittal. If the submittal is disapproved, the applicant may supplement its submittal or demonstrate preconstruction compliance through a different method provided in Section 210. If the applicant does not supplement its submittal or demonstrate preconstruction compliance through a different method provided in Section 210, the Department shall deny the permit. (6-30-95)

15. Short Term Source Factor. For short term sources, the applicant may utilize a short term adjustment factor of ten (10). For a carcinogen, multiply either the applicable acceptable ambient concentration (AACC) or the screening emission rate, but not both, by ten (10), to demonstrate preconstruction compliance. This method may be used for TAPs listed in Section 586 only and may be utilized in conjunction with standard methods for quantification of emission rates (Subsections 210.05 through 210.08). (4-5-00)

16. Environmental Remediation Source. (6-30-95)

a. For Remediation sources subject to or regulated by the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901-6992k) and the "Idaho Rules and Standards for Hazardous Waste," (IDAPA 58.01.05.000 et seq.) or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 6901-6992k) or a consent order, if the estimated ambient concentration at the point of impact is greater than the acceptable ambient impacts listed in Sections 585 and 586, Best Available Control Technology shall be applied and operated until the estimated uncontrolled emissions from the remediation source are below the acceptable ambient concentration. (6-30-95)

b. For Remediation sources not subject to or regulated by the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901-6992k) and the "Idaho Rules and Standards for Hazardous Waste," (IDAPA 58.01.05.000 et seq.) or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 6901-6992k) or a consent order, shall, for the purposes of these rules, be considered the same as any other new or modified source of toxic air pollution. (6-30-95)

c. For an environmental remediation source that functions to remediate or recover any release, spill, leak, discharge or disposal of any petroleum product or petroleum substance, the Department may waive the requirements of Section 513 of these rules. (3-15-02)

17. Interpollutant Trading Ambient Concentration. (6-30-95)

a. As provided in Subsections 209.01.c., 210.17 through 210.19, the owner or operator may use interpollutant trading to demonstrate preconstruction compliance. This method may be used in conjunction with netting (Subsection 210.10), and offsets (Subsection 210.11) (6-30-95)

b. Compare the source's or modification's approved interpollutant ambient concentration at the point of compliance for the toxic air pollutant emitted by the source or modification to the applicable acceptable ambient concentration listed in Sections 585 or 586. (6-30-95)

c. If the source's or modification's approved interpollutant ambient concentration at the point of compliance is less than or equal to the applicable acceptable ambient concentration listed in Sections 585 or 586, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

d. The Department shall include emission limits for all of the toxic air pollutants involved in the trade in the permit to construct. The Department shall also include other permit terms in the permit to construct that assure that the facility will be operated in the manner described in the preconstruction compliance demonstration. (6-30-95)

18. Interpollutant Trading Determination Processing. (6-30-95)

a. The applicant may submit all information necessary to the demonstration at the time the applicant

submits the complete initial application or the applicant may request the Department to review a complete initial application to determine if Subsection 210.17 may be applicable to the source or modification. (6-30-95)

b. Notwithstanding Subsections 209.01.a. and 209.01.b., if the applicant requests the Department to review a complete initial application and Subsection 210.17 is determined to be applicable, the completeness determination for the initial application will be revoked until a supplemental application is submitted and determined complete. When the supplemental application is determined complete, the timeline for agency action shall be reinitiated. (6-30-95)

19. Interpollutant Determination. (6-30-95)

a. The applicant may request an interpollutant trade if the Department determines that: (6-30-95)

i. The facility complies with an emission standard at least as stringent as best available control technology (BACT); and (6-30-95)

ii. The owner or operator has instituted all known and available methods of pollution prevention at the facility to reduce, avoid or eliminate toxic air pollution prior to its generation including, but not limited to, recycling, chemical substitution, and process modification provided that such pollution prevention methods are compatible with each other and the product or service being produced; and (6-30-95)

iii. The owner or operator has taken all available offsets; and (6-30-95)

iv. The owner or operator has identified all geographical areas and populations that may be impacted by the proposed interpollutant trade. (6-30-95)

b. Interpollutant trades shall be approved or denied on a case-by-case basis by the Department. Denials shall be within the discretion of the Department. Approvals shall be granted only if: (6-30-95)

i. The Department of Health and Welfare's Division of Health approves the interpollutant trade; and (6-30-95)

ii. The Department of Environmental Quality determines that the interpollutant trade will result in a overall benefit to the environment; and (6-30-95)

iii. An EPA approved database or other EPA approved reference provides relative potency factors, or comparable factors, or other data that is sufficient to allow for adequate review and approval of the proposed trade by the Department and the Department of Health and Welfare's Division of Health is submitted for all of the toxic air pollutants being traded; and (6-30-95)

iv. The reductions occur at the same facility where the proposed source or modification will be constructed; and (6-30-95)

v. The interpollutant trade will not cause an increase in sum of the ambient concentrations of the carcinogenic toxic air pollutants involved in the particular interpollutant trade at any receptor site; and (6-30-95)

vi. The total cancer risk with the interpollutant trade will be less than the total cancer risk without the interpollutant trade; and (6-30-95)

vii. The total non-cancer health risk with the interpollutant trade will be less than the total non-cancer health risk without the interpollutant trade. (6-30-95)

20. NSPS and NESHAP Sources. No demonstration of compliance with the toxic air pollutant provisions is required to obtain a permit to construct or to demonstrate permit to construct exemption criteria for a new source or for modification of an existing source if the toxic air pollutant is also a listed hazardous air pollutant from: (4-11-19)

- a. The equipment or activity covered by a NSPS or NESHAP; or (4-11-19)
- b. The source category of equipment or activity addressed by a NSPS or NESHAP even if the equipment or activity is not subject to compliance requirements under the federal rule. (4-11-19)

21. Permit Compliance Demonstration. Additional procedures and requirements to demonstrate and ensure actual and continuing compliance may be required by the Department in the permit to construct. (5-1-94)

22. Interpretation and Implementation of Other Sections. Except as specifically provided in other sections of these rules, the provisions of Section 210 are not to be utilized in the interpretation or implementation of any other section of these rules. (6-30-95)

211. CONDITIONS FOR PERMITS TO CONSTRUCT.

01. Reasonable Conditions. The Department may impose any reasonable conditions upon an approval, including conditions requiring the stationary source or facility to be provided with: (5-1-94)

- a. Sampling ports of a size, number, and location as the Department may require; (5-1-94)
- b. Safe access to each port; (5-1-94)
- c. Instrumentation to monitor and record emissions data; (5-1-94)
- d. Instrumentation for ambient monitoring to determine the effect emissions from the stationary source or facility may have, or are having, on the air quality in any area affected by the stationary source or facility; and (5-1-94)
- e. Any other sampling and testing facilities as may be deemed reasonably necessary. (5-1-94)

02. Cancellation. The Department may cancel a permit to construct if the construction is not begun within two (2) years from the date of issuance, or if during the construction, work is suspended for one (1) year. (5-1-94)

03. Notification to The Department. Any owner or operator of a stationary source or facility subject to a permit to construct shall furnish the Department written notifications as follows: (5-1-94)

- a. A notification of the anticipated date of initial start-up of the stationary source or facility not more than sixty (60) days or less than thirty (30) days prior to such date; and (5-1-94)
- b. A notification of the actual date of initial start-up of the stationary source or facility within fifteen (15) days after such date. (5-1-94)

04. Performance Test. Within sixty (60) days after achieving the maximum production rate at which the stationary source or facility will be operated but not later than one hundred eighty (180) days after initial start-up of such stationary source or facility, the owner or operator of such stationary source or facility may be required to conduct a performance test in accordance with methods and under operating conditions approved by the Department and furnish the Department a written report of the results of such performance test. (5-1-94)

- a. Such test shall be at the expense of the owner or operator. (5-1-94)
- b. The Department may monitor such test and may also conduct performance tests. (5-1-94)
- c. The owner or operator of a stationary source or facility shall provide the Department fifteen (15) days prior notice of the performance test to afford the Department the opportunity to have an observer present. (5-1-94)

212. OBLIGATION TO COMPLY.

01. Responsibility to Comply with All Requirements. Receiving a permit to construct shall not relieve any owner or operator of the responsibility to comply with all applicable local, state and federal statutes, rules and regulations. (5-1-94)

02. Relaxation of Standards or Restrictions. At such time that a particular facility or modification becomes a major facility or major modification solely by virtue of a relaxation in any enforceable emission standard or restriction on the operating rate, hours of operation or on the type or amount of material combusted, stored or processed, which was used to exempt the facility or modification from certain requirements for a permit to construct, the requirements for new major facilities or major modifications shall apply to the facility or modification as though construction had not yet commenced. (5-1-94)

213. PRE-PERMIT CONSTRUCTION.

This section describes how owners or operators may commence construction or modification of certain stationary sources before obtaining the required permit to construct. (3-23-98)

01. Pre-Permit Construction Eligibility. Pre-permit construction approval is available for non-major sources and non-major modifications and for new sources or modifications proposed in accordance with Subsection 213.01.d. Pre-permit construction is not available for any new source or modification that: uses emissions netting to stay below major source levels; uses optional offsets pursuant to Section 206; or would have an adverse impact on the air quality related values of any Class I area. Owners or operators may ask the Department for the ability to commence construction or modification of qualifying sources under Section 213 before receiving the required permit to construct. To obtain the Department's pre-permit construction approval, the owner or operator shall satisfy the following requirements: (4-5-00)

a. The owner or operator shall apply for a permit to construct in accordance with Subsections 202.01.a., 202.02, and 202.03 of this chapter. (3-23-98)

b. The owner or operator shall consult with Department representatives prior to submitting a pre-permit construction approval application. (3-23-98)

c. The owner or operator shall submit a pre-permit construction approval application which must contain, but not be limited to: a letter requesting the ability to construct before obtaining the required permit to construct, a copy of the notice referenced in Subsection 213.02; proof of eligibility; process description(s); equipment list(s); proposed emission limits and modeled ambient concentrations for all regulated air pollutants and toxic air pollutants, such that they demonstrate compliance with all applicable air quality rules and regulations. The models shall be conducted in accordance with Subsection 202.02 and with written Department approved protocol and submitted with sufficient detail so that modeling can be duplicated by the Department. (4-11-06)

d. Owners or operators seeking limitations on a source's potential to emit such that permitted emissions will be either below major source levels or below a significant increase must describe in detail in the pre-permit construction application the proposed restrictions and certify in accordance with Section 123 that they will comply with the restrictions, including any applicable monitoring and reporting requirements. (3-23-98)

02. Permit to Construct Procedures for Pre-Permit Construction. (3-23-98)

a. Within ten (10) days after the submittal of the pre-permit construction approval application, the owner or operator shall hold an informational meeting in at least one (1) location in the region in which the stationary source or facility is to be located. The informational meeting shall be made known by notice published at least ten (10) days before the meeting in a newspaper of general circulation in the county(ies) in which the stationary source or facility is to be located. A copy of such notice shall be included in the application. (3-23-98)

b. Within fifteen (15) days after the receipt of the pre-permit construction approval application, the Department shall notify the owner or operator in writing of pre-permit construction approval or denial. The Department may deny the pre-permit construction approval application for any reason it deems valid. (3-23-98)

c. Upon receipt of the pre-permit construction approval letter issued by the Department, the owner or

operator may begin construction at their own risk as identified in Subsection 213.02.d. Upon issuance of the pre-permit construction approval letter, any and all potential to emit limitations addressed in the pre-permit construction application pursuant to Subsection 213.01.d. shall become enforceable. The owner or operator shall not operate those emissions units subject to permit to construct requirements in accordance with Section 200 unless and until issued a permit pursuant to Section 209. (5-3-03)

d. If the pre-permit construction approval application is determined incomplete or the permit to construct is denied, the Department shall issue an incompleteness or denial letter pursuant to Section 209. If the Department denies the permit to construct, then the owner or operator shall have violated Section 201 on the date it commenced construction as defined in Section 006. The owner or operator shall not contest the final permit to construct decision based on the fact that they have already begun construction. (3-23-98)

214. DEMONSTRATION OF PRECONSTRUCTION COMPLIANCE FOR NEW AND RECONSTRUCTED MAJOR SOURCES OF HAZARDOUS AIR POLLUTANTS.

01. Permitting Authority. For purposes of this section, Sections 112(g) and (j) of the Clean Air Act, and 40 CFR Part 63, the permitting authority shall be the Department. (3-19-99)

02. Definitions. Unless specifically provided otherwise, the definitions for terms set forth in this section shall be the definitions set forth in Section 112 of the Clean Air Act and 40 CFR Part 63 as incorporated by reference into these rules at Section 107. For purposes of determining if a source is a major source of hazardous air pollutants, the definition of potential to emit at Section 006 of these rules shall apply. (3-19-99)

03. Compliance with Federal MACT. All owners or operators of major sources of hazardous air pollutants which are subject to an applicable Maximum Available Control Technology (MACT) standard promulgated by EPA pursuant to Section 112 of the Clean Air Act and 40 CFR Part 63 shall comply with the applicable MACT standard and such owners or operators are not subject to Subsections 214.04 and 214.05. (3-19-99)

04. Requirement to Obtain Preconstruction MACT Determination from the Director. No owner or operator may construct or reconstruct a major source of hazardous air pollutants unless such owner or operator has obtained a MACT standard determination from the Director. The Director shall make the MACT standard determination on a case by case basis and in accordance with Section 112(g)(2)(B) of the Clean Air Act and 40 CFR 63.40 through 63.44 as incorporated by reference into these rules at Section 107. (3-19-99)

05. Development of MACT by the Director After EPA Deadline. In the event that EPA fails to promulgate a MACT standard for a category or subcategory of major sources of hazardous air pollutants identified by the EPA under the Clean Air Act by the date established under Section 112(e) of the Clean Air Act, the owner or operator of any major source of hazardous air pollutants in such category or subcategory shall submit an application to the Director for a MACT standard determination. The Director shall make the MACT standard determination on a case by case basis and in accordance with Section 112(j) of the Clean Air Act and 40 CFR 63.50 through 63.56 as incorporated by reference into these rules at Section 107. (3-19-99)

215. MERCURY EMISSION STANDARD FOR NEW OR MODIFIED SOURCES.

No owner or operator may commence construction or modification of a stationary source or facility that results in an increase in annual potential emissions of mercury of twenty-five (25) pounds or more unless the owner or operator has obtained a permit to construct under Sections 200 through 228 of these rules. The permit to construct application shall include an MBACT analysis for the new or modified source or sources for review and approval by the Department. A determination of applicability under Section 215 shall be based upon the best available information. Fugitive emissions shall not be included in a determination of applicability under Section 215. (4-7-11)

01. Exemptions. New or modified stationary sources within a source category subject to 40 CFR Part 63 are exempt from the requirements of Section 215. (4-7-11)

02. Applicability. Except as provided in Subsection 215.01, Section 215 applies to all new or modified sources for which an application for a permit to construct was submitted to the Department on or after July 1, 2011. (4-7-11)

216. -- 219. (RESERVED)

220. GENERAL EXEMPTION CRITERIA FOR PERMIT TO CONSTRUCT EXEMPTIONS.

01. General Exemption Criteria. Sections 220 through 223 may be used by owners or operators to exempt certain sources from the requirement to obtain a permit to construct. Nothing in these sections shall preclude an owner or operator from choosing to obtain a permit to construct. For purposes of Sections 220 through 223, the term source means the equipment or activity being exempted. For purposes of Sections 220 through 223, fugitive emissions shall not be considered in determining whether a source meets the applicable exemption criteria unless required by federal law. No permit to construct is required for a source that satisfies all of the following criteria, in addition to the criteria set forth at Sections 221 and 223 or 222 and 223 (as required): (4-4-13)

a. The maximum capacity of a source to emit an air pollutant under its physical and operational design without consideration of limitations on emission such as air pollution control equipment, restrictions on hours of operation and restrictions on the type and amount of material combusted, stored or processed would not: (4-5-00)

i. Equal or exceed one hundred (100) tons per year of any regulated air pollutant. (4-5-00)

ii. Cause an increase in the emissions of a major facility that equals or exceeds the significant emissions rates set out in the definition of significant at Section 006. (4-5-00)

b. Combination. The source is not part of a proposed new major facility or part of a proposed major modification. (4-5-00)

02. Record Retention. Unless the source is subject to and the owner or operator complies with Section 385, the owner or operator of the source, except for those sources listed in Subsections 222.02.a. through 222.02.g., shall maintain documentation on site which shall identify the exemption determined to apply to the source and verify that the source qualifies for the identified exemption. The records and documentation shall be kept for a period of time not less than five (5) years from the date the exemption determination has been made or for the life of the source for which the exemption has been determined to apply, which ever is greater, or until such time as a permit to construct or an operating permit is issued which covers the operation of the source. The owner or operator shall submit the documentation to the Department upon request. (4-5-00)

221. CATEGORY I EXEMPTION.

No permit to construct is required for a source that satisfies the criteria set forth in Section 220 and the following: (4-5-00)

01. Below Regulatory Concern. The maximum capacity of a source to emit an air pollutant under its physical and operational design considering limitations on emissions such as air pollution control equipment, restrictions on hours of operation and restrictions on the type and amount of material combusted, stored or processed shall be less than ten percent (10%) of the significant emission rates set out in the definition of significant at Section 006. (4-5-00)

02. Radionuclides. The source is not required to obtain approval to construct in accordance with the applicable radionuclides standard in 40 CFR Part 61, Subpart H. (4-11-19)

03. Toxic Air Pollutants. The source shall comply with Section 223. (4-5-00)

04. Mercury. The source shall have potential emissions that are less than twenty-five (25) pounds per year of mercury. Fugitive emissions shall not be included in the calculation of potential mercury emissions. (4-7-11)

222. CATEGORY II EXEMPTION.

No permit to construct is required for the following sources. (4-5-00)

01. Exempt Source. A source that satisfies the criteria set forth in Section 220 and that is specified below: (4-5-00)

a. Laboratory equipment used exclusively for chemical and physical analyses, research or education, including, but not limited to, ventilating and exhaust systems for laboratory hoods. To qualify for this exemption, the source shall: (5-1-94)

i. Comply with Section 223. (4-5-00)

ii. Not be required to obtain approval to construct in accordance with the applicable radionuclides standard in 40 CFR Part 61, Subpart H. (4-11-19)

b. Environmental characterization activities including emplacement and operation of field instruments, drilling of sampling and monitoring wells, sampling activities, and environmental characterization activities. (4-5-00)

c. Stationary internal combustion engines of less than or equal to six hundred (600) horsepower and which are fueled by natural gas, propane gas, liquefied petroleum gas, distillate fuel oils, residual fuel oils, and diesel fuel; waste oil, gasoline, or refined gasoline shall not be used. To qualify for this exemption, the source must be operated in accordance with the following: (5-1-94)

i. One hundred (100) horsepower or less -- unlimited hours of operation. (5-1-94)

ii. One hundred one (101) to two hundred (200) horsepower -- less than four hundred fifty (450) hours per month. (5-1-94)

iii. Two hundred one (201) to four hundred (400) horsepower -- less than two hundred twenty-five (225) hours per month. (5-1-94)

iv. Four hundred one (401) to six hundred (600) horsepower -- less than one hundred fifty (150) hours per month. (5-1-94)

d. Stationary internal combustion engines used exclusively for emergency purposes which are operated less than five hundred (500) hours per year and are fueled by natural gas, propane gas, liquefied petroleum gas, distillate fuel oils, residual fuel oils, and diesel fuel; waste oil, gasoline, or refined gasoline shall not be used. (4-11-06)

e. A pilot plant that uses a slip stream from an existing process stream not to exceed ten percent (10%) of that existing process stream and which satisfies the following: (4-4-13)

i. The source shall comply with Section 223. For carcinogen emissions, the owner or operator may utilize a short term adjustment factor of ten (10) by multiplying either the acceptable ambient concentration or the screening emissions level, but not both, by ten (10). (4-5-00)

ii. The source is not required to obtain approval to construct in accordance with the applicable radionuclides standard in 40 CFR Part 61, Subpart H. (4-11-19)

iii. The exemption for a pilot plant shall terminate one (1) year after the commencement of operations and shall not be renewed. (4-5-00)

02. Other Exempt Sources. A source that satisfies the criteria set forth in Section 220 and that is specified below: (4-5-00)

a. Air conditioning or ventilating equipment not designed to remove air pollutants generated by or released from equipment. (5-1-94)

b. Air pollutant detectors or recorders, combustion controllers, or combustion shutoffs. (5-1-94)

c. Fuel burning equipment for indirect heating and for heating and reheating furnaces using natural

gas, propane gas, liquefied petroleum gas, or biogas (gas produced by the anaerobic decomposition of organic material through a controlled process) with hydrogen sulfide concentrations less than two hundred (200) ppmv exclusively with a capacity of less than fifty (50) million btu's per hour input. (4-11-06)

d. Other fuel burning equipment for indirect heating with a capacity of less than one million (1,000,000) btu's per hour input. (5-1-94)

e. Mobile internal combustion engines, marine installations and locomotives. (5-1-94)

f. Agricultural activities and services. (5-1-94)

g. Retail gasoline, natural gas, propane gas, liquefied petroleum gas, distillate fuel oils and diesel fuel sales. (5-1-94)

h. Used Oil Fired Space Heaters which comply with all the following requirements: (7-1-97)

i. The used oil fired space heater burns only used oil that the owner or operator generates on site, that is derived from households, such as used oil generated by individuals maintaining their personal vehicles, or on-specification used oil that is derived from commercial generators provided that the generator, transporter and owner or operator burning the oil for energy recovery comply fully with IDAPA 58.01.05.015, "Rules and Standards for Hazardous Waste"; (7-1-97)

(1) For the purposes of Subsection 222.02.h., "used oil" refers to any oil that has been refined from crude oil or any synthetic oil that has been used and, as a result of such use, is contaminated by physical or chemical impurities. (4-5-00)

(2) For the purposes of Subsection 222.02.h., "used oil fired space heater" refers to any furnace or apparatus and all appurtenances thereto, designed, constructed and used for combusting used oil for energy recovery to directly heat an enclosed space. (4-5-00)

ii. Any used oil burned is not contaminated by added toxic substances such as solvents, antifreeze or other household and industrial chemicals; (7-1-97)

iii. The used oil fired space heater is designed to have a maximum capacity of not more than one half (0.5) million BTU per hour; (4-5-00)

iv. The combustion gases from the used oil fired space heater are vented to the ambient air through a stack equivalent to the type and design specified by the manufacturer of the heater and installed to minimize down wash and maximize dispersion; and (7-1-97)

v. The used oil fired space heater is of modern commercial design and manufacture, except that a homemade used oil fired space heater may be used if, prior to the operation of the homemade unit, the owner or operator submits documentation to the Department demonstrating, to the satisfaction of the Department, that emissions from the homemade unit are no greater than those from modern commercially available units. (7-1-97)

i. Multiple chamber crematory retorts used to cremate human or animal remains using natural gas exclusively with a maximum average charge capacity of two hundred (200) pounds of remains per hour and a minimum secondary combustion chamber temperature of one thousand five hundred (1500) degrees Fahrenheit while operating. (4-11-06)

j. Petroleum environmental remediation source by vapor extraction with an operation life not to exceed five (5) years (except for landfills). The short-term adjustment factor in Subsection 210.15 cannot be used if the remediation is within five hundred (500) feet of a sensitive receptor. Forms are available at the DEQ website at <http://www.deq.idaho.gov>, to help assist sources in this exemption determination. (4-11-06)

k. Dry cleaning facilities that are not major under, but subject to, 40 CFR Part 63, Subpart M. (4-11-06)

223. EXEMPTION CRITERIA AND REPORTING REQUIREMENTS FOR TOXIC AIR POLLUTANT EMISSIONS.

No permit to construct for toxic air pollutants is required for a source that satisfies any of the exemption criteria below, the recordkeeping requirements at Subsection 220.02, and reporting requirements as follows: (4-5-00)

01. Below Regulatory Concern (BRC) Exemption. The source qualifies for a BRC exemption if the uncontrolled emission rate (refer to Section 210) for all toxic air pollutants emitted by the source is less than or equal to ten percent (10%) of all applicable screening emission levels listed in Sections 585 and 586. (4-5-00)

02. Level I Exemption. To obtain a Level I exemption, the source shall satisfy the following criteria: (4-5-00)

a. The uncontrolled emission rate (refer to Section 210) for all toxic air pollutants shall be less than or equal to all applicable screening emission levels listed in Sections 585 and 586; or (4-5-00)

b. The uncontrolled ambient concentration (refer to Section 210) for all toxic air pollutants at the point of compliance shall be less than or equal to all applicable acceptable ambient concentrations listed in Sections 585 and 586. (4-5-00)

03. Level II Exemption. To obtain a Level II exemption, the maximum capacity of a source to emit a toxic air pollutant under its physical and operational design considering limitations on emissions such as air pollution control equipment, restrictions on hours of operation and restrictions on the type and amount of material combusted, stored or processed at the point of compliance is less than or equal to ten percent (10%) of all applicable screening emission levels listed in Sections 585 and 586. (4-11-19)

04. Annual Report for Toxic Air Pollutant Exemption. The owner or operator of a source claiming a Level I or II exemption shall submit a certified report, on or before May 1 for the previous calendar year, to the Department for each Level I or II exemption determination. The owner or operator is not required to annually submit a certified report for a Level I or II exemption determination previously claimed and reported. The report shall be labeled "Toxic Air Pollutant Exemption Report" and shall state the date construction has or will commence and shall include copies of all exemption determinations completed by the owner or operator for each Level I and II exemption. (4-11-19)

224. PERMIT TO CONSTRUCT APPLICATION FEE.

All applicants for a permit to construct shall submit a permit to construct application fee of one thousand dollars (\$1,000) to the Department at the time of the original submission of the application. The permit to construct application fee is not required to be submitted for: (7-1-02)

01. Exemption Applicability Determinations. Exemption applicability determinations set forth in Sections 220 through 223; (7-1-02)

02. Typographical Errors. Changes to correct typographical errors; or (7-1-02)

03. Name or Ownership Change. A change in the name or ownership of the holder of a permit to construct when the Department determines no other review or analysis is required. (7-1-02)

225. PERMIT TO CONSTRUCT PROCESSING FEE.

A permit to construct processing fee, calculated by the Department pursuant to the categories provided in the following table, shall be paid to the Department by the person receiving the permit. The applicable processing fee category shall be determined by adding together the amount of increases of regulated pollutant emissions and subtracting any decreases of regulated pollutant emissions as identified in the permit to construct. The fee calculation shall not include fugitive emissions.

PERMIT TO CONSTRUCT CATEGORY	FEE
General permit, no facility-specific requirements (Defined as a source category specific permit for which the Department has developed standard emission limitations, operating requirements, monitoring and recordkeeping requirements, and that require minimal engineering analysis. General permit facilities may include portable concrete batch plants, portable hot-mix asphalt plants and portable rock crushing plants.)	\$500
New source or modification to existing source with increase of emissions of less than one (1) ton per year	\$1,000
New source or modification to existing source with increase of emissions of one (1) to less than ten (10) tons per year	\$2,500
New source or modification to existing source with increase of emissions of ten (10) to less than one hundred (100) tons per year	\$5,000
Nonmajor new source or modification to existing source with increase of emissions of one hundred (100) tons per year or more	\$7,500
New major facility or major modification	\$10,000
Permit modifications where no engineering analysis is required	\$250
Application submittals for exemption applicability determinations, typographical errors, and name and ownership changes as described in Subsections 224.01, 224.02, 224.03	\$0.00

(4-6-05)

226. PAYMENT OF FEES FOR PERMITS TO CONSTRUCT.

01. Fee Submittal. The permit to construct application fee shall be submitted with the application. The permit to construct processing fee shall be payable upon receipt of an assessment sent to the person receiving a permit by the Department. The permit to construct application and processing fees shall be sent to:

Air Quality Permit to Construct Fees
 Fiscal Office,
 Idaho Department of Environmental Quality
 1410 N. Hilton, Boise, ID 83706-1255

(7-1-02)

02. Delinquency. No application for a permit to construct shall be processed by the Department unless accompanied by a permit to construct application fee. No permit to construct shall be issued by the Department until the Department has received the permit to construct processing fee.

(7-1-02)

227. RECEIPT AND USAGE OF FEES.

Permit to construct application and processing fee receipts shall be deposited by the Department into a stationary source permit account. Monies from this account shall be used solely toward technical, legal and administrative support of the Department's permit to Construct and Tier II permit programs and shall not be used for those activities supported by the fund created for implementing the operating permit program required under Title V of the federal Clean Air Act amendments of 1990. The permit to construct application fee payable under Section 227 shall be retained by the Department regardless of whether a permit to construct is issued by the Department in response to an application. The Department will review the fee schedule at least every two (2) years.

(7-1-02)

228. APPEALS.

A person may be able to file an appeal within thirty-five (35) days of the date the person receives an assessment from the Department under Section 225, in accordance with IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality."

(5-3-03)

229. -- 299. (RESERVED)

300. PROCEDURES AND REQUIREMENTS FOR TIER I OPERATING PERMITS.

The purposes of Sections 300 through 399 are to establish requirements and procedures for the issuance of Tier I operating permits. (7-1-02)

301. REQUIREMENT TO OBTAIN TIER I OPERATING PERMIT.

01. Prohibition. No owner or operator shall operate, or allow or tolerate the operation of, any Tier I source without an effective Tier I operating permit. (5-1-94)

02. Exceptions. (3-23-98)

a. No Tier I operating permit is required if the owner or operator is in compliance with Sections 311 through 315 and the Department has not taken final action on the application. (5-1-94)

b. Tier I sources not located at major facilities do not require a Tier I operating permit until: (3-23-98)

i. December 31, 1997 for Phase II sulfur dioxide sources; (3-23-98)

ii. January 1, 1999 for Phase II nitrogen oxides sources; (3-23-98)

iii. January 1, 2000 for solid waste incineration units required to obtain a permit pursuant to 42 U.S.C. Section 7429(e); and (3-23-98)

iv. The source becomes a Tier I source under Section 006 of this chapter. (4-11-06)

c. No Tier I operating permit is required for the following Tier I sources: (5-1-94)

i. All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA; and (5-1-94)

ii. All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61.145. (5-1-94)

302. OPTIONAL TIER I OPERATING PERMIT.

Any facility listed in Section 301 not required to obtain a Tier I operating permit may opt to apply for a Tier I operating permit. (3-23-98)

303. -- 310. (RESERVED)

311. STANDARD PERMIT APPLICATIONS.

The purpose of Sections 311 through 315 is to establish standard Tier I operating permit application procedures. (5-1-94)

312. DUTY TO APPLY.

For each Tier I source, the owner or operator shall submit a timely and complete permit application in accordance with Sections 311 through 315. (5-1-94)

313. TIMELY APPLICATION.

01. Original Tier I Operating Permits. (5-1-94)

a. For Tier I sources existing on May 1, 1994, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit by no later than June 1, 1996, or within twelve (12) months of EPA approval of the Tier I operating program, whichever is earlier, unless: (3-20-97)

- i. The Department provides written notification of an earlier date to the owner or operator. (5-1-94)
 - ii. The Tier I source is identified in Subsections 301.02.b. or 301.02.c. (5-1-94)
 - b.** For sources that become Tier I sources after May 1, 1994, that are located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit within twelve (12) months after becoming a Tier I source or commencing operation, unless: (3-23-98)
 - i. The Department provides written notification of an earlier date to the owner or operator. (5-1-94)
 - ii. The Tier I source is identified in Subsections 301.02.b. or 301.02.c. (5-1-94)
 - c.** For initial phase II acid rain sources identified in Subsections 301.02.b.i. or 301.02.b.ii., the owner or operator of the initial Phase II acid rain source shall submit to the Department a complete application for an original Tier I operating permit by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides. (3-23-98)
 - d.** For Tier I sources identified in Subsection 301.02.b.iii.: (3-23-98)
 - i. Existing on July 1, 1998, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit by no later than January 1, 1999, unless the Department provides written notification of an earlier date to the owner or operator. (3-23-98)
 - ii. That become Tier I sources after July 1, 1998, located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit within twelve (12) months after becoming a Tier I source or commencing operation, unless the Department provides written notification of an earlier date to the owner or operator. (3-23-98)
- 02. Earlier Dates During Initial Period.** Except as otherwise provided in these rules, during the initial period which begins May 1, 1994 and ends three (3) years after EPA approval of the Tier I operating program, the Department may designate Tier I sources for processing as follows: (5-1-94)
- a.** The Department may develop a general estimate of the total work load and benefits associated with the Tier I operating permit applications that are predicted to be submitted during the initial period including, but not limited to, original permit applications and significant permit modification applications. (3-19-99)
 - b.** Considering the complexity of the applications, air quality benefits of permitting and requests for early actions from owners and operators, the Department may divide the applications into three (3) groups each representing approximately one-third (1/3) of the total work load and benefits. (5-1-94)
 - c.** The Department may prioritize the three (3) groups and the Tier I sources within each group for processing, establish early application deadlines and notify the owners or operators of the Tier I sources in the group in writing of a required submittal date earlier than the general deadlines provided in Subsection 313.01. (5-1-94)
- 03. Renewals of Tier I Operating Permits.** The owner or operator of the Tier I source shall submit a complete application to the Department for a renewal of the Tier I operating permit at least six (6) months before, but no earlier than eighteen (18) months before, the expiration date of the existing Tier I operating permit. To ensure that the term of the operating permit does not expire before the permit is renewed, the owner or operator is encouraged to submit the application nine (9) months prior to expiration. (4-5-00)
- 04. Changes to Tier I Operating Permits.** Sections 380 through 386 provide the requirements and procedures for changes at Tier I sources and to Tier I operating permits. (3-19-99)

314. REQUIRED STANDARD APPLICATION FORM AND REQUIRED INFORMATION.

- 01. General Requirements.** (5-1-94)
- a.** Applications shall be submitted on a form or forms provided by the Department or by other means prescribed by these rules or the Department. The application shall be certified by the responsible official in accordance with Section 123. (5-1-94)
- i.** If the Tier I source is regulated under 42 U.S.C. Sections 7651 through 7651o, the owner or operator shall also submit nationally-standardized acid rain forms provided by EPA. (5-1-94)
- b.** All information shall be in sufficient detail so that the Department may efficiently and effectively determine the applicability of requirements and make all other necessary evaluations and determinations. (5-1-94)
- 02. General Information for the Facility.** (5-1-94)
- a.** Provide identifying information, including the name, address and telephone number of: (5-1-94)
- i.** The owner; (5-1-94)
- ii.** The operator; (5-1-94)
- iii.** The facility where the Tier I source is located; (5-1-94)
- iv.** The registered agent of the owner, if any; (5-1-94)
- v.** The registered agent of the operator, if any; (5-1-94)
- vi.** The responsible official, if other than the owner or operator; and (5-1-94)
- vii.** The contact person. (5-1-94)
- b.** Provide a general description of the processes used and products produced by the facility where the Tier I source is located, including any associated with each requested alternative operating scenario and trading scenario. The description shall include narrative and applicable SIC codes. (5-1-94)
- c.** Provide a general description of each process line affecting a Tier I source. (5-1-94)
- 03. Specific Information for Each Emissions Unit.** The owner or operator shall provide, in an itemized format, all of the information identified in Subsections 314.04 through 314.11 for each emissions unit, unless the emissions unit is an insignificant activity. (4-5-00)
- 04. Emissions.** (5-1-94)
- a.** Identify and describe all emissions of pollutants for which the source is major and all emissions of regulated air pollutants from each emissions unit. Fugitive emissions shall be included in the application in the same manner as stack emissions, regardless of whether the source category is included in the list of sources contained in the definition of major facility (Section 008). (3-23-98)
- b.** Emissions rates shall be quantified in tons per year (tpy) or for radionuclides the effective dose equivalent (EDE) in millirem per year and in such additional terms as are necessary to determine compliance consistent with the applicable test method. (4-5-00)
- c.** Identify and describe all points of emissions in sufficient detail to establish the basis for fees and applicability of requirements of the Clean Air Act. (3-20-97)
- d.** To the extent it is needed to determine or regulate emissions, identify and quantify all fuels, fuel use, raw materials, production rates, and operating schedules. (5-1-94)

- e. Identify and describe all air pollution control equipment and compliance monitoring devices or activities. (5-1-94)
- f. Identify and describe all limitations on source operation or any work practice standards affecting emissions. (5-1-94)
- g. Provide the calculations on which the information provided under Subsections 314.04.a. through 314.04.e. is based. (4-5-00)
- 05. Applicable Requirements.** (5-1-94)
 - a. Cite and describe all applicable requirements affecting the emissions unit; and (5-1-94)
 - b. Describe or reference all methods required by each applicable requirement for determining the compliance status of the emissions unit with the applicable requirement, including any applicable monitoring, recordkeeping and reporting requirements or test methods. (5-1-94)
- 06. Other Requirements.** Other specific information that may be necessary to determine the applicability of, implement or enforce any requirement of the Act, these rules, 42 U.S.C. Sections 7401 through 7671q or federal regulations. (5-1-94)
- 07. Proposed Determinations of Nonapplicability.** Identify requirements for which the applicant seeks a determination of nonapplicability and provide an explanation of why the requirement is not applicable to the Tier I source. (3-23-98)
- 08. Alternative Operating Scenarios.** (5-1-94)
 - a. Identify all requested alternative operating scenarios. (5-1-94)
 - b. Provide a detailed description of all requested alternative operating scenarios. Include all the information required by Section 314 that is relevant to the alternative operating scenario. (5-1-94)
- 09. Compliance Certifications.** (5-1-94)
 - a. Provide a compliance certification regarding the compliance status of each emissions unit at the time the application is submitted to the Department that: (5-1-94)
 - i. Identifies all applicable requirements affecting each emissions unit. (5-1-94)
 - ii. Certifies the compliance status of each emissions unit with each of the applicable requirements. (5-1-94)
 - iii. Provides a detailed description of the method(s) used for determining the compliance status of each emissions unit with each applicable requirement, including a description of any monitoring, recordkeeping, reporting and test methods that were used. Also provide a detailed description of the method(s) required for determining compliance. (5-1-94)
 - iv. Certifies the compliance status of the emissions unit with any applicable enhanced monitoring requirements. (5-1-94)
 - v. Certifies the compliance status of the emissions unit with any applicable enhanced compliance certification requirements. (5-1-94)
 - vi. Provides all other information necessary to determining the compliance status of the emissions unit. (5-1-94)
 - b. Provide a schedule for submission of compliance certifications during the term of the Tier I

operating permit. The schedule shall require compliance certifications to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department. (5-1-94)

10. Compliance Plans. (5-1-94)

a. Provide a compliance description as follows: (5-1-94)

i. For each applicable requirement with which the emissions unit is in compliance, state that the emissions unit will continue to comply with the applicable requirement. (5-1-94)

ii. For each applicable requirement that will become effective during the term of the Tier I operating permit that does not contain a more detailed schedule, state that the emissions unit will meet the applicable requirement on a timely basis. (5-1-94)

iii. For each applicable requirement that will become effective during the term of the Tier I operating permit that contains a more detailed schedule, state that the emissions unit will comply with the applicable requirement on the schedule provided in the applicable requirement. (5-1-94)

iv. For each applicable requirement with which the emission unit is not in compliance, state that the emissions unit will be in compliance with the applicable requirement by the time the Tier I operating permit is issued or provide a compliance schedule in accordance with Subsection 314.10.b. (4-5-00)

b. All compliance schedules shall: (5-1-94)

i. Include a schedule of remedial measures leading to compliance, including an enforceable sequence of actions and specific dates for achieving milestones and achieving compliance. (4-5-00)

ii. Incorporate the terms and conditions of any applicable consent order, judicial order, judicial consent decree, administrative order, settlement agreement or judgment. (5-1-94)

iii. Be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based. (5-1-94)

c. Provide a schedule for submission to the Department of periodic progress reports no less frequently than every six (6) months or at a more frequent period if one (1) is specified in the underlying applicable requirement or by the Department. (4-5-00)

11. Trading Scenarios. (5-1-94)

a. Identify all requested trading scenarios, including alternative emissions limits (bubbles) authorized by Section 440. (5-1-94)

b. Provide a detailed description of all requested trading scenarios. Include all the information required by Section 314 that is relevant to the trading scenario and all the information required by Section 440, if applicable. Emissions trades must comply with all applicable requirements. (3-23-98)

c. Provide proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. Emissions trades involving emissions units for which the emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trade shall not be approved. (3-23-98)

12. Additional Information. Provide all additional information that the Department determines is necessary for the Department to efficiently and effectively perform its functions. Such functions include, but are not limited to, determining the applicability of requirements for all regulated air pollutants, determining compliance with applicable requirements, developing or defining Tier I operating permit terms and conditions, defining all approved alternative operating scenarios, evaluating excess emissions procedures or making all necessary evaluations and determinations. (4-5-00)

315. DUTY TO SUPPLEMENT OR CORRECT APPLICATION.

01. Failure to Submit. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. (5-1-94)

02. Necessary Additional Information. If, while processing an application that has been determined or deemed to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, the Department may request such information in writing and set a deadline for a response. The applicant shall submit the requested information on or before the deadline set by the Department. (5-1-94)

03. Additional Information After Completeness. The applicant shall promptly provide additional information as necessary to address any requirements that become applicable to the Tier I source after the date a complete application was filed but prior to release of a proposed action. (5-1-94)

316. EFFECT OF INACCURATE INFORMATION IN APPLICATIONS OR FAILURE TO SUBMIT RELEVANT INFORMATION.

Notwithstanding the shield provisions of Section 325, the owner or operator shall be subject to enforcement action for operation of the Tier I source without a Tier I operating permit if the owner or operator submitted an incomplete or inaccurate application or the Tier I source is later determined not to qualify for coverage under the conditions and terms of the Tier I operating permit. (4-5-00)

317. INSIGNIFICANT ACTIVITIES.

01. Applicability Criteria. This Section contains the criteria for identifying insignificant activities for the purposes of the Tier I operating permit program. Notwithstanding any other provision of this rule, no emission unit or activity subject to an applicable requirement shall qualify as an insignificant emission unit or activity. Applicants may not exclude from Tier I operating permit applications information that is needed to determine whether the facility is major or whether the facility is in compliance with applicable requirements. (3-23-98)

- a.** Presumptively insignificant emission units. (3-23-98)
 - i.** Except as provided above, the activities listed in this section may be omitted from the permit application. (3-23-98)
 - (1) Blacksmith forges. (3-23-98)
 - (2) Mobile transport tanks on vehicles except for those containing asphalt and not including loading and unloading operations. (3-23-98)
 - (3) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities. (3-23-98)
 - (4) Storage tanks, reservoirs and pumping and handling equipment of any size, limited to soaps, lubricants, lubricating oil, treater oil, hydraulic fluid, vegetable oil, grease, animal fat, aqueous salt solutions or other materials and processes using appropriate lids and covers where there is no generation of objectionable odor or airborne particulate matter. (3-23-98)
 - (5) Pressurized storage of oxygen, nitrogen, carbon dioxide, air, or inert gases. (3-3-95)L
 - (6) Storage of solid material, dust-free handling. (3-3-95)L
 - (7) Boiler water treatment operations, not including cooling towers. (3-23-98)
 - (8) Vents from continuous emission monitors and other analyzers. (3-3-95)L

- (9) Vents from rooms, buildings and enclosures that contain permitted emissions units or activities from which local ventilation, controls, and separate exhaust are provided. (3-3-95)L
- (10) Internal combustion engines for propelling or powering a vehicle. (3-3-95)L
- (11) Recreational fireplaces including the use of barbecues, campfires and ceremonial fires. (3-3-95)L
- (12) Brazing, soldering, and welding equipment and cutting torches for use in cutting metal wherein components of the metal do not generate hazardous air pollutants or hazardous air pollutant precursors. (3-23-98)
- (13) Atmospheric generators used in connection with metal heat treating processes using non-hazardous air pollutant metals as the primary raw material. (3-23-98)
- (14) Non-hazardous air pollutant metal finishing or cleaning using tumblers. (3-23-98)
- (15) Drop hammers or hydraulic presses for forging or metalworking. (3-3-95)L
- (16) Electrolytic deposition, used to deposit brass, bronze, copper, iron, tin, zinc, precious and other metals not listed as the parents of hazardous air pollutants. (3-23-98)
- (17) Equipment used for surface coating, painting, dipping or spraying operations, except those that will emit volatile organic compound or hazardous air pollutant. (3-23-98)
- (18) Process water filtration systems. (3-23-98)
- (19) Portable electrical generators that can be moved by hand from one (1) location to another. Moved by hand means that it can be moved without the assistance of any motorized or non-motorized vehicle, conveyance, or device. (3-23-98)
- (20) Plastic and resin curing equipment, excluding FRP and provided these activities are not related to the source's primary business activity. (3-23-98)
- (21) Extrusion equipment, metals, minerals, plastics, grain or wood used without solvents containing hazardous air pollutant. (3-23-98)
- (22) Presses and vacuum forming, for curing rubber and plastic products or for laminating plastics without solvents containing hazardous air pollutants present. (3-23-98)
- (23) Roller mills and calendars for use with rubber and plastics without solvents containing hazardous air pollutants. (3-23-98)
- (24) Conveying and storage of plastic pellets. (3-3-95)L
- (25) Plastic compression, injection, and transfer molding and extrusion, rotocasting, pultrusion, blowmolding, excluding acrylics, PVC, polystyrene and related copolymers and the use of plasticizer. Only oxygen, carbon dioxide, nitrogen, air or inert gas allowed as blowing agent. (3-3-95)L
- (26) Plastic pipe welding. (3-3-95)L
- (27) Wax application in either a molten state or aqueous suspension. (3-23-98)
- (28) Plant maintenance and upkeep including routine housekeeping, janitorial activities, cleaning and preservation of equipment, preparation for and painting of structures or equipment, retarring roofs, applying insulation to buildings in accordance with applicable environmental and health and safety requirements and lawn, landscaping and groundskeeping activities. Provided these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and not otherwise triggering a permit modification. (3-23-98)

- (29) Agricultural activities on a facility's property that are not subject to registration or new source review by the permitting authority. (3-3-95)L
- (30) Maintenance of paved streets and parking lots including paving, stripping, salting, sanding, cleaning and sweeping of streets and paved surfaces. Provided these activities are not related to the source's primary business activity, do not otherwise trigger a permit modification, and fugitive emissions are reasonably controlled as required in Section 808. (3-23-98)
- (31) Ultraviolet curing processes. (3-3-95)L
- (32) Hot melt adhesive application with no volatile organic compounds or hazardous air pollutants in the adhesive formula. (3-23-98)
- (33) Laundering, dryers, extractors, tumblers for fabrics, using water solutions of bleach and/or detergents except for boilers. (3-23-98)
- (34) Steam cleaning operations. (3-3-95)L
- (35) Steam sterilizers. (3-3-95)L
- (36) Food service activities including cafeterias, kitchen facilities and barbecues located at a source for providing food service on premises. (3-23-98)
- (37) Portable drums and totes. (3-3-95)L
- (38) Fluorescent light tube and aerosol can crushing in units designed to reduce emissions from these activities. (3-23-98)
- (39) Flares used to indicate danger to the public. (3-3-95)L
- (40) General vehicle maintenance including vehicle exhaust from repair facilities provided these activities are not related to the source's primary business activity and do not have applicable requirements under title VI of the Clean Air Act. (3-23-98)
- (41) Comfort air conditioning or air cooling systems, not used to remove air contaminants from specific equipment. (3-3-95)L
- (42) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves, and storage tanks subject to size and service limitations expressed elsewhere in this section. (3-3-95)L
- (43) Natural and forced air vents for bathroom/toilet facilities. (3-3-95)L
- (44) Office activities. (3-3-95)L
- (45) Equipment used for quality control/assurance or inspection purposes, including sampling equipment used exclusively to withdraw materials for laboratory analyses and testing. (3-23-98)
- (46) Fire suppression systems and similar safety equipment and equipment used to train firefighters including fire drill pits. (3-23-98)
- (47) Materials and equipment used by, and activity related to operation of infirmary; infirmary is not the source's business activity except equipment affected by the radionuclide NESHAP. (3-23-98)
- (48) Satellite Accumulation Areas (SAAs) and Temporary Accumulation Areas (TAAs) managed in compliance with RCRA. (3-23-98)

- (49) Equipment for carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, shot blasting, sintering, or polishing: Ceramics, glass, leather, metals, plastics, rubber, concrete, paper stock, or wood provided that these activities are not conducted as part of a manufacturing process. (3-23-98)
- (50) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment subject to other exemption limitation, e.g., internal and external combustion equipment. (3-3-95)L
- (51) Slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment. (3-23-98)
- (52) Ozonation equipment. (3-3-95)L
- (53) Temporary construction activities at a facility provided that the installation or modification of emissions units must comply with all applicable federal, state, and local rules and regulations. (3-23-98)
- (54) Batch loading and unloading of solid phase catalysts. (3-3-95)L
- (55) Pulse capacitors. (3-3-95)L
- (56) Gas cabinets using only gases that are not regulated air pollutants. (3-3-95)L
- (57) CO₂ lasers, used only on metals and other materials which do not emit hazardous air pollutants in the process. (3-23-98)
- (58) Structural changes not having air contaminant emissions. (3-3-95)L
- (59) Equipment used to mix, package, store and handle soaps, lubricants, vegetable oil, grease, animal fat, and non-volatile aqueous salt solutions, provided appropriate lids and covers are utilized. (3-23-98)
- (60) Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy, e.g., blueprint activity, photocopiers, mimeograph, telefax, photographic developing, and microfiche provided these activities are not related to the source's primary business activity. (3-23-98)
- (61) Pharmaceutical and cosmetics packaging equipment. (3-3-95)L
- (62) Paper trimmers/binders provided these activities are not related to the source's primary business activity. (3-23-98)
- (63) Bench-scale laboratory equipment and laboratory equipment used exclusively for physical or chemical analysis, including associated vacuum producing devices but excluding research and development facilities. (3-23-98)
- (64) Repair and maintenance shop activities not related to the source's primary business activity. (3-23-98)
- (65) Handling equipment and associated activities for glass and aluminum which is destined for recycling, provided these activities are not related to the source's primary business activity. (3-23-98)
- (66) Hydraulic and hydrostatic testing equipment. (3-3-95)L
- (67) Batteries and battery charging stations, except at battery manufacturing plants. (3-23-98)
- (68) Porcelain and vitreous enameling equipment. (3-3-95)L
- (69) Solid waste containers. (3-3-95)L

(70)	Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants.	(3-23-98)
(71)	Shock chambers.	(3-3-95)L
(72)	Wire strippers.	(3-3-95)L
(73)	Humidity chambers.	(3-3-95)L
(74)	Solar simulators.	(3-3-95)L
(75)	Environmental chambers not using hazardous air pollutant gases.	(3-23-98)
(76)	Totally enclosed conveyors not including transfer points.	(3-23-98)
(77)	Steam vents and safety relief valves.	(3-3-95)L
(78)	Air compressors, pneumatically operated equipment, systems, and hand tools.	(3-3-95)L
(79)	Steam leaks.	(3-3-95)L
(80)	Boiler blow-down tank.	(3-3-95)L
(81)	Salt cake mix tanks at pulp mills.	(3-23-98)
(82)	Digester chip feeders at pulp mills.	(3-23-98)
(83)	Weak liquor and filter tanks at pulp mills.	(3-23-98)
(84)	Process water and white water storage tanks at pulp mills.	(3-23-98)
(85)	Demineralizer water tanks, demineralization, demineralizer vents, and oxygen scavenging (deaeration) of water.	(3-23-98)
(86)	Clean condensate tanks.	(3-3-95)L
(87)	Alum tanks.	(3-3-95)L
(88)	Broke beaters, repulpers, pulp and repulping tanks, stock chests and pulp handling.	(3-3-95)L
(89)	Lime and mud filtrate tanks.	(3-3-95)L
(90)	Hydrogen peroxide tanks.	(3-3-95)L
(91)	Lime mud washer.	(3-3-95)L
(92)	Lime mud filter.	(3-3-95)L
(93)	Hydro and liquor clarifiers or filters and storage tanks and associated pumping, piping, and handling.	(3-23-98)
(94)	Lime grits washers, filters, and handing.	(3-3-95)L
(95)	Lime silos and feed bins.	(3-3-95)L
(96)	Paper forming.	(3-3-95)L

- (97) Starch cooking. (3-3-95)L
- (98) Pulp stock cleaning and screening. (3-23-98)
- (99) Paper winders or other paper converting equipment. (3-23-98)
- (100) Sludge dewatering and wet sludge handling. (3-23-98)
- (101) Screw press vents. (3-3-95)L
- (102) Pond dredging. (3-3-95)L
- (103) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation. (3-3-95)L
- (104) Non-PCB oil filled circuit breakers, oil filled transformers and other equipment that is analogous to, but not considered to be, a tank. (3-3-95)L
- (105) Lab-scale electric or steam-heated drying ovens and autoclaves. (3-23-98)
- (106) Sewer manholes, junction boxes, sumps and lift stations associated with waste water treatment systems. (3-3-95)L
- (107) Water cooling towers processing exclusively noncontact cooling water. (3-3-95)L
- (108) Paper coating and sizing. (3-3-95)L
- (109) Process waste water and ponds. (3-3-95)L
- (110) Outdoor firearms practice ranges. (3-3-95)L
- b.** Insignificant activities on the basis of size or production rate. (3-23-98)
- i. This section contains lists of units or activities that are insignificant on the basis of size or production rate. Units and activities listed in this section must be listed in the permit application. The following units and activities are determined to be insignificant based on their size or production rate: (3-23-98)
- (1) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than two hundred sixty (260) gallon capacity thirty five cubic feet (35cft), heated only to the minimum extend to avoid solidification if necessary. (3-3-95)L
- (2) Operation, loading and unloading of storage tanks, not greater than one thousand one hundred (1,100) gallon capacity, with lids or other appropriate closure, not for use with hazardous air pollutants, maximum (max.) vp five-hundred fifty (550) mm Hg. (3-23-98)
- (3) Operation, loading and unloading of volatile organic compound storage tanks, ten thousand (10,000) gallons capacity or less, with lids or other appropriate closure, vp not greater than eighty (80) mm Hg at twenty-one (21) degrees C. Operation, loading and unloading of gasoline storage tanks, ten thousand (10,000) gallons capacity or less, with lids or other appropriate closure. (3-23-98)
- (4) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas (LPG), storage tanks, vessel capacity under forty thousand (40,000) gallons. (3-3-95)L
- (5) Combustion source, less than five million (5,000,000) Btu/hr, exclusively using natural gas, butane, propane, and/or LPG. (3-3-95)L
- (6) Combustion source, less than five hundred thousand (500,000) Btu/hr, using any commercial fuel

containing less than four-tenths percent (.4%) by weight sulfur for coal or less than one percent (1%) by weight sulfur for other fuels. (3-3-95)L

(7) Combustion source, of less than one million (1,000,000) Btu/hr, if using kerosene, No. 1 or No. 2 fuel oil. (3-3-95)L

(8) Combustion source, not greater than five hundred thousand (500,000) Btu/hr, if burning waste wood, wood waste or waste paper. (3-3-95)L

(9) Welding using not more than one (1) ton per day of welding rod. (3-3-95)L

(10) Foundry sand molds, unheated and using binders with less than twenty-five hundredths percent (.25%) free phenol by sand weight. (3-3-95)L

(11) "Parylene" coaters using less than five hundred (500) gallons of coating per year. (3-3-95)L

(12) Printing and silkscreening, using less than two (2) gallon/day of any combination of the following: Inks, coatings, adhesives, fountain solutions, thinners, retarders, or nonaqueous cleaning solutions. (3-3-95)L

(13) Water cooling towers and ponds, not using chromium-based corrosion inhibitors, not used with barometric jets or condensers, not greater than ten thousand (10,000) gpm, not in direct contact with gaseous or liquid process streams containing regulated air pollutants. (3-3-95)L

(14) Combustion turbines, of less than five hundred (500) HP. (3-3-95)L

(15) Batch solvent distillation, not greater than fifty-five (55) gallons batch capacity. (3-3-95)L

(16) Municipal and industrial water chlorination facilities of not greater than twenty million (20,000,000) gallons per day capacity. The exemption does not apply to waste water treatment. (3-3-95)L

(17) Surface coating, using less than two (2) gallons per day. (3-3-95)L

(18) Space heaters and hot water heaters using natural gas, propane or kerosene and generating less than five million (5,000,000) Btu/hr. (3-3-95)L

(19) Tanks, vessels, and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids excluding:

(a) Ninety-nine percent (99%) or greater H₂SO₄ or H₃PO₄. (3-3-95)L

(b) Seventy percent (70%) or greater HNO₃. (3-3-95)L

(c) Thirty percent (30%) or greater HCl. (3-3-95)L

(d) More than one (1) liquid phase where the top phase is more than one percent (1%) volatile organic compounds. (3-23-98)

(20) Equipment used exclusively to pump, load, unload, or store high boiling point organic material, material with initial boiling point (IBP) not less than one hundred fifty (150) degrees C or vapor pressure (vp) not more than five (5) mm Hg at twenty-one (21) degrees C with lids or other appropriate closure. (3-3-95)L

(21) Smokehouses under twenty (20) square feet. (3-3-95)L

(22) Milling and grinding activities, using paste-form compounds with less than one percent (1%) volatile organic compounds. (3-23-98)

(23) Rolling, forging, drawing, stamping, shearing, or spinning hot or cold metals. (3-3-95)L

- (24) Dip-coating operations, using materials with less than one percent (1%) volatile organic compounds. (3-23-98)
- (25) Surface coating, aqueous solution or suspension containing less than one percent (1%) volatile organic compounds. (3-23-98)
- (26) Cleaning and stripping activities and equipment, using solutions having less than one percent (1%) volatile organic compounds by weight. On metallic substrates, acid solutions are not considered for listing as insignificant. (3-23-98)
- (27) Storage and handling of water based lubricants for metal working where the organic content of the lubricant is less than ten percent (10%). (3-3-95)L
- (28) Municipal and industrial waste water chlorination facilities of not greater than one million (1,000,000) gallons per day capacity. (3-3-95)L
- (29) Domestic sewage treatment ponds with average flowrates less than four hundred (400) gpm or treating waste from less than three thousand (3000) people from non-residential sources. (3-23-98)
- (30) An emission unit or activity with potential emissions less than or equal to the significant emission rate as defined in Section 006 and actual emissions less than or equal to ten percent (10%) of the levels contained in Section 006 of the definition of significant and no more than one (1) ton per year of any hazardous air pollutant. (5-3-03)

318. -- 320. (RESERVED)

321. TIER I OPERATING PERMIT CONTENT.

The purpose of Sections 321 through 336 is to mandate and authorize the contents of Tier I operating permits. (5-1-94)

322. STANDARD CONTENTS OF TIER I OPERATING PERMITS.

All Tier I operating permits shall contain and the Department shall have the authority to impose, implement and enforce, the following elements for all permitted operating scenarios and emissions trading scenarios. Fugitive emissions shall be included in the Tier I operating permit in the same manner as stack emissions. (3-23-98)

01. Emission Limitations and Standards. All Tier I operating permits shall contain emission limitations and standards, including, but not limited to, those operational requirements and limitations that assure compliance with the applicable requirements identified in the application, or determined by the Department to be applicable to the source. (3-19-99)

02. Authority for and Form of Terms and Conditions. All Tier I operating permits shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based. (5-1-94)

03. Terms or Conditions for Applicable Requirements. All Tier I operating permits shall contain at least one (1) permit term or condition for every applicable requirement specifically identified in the application or determined by the Department to be applicable to the source. (3-23-98)

04. Alternative Operating Scenarios. All Tier I operating permits shall contain terms and conditions to ensure compliance with all applicable requirements for each alternative operating scenario that was requested by the applicant and approved by the Department, including, but not limited to, a requirement that the owner or operator of the source, contemporaneously with making a change from one (1) operating scenario to another, record the change in an operating scenario log located and retained at the permitted facility. (5-1-94)

05. Trading Scenarios. (5-1-94)

a. All Tier I operating permits shall contain terms and conditions for each trading scenario that was requested by the applicant and approved by the Department including, but not limited to, terms and conditions which ensure that any emission trade is quantifiable, accountable, enforceable and based on replicable procedures.

(3-23-98)

b. The Tier I operating permit shall state that no permit revision shall be required under approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit.

(4-5-00)

c. The Tier I operating permit shall, at a minimum, include a requirement that the owner or operator of the source, contemporaneously with making a change from one (1) trading scenario to another, record the change in a trading scenario log located and retained at the permitted facility and provide notice to the Department in accordance with Section 383.

(3-23-98)

06. Monitoring. All Tier I operating permits shall contain the following with respect to monitoring:

(5-1-94)

a. Sufficient monitoring to ensure compliance with all of the terms and conditions of the Tier I operating permit;

(5-1-94)

b. All emissions monitoring and analysis procedures or test methods required under the applicable requirements;

(5-1-94)

c. If the applicable requirement does not require specific periodic testing or monitoring, terms and conditions requiring periodic monitoring, recordkeeping, or both, that is sufficient to yield reliable data for the relevant time periods that are representative of the emissions unit's compliance with the Tier I operating permit, as reported pursuant to Subsection 322.08, and ensuring the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement; and

(5-1-94)

d. Requirements that the Department determines are necessary, concerning the use, maintenance and installation of monitoring equipment or methods.

(5-1-94)

07. Recordkeeping. All Tier I operating permits shall incorporate by reference all applicable requirements regarding recordkeeping and require all of the following:

(5-1-94)

a. Sufficient recordkeeping to assure compliance with all of the terms and conditions of the Tier I operating permit.

(5-1-94)

b. Recording of monitoring information including but not limited to the following:

(5-1-94)

i. The date, place (as defined in the Tier I operating permit) and time of sampling or measurements;

(5-1-94)

ii. The date(s) analyses were performed;

(5-1-94)

iii. The company or entity that performed the analyses;

(5-1-94)

iv. The analytical techniques or methods used;

(5-1-94)

v. The results of such analyses; and

(5-1-94)

vi. The operating conditions existing at the time of sampling or measurement.

(5-1-94)

c. Retention of all monitoring records and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report or application. Supporting information includes but is not limited to all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation and copies of all reports required by the Tier I operating permit.

(5-1-94)

08. Reporting. All Tier I operating permits shall incorporate by reference all applicable requirements regarding reporting and require all of the following: (5-1-94)

a. Sufficient reporting to assure compliance with all of the terms and conditions of the Tier I operating permit. (5-1-94)

b. Prompt reporting of deviations from permit requirements including, but not limited to, those attributable to excess emissions. If the deviation is an excess emission, the report shall be submitted in accordance with the requirements of Sections 130 through 136. For all other deviations, the report shall be submitted in accordance with Subsection 322.08.c. unless the permit specifies another time frame. The reports shall describe the probable cause of such deviations and any corrective actions or preventative measures taken. (3-23-98)

c. Submittal of reports for any required monitoring at least every six (6) months. All instances of deviations from Tier I operating permit requirements, which include monitoring, recordkeeping, and reporting, must be clearly identified in such reports. All required reports must be certified in accordance with Section 123. (4-5-00)

09. Testing. All Tier I operating permits shall contain terms and conditions requiring sufficient testing to assure compliance with all of the terms and conditions of the Tier I operating permit. (5-1-94)

10. Compliance Schedule and Progress Reports. All Tier I operating permits shall contain terms and conditions regarding the compliance plan submitted in the application in accordance with Subsection 314.10 including all of the following: (4-5-00)

a. For each applicable requirement for which the source is not in compliance at the time of the permit issuance, terms and conditions consistent with the compliance schedule submitted by the applicant including all of the following: (4-5-00)

i. A schedule of remedial measures leading to compliance including an enforceable sequence of actions and specific dates for achieving the milestones and achieving compliance. (4-5-00)

ii. A requirement that the permittee submit periodic progress reports to the Department no less frequently than every six (6) months or at a more frequent period if one is specified in the underlying applicable requirement or by the Department. (5-1-94)

iii. A requirement that any progress report shall include a statement of when the milestones and compliance were or will be achieved, an explanation of why any dates in the compliance schedule submitted by the applicant or in the terms or conditions of the Tier I operating permit were not or will not be met and a detailed description of any preventative or corrective measures undertaken by the permittee. (5-1-94)

iv. All terms and conditions of any applicable consent order, judicial order, judicial consent decree, administrative order, settlement agreement or judgment. (5-1-94)

v. A statement that the terms and conditions regarding the compliance schedule are supplemental to, and do not sanction noncompliance with, the underlying applicable requirement. (5-1-94)

b. For each applicable requirement that will become effective during the term of the Tier I operating permit and that requires a detailed compliance schedule, the permit shall include such compliance schedule. (4-5-00)

c. For each applicable requirement that will become effective during the term of the Tier I operating permit that does not require a detailed compliance schedule, the permit shall include a statement that the permittee shall meet, on a timely basis, all such applicable requirements. (4-5-00)

11. Periodic Compliance Certifications. Each Tier I operating permit shall require submittal of compliance certifications during the term of the permit for each emissions unit to the Department and the EPA as follows: (5-1-94)

a. Compliance certifications for all emissions units shall be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department. (5-1-94)

b. The compliance certification for each emissions unit shall address all of the terms and conditions contained in the Tier I operating permit that are applicable to such emissions unit including emissions limitations, standards and work practices. (5-1-94)

c. The compliance certification shall be in an itemized format providing the following information: (5-1-94)

i. The identification of each term or condition of the Tier I operating permit that is the basis of the certification; (4-5-00)

ii. The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under Subsections 322.06, 322.07, and 322.08; (4-6-05)

iii. The status of compliance with the terms and conditions of the Tier I operating permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in Subsection 322.11.c.ii. above. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and (4-6-05)

iv. Such information as the Department may require to determine the compliance status of the emissions unit. (4-5-00)

d. All original compliance certifications shall be submitted to the Department and a copy of all compliance certifications shall be submitted to the EPA; (5-1-94)

12. Permit Conditions Regarding Acid Rain Allowances. (5-1-94)

a. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds. (5-1-94)

b. No limit shall be placed on the number of allowances held by the source and no permit revisions shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement. (3-23-98)

c. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement. (5-1-94)

d. Any such allowance shall be accounted for according to the procedures established in 40 CFR Part 72 and 40 CFR Part 73. (5-1-94)

13. Permit Duration. Each Tier I operating permit shall state that it is effective for a fixed term of five (5) years; except that during the first four (4) years after EPA approval of the Tier I operating permit program, the permit may be issued with an initial term of three (3) years to five (5) years unless the Tier I source is also a Phase II source. (5-1-94)

14. Other Specific Requirements. Any terms or conditions determined by the Department to be necessary for approval of the Tier I operating permit. (5-1-94)

15. General Requirements. Each Tier I operating permit shall contain provisions stating the following: (5-1-94)

- a.** The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation and is grounds for enforcement action; for permit revocation, termination, revocation and reissuance, or revision; or for denial of a permit renewal application. (5-1-94)
- b.** It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce any activity in order to maintain compliance with the terms and conditions of this permit. (5-1-94)
- c.** This permit may be revised, revoked, reopened and reissued, or terminated for cause. (5-1-94)
- d.** The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition. (5-1-94)
- e.** This permit does not convey any property rights of any sort, or any exclusive privilege. (5-1-94)
- f.** The permittee shall furnish all information requested by the Department, within a reasonable time, that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing or terminating the permit or to determine compliance with the permit. (4-5-00)
- g.** Upon request, the permittee shall furnish to the Department copies of records required to be kept by this permit. (5-1-94)
- h.** The provisions of this permit are severable, and if any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby. (5-1-94)
- i.** The permittee shall comply with Sections 380 through 386 as applicable. (3-19-99)
- j.** Unless specifically identified as a “State Only” provision, all terms and conditions in the this permit, including any terms and conditions designed to limit a source's potential to emit, are enforceable: (5-1-94)
- i.** By the Department in accordance with State law; and (5-1-94)
- ii.** By the United States or any other person in accordance with Federal law. (5-1-94)
- k.** Provisions specifically identified as a “State Only” provision are enforceable only in accordance with State law. “State Only” provisions are those that are not required under the Federal Clean Air Act or under any of its applicable requirements or those provisions adopted by the State prior to federal approval. (3-23-98)
- l.** Upon presentation of credentials, the permittee shall allow the Department or an authorized representative of the Department to do the following: (5-1-94)
- i.** Enter upon the permittee's premises where a Tier I source is located or emissions-related activity is conducted, or where records are kept under the conditions of this permit; (5-1-94)
- ii.** Have access to and copy, at reasonable times, any records that are kept under the conditions of this permit; (5-1-94)
- iii.** Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under this permit; and (5-1-94)
- iv.** Sample or monitor at reasonable times substances or parameters for the purpose of determining or ensuring compliance with this permit or applicable requirements. (5-1-94)
- m.** Nothing in this permit shall alter or affect the following: (5-1-94)

- i. Any administrative authority or judicial remedy available to prevent or terminate emergencies or imminent and substantial dangers; (5-1-94)
- ii. The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance; (5-1-94)
- iii. The applicable requirements of the acid rain program, consistent with 42 U.S.C. Section 7651g(a); (5-1-94)
- iv. The owner or operator's duty to provide information. (5-1-94)
- n. The owner or operator of a Tier I source shall pay registration fees to the Department in accordance with Sections 387 through 399, which are hereby incorporated by reference. (7-1-02)
- o. All documents submitted to the Department shall be certified in accordance with Section 123 and comply with Section 124. (5-1-94)
- p. If a timely and complete application for a Tier I operating permit renewal is submitted, but the Department fails to issue or deny the renewal permit before the end of the term of the previous permit, then all the terms and conditions of the previous permit including any permit shield that may have been granted pursuant to Section 325 shall remain in effect until the renewal permit has been issued or denied. (5-1-94)
- q. The permittee shall promptly report deviations from permit requirements including, but not limited to, those attributable to excess emissions. If the deviation is an excess emission, the report shall be submitted in accordance with the requirements of Sections 130 through 136. For all other deviations, the report shall be submitted in accordance with Subsection 322.08.c. unless the permit specifies another time frame. The reports shall describe the probable cause of such deviations and any corrective actions or preventative measures taken. (3-23-98)

323. -- 324. (RESERVED)

325. ADDITIONAL CONTENTS OF TIER I OPERATING PERMITS -- PERMIT SHIELD.

Each Tier I operating permit shall include provisions stating: (5-1-94)

01. General Permit Shield. Compliance with the terms and conditions of the Tier I operating permit, including those applicable to all alternative operating scenarios and trading scenarios, shall be deemed compliance with all of the following: (5-1-94)

a. Applicable requirements as of the date of permit issuance that are specifically identified in the Tier I operating permit and have a corresponding term or condition in the Tier I operating permit. (5-1-94)

b. Non-applicable requirements. For a requirement to be a non-applicable requirement, all of the following criteria must be met: (5-1-94)

i. The permittee must have provided the information required by Subsection 314.08.b. in the application. (5-1-94)

ii. The requirement must be specifically identified in the Tier I operating permit as a non-applicable requirement. (5-1-94)

iii. The requirement must have been determined by the Department, in writing and in acting on the permit application or revision, to not be applicable to the Tier I source. (5-1-94)

iv. Tier I operating permit must include the Department's determination or a concise summary thereof. (5-1-94)

02. Limitation on Permit Shield. Permit revisions and other actions authorized by Sections 300 through 386 may eliminate, modify or suspend the permit shield. (3-19-99)

326. -- 331. (RESERVED)

332. EMERGENCY AS AN AFFIRMATIVE DEFENSE REGARDING EXCESS EMISSIONS.

01. General. An emergency, as defined in Section 008, constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitation if the conditions of Subsection 332.02 are met. (5-1-94)

02. Demonstration of Emergency. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that: (5-1-94)

a. An emergency occurred and that the permittee can identify the cause(s) of the emergency; (5-1-94)

b. The permitted facility was at the time being properly operated; (5-1-94)

c. During the period of the emergency, the permittee took all reasonable steps, as determined by the Department, to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and (5-1-94)

d. The permittee submitted written notice of the emergency to the Department within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken. Compliance with this section satisfies the written reporting requirements under Section 135 and Subsection 322.15.q. (4-5-00)

03. Burden of Proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof. (5-1-94)

04. Applicability. Section 332 is in addition to any emergency or upset provision contained in any applicable requirement. (3-20-97)

333. -- 334. (RESERVED)

335. GENERAL TIER I OPERATING PERMITS AND AUTHORIZATIONS TO OPERATE.

01. Issuance of General Tier I Operating Permits. The Department may, after notice and opportunity for public participation provided in accordance with Section 364, issue a general Tier I operating permit covering numerous similar sources. (5-1-94)

02. Contents of General Tier I Operating Permits. Each general Tier I operating permit: (5-1-94)

a. Shall include all terms and conditions identified in Sections 322 and 325. (3-23-98)

b. Shall include specific criteria by which sources may qualify for coverage under the general Tier I operating permit; and (5-1-94)

c. May provide for applications which deviate from the requirements of Sections 311 through 315, provided that such applications meet all other requirements of 42 U.S.C. 7661 through 7661f and include all information necessary to determine qualification for, and to ensure compliance with, the general Tier I operating permit. (3-23-98)

03. Applications for Authorizations to Operate. The owner or operator of a Tier I source may apply for an authorization to operate under the terms and conditions of a general Tier I operating permit by: (5-1-94)

a. Stating in the application submitted pursuant to Sections 311 through 315 that the owner or operator has determined that the Tier I source qualifies for coverage under a specifically identified general Tier I operating permit and that the owner or operator requests that operations of the Tier I source be authorized under a

specifically identified general Tier I operating permit; or (5-1-94)

b. Complying with the specific application requirements, if any, provided in the general Tier I operating permit. (5-1-94)

04. Procedures for Issuing Authorizations to Operate. Without repeating the public participation procedures required under Section 364, the Department shall issue an authorization to operate a Tier I source under a specifically identified general Tier I operating permit if the Department determines that the Tier I source qualifies for coverage. (3-23-98)

05. Review of Authorizations to Operate. The issuance of an authorization to operate shall be a final agency action for purposes of administrative and judicial review of the authorization. The general Tier I operating permit shall not be subject to administrative or judicial review upon the issuance of an authorization to operate. (5-1-94)

06. Phase II Sources. General Tier I operating permits shall not be authorized for Phase II sources under the acid rain program unless otherwise provided in 40 CFR Part 72. (5-1-94)

336. TIER I OPERATING PERMITS FOR TIER I PORTABLE SOURCES.

01. Issuance of Tier I Operating Permits for Portable Tier I Sources. (5-1-94)

a. The Department may issue a single Tier I operating permit authorizing emissions from similar operations of a portable Tier I source by the owner or operator at multiple temporary locations. (5-1-94)

b. The operation must be temporary and involve at least one (1) change of location for the portable Tier I source during the term of the Tier I operating permit. (5-1-94)

02. Phase II Sources. No Phase II source shall be permitted as a portable Tier I source. (5-1-94)

03. Contents of Tier I Operating Permits for Portable Tier I Sources. Tier I operating permits for portable Tier I sources shall include the following: (5-1-94)

a. Terms and conditions that will ensure compliance with all applicable requirements at all authorized locations; (5-1-94)

b. Requirements that the owner or operator notify the Department at least ten (10) days in advance of each change in location in accordance with Section 500; and (5-1-94)

c. All terms and conditions identified in Sections 322 and 325 through 332. (5-1-94)

337. -- 359. (RESERVED)

360. STANDARD PROCESSING OF TIER I OPERATING PERMIT APPLICATIONS.

The purposes of Sections 360 through 369 is to establish standard procedures and requirements for processing Tier I operating permits. (5-1-94)

361. COMPLETENESS OF APPLICATIONS.

01. Criteria for Completeness. Except as otherwise provided by these rules, the application must comply with Section 314 including that the information must be in sufficient detail. (5-1-94)

02. Timelines for Determinations of Completeness. The Department shall send written notice to the applicant of whether the application is complete within sixty (60) days of receiving the application. If the Department fails to send the written notice to the applicant within sixty (60) days of receipt, the application shall be deemed complete. (3-23-98)

- 03. Effects of Completeness Determination.** (5-1-94)
- 361.02. **a.** The submittal of a complete application activates the application shield provided by Subsection (5-1-94)
- b.** The submittal of a complete Tier I operating permit application shall not affect the permit to construct requirements of Sections 200 through 225 or 42 U.S.C. Sections 7401 through 7515. (5-1-94)
- c.** The timelines for final agency action provided in Subsections 367.02 and 367.03 begin on the date of the completeness determination. (5-1-94)

362. TECHNICAL MEMORANDUMS FOR TIER I OPERATING PERMITS.

- 01. Memorandum for Draft Permit.** As part of its review of the Tier I operating permit application, the Department shall prepare a technical memorandum that sets forth the legal and factual basis for the draft Tier I operating permit terms and conditions (including references to the applicable statutory or regulatory provisions) or the draft denial. (5-1-94)
- 02. Revised Memorandum for Proposed Permit.** If the Department revises its analysis, its conclusions or the terms or conditions of the Tier I operating permit in response to public comment, the Department may revise the technical memorandum for the proposed permit or the proposed denial. (5-1-94)
- 03. Release of Memorandum.** The technical memorandum(s) shall be made available to the public in accordance with Section 364 and sent to the EPA with the proposed Tier I operating permit or proposed denial. (5-1-94)

363. PREPARATION OF DRAFT PERMIT OR DRAFT DENIAL.

Except as otherwise provided in these rules, the Department shall prepare a draft permit or draft denial as promptly as practicable or one hundred twenty (120) days before the deadline for final action, whichever is earlier. (5-1-94)

364. PUBLIC NOTICES, COMMENTS AND HEARINGS.

- 01. Generally.** Except as otherwise provided in these rules, all Tier I operating permit proceedings shall provide for public notice and public comment, including offering an opportunity for a hearing, on a draft permit or on a draft denial. (5-1-94)
- 02. Public Comment Package.** A public comment package including the draft permit or draft denial, the technical memorandum and the application shall be prepared and distributed to appropriate public locations, the applicant and affected States. (5-1-94)
- 03. Giving Notice.** Notice shall be given: by publication in a newspaper of general circulation in the area where the Tier I source is located or in a State publication designed to give general public notice; by mailing the notice to persons on a mailing list developed by the Department, including those who request in writing to be on the list; by mailing the notice to all affected States; and by other means if necessary to ensure adequate notice to the affected public. (5-1-94)
- 04. Content of the Notice.** The notice shall identify the affected facility; provide the name and address of the permittee; provide the name and address of the Department processing the application; identify the draft permit action; identify the emissions change if the permit action is a permit revision or reopening; provide the locations where the public may locate a copy of the public comment package; provide the name, address, and telephone number of a person from whom interested persons may obtain additional information that is relevant to the permit decision by filing a written public documents request and paying any costs; provide a brief description of the comment procedures, including the deadline for comments and the name and address of the person to whom written comments must be delivered; and state the time and place of any hearing that has been scheduled or provide information regarding how a person may request a hearing. (5-1-94)
- 05. Public Comment Procedures.** (5-1-94)

- a. The Department shall provide at least thirty (30) days for public comment. (5-1-94)
- b. The Department may designate the person to receive written comments. (5-1-94)
- c. The Department shall give notice of any public hearing at least thirty (30) days in advance of the hearing. (5-1-94)
- d. The public hearing, if any, shall be an informal meeting, conducted by a hearing officer designated by the Department and transcribed. Written comments or supporting documents may be submitted during the hearing. (5-1-94)
- e. The public comments and additional information received during the comment period shall be available to the public upon the filing of a written public documents request and the payment of any costs. (5-1-94)

365. PREPARATION OF PROPOSED PERMIT OR PROPOSED DENIAL.

- 01. Timeline.** Except as otherwise provided by these rules, the Department shall prepare a proposed permit or proposed denial within thirty (30) days after the close of the public comment period, unless the Department determines that additional time is required to evaluate comments and information received. (5-1-94)
- 02. Availability.** The proposed permit or proposed denial shall be available to the public upon the filing a written public documents request and the payment of any costs. (5-1-94)
- 03. Notice to Affected States.** If the Department refuses to accept all recommendations that an affected State submitted during the public comment period, the Department shall send a copy of the notice sent to EPA in accordance with Subsection 366.01.d. to the affected State that submitted the recommendation. (5-1-94)

366. EPA REVIEW PROCEDURES.

- 01. Submittal of Proposal to EPA.** Except as otherwise provided in these rules and unless EPA waives its opportunity to review a proposed permit, the Department will transmit the following to EPA: (5-1-94)
 - a. The proposed permit or proposed denial. (5-1-94)
 - b. The technical memorandum, as revised if appropriate. (5-1-94)
 - c. The application including all supplements and corrections submitted by the applicant, unless the applicant has submitted the information under a claim of confidentiality or unless the Department has entered an agreement with EPA to submit only a summary form and relevant portions of the permit application. (5-1-94)
 - d. Notice of any refusal by the Department to accept all recommendations for the proposal that any affected State submitted during the public comment period. The notice shall include the Department's reasons for not accepting any such recommendation. The Department is not required to accept recommendations that are not based on applicable requirements. (5-1-94)
- 02. Opportunity for EPA Objection.** (5-1-94)
 - a. EPA may submit to the Department a written objection to the proposal within forty-five (45) days of receipt of the transmittal identified in Subsection 366.01. (5-1-94)
 - b. The written objection shall state the EPA's reasons for the objection and provide the terms and conditions that the Tier I operating permit must include to respond to the objection or state that the permit must be denied. (5-1-94)
 - c. EPA shall provide a copy of the written objection to the applicant. (5-1-94)

03. Response to EPA Objections. Within ninety (90) days of receiving a written objection from EPA, the Department shall prepare a revised proposal and submit it to EPA in accordance with Subsection 366.01. If EPA determines that the revised proposal is objectionable, the Department will review the permit action taken by EPA and take a comparable final permit action in accordance with Section 367. (5-1-94)

04. Public Petitions to EPA. (5-1-94)

a. If the EPA does not object in writing under Subsection 366.02, any person may petition the EPA within sixty (60) days after the expiration of the EPA's forty-five (45) day review period to make such objection. (5-1-94)

b. Any such petition shall be based only on objections to the draft permit or draft denial that were raised with specificity during the public comment period provided for in Section 364 unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. (5-1-94)

c. If the EPA objects to the proposal in accordance with Subsection 366.02 as a result of a petition filed under Subsections 366.04.a. and 366.04.b., the Department shall: (5-1-94)

i. Not issue a permit action until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a Tier I operating permit or its requirements pending EPA's review of the petition and Department review of the objection if the Tier I operating permit was issued by the Department after the end of the forty-five (45) day review period and prior to an EPA objection initiated by a petition. (5-1-94)

ii. Process the objection in accordance with Subsection 366.03. (5-1-94)

367. ACTION ON APPLICATION.

01. Issuance Conditions. Except as otherwise provided by these rules, a Tier I operating permit, or any portion thereof, may be issued only if all of the following conditions have been met: (5-1-94)

a. The owner or operator has submitted a complete application in accordance with Section 361. (5-1-94)

b. The public has been provided notice and opportunities for comment and a hearing in accordance with Section 364. (5-1-94)

c. Affected States have been provided notice in accordance with Section 364 and Subsection 365.03. (5-1-94)

d. The terms and conditions of the Tier I operating permit comply with Sections 321 through 336 including providing for compliance with all applicable requirements. (5-1-94)

e. The EPA has been provided with the proposal and an opportunity to object and the Department has responded as required by Section 366. (5-1-94)

02. Deadlines for Final Actions During Initial Period. Except as otherwise provided in these rules, during the initial period beginning May 1, 1994 and ending three (3) years after EPA approval of the Tier I operating program, the Department will prioritize all of the applications predicted to be submitted during the initial period considering the groups established in accordance with Subsection 313.02, if any. The prioritization will result in the Department taking final action on one-third (1/3) of all such permit applications during each of the one (1) year periods following EPA approval of the program. (5-1-94)

03. Deadlines for Final Actions After Initial Period. Except as otherwise provided in these rules, during the period beginning three (3) years after EPA approval of the Tier I operating program, the Department shall take final action on complete applications within eighteen (18) months. (5-1-94)

04. Deadline for Tier I Operating Permits with Early Reductions. The Department shall take final action on any complete Tier I operating permit application containing an early reduction demonstration under 42 U.S.C. Section 7412 (i)(5) within nine (9) months of receipt of the complete application. (5-1-94)

05. Deadline for Tier I Operating Permits for Phase II Sources. The permitting of phase II sources shall occur in accordance with the deadlines in 42 U.S.C. Section 7651 through 7651o. (5-1-94)

06. Copy to EPA. The Department shall send a copy of the final Tier I operating permit to EPA. (5-1-94)

07. Original to Permittee. The Department shall send the original Tier I operating permit to the permittee. (5-1-94)

368. EXPIRATION OF PRECEDING PERMITS.

If a timely and complete Tier I permit application is received by the Department and is not acted upon in a timely manner as prescribed by these rules, the permit to construct, Tier I operating permit or Tier II operating permit, if any, that has been previously issued to the owner or operator of the Tier I source by the Department or EPA shall continue in full force until the Department has completed action of the permit application. No Tier I operating permit will be considered to have expired due solely to the Department's inaction on a timely Tier I operating permit application. (5-1-94)

369. TIER I OPERATING PERMIT RENEWAL.

01. Renewal Procedures. Tier I operating permits being renewed are subject to the same procedural requirements, including those for public participation, including affected State review, and EPA review, that apply to initial Tier I operating permit issuance. (5-1-94)

02. Expiration and Renewal Application Shield. Tier I operating permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted. (5-1-94)

370. -- 379. (RESERVED)

380. CHANGES TO TIER I OPERATING PERMITS.

01. Applicability. Sections 380 through 399 establish procedures and requirements for permit revisions and changes requiring notice. These provisions do not alter the requirements for permits to construct set forth at Sections 200 through 228. (7-1-02)

02. Changes Requiring Permit Revisions. Sections 381 through 383 establish procedures and requirements for Tier I operating permit revisions. A permit revision is required for changes that are not addressed or prohibited by the Tier I operating permit if such changes are subject to any requirements under Title IV of the Clean Air Act or are modifications under any provision of Title I of the Clean Air Act. (4-5-00)

03. Changes Requiring Notice. Sections 384 and 385 establish procedures and requirements for providing notice by the permittee to the Department and EPA of certain emission trades and changes that contravene a permit term (Section 384), or certain changes that are not addressed or prohibited by the permit (Section 385). (3-19-99)

04. Reopening. Section 386 establishes procedures for reopening the permit for cause by the Department, EPA, or the permittee. (3-19-99)

05. Acid Rain. Changes regulated under Title IV of the Clean Air Act, 42 U.S.C. Sections 7651 through 7651o, shall be governed by regulations promulgated under Title IV of the Act. (3-19-99)

381. ADMINISTRATIVE PERMIT AMENDMENTS.

01. Criteria. An administrative permit amendment is a permit revision that: (3-19-99)

- a. Corrects typographical errors; (3-19-99)
 - b. Identifies a change in the name, address, or phone number of any person identified in the Tier I operating permit, or provides a similar minor administrative change at the Tier I source; (3-19-99)
 - c. Requires more frequent monitoring or reporting by the permittee; (3-19-99)
 - d. Allows for a change in ownership or operational control of a Tier I source where the Department determines that no other change in the Tier I operating permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department; (3-19-99)
 - e. Incorporates into the Tier I operating permit the requirements from a permit to construct that was issued by the Department in accordance with Subsection 209.05.c.; or (4-5-00)
 - f. Is any other type of change that EPA and the Department have determined as part of the Part 70 program to be similar to those in Subsections 381.01.a. through 381.01.d. (3-19-99)
- 02. Administrative Permit Amendment Application Procedures. (3-19-99)**
- a. If initiated by the permittee, the permittee shall submit a request to the Department. The request shall:
 - i. State at the beginning of the request that it is a “REQUEST FOR ADMINISTRATIVE PERMIT AMENDMENT.” (3-19-99)
 - ii. Describe the proposed administrative permit amendment including any permit to construct to be incorporated; (3-19-99)
 - iii. State the date on which the proposed administrative amendment will occur at the facility; (3-19-99)
 - iv. Identify any Tier I operating permit term or condition that is no longer applicable as a result of the change; and (3-19-99)
 - v. Identify any applicable requirement that would apply to the Tier I source as a result of the change. (3-19-99)
 - b. If initiated by the Department, the Department shall notify the permittee that the Department is initiating an administrative permit amendment and provide a brief summary of the proposed administrative permit amendment including all of the information required by Subsection 381.02.a.i. through 381.02.a.v. (3-19-99)
 - c. The Department shall, within sixty (60) days of the receipt of a request for an administrative permit amendment, take final action on the request and may incorporate such changes without providing notice to the public or affected States provided that the Department designates any such administrative permit amendment as having been made pursuant to Section 381. The Department shall submit a copy of the revised permit, or an addendum, to the EPA and send the original to the permittee. (4-5-00)
- 03. Implementation Procedures. (3-19-99)**
- a. The permittee may implement the changes addressed in the request for an administrative permit amendment under Subsections 381.01.a. through 381.01.f. immediately upon submittal of the request. (3-19-99)
 - b. If the permittee obtains a permit to construct under Subsection 209.05.c., then so long as the change does not violate any terms or conditions of the existing Tier I operating permit, the permittee may operate the source described in the permit to construct immediately upon submittal of the request for an administrative permit amendment. (4-5-00)

04. Permit Shield. Upon final action by the Department, the permit shield described in Section 325 shall extend only to administrative permit amendments identified in Subsection 381.01.e. (3-19-99)

382. SIGNIFICANT PERMIT MODIFICATION.

01. Criteria. Significant modification procedures shall be used for applications requesting permit revisions that do not qualify as minor permit modifications or as administrative amendments. Nothing herein shall be construed to preclude the permittee from making changes consistent with this chapter that would render existing permit compliance terms and conditions irrelevant. A significant permit modification is a permit revision for changes that: (3-19-99)

- a.** Violate an existing Tier I permit term or condition derived from an applicable requirement; (3-19-99)
- b.** Involve significant changes to existing monitoring, reporting or recordkeeping requirements in the permit. Every significant change in existing monitoring terms or conditions (except more frequent monitoring or reporting under Subsection 381.01.c.) and every relaxation of reporting or recordkeeping terms or conditions shall be considered significant; (3-19-99)
- c.** Require or change a case-by-case determination of an emission limitation or other standard; a source-specific determination for temporary sources of ambient impacts; or a visibility or increment analysis; (3-19-99)
- d.** Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, an enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Clean Air Act or an alternative emissions limit for an early reduction of hazardous air pollutants that was approved pursuant to regulations promulgated under 42 U.S.C. Section 7412(i)(5) of the Clean Air Act; (3-19-99)
- e.** Constitute a modification under any provision of Title I of the Clean Air Act; or (3-19-99)
- f.** Could be processed as an administrative amendment or as a minor modification, except the permittee has requested the change be processed as a significant modification, including incorporating the requirements of a permit to construct that was issued by the Department in accordance with Subsection 209.05.a. (3-19-99)

02. Significant Permit Modification Application Procedures. A permittee may initiate a significant permit modification by submitting a complete significant permit modification application to the Department. The application shall: (3-19-99)

- a.** Request the use of significant permit modification procedures and state at the beginning of the request that it is a "REQUEST FOR SIGNIFICANT PERMIT MODIFICATION"; (3-19-99)
- b.** Meet the standard application requirements of Sections 314 and 315; (3-19-99)
- c.** Provide a summary sheet; (3-19-99)
 - i.** Describing the proposed significant permit modification; (3-19-99)
 - ii.** Describing and quantifying any change in emissions resulting from the significant permit modification including, but not limited to, an identification of any new regulated air pollutant(s) that will be emitted; (4-5-00)
 - iii.** Identifying any Tier I operating permit term or condition that will no longer be applicable as a result of the significant permit modification; and (3-19-99)

iv. Identifying new applicable requirement resulting from the change. (3-19-99)

d. Significant permit modifications shall be issued in accordance with all procedural requirements as they apply to Tier I operating permit issuance and renewal, including those for applications (Sections 314 and 315), public participation (Section 364), review by affected States (Sections 364 and 365), and review by EPA (Section 366). (3-19-99)

e. The Department will process the majority of significant permit modifications within nine (9) months of receiving a complete application. The Department shall determine which significant permit modification applications will be processed within nine (9) months. (3-19-99)

03. Implementation Procedures. The permittee shall comply with Sections 200 through 223 as applicable, including Subsection 209.05 governing permit to construct procedures for Tier I sources. (4-5-00)

04. Permit Shield. Upon final action by the Department, the permit shield described in Section 325 shall extend to significant permit modifications. (3-19-99)

383. MINOR PERMIT MODIFICATION.

01. Criteria. (3-19-99)

a. Minor permit modification procedures may be used for permit modifications involving economic incentives, marketable permits, emissions trading, and other similar approaches explicitly provided for in the SIP or applicable requirements promulgated by EPA. A permittee may not use minor modification procedures for changes described in Subsections 382.01.a. through 382.01.e. (3-19-99)

b. Any other permit modification that is not required to be processed as a significant permit modification under Section 382. (3-19-99)

c. Groups of a permittee's applications eligible for processing as minor permit modifications may be processed under minor permit modification procedures if collectively, the changes proposed in the minor modification applications do not exceed the lesser of: (3-19-99)

i. Ten percent (10%) of the emissions allowed by the existing Tier I operating permit for the emissions unit for which the change is requested; (3-19-99)

ii. Twenty percent (20%) of the major facility criteria in Section 008; or (4-5-00)

iii. Five (5) tons per year. (3-19-99)

02. Minor Permit Modification Application Procedures. A permittee may initiate a minor permit modification by submitting a complete standard application described in Section 314 to the Department. The application shall: (3-19-99)

a. Request the use of minor permit modification procedures and state at the beginning of the request that it is a "REQUEST FOR MINOR PERMIT MODIFICATION," designate either "INDIVIDUAL" or "GROUP" processing, and provide a summary sheet; (3-19-99)

i. Describing the proposed minor permit modification; (3-19-99)

ii. Stating the date on which the proposed minor permit modification will occur at the facility; (3-19-99)

iii. Describing and quantifying any change in emissions resulting from the minor permit modification including, but not limited to, an identification of any new regulated air pollutant(s) that will be emitted; (4-5-00)

iv. Identifying any Tier I operating permit term or condition that will no longer be applicable as a result of the minor permit modification; (3-19-99)

v. Identifying any new applicable requirement that is applicable to the Tier I source as a result of the minor permit modification; (3-19-99)

vi. Certifying by a responsible official under Section 123 that the proposed permit modification meets the criteria for a minor permit modification and, if applicable, the use of group processing procedures; and (3-19-99)

vii. Listing the permittee's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with the other applications, equals or exceeds the thresholds under Subsection 383.01.c. above. (3-19-99)

b. Include completed forms for the Department to use to notify the EPA and affected States as required under Sections 364 and 366. (3-19-99)

c. Include the applicant's suggested draft Tier I permit with the minor permit modification. (3-19-99)

03. EPA and Affected State Notification Procedures. (3-19-99)

a. Within five (5) working days of receipt of a complete minor permit modification application, the Department shall notify EPA and the affected States of the requested permit modification and forward the forms completed by the applicant and other required information, if any, to the EPA and affected States. Affected States and EPA review shall occur simultaneously. (3-19-99)

b. On a quarterly basis or within five (5) working days of receiving an application demonstrating that the aggregate of a permittee's pending applications equals or exceeds the threshold level established in Subsection 383.01.c. above, whichever is earlier, the Department shall notify EPA and the affected States of the requested permit modification and forward the forms completed by the applicant and other required information, if any, to the EPA and affected States. Affected States and EPA review shall occur simultaneously. (3-19-99)

c. The Department shall promptly notify EPA and any affected States in writing including its reasons for not accepting any such recommendation if the Department refuses to accept all the timely recommendations submitted by affected States. (3-19-99)

d. Timetable for Issuance. The Department may not issue a final permit modification until after EPA's forty-five (45) day review period or until EPA has notified the Department that EPA will not object to issuance of the permit modification, whichever is first; although the Department can approve the permit modification prior to that time. (3-19-99)

e. Within ninety (90) days of the Department's receipt of a complete minor permit modification application or within fifteen (15) days after the end EPA's forty-five (45) day review period, whichever is later, the Department shall take one (1) of the following actions: (3-19-99)

i. Issue the minor permit modification as proposed; (3-19-99)

ii. Deny the minor permit modification application; (3-19-99)

iii. Determine that the requested minor permit modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or (3-19-99)

iv. Revise the proposed minor permit modification, transmit the revised proposal to the EPA in accordance with Section 366, and notify the permittee. (3-19-99)

f. Within one hundred and eighty (180) days of the Department's receipt of a complete application for modifications eligible for group processing or within fifteen (15) days after the end of EPA's forty-five (45) day review period, whichever is later, the Department shall take one (1) of the actions specified in Subsections 383.03.e.i.,

383.03.e.ii., 383.03.e.iii., or 383.03.e.iv. (3-19-99)

04. Implementation Procedures. (3-19-99)

a. The permittee may make the change proposed in its minor permit modification immediately upon submittal of a complete application to the Department before final action by the Department. (3-19-99)

b. After the source makes the allowed change and until the Department takes any of the actions specified in Subsections 383.03.e.i., 383.03.e.ii., or 383.03.e.iii., the permittee must comply with both the applicable requirements governing the change and the proposed terms and conditions. (3-19-99)

c. During this time period, the permittee need not comply with the existing permit terms and conditions it seeks to modify; provided that, if the source fails to comply with the applicable requirements governing the change and the proposed revisions, the existing permit terms and conditions it seeks to modify may be enforced against it. (3-19-99)

05. Permit Shield. The permit shield described in Section 325 shall not apply to any minor permit modification. (3-19-99)

384. SECTION 502(B)(10) CHANGES AND CERTAIN EMISSION TRADES.

01. Criteria. This section authorizes emission changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of the Title I of the Clean Air Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or total emissions). (3-19-99)

a. Changes authorized are changes that: (3-19-99)

i. Are Section 502(b)(10) changes; (3-19-99)

ii. Are changes involving trades of increases and decreases of emissions within the permitted facility where the State Implementation Plan provides for such emissions trades without requiring a permit revision. SIP trades are allowed in compliance with this Section even if the Tier I operating permit does not already provide for such emission trading; or (3-19-99)

iii. Are changes made under the terms and conditions of the Tier I permit that authorize the trading of emissions increases and decreases within the permitted facility for the purpose of complying with a federally-enforceable emissions cap that is established by the Department in the Tier I operating permit independent of otherwise applicable requirements. (3-19-99)

b. Changes constituting a modification under Title I of the Clean Air Act or subject to a requirement under Title IV of the Clean Air Act are not authorized by this Section. (3-19-99)

02. Notice Procedures. The permittee may make a change under this Section if the permittee provides written notification to the Department and EPA so that the notification is received at least seven (7) days in advance of the proposed change; or, in the event of an emergency, the permittee provides the notification so that it is received at least twenty-four (24) hours in advance of the proposed change. The permittee, the Department, and EPA shall attach the notification to their copy of the Tier I operating permit. (3-19-99)

a. For each such change, the written notification shall: (3-19-99)

i. State at the beginning of the notification “NOTIFICATION OF SECTION 502(b)(10) CHANGE” or “NOTIFICATION OF EMISSION TRADE”; (3-19-99)

ii. Describe the proposed change; (3-19-99)

iii. Provide the date on which the proposed change will occur; (3-19-99)

- iv. Describe and quantify any expected change in emissions including identification of any new regulated air pollutant(s) that will be emitted; (4-5-00)
- v. Identify any permit term or condition that is no longer applicable as a result of the change; (3-19-99)
- vi. Specifically identify and describe the emergency, if any; and (3-19-99)
- vii. Identify any new applicable requirement that would apply to the Tier I source as a result of the change. (3-19-99)
- b.** For changes described in Subsection 384.01.a.ii., the written notification shall also include: (3-19-99)
 - i. Identification of the provisions in the SIP that provide for the emissions trade; (3-19-99)
 - ii. All of the information required by the provision in the SIP authorizing the emissions trade; (3-19-99)
 - iii. Specific identification of the provisions in the SIP with which the permittee will comply; and (3-19-99)
 - iv. The pollutants subject to the trade. (3-19-99)
- c.** For changes described in Subsection 384.01.a.iii., the written notification shall also describe how the change will comply with the terms and conditions of the permit. (3-19-99)

03. Permit Shield. The permit shield described in Section 325 shall only extend to changes made in accordance with Subsection 384.01.a.iii. (3-19-99)

385. OFF-PERMIT CHANGES AND NOTICE.

01. Criteria. This section authorizes changes that are neither addressed nor prohibited by the Tier I operating permit to be made without a permit revision if each such change meets all applicable requirements and does not violate any existing permit terms or conditions. Changes constituting a modification under Title I of the Clean Air Act, or subject to a requirement under Title IV of the Clean Air Act are not off-permit changes. (3-19-99)

02. Notice Procedure. Sources must provide written notice to the Department and EPA of each such change except changes that qualify as insignificant under Section 317, within seven (7) days of making the off-permit change. (3-19-99)

- a.** The written notification provided to the Department and EPA shall: (3-19-99)
 - i. State at the beginning of the notification “NOTIFICATION OF OFF-PERMIT CHANGE”; (3-19-99)
 - ii. Describe the off-permit change; (3-19-99)
 - iii. State the date on which the off-permit change will occur or has occurred; (3-19-99)
 - iv. Describe and quantify any change in emissions resulting from the off-permit change including, but not limited to, an identification of any new regulated air pollutant(s) that will be emitted; and (4-5-00)
 - v. Identify any new applicable requirement that is applicable to the Tier I source as a result of the off-permit change. (3-19-99)

b. The permittee shall keep a record at the facility describing all off-permit changes made at the Tier I source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and identifying the emissions resulting from those changes. (3-19-99)

03. Permit Shield Applicability. The permit shield described in Section 325 shall not apply to any off-permit change. (3-19-99)

386. REOPENING FOR CAUSE. The Department shall reopen a Tier I permit if cause exists. (3-19-99)

01. Criteria. Cause for reopening exists under any of the following circumstances: (3-19-99)

a. Additional applicable requirements become applicable to a major Tier I source with a remaining permit term of three (3) or more years; provided that no such reopening is required if the original effective date of the applicable requirement is later than the date on which the Tier I operating permit is due to expire and the original Tier I operating permit or any of its terms and conditions has not been extended pursuant to Section 368; provided further that the permittee must comply with the additional applicable requirement no later than the effective date; (3-19-99)

b. Whenever additional applicable requirements become applicable to an affected source, as defined for the purposes of the acid rain program; (3-19-99)

c. The Department or EPA determines that the Tier I operating permit contains a material mistake or inaccurate statements were used or considered in establishing the emissions standards or other terms or conditions of the Tier I operating permit; or (3-19-99)

d. The Department or EPA determines that the Tier I operating permit does not ensure compliance with the applicable requirements. (3-19-99)

02. Procedures for Reopenings. (3-19-99)

a. The Department shall follow the same procedures for reopening as they apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Reopenings shall be made as expeditiously as practicable in accordance with Sections 360 through 379. (3-19-99)

b. The Department shall notify the permittee in writing of reopening and provide a brief summary of the reason for the reopening at least thirty (30) days prior to the reopening. (3-19-99)

c. The EPA may initiate reopenings for circumstances listed in Subsections 386.01.a. through 386.01.d. by providing written notification to the Department and the permittee. (3-19-99)

i. The Department shall within ninety (90) days after receipt of notification from EPA, forward to EPA a proposed determination of termination, revocation, revision, or revocation and reissuance, as appropriate. The Administrator may extend the ninety (90) day period for an additional ninety (90) days if EPA finds that a new or revised permit application is necessary or that the Department must require the permittee to submit additional information. (3-19-99)

ii. The EPA will review the proposed determination from the Department within ninety (90) days of receipt. (3-19-99)

iii. The Department shall have ninety (90) days from receipt of an EPA objection to resolve any EPA objection and to terminate, modify, or revoke and reissue the permit. (3-19-99)

iv. If the Department fails to submit a proposed determination or fails to resolve any EPA objection, the EPA may terminate, modify, revoke and reissue the permit after taking the following actions: (3-19-99)

(1) Providing at least thirty (30) days' notice to the permittee in writing of the reason for such action, and (3-19-99)

(2) Providing the permittee an opportunity for comment on the EPA's proposed action and an opportunity for a hearing. (3-19-99)

387. REGISTRATION AND REGISTRATION FEES.

The purpose of Sections 387 through 397 is to set forth the requirements for the annual registration of Tier I sources, and the annual assessment and payment of fees to support the Tier I permitting program. (4-2-03)

388. APPLICABILITY.

01. Applicability. Sections 387 through 397 shall apply to all major facilities, as defined in Section 008, including facilities that obtained air quality permits that limited potential emissions below major facility levels during the previous year. Facilities, sources and emissions exempt under Section 301 are not required to register or pay fees. (4-2-03)

02. Deferred Sources. Certain sources may qualify for and request deferral from the Tier 1 operating permit program under Subsection 301.02.b.iv. and thereby not pay Tier I fees. On or before such time as those deferred sources are required to submit a Tier 1 operating permit application, the Department shall reconsider Sections 387 through 397 to determine whether an alternative basis upon which those sources shall register and be assessed and pay fees should be developed. (4-2-03)

389. REGISTRATION INFORMATION.

Any person owning or operating a facility or source during the previous calendar year or any portion of the previous calendar year for which Sections 387 through 397 apply shall, by April 1 of each year, register with the Department and submit the following information (submittal forms are located at the DEQ website at <http://www.deq.idaho.gov>): (3-19-07)

01. Facility Information. The name, address, telephone number and location of the facility; (5-1-94)

02. Owner/Operator Information. The name, address and telephone numbers of the owners and operators; (5-1-94)

03. Facility Emission Units. The number and type of emission units present at the facility or the Tier I permit number for the facility; and (4-2-03)

04. Pollutant Registration. The actual emissions from the previous calendar year for oxides of sulfur (SO_x), oxides of nitrogen (NO_x), particulate matter (PM₁₀), and volatile organic compounds (VOC) calculated using methods to include, but not limited to, continuous emissions monitoring (CEMS), certified source tests, material balances (mass-balance), state/industry emission factors, or AP-42 emission factors applied to throughput, actual operating hours, production rates, in-place control equipment, or the types of materials processed, stored, or combusted. (3-19-07)

05. Radionuclide Registration. The amount of radionuclides from facilities regulated under 40 CFR Part 61, Subpart H, for which the registrant wishes to be registered to emit from each source in curies per year except that no amount in excess of or less than an existing permit, consent order, or judicial order will be allowed. (5-1-94)

390. REGISTRATION FEE.

This registration fee structure shall be reviewed at least every two (2) years to assure the funds meet the presumptive minimum as defined by EPA. The annual registration fee as determined in Section 390 shall be paid as provided in Section 393. (3-19-07)

01. Tier I Annual Fee. The Tier I annual fee schedule shall be as follows: (3-19-07)

a. A fixed annual fee for Tier I major sources emitting regulated air pollutants listed in Subsection 389.04 as follows: (4-2-03)

i. Seven thousand (7,000) tons per year and above shall pay seventy-one thousand five hundred

dollars (\$71,500); (3-19-07)

ii. Four thousand five hundred (4,500) tons per year and above shall pay forty-two thousand nine hundred dollars (\$42,900); (3-19-07)

iii. Three thousand (3,000) tons per year and above shall pay twenty-eight thousand six hundred dollars (\$28,600); (3-19-07)

iv. One thousand (1,000) tons per year and above shall pay twenty-two thousand seven hundred fifty dollars (\$22,750); (3-19-07)

v. Five hundred (500) tons per year and above shall pay eleven thousand fifty dollars (\$11,050); (3-19-07)

vi. Two hundred (200) tons per year and above shall pay seven thousand one hundred fifty dollars (\$7,150); and (3-19-07)

vii. Less than two hundred (200) tons per year shall pay three thousand five hundred seventy-five dollars (\$3,575); plus (3-19-07)

b. A per ton annual fee of thirty-nine dollars and forty-eight cents (\$39.48) per ton for all regulated air pollutant emissions listed in Subsection 389.04 as follows: (3-19-07)

i. Greater than or equal to four thousand five hundred (4,500) tons per year not to exceed one hundred forty-three thousand dollars (\$143,000); (3-19-07)

ii. Greater than or equal to three thousand (3,000) but less than four thousand five hundred (4,500) tons per year not to exceed seventy-one thousand five hundred dollars (\$71,500); (3-19-07)

iii. Greater than or equal to one thousand (1,000) but less than three thousand (3,000) tons per year not to exceed thirty-five thousand one hundred dollars (\$35,100); (3-19-07)

iv. Greater than or equal to five hundred (500) but less than one thousand (1,000) tons per year not to exceed twenty-five thousand twenty-five dollars (\$25,025); (3-19-07)

v. Greater than or equal to two hundred (200) but less than five hundred (500) tons per year not to exceed ten thousand seven hundred twenty-five dollars (\$10,725); and (3-19-07)

vi. Less than two hundred (200) tons per year not to exceed three thousand five hundred seventy-five dollars (\$3,575). (3-19-07)

02. Fee-for-Service. The fee-for-service shall be as follows: Sources requesting Section 300 permit modifications or renewals, or receiving program maintenance services, including but not limited to site visits, response to public inquiries, modeling, responses to site questions and opacity readings by the Department shall be assessed a fee for actual time expended and expenses incurred by the Department in the previous calendar year in an amount not to exceed twenty thousand dollars (\$20,000) per facility per year as a fee-for-service. Service shall be conducted by qualified Department staff or contractors. (3-19-07)

03. Radionuclide Registration Fee. (4-2-03)

a. A registration fee of five dollars per curie per year (\$5/curie/year) shall be paid by facilities regulated under 40 CFR Part 61, Subpart H. (4-2-03)

b. The registration fee may be paid as provided in Section 397. (4-2-03)

391. REQUEST FOR INFORMATION.

Any additional information, plans, specifications, evidence or documents that the Department may require to make

the determinations required under Sections 387 through 397 shall be furnished on request. (4-2-03)

392. REGISTRATION FEE ASSESSMENT.

All facilities to which Sections 387 through 397 apply shall pay to the Department an annual registration fee as required by Section 390. The Department shall determine the fee based on the information supplied by the registrant and the Department's analysis of information available. In the event of a failure of a facility to submit pertinent registration information, the Department may calculate the fee and shall assess the facility the fee and the costs of calculating the fee. No later than May 15 of each year, or within fifteen (15) days following the adjournment of the regular session of the Idaho State Legislature, whichever is later, the Department shall send to each registrant, to which Sections 387 through 397 apply, by certified mail, an assessment of the annual fee payable by the registrant. (3-19-07)

393. PAYMENT OF TIER I REGISTRATION FEE.

01. Fee Payment Date. The registration fee shall be paid to and received by the Department no later than July 1 of each year, or within forty-five (45) days following the receipt of the registration fee assessment in Section 392, whichever is later. Checks should be made payable to "Department of Environmental Quality." (3-19-07)

02. Fee Payments Mailing Address. All fee payments should be sent to:

Air Quality Tier I Registration Fees
Idaho Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255 (3-19-07)

394. EFFECT OF DELINQUENCY ON APPLICATIONS.

No permit to construct or operate, other than those issued at the discretion of the Director, shall be accepted for processing, processed, or issued by the Department for any facility or to any person having Tier I operating permit fees delinquent in full or in part. (4-2-03)

395. APPEALS.

Persons may file an appeal within thirty-five (35) days of the date the person received an assessment issued under Section 392. The appeal shall be filed in accordance with IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-19-07)

396. EXEMPTIONS.

01. Registration Fees. The following facilities or sources are exempt from paying registration fees under Sections 387 through 397: (4-2-03)

a. Facilities and sources specified by the Department, after public notice, as exempt from the payment of registration fees; and (5-1-94)

b. Country grain elevators. (5-1-94)

02. Registering and Paying Fees. The following facilities or sources are exempt from registering and paying registration fees under Sections 387 through 397: (4-2-03)

a. Facilities and sources specified by the Department, after public notice, as exempt from registration and the payment of registration fees; (3-19-99)

b. Confined animal feeding operations; and (3-19-99)

c. Insignificant activities identified in Subsection 317.01. (3-19-99)

03. Paying Fees. The following emissions are exempt from registering and paying registration fees under Sections 387 through 397: (4-2-03)

a. Fugitive emissions from wood products. (3-7-95)L

b. Fugitive dust emissions, except facilities listed in Subsections 008.10.c.i. and 008.10.c.ii. Facilities listed in that section shall not be required to pay fees for fugitive dust emission in excess of one hundred (100) tons. (4-5-00)

397. LUMP SUM PAYMENTS OF REGISTRATION FEES.

01. Agreement. The Department may, in its discretion, enter an agreement with any person for the lump sum payment of all, or any addition to, the registration fees required by Section 390. (3-19-07)

02. Minimum Amount. The minimum amount for any lump sum agreement shall be three hundred thousand dollars (\$300,000). (5-1-94)

03. Payment Waiver. Upon the execution and full performance of the agreement by the person, the Department shall waive the payment requirements of Section 390. All other provisions of Sections 387 through 397 shall remain applicable to the person. (3-19-07)

398. -- 399. (RESERVED)

400. PROCEDURES AND REQUIREMENTS FOR TIER II OPERATING PERMITS.

The purpose of Sections 400 through 410 is to establish uniform procedures for the issuance of "Tier II Operating Permits." (7-1-02)

401. TIER II OPERATING PERMIT.

01. Optional Tier II Operating Permits. The owner or operator of any stationary source or facility which is not subject to (or wishes to accept limitations on the facility's potential to emit so as to not be subject to) Sections 300 through 399 may apply to the Department for an operating permit to: (7-1-02)

a. Authorize the use of alternative emission limits (bubbles) pursuant to Section 440; (5-1-94)

b. Authorize the use of an emission offset pursuant to Sections 204.02.b. or 206; (4-6-05)

c. Authorize the use of a potential to emit limitation, an emission reduction or netting transaction to exempt a facility or modification from certain requirements for a permit to construct; (4-5-00)

d. Authorize the use of a potential to emit limitation to exempt the facility from Tier I permitting requirements. (4-5-00)

e. Bank an emission reduction credit pursuant to Section 461; (5-1-94)

02. Required Tier II Operating Permits. (4-7-11)

a. A Tier II operating permit is required for any stationary source or facility which: (4-7-11)

i. Is not subject to Sections 300 through 399 with a permit to construct which establishes any emission standard different from those in these rules. (4-7-11)

ii. Has annual actual mercury emissions in excess of sixty-two (62) pounds. Fugitive emissions shall not be included in a determination of the actual mercury emissions. The owner or operator of the stationary source or facility shall submit a Tier II permit application for review and approval by the Department, no later than twelve (12) months after becoming subject to Subsection 401.02.a.ii., that includes an MBACT analysis for all sources that emit mercury. A determination of applicability under Subsection 401.02 shall be based upon best available information. An MBACT analysis for review and approval by the Department shall be included in a Tier II renewal application for any mercury emitting source not otherwise subject to MBACT. (4-7-11)

b. Stationary sources within a source category subject to 40 CFR Part 63 are exempt from the requirements of Subsection 401.02.a.ii. (4-7-11)

03. Tier II Operating Permits Required by the Department. The Director may require or revise a Tier II operating permit for any stationary source or facility whenever the Department determines that: (5-1-94)

a. Emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increment; or (4-5-00)

b. Specific emission standards, or requirements on operation or maintenance are necessary to ensure compliance with any applicable emission standard or rule. (5-1-94)

04. Multiple Tier II Operating Permits. Subject to approval by EPA, the Director may issue one (1) or more Tier II operating permits to a facility which allow any specific stationary source or emissions unit within that facility a future compliance date of up to three (3) years beyond the compliance date of any provision of these rules, provided the Director has reasonable cause to believe such a future compliance date is warranted. (4-5-00)

05. Tier II Operating Permits Establishing a Facility Emissions Cap. The owner or operator of any stationary source or facility may request a Tier II operating permit establishing a Facility Emissions Cap (FEC) pursuant to Sections 175 through 181. (4-11-06)

402. APPLICATION PROCEDURES.

Application for a Tier II operating permit must be made using forms furnished by the Department, or by other means prescribed by the Department. The application shall be certified by the responsible official and shall be accompanied by all information necessary to perform any analysis or make any determination required under Sections 400 through 410. (7-1-02)

01. Required Information. Site information, plans, description, specifications, and drawings showing the design of the stationary source, facility, or modification, the nature and amount of emissions (including secondary emissions), and the manner in which it will be operated and controlled. (5-1-94)

02. Additional Specific Information. (5-1-94)

a. For emission reduction credits, a description of the emission reduction credits proposed for use, including descriptions of the stationary sources or facilities providing the reductions, a description of the system of continuous emission control which provides the emission reduction credits, emission estimates, and other information necessary to determine that the emission reductions satisfy the requirements for emission reduction credits (Section 460); and (4-5-00)

b. For alternative emission limits (bubbles) or emission offsets, information on the air quality impacts of the traded emissions as necessary to determine the change in ambient air quality that would occur. (5-1-94)

c. For restrictions on potential to emit, a description of the proposed potential to emit limitations including the proposed monitoring and recordkeeping requirements that will be used to verify compliance with the limitations. (4-5-00)

03. Estimates of Ambient Concentrations. All estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR 51 Appendix W (Guideline on Air Quality Models). (4-5-00)

a. Where an air quality model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted, subject to written approval of the Administrator of the U.S. Environmental Protection Agency and public comment pursuant to Subsection 404.01.c. (4-5-00)

b. Methods like those outlined in the U.S. Environmental Protection Agency's "Interim Procedures for Evaluating Air Quality Models (revised)" (1984) should be used to determine the comparability of air quality models. (5-1-94)

04. Additional Information. Any additional information, plans, specifications, evidence or documents that the Department may require to make the determinations required under Sections 400 through 410 shall be furnished upon request. (5-1-92)

403. PERMIT REQUIREMENTS FOR TIER II SOURCES.

No Tier II operating permit shall be granted unless the applicant shows to the satisfaction of the Department that: (5-1-94)

01. Emission Standards. The stationary source would comply with all applicable local, state or federal emission standards. (5-1-94)

02. NAAQS. The stationary source would not cause or significantly contribute to a violation of any ambient air quality standard. (5-1-94)

404. PROCEDURE FOR ISSUING PERMITS.

01. General Procedures. General procedures for Tier II operating permits. (5-1-94)

a. Within thirty (30) days after receipt of the application for a Tier II operating permit, the Department shall determine whether the application is complete or whether more information must be submitted and shall notify the applicant of its findings in writing. (5-1-94)

b. Within sixty (60) days after the application is determined to be complete the Department shall: (5-1-94)

i. Notify the applicant in writing of the approval, conditional approval, or denial of the application if an opportunity for public comment is not required pursuant to Subsection 404.01.c. The Department shall set forth reasons for any denial; or (5-1-94)

ii. Issue a proposed approval, proposed conditional approval, or proposed denial. (5-1-94)

c. An opportunity for public comment shall be provided on an application for any Tier II operating permit pursuant to Subsection 401.01, any application which uses fluid modeling or a field study to establish a good engineering practice stack height pursuant to Sections 510 through 516 and any other application which the Director determines an opportunity for public comment should be provided. (5-1-94)

i. The Department's proposed action, together with the information submitted by the applicant and the Department's analysis of the information, shall be made available to the public in at least one (1) location in the region in which the stationary source or facility is to be located. (5-1-94)

ii. The availability of such materials shall be made known by notice published in a newspaper of general circulation in the county(ies) in which the stationary source or facility is to be located. (5-1-94)

iii. A copy of such notice shall be sent to the applicant and to appropriate federal, state and local agencies. (5-1-94)

iv. There shall be a thirty (30) day period after initial publication for comment on the Department's proposed action, such comment to be made in writing to the Department. (5-1-94)

v. After consideration of comments and any additional information submitted during the comment period, and within forty-five (45) days after initial publication of the notice, unless the Director deems that additional time is required to evaluate comments and information received, the Department shall notify the applicant in writing of approval, conditional approval, or denial of the permit. The Department shall set forth the reasons for any denial. (5-1-94)

vi. All comments and additional information received during the comment period, together with the

Department's final determination, shall be made available to the public at the same location as the preliminary determination. (5-1-94)

d. A copy of each proposed and final permit will be sent to the U.S. Environmental Protection Agency. (4-5-00)

02. Specific Procedures. Procedures for Tier II operating permits required by the Department under Subsection 401.03. (5-1-94)

a. The Director shall send a notification to the proposed permittee by registered mail of his intention to issue a Tier II operating permit for the facility concerned. The notification shall contain a copy of the proposed permit in draft form stating the proposed emission standards and any required action, with corresponding dates, which must be taken by the proposed permittee in order to achieve or maintain compliance with the proposed Tier II operating permit. (5-1-94)

b. The Department's proposed Tier II operating permit shall be made available to the public in at least one (1) location in the region in which the facility is located. The availability of such materials shall be made known by notice published in a newspaper of general circulation in the county(ies) in which the facility is located. A copy of such notice shall be sent to the applicant. There shall be a thirty (30) day period after publication for comment on the Department's proposed Tier II operating permit. Such comment shall be made in writing to the Department. (5-1-94)

c. A public hearing will be scheduled to consider the standards and limitations contained in the proposed Tier II operating permit if the proposed permittee files a request therefor with the Department within ten (10) days of receipt of the notification, or if the Director determines that there is good cause to hold a hearing. (5-1-94)

d. After consideration of comments and any additional information submitted during the comment period or at any public hearing, the Director shall render a final decision upon the proposed Tier II operating permit within thirty (30) days of the close of the comment period or hearing. At this time the Director may adopt the entire Tier II operating permit as originally proposed or any part or modification thereof. (5-1-94)

e. All comments and additional information received during the comment period, together with the Department's final permit, shall be made available to the public at the same location as the proposed Tier II operating permit. (5-1-94)

03. Availability of Fluid Models and Field Studies. The Department will notify the public of the availability of any fluid model or field study used to establish a good engineering practice stack height and provide an opportunity for a public hearing before issuing a permit or setting an emission standard based thereon. (5-1-94)

04. Permit Revision or Renewal. The Director may approve a revision of any Tier II operating permit or renewal of any Tier II operating permit provided the stationary source or facility continues to meet all applicable requirements of Sections 400 through 410. Revised permits will be issued pursuant to procedures for issuing permits (Section 404), except that the requirements of Subsection 404.01.c. shall only apply if the permit revision results in an increase in allowable emissions or if deemed appropriate by the Director. Renewed Tier II operating permits will be issued pursuant to procedures for issuing permits (Section 404), except that the requirements of Subsections 404.01.c., and 404.02.b. through 404.02.e. shall only apply if the permit revision results in an increase in allowable emissions or if deemed appropriate by the Director. The expiration of a permit will not affect the operation of a stationary source or a facility during the administrative procedure period associated with the permit renewal process. The permittee shall submit a complete application to the Department for a renewal of the terms and conditions establishing the Tier II operating permit at least six (6) months before, but no earlier than eighteen (18) months before, the expiration date of the existing permit. To ensure that the term of the permit does not expire before the terms and conditions are renewed, the permittee is encouraged to submit the application nine (9) months prior to expiration. (4-11-19)

05. Transfer of Tier II Permit. (4-11-06)

a. Transfers by Revision. A Tier II permit may be transferred to a new owner or operator in

accordance with Subsection 404.04. (4-11-06)

b. Automatic Transfers. Any Tier II permit, with or without transfer prohibition language, may be automatically transferred if: (4-11-06)

i. The current permittee notifies the Department at least thirty (30) days in advance of the proposed transfer date; (4-11-06)

ii. The notice provides written documentation signed by the current and proposed permittees containing a date for transfer of permit responsibility, designation of the proposed permittee's responsible official, and certification that the proposed permittee has reviewed and intends to operate in accordance with the permit terms and conditions; and (4-11-06)

iii. The Department does not notify the current permittee and the proposed permittee within thirty (30) days of receipt of the notice of the Department's determination that the permit must be revised pursuant to Subsection 404.04. If the Department does not issue such notice, the transfer is effective on the date provided in the notice described in Subsection 404.05.b.ii. (4-11-06)

405. CONDITIONS FOR TIER II OPERATING PERMITS.

01. Reasonable Conditions. The Department may impose any reasonable conditions upon an approval, including conditions requiring the stationary source or facility to be provided with: (5-1-94)

a. Sampling ports of a size, number, and location as the Department may require; (5-1-94)

b. Safe access to each port; (5-1-94)

c. Instrumentation to monitor and record emissions data; (5-1-94)

d. Instrumentation for ambient monitoring to determine the effect emissions from the stationary source or facility may have, or are having, on the air quality in any area affected by the stationary source or facility; and (5-1-94)

e. Any other sampling and testing facilities as may be deemed reasonably necessary. (5-1-94)

02. Performance Tests. Any performance tests required by the permit shall be performed in accordance with methods and under operating conditions approved by the Department. The owner or operator shall furnish to the Department a written report of the results of such performance test. (5-1-94)

a. Such test shall be at the expense of the owner or operator. (5-1-94)

b. The Department may monitor such test and may also conduct performance tests. (5-1-94)

c. The owner or operator of a stationary source or facility shall provide the Department fifteen (15) days prior notice of the performance test to afford the Department the opportunity to have an observer present. (5-1-94)

03. Permit Term. Tier II operating permits shall be issued for a period not to exceed five (5) years. This five (5) year operating permit restriction does not apply to the provisions contained in Section 461.02 (banked emission reduction credits). (5-1-94)

04. Single Tier II Operating Permit. When a facility includes more than one (1) stationary source or emissions unit, a single Tier II operating permit may be issued including all stationary sources and emissions units located at that facility. Such Tier II operating permit shall separately identify each stationary source and emissions unit to which the Tier II operating permit applies. When a single stationary source or facility is subject to permit modification, suspension or revocation, such action by the Director shall only affect that individual stationary source or emissions unit without thereby affecting any other stationary source or emissions unit subject to that Tier II

operating permit. (5-1-94)

406. OBLIGATION TO COMPLY.

Receiving a Tier II operating permit shall not relieve any owner or operator of the responsibility to comply with all applicable local, state and federal rules and regulations. (5-1-94)

407. TIER II OPERATING PERMIT PROCESSING FEE.

01. Tier II Operating Permit Processing Fee. A Tier II operating permit processing fee, calculated by the Department pursuant to the categories provided in the following table, shall be paid to the Department by the person receiving a Tier II permit or permit renewal. The fee calculation shall not include fugitive emissions.

TIER II OPERATING PERMIT CATEGORY	FEE
General permit, no facility specific requirements (Defined as a source category specific permit for which the Department has developed standard emission limitations, operating requirements, monitoring and recordkeeping requirements, and that require minimal engineering analysis.)	\$500
Stationary sources or facilities with permitted emissions of less than one (1) ton per year	\$1,250
Stationary sources or facilities with permitted emissions of one (1) to less than ten (10) tons per year	\$2,500
Stationary sources or facilities with permitted emissions of ten (10) to less than one hundred (100) tons per year	\$5,000
Stationary sources or facilities with permitted emissions of one hundred (100) tons or more per year	\$10,000
Synthetic minor stationary sources with permitted emissions below a major threshold level	\$10,000

(7-1-02)

02. Tier II Operating Permit Processing Fee Not Required. So long as the Department determines no other review or analysis is required, the Tier II operating permit processing fee is not required to be submitted when: (7-1-02)

- a. A permit to construct issued within the last five (5) years is rolled into a Tier II permit; (7-1-02)
- b. A change to correct typographical errors is requested; (7-1-02)
- c. A change in the name or ownership of the holder of a Tier II operating permit is requested; or (7-1-02)

d. A synthetic minor permit is issued and the Department's processing costs can be charged against fees collected from the person receiving the permit under Title V of the federal Clean Air Act amendments of 1990. (7-1-02)

408. PAYMENT OF TIER II OPERATING PERMIT PROCESSING FEE.

01. Fee Submittal. The Tier II operating permit processing fee shall be payable upon receipt of an assessment sent, along with the final permit or permit renewal, to the person receiving a permit or permit renewal by the Department. The Tier II operating permit fee should be sent to:

Air Quality Tier II Fees
 Fiscal Office

Idaho Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706-1255

(7-1-02)

02. Delinquency. Failure to submit a Tier II operating permit processing fee within forty-five (45) days of receipt of an assessment by the Department will result in a monthly accrual of interest in the amount of twelve percent (12%) per annum on the outstanding balance until the fee is paid in full. (7-1-02)

409. RECEIPT AND USAGE OF FEES.

Tier II operating permit processing fee and delinquency interest receipts shall be deposited by the Department into a stationary source permit account. Monies from this account shall be used solely toward technical, legal and administrative support of the Department's Permit to Construct and Tier II permit programs and shall not be used for those activities supported by the fund created for implementing the operating permit program required under Title V of the federal Clean Air Act amendments of 1990. The Department will review the Tier II fee schedule at least every two (2) years. (7-1-02)

410. APPEALS.

A person may be able to file an appeal within thirty-five (35) days of the date the person receives an assessment under Section 407, in accordance with IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (5-3-03)

411. -- 439. (RESERVED)

440. REQUIREMENTS FOR ALTERNATIVE EMISSION LIMITS (BUBBLES).

The owner or operator of any facility may apply to the Department for a Tier I or Tier II operating permit (or a revision thereto) to authorize an alternative emission limit for any stationary source or emissions unit within the facility. The Department may issue or revise a Tier II operating permit or issue a significant modification to a Tier I operating permit which authorizes an alternative emission limit provided that all of the following are met: (4-5-00)

01. Actual Emissions. There is no increase in actual emissions of the applicable air pollutant at the facility. (4-11-06)

02. Emission Reductions. All emission reductions satisfy the requirements for emission reduction credits (Section 460). (5-1-94)

03. Trade Requirements. All trades involve the same air pollutant and demonstrate ambient equivalence as specified in Subsection 441.02. (4-11-06)

04. Applicable Requirement Prohibition. No applicable Section of 40 CFR Part 60, 40 CFR Part 61, or 40 CFR Part 63, best available control technology requirement, lowest achievable emission rate requirement, or visual emission standard is exceeded. (5-1-94)

05. Actual HAP/TAP Emissions. The actual emissions of any hazardous air pollutant or any toxic air pollutant are not increased. (5-1-94)

06. Fugitive Dust Trades. Where the trade involves fugitive dust, the owner or operator shall undertake an adequate post-approval monitoring program to evaluate the ambient results of the controls. If the monitoring data indicate that the air quality effects are not equivalent, then: (5-1-94)

a. Further reductions must be proposed by the owner or operator; and/or (5-1-94)

b. The applicable emission standards in the operating permit will be adjusted by the Department; (5-1-94)

07. Compliance Schedule Extension. Any compliance schedule extension for a facility in a nonattainment area is consistent with reasonable further progress. (5-1-94)

08. EPA Approval. Approval of the U.S. Environmental Protection Agency, and where necessary the

appropriate court, has been obtained for any individual stationary source or facility which is the subject of a federal enforcement action or outstanding enforcement order. (5-1-94)

441. DEMONSTRATION OF AMBIENT EQUIVALENCE.

The demonstration of ambient equivalence shall: (5-1-94)

01. VOC Trades. For trades involving volatile organic compounds, show that total emissions are not increased for the air basin in which the stationary source or facility is located. (5-1-94)

02. Other Trades. For trades involving any other air pollutant, show through appropriate dispersion modeling that the trade will not cause a significant contribution at any modeled receptor. (4-11-06)

442. -- 459. (RESERVED)

460. REQUIREMENTS FOR EMISSION REDUCTION CREDIT.

In order to be credited in a permit to construct, Tier I operating permit or Tier II operating permit any emission reduction must satisfy the following: (5-1-94)

01. Allowable Emissions. The proposed level of allowable emissions must be less than the actual emissions of the stationary source(s) or emission unit(s) providing the emission reduction credit. No emission reduction(s) can be credited for actual emissions which exceed the allowable emissions of the stationary source(s) or emission unit(s). (5-1-94)

02. Timing of Emission Reduction. In an attainment or unclassifiable area any emission reduction which occurs prior to the minor source baseline date must have been banked with the Department prior to the minor source baseline date in order to be credited; in a nonattainment area the emission reduction must occur after the base year of any control strategy for the particular air pollutant. (4-11-06)

03. Emission Rate Calculation. The emission rate before and after the reduction must be calculated using the same method and averaging time and the characteristics necessary to evaluate any future use of the emission reduction credit must be described. (5-1-94)

04. Permit Issuance. A permit to construct, Tier I operating permit or Tier II operating permit shall be issued which establishes a new emission standard for the facility, or restricts the operating rate, hours of operation, or the type or amount of material combusted, stored or processed for the stationary source(s) or emission unit(s) providing the emission reductions. (4-5-00)

05. Imposed Reductions. Emission reductions imposed by local, state or federal regulations or permits shall not be allowed for emission reduction credits. (5-1-94)

06. Mobile Sources. The proposed level of allowable emissions must be less than the actual emissions of the mobile sources or stationary sources providing the emission reduction credit. Mobile source emission reduction credits shall be made state or federally enforceable by SIP revision. The form of the SIP revision may be a state or local regulation, operating permit condition, consent or enforcement order, or any mechanism available to the state that is enforceable. (4-5-00)

461. REQUIREMENTS FOR BANKING EMISSION REDUCTION CREDITS (ERC'S).

01. Application to Bank an ERC. The owner or operator of any facility may apply to the Department for a Tier I or Tier II operating permit (or a revision thereto) to bank an emission reduction credit. An application to bank an emission reduction credit must be received by the Department no later than one (1) year after the reduction occurs. The Department may issue or revise such a Tier I or Tier II operating permit and a "Certificate of Ownership" for an emission reduction credit, provided that all emission reductions satisfy the requirements for emission reduction credits (Section 460). (5-1-94)

02. Banking Period. Emission reduction credits may be banked with the Department. The banked emission reduction credits may be used for offsets, netting in accordance with the definition of net emissions increase

at Section 007, or alternative emission limits (bubbles), or sold to other facilities. The use of banked emission reduction credits must satisfy the applicable requirements of the program in which they are proposed for use, including approval of a permit to construct or a Tier I or Tier II operating permit. (4-5-00)

03. Certificate of Ownership. Upon issuing or revising a Tier I or Tier II operating permit for an emission reduction credit, the Department will issue a "Certificate of Ownership" which will identify the owner of the credits, quantify the credited emission reduction and describe the characteristics of the emissions which were reduced and emissions unit(s) which previously emitted them. (5-1-94)

04. Adjustment by Department. If at any time the Department, or the owner or operator of a facility which has produced an emission reduction credit, finds that the actual reduction in emissions differs from that in the certificate of ownership, the Department will adjust the amount of banked emission reduction credits to reflect the actual emission reduction and issue a revised certificate of ownership. (5-1-94)

05. Proportional Discounts. If at any time the Department finds that additional emission reductions are necessary to attain and maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increment, banked emission reduction credits at facilities in the affected area may be proportionally discounted by an amount which will not exceed the percentage of emission reduction required for that area. (4-5-00)

06. Transfer of Ownership. Whenever the holder of a certificate of ownership for banked emission reduction credits, sells or otherwise transfers ownership of all or part of the banked credits, the holder shall submit the certificate of ownership to the Department. The Department will issue a revised certificate(s) of ownership which reflects the old and new holder(s) and amount(s) of banked emission reduction credits. (5-1-94)

07. Public Registry. The Department will maintain a public registry of all banked emissions reduction credits, indicating the current holder of each certificate of ownership and the amount and type of credited emissions. (5-1-94)

462. -- 499. (RESERVED)

500. REGISTRATION PROCEDURES AND REQUIREMENTS FOR PORTABLE EQUIPMENT.

01. Registration Requirements. All existing portable equipment shall be registered within ninety (90) days after the original effective date of this Section 500 and at least ten (10) days prior to relocating, using forms provided by the Department, except that no registration is required for mobile internal combustion engines, marine installations and locomotives. (5-1-94)

02. Compliance with Rules and Regulations. Possessing a "Certificate of Registration" does not relieve any owner or operator of the responsibility to comply with all applicable local, state and federal rules and regulations. (5-1-94)

501. -- 509. (RESERVED)

510. STACK HEIGHTS AND DISPERSION TECHNIQUES.

The purpose of Sections 510 through 516 is to establish criteria for good engineering practice for stack heights and dispersion techniques. (5-1-94)

511. APPLICABILITY.

The provisions of Sections 510 through 516 shall apply to existing, new, and modified stationary sources and facilities. The provisions of Sections 510 through 516 do not apply to stack heights in existence, or dispersion techniques implemented, on or before December 31, 1970, except where regulated or toxic air pollutant(s) are being emitted from such stacks or using such dispersion techniques by sources which were constructed, or reconstructed, or for which major modifications were carried out, after December 31, 1970. (4-11-06)

512. DEFINITIONS.

For the purpose of Sections 500 through 516: (5-1-94)

01. Dispersion Technique. Any technique which attempts to affect the concentration of a regulated or toxic air pollutant in the ambient air by: (4-11-06)

a. Using that portion of a stack which exceeds good engineering practice stack height; (5-1-94)

b. Varying the rate of emission of a regulated or toxic air pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or (4-11-06)

c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one (1) stack, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This does not include the reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream; smoke management in agricultural or silvicultural prescribed burning programs; episodic restrictions on residential woodburning and open burning; techniques which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed five thousand (5,000) tons per year; or the merging of exhaust gas streams where: (5-1-94)

i. The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams; (5-1-94)

ii. After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a regulated or toxic air pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the regulated or toxic air pollutant affected by such change in operation; or (4-11-06)

iii. Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, the reviewing agency shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source. (5-1-94)

02. Excessive Concentration. For the purpose of determining good engineering practice stack height in a fluid modeling evaluation or field study as provided for in Subsection 512.03.c. "Excessive Concentration" means: (5-1-94)

a. For sources seeking credit for stack height exceeding that established under Subsection 512.03.b., a maximum ground level concentration due to emissions from a stack due in whole or in part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent (40%) in excess of the maximum concentration experienced in the absence of such effects, and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the prevention of significant deterioration program, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent (40%) in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under Subsection 512.02.a., shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Department, an alternative emission rate shall be established in consultation with the source owner or operator. (5-1-94)

b. For sources seeking credit after October 1, 1983, for increases in existing stack heights up to the heights established under Subsection 512.03.b., either: (5-1-94)

i. A maximum ground-level concentration due in whole or in part to downwash, wakes or eddy effects as provided in Subsection 512.02.a., except that the emission rate specified by any applicable SIP or, in the absence of such a limit, the actual emission rate shall be used; or (5-1-94)

ii. The actual presence of a local nuisance caused by the existing stack as determined by the authority administering the Department. (5-1-94)

c. For sources seeking credit after January 12, 1979, for a stack height determined under Subsection 512.03.b., where the Department requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in Subsection 512.03.b., a maximum ground-level concentration due in whole or in part to downwash, wakes or eddy effects that is at least forty percent (40%) in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects. (5-1-94)

03. Good Engineering Practice (GEP) Stack Height. The greater of: (5-1-94)

a. Sixty-five (65) meters, measured from the ground-level elevation at the base of the stack; (5-1-94)

b. For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable preconstruction permits or approvals required,

$$H = 2.5S$$

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation. For all other stacks provided that the Department may require the use of a field study or fluid model to verify GEP stack height for the source,

$$H = S + 1.5L$$

where:

(5-1-94)

i. H = good engineering practice stack height measured from the ground-level elevation at the base of the stack. (5-1-94)

ii. S = height of nearby structure(s) measured from the ground-level elevation at the base of the stack. (5-1-94)

iii. L = lesser dimension, height or projected width, of nearby structure(s). (5-1-94)

c. The height demonstrated by a fluid model or a field study approved by the Department which ensures that the emissions from a stack do not result in excessive concentrations of any regulated or toxic air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, structures, or terrain features. (4-11-06)

04. Nearby Structures or Terrain Features. "Nearby" as applied to a specific structure or terrain feature under the definition of "good engineering practice stack height"; and (5-1-94)

a. For purposes of applying the formulae provided under Subsection 512.03.b., means that distance up to five (5) times the lesser of the height or the width dimension of a structure, but not greater than one-half (1/2) mile (0.8 km); and (5-1-94)

b. For conducting demonstrations under Subsection 512.03.c., means not greater than one-half (0.5) mile (0.8 km), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten (10) times the maximum height of the feature, not to exceed two (2) miles if such feature achieves a height one-half (0.5) mile (0.8 km) from the stack that is at least forty percent (40%) of the GEP stack height determined by the formulae provided in Subsection 512.03.b., or twenty-six (26) meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack. (4-5-00)

05. Stack in Existence. The owner or operator had: (5-1-94)

a. Begun, or caused to begin, a continuous program of physical on-site construction of the stack; or (5-1-94)

b. Entered into binding agreements or contractual obligations which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time. (5-1-94)

513. REQUIREMENTS.

The required degree of emission control of any regulated or toxic air pollutant shall not be affected by the amount of any stack height that exceeds good engineering practice (GEP) or by any other dispersion technique. (4-11-06)

514. OPPORTUNITY FOR PUBLIC HEARING.

Whenever a new or revised emission limitation is to be based on a good engineering practice stack height that exceeds the height allowed by the formulae in Subsections 512.03.a. and 512.03.b., the Department will notify the public of the availability of the demonstration study submitted under Subsection 512.03.c., and will provide an opportunity for public hearing on the demonstration study. (5-1-94)

515. APPROVAL OF FIELD STUDIES AND FLUID MODELS.

Any field study or fluid model used to demonstrate GEP stack height under Subsection 512.03.b. or 512.03.c., and any determination of “excessive concentration” under Subsection 512.02 must be approved by the EPA prior to an emission limit being established. The construction of any new stack, or any increase to the height of any existing stack to the height determined by the formulae in Subsection 512.03.b., without completing a fluid model and a field study must be approved by the EPA. (5-1-94)

516. NO RESTRICTION ON ACTUAL STACK HEIGHT.

The provisions of Sections 510 through 516 do not restrict, in any manner, the actual stack height of any stationary source or facility. (5-1-94)

517. MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM.

01. Purpose. The purpose of Sections 517 through 527 is to set forth the minimum standards for a motor vehicle inspection and maintenance program, established pursuant to Section 39-116B, Idaho Code, for registered motor vehicles as defined in Section 49-123, Idaho Code. This program is designed to follow the basic inspection and maintenance program defined in 40 CFR 51.352. (4-4-13)

02. Applicability. Sections 517 through 527 apply only to the counties of Ada and Canyon and the cities of Boise, Eagle, Garden City, Meridian, Kuna, Star, Caldwell, Greenleaf, Melba, Middleton, Nampa, Notus, Parma, and Wilder. (4-4-13)

03. Options. (3-29-10)

a. Section 39-116B, Idaho Code, provides the counties and cities listed in Subsection 517.02 with the following implementation options. The counties and cities may: (3-29-10)

i. Enter into a joint exercise of powers agreement with the Director to implement a motor vehicle inspection and maintenance program; or (3-29-10)

ii. Obtain Department approval to implement an alternative motor vehicle emissions control strategy that will result in emissions reductions equivalent to that of a motor vehicle inspection and maintenance program. (3-29-10)

b. If neither of the options listed in Subsection 517.03.a. are selected, the Department shall implement the motor vehicle inspection and maintenance program. (3-29-10)

04. Governing Authority. For the purpose of Sections 517 through 527, governing authority means

the governing entity responsible for the development and implementation of the motor vehicle inspection and maintenance program. The governing entity may be the counties and cities listed in Subsection 517.02 or the Department. The governing authority shall adopt Sections 517 through 527 of these rules. (4-4-13)

- 05. Exemptions.** Sections 517 through 527 do not apply to the following: (4-4-13)
 - a.** Electric or hybrid motor vehicles; (3-29-10)
 - b.** Motor vehicles with a model year less than five (5) years old; (3-29-10)
 - c.** Motor vehicles with a model year older than 1981; (3-29-10)
 - d.** Classic automobiles as defined by Section 49-406A, Idaho Code; (3-29-10)
 - e.** Motor vehicles with a maximum vehicle gross weight of less than fifteen hundred (1500) pounds; (3-29-10)
 - f.** Motor vehicles registered as motor homes as defined by Section 49-114, Idaho Code; (3-29-10)
 - g.** Motorized farm equipment; and (3-29-10)
 - h.** Registered motor vehicles engaged solely in the business of agriculture. (3-29-10)

518. REQUIREMENTS FOR LICENSING AUTHORIZED INSPECTION STATIONS OR RETEST STATIONS.

- 01. General.** (3-29-10)
 - a.** No person or enterprise shall in any manner represent any place as an inspection station or retest station unless such station is operated under a valid license issued by the governing authority. (3-29-10)
 - b.** No license for any inspection station or retest station may be assigned, transferred or used by other than the original applicant for that specific station. (3-29-10)
- 02. Applications for License.** Applications for license as an inspection station or retest station shall be made on the forms provided by the governing authority. No license shall be issued unless the governing authority finds that the facilities, tools and equipment of the applicant comply with the requirements set forth in Subsections 518.03 or 518.04. (3-29-10)
- 03. Requirements for Licensed Inspection Stations.** In order to qualify for issuance and continuance of an inspection station license, an establishment must meet the following requirements: (3-29-10)
 - a.** Must have a permanent location; (3-29-10)
 - b.** Must ensure that at least one employee, who has been issued an emissions technician license by the governing authority, is on duty at all times of station operation; (3-29-10)
 - c.** Must demonstrate the ability to perform the emissions test and comply with reporting and recordkeeping requirements established by the governing authority; (3-29-10)
 - d.** Must obtain and maintain in force appropriate business liability insurance; and (3-29-10)
 - e.** Must have the tools, equipment and supplies, as required by the governing authority, available for performance of the emissions test. (3-29-10)
- 04. Requirements for Licensed Retest Stations.** In order to qualify for issuance and continuance of a retest station license, an establishment must meet the requirements listed in Subsection 518.03. (4-4-13)

05. Approval Procedure. (3-29-10)

a. Applications received by the governing authority will be reviewed for completeness and an inspection of the facility will be performed. An inspection report will be prepared for the governing authority's review. (3-29-10)

b. Stations which meet the requirements of Subsections 518.01 through 518.04 will be granted an inspection station license or retest station license and issued a station sign. The station sign and license shall be posted in a conspicuous place, readily visible to the public. The station sign and license shall remain the property of the governing authority. (3-29-10)

06. Revocation of Inspection Station or Retest Station License. The governing authority has the authority to issue warnings and suspend or revoke a station license upon a showing that emission tests are not being performed in accordance with these rules and any other specifications or procedures enacted by the governing authority. (3-29-10)

519. REQUIREMENTS FOR LICENSING AUTHORIZED EMISSIONS TECHNICIANS.

01. Applications for License. Application for a license as an emissions technician shall be filed with the governing authority. Applications for the emissions technician license shall be completed on forms provided by the governing authority. (3-29-10)

02. Requirements for Issuance of an Emissions Technician License. An applicant must demonstrate the knowledge and skill necessary to perform an emissions test of motor vehicle engines. The governing authority shall require the minimum standards set forth in 40 CFR 51.367, incorporated by reference into these rules at Section 107. (3-29-10)

03. Revocation of Emissions Technician License. The governing authority has the authority to issue warnings and suspend or revoke an emissions technician license upon a showing that emission tests are not being performed in accordance with these rules or any other specifications or procedures enacted by the governing authority. (3-29-10)

520. INSPECTION FREQUENCY.

The inspections shall occur no more than once every two (2) years. If the owner of the motor vehicle obtains a waiver pursuant to Section 526, the motor vehicle must be inspected the following year. (3-29-10)

521. TEST PROCEDURE REQUIREMENTS.

The governing authority shall require the minimum standards set forth in 40 CFR 51.357(a), incorporated by reference into these rules at Section 107. (3-29-10)

522. TEST STANDARDS.

The governing authority shall require the minimum standards set forth in 40 CFR 51.357(b), incorporated by reference into these rules at Section 107. (3-29-10)

523. TEST EQUIPMENT.

The governing authority shall require the minimum standards set forth in 40 CFR 51.358, incorporated by reference in to these rules at Section 107. (3-29-10)

524. INSPECTION FEE.

The fee for a motor vehicle inspection, as established in Section 39-116B(2)(g), Idaho Code, shall not exceed twenty dollars (\$20) per vehicle. This fee is necessary to carry out the provisions of Sections 517 through 527 and to fund an air quality public awareness and outreach program. (4-4-13)

525. PUBLIC OUTREACH.

The governing authority shall issue a pamphlet for distribution to owners of motor vehicles. The pamphlet shall include, but not be limited to, the reasons for and the methods of the inspection. The governing authority may also

establish and operate an informational hotline, website, or any other means of outreach that is deemed to be efficient and effective by the governing authority. (3-29-10)

526. WAIVERS.

The governing authority shall require the minimum standards set forth in 40 CFR 51.360(a), incorporated by reference into these rules at Section 107. If the owner of the motor vehicle obtains a waiver, the motor vehicle must be inspected the following year. (3-29-10)

01. Financial Hardship. If repairs required under Section 526 pose a financial hardship on the owner of the motor vehicle, the governing authority shall have the authority to issue a waiver without requiring expenditure of the amounts listed in 40 CFR 51.360(a). Such determination of hardship shall be made on a case-by-case basis by the governing authority. (3-29-10)

02. Public Service Vehicles Operating Less than 1,000 Miles Per Year. For public service vehicles owned by a governmental entity and operated less than one thousand (1,000) miles per year, the governing authority shall have the authority to issue a waiver without requiring expenditure of the amounts listed in 40 CFR 51.360(a). (3-29-10)

527. EXTENSIONS.

The governing authority shall have the authority to grant extensions for vehicles or vehicle owners temporarily located outside of a testing area that cannot easily be returned to an area for testing. The extension shall not exceed one (1) year. For active duty military personnel and their families stationed outside the applicable testing area specified in Subsection 517.02, a time extension not to exceed the testing period is available. Military extensions shall be renewed with current military orders. (4-4-13)

528. -- 549. (RESERVED)

550. AIR POLLUTION EMERGENCY RULE.

The purpose of Sections 550 through 562 is to define criteria for an air pollution emergency, to formulate a plan for preventing or alleviating such an emergency, and to specify rules for carrying out the plan. The procedures for implementing Sections 550 through 562 are delineated in Chapter VI of the SIP. (5-1-94)

551. EPISODE CRITERIA.

The purpose of Sections 551 through 556 is to establish criteria for stages of atmospheric stagnation and/or degraded air quality. (5-1-94)

552. STAGES.

The Department has defined four (4) stages of atmospheric stagnation and/or degraded air quality. (5-1-94)

01. Stage 1 -- Air Pollution Forecast and Caution. An internal watch by the Department shall be actuated by a National Weather Service report that an Atmospheric Stagnation Advisory has been issued, or the equivalent local forecast of stagnant atmospheric conditions. (3-15-02)

02. Stage 2 -- Alert. This is the first stage at which air pollution control actions by industrial sources are to begin. (5-1-94)

03. Stage 3 -- Warning. The warning stage indicates that air quality is further degraded and that control actions are necessary to maintain or improve air quality. (5-1-94)

04. Stage 4 -- Emergency. The emergency stage indicates that air quality has degraded to a level that will substantially endanger the public health and that the most stringent control actions are necessary. (5-1-94)

553. EFFECT OF STAGES.

Once an episode stage is reached or the Department determines that reaching a particular stage is imminent, emergency action corresponding to that stage will remain in effect until air quality measurements indicate that another stage (either lower or higher) has been attained or the Department determines that reaching another stage (either lower or higher) is imminent. At such time, actions corresponding to the next stage will go into effect. This

procedure will continue until the episode is terminated. The air quality criteria used to define each of the episode stages for carbon monoxide, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide are specified in Section 556. The levels will be determined by the Department through its analysis of meteorological and ambient air quality monitoring data. (3-15-02)

554. -- 555. (RESERVED)

556. CRITERIA FOR DEFINING LEVELS WITHIN STAGES.

The air quality criteria defining each of these levels for carbon monoxide (CO), nitrogen dioxide (NO₂), ozone (O₃), particles with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers (PM-10), particles with an aerodynamic diameter less than or equal to a nominal two point five (2.5) micrometers (PM-2.5), and sulfur dioxide (SO₂) are: (3-15-02)

01. Stage 1 -- Forecast and Caution. A Stage 1 Forecast and Caution shall be declared by the Department when particulate concentrations reach, or are forecasted to reach, and persist, at or above the levels listed below. The Department may call a Stage 1 Forecast and Caution, if it determines, after evaluating the pertinent meteorology, weather conditions and air quality conditions such as visibility, and source parameters such as source type, strength, location and projected duration, that a Stage 1 Forecast and Caution is required to protect the public health.

CO	NA
NO ₂	NA
O ₃	NA
SO ₂	NA
PM-2.5	80 ug/m3 1 hour average
PM-2.5	50 ug/m3 24 hour average
PM-10	385 ug/m3 1 hour average
PM-10	150 mg/m3 24 hour average

(3-15-02)

02. Stage 2 -- Alert.

CO - 17 mg/m3 (15 ppm)	8-hour average
NO ₂ - 1130 ug/m3 (0.6 ppm)	1-hour average
- 282 ug/m3 (0.15 ppm)	24-hour average
O ₃ - 400 ug/m3 (0.2 ppm)	1-hour average
PM-10 - 350 ug/m3	24-hour average
SO ₂ - 800 ug/m3 (0.3 ppm)	24-hour average

(4-5-00)

03. Stage 3 -- Warning.

CO - 34 mg/m3 (30 ppm)	8-hour average
NO ₂ - 2260 ug/m3 (1.2 ppm),	1-hour average
- 565 ug/m3 (0.3 ppm)	24-hour average

O ₃ - 800 ug/m3 (0.4 ppm)	1-hour average
PM-10 - 420 ug/m3	24-hour average
SO ₂ - 1600 ug/m3 (0.6 ppm)	24-hour average

(4-5-00)

04. Stage 4 -- Emergency.

CO - 46 mg/m3 (40 ppm)	8-hour average
NO ₂ - 3000 ug/m3 (1.6 ppm)	1-hour average
- 750 ug/m3 (0.4 ppm)	24-hour average
O ₃ - 1000 ug/m3 (0.5 ppm)	1-hour average
PM-10 - 500 ug/m3	24-hour average
SO ₂ - 2100 ug/m3 (0.8 ppm)	24-hour average

(4-5-00)

557. PUBLIC NOTIFICATION.

The purpose of Sections 557 through 560 is to establish requirements for public notification regarding atmospheric stagnation and/or degraded air quality. (5-1-94)

558. INFORMATION TO BE GIVEN.

01. Information to Be Given. On the basis of degrading air quality as determined by the Director, and the criteria for emergency episode stages as shown in Section 556, the Director will utilize appropriate media and techniques including, but not limited to, print, electronic and internet, to insure that the following information is announced to the public, affected government, and commercial, industrial institutional and agricultural entities as practicable: (3-15-02)

- a. Definition of the extent of the problem; (5-1-94)
- b. Indication of the action taken by the Director; (5-1-94)
- c. Air pollution forecast for next few days; (5-1-94)
- d. Notice of when the next statement from the Department will be issued; (5-1-94)
- e. Listing of all general procedures which the public, commercial, institutional and industrial sectors are required to follow; (5-1-94)
- f. Specific warnings and advice to those persons who because of acute or chronic health problems, may be most susceptible to the effects of the episode. (3-15-02)
- g. Location and description of the affected area. (3-15-02)

559. MANNER AND FREQUENCY OF NOTIFICATION.

Such announcements will be made by the news media during regularly scheduled television and radio news broadcasts and in all editions of specified newspapers. In addition, when the stage 4 emergency level is reached, television and radio stations designated by the Department will repeat these announcements at one (1) hour intervals during normal broadcasting hours. (5-1-94)

560. NOTIFICATION TO SOURCES.

The Department will assure that all significant sources of the applicable air pollutant(s) are notified of the emergency

stage by telephone or other appropriate means. (4-11-06)

561. GENERAL RULES.

All persons in the designated stricken area shall be governed by the following rules for each emergency episode stage. The Director may waive one (1) or more of the required measures at each episode stage if, on the basis of information available to him, he judges that a measure is an inappropriate response to the specific episode conditions which then exist. (5-1-94)

01. Stage 1 -- Air Pollution Forecast and Caution. There shall be no new ignition of open burning of any kind. The Director may require, if practicable, or in an emergency situation, the cessation of any open burning. (3-15-02)

02. Stage 2 -- Alert. (5-1-94)

a. There shall be no open burning of any kind. (5-1-94)

b. The use of burners and incinerators for the disposal of any form of solid waste shall be prohibited. (3-15-02)

c. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of 12:00 pm (noon) and 4:00 p.m. (5-1-94)

d. Commercial, industrial and institutional facilities utilizing coal or residual fuel oil are required to switch to natural gas or distillate oil if available. (5-1-94)

03. Stage 3 -- Warning. (5-1-94)

a. There shall be no open burning of any kind. (5-1-94)

b. The use of burners and incinerators for the disposal of any form of solid waste or liquid waste shall be prohibited. (3-15-02)

c. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of 12:00 pm (noon) and 4:00 p.m. (5-1-94)

d. Commercial, industrial and institutional facilities utilizing coal or residual fuel are required to either: (5-1-94)

i. Switch completely to natural gas or distillate oil; or (5-1-94)

ii. If these low sulfur fuels are not available, curtail the use of existing fuels to the extent possible without causing injury to persons or damage to equipment. (5-1-94)

04. Stage 4 -- Emergency. This will be called only with specific concurrence of Governor. (5-1-94)

a. There shall be no open burning of any kind. (5-1-94)

b. The use of burners and incinerators for the disposal of any form of solid or liquid waste shall be prohibited. (3-15-02)

c. All places of employment described below shall immediately cease operations: (5-1-94)

i. All mining and quarrying operations; (5-1-94)

ii. All construction work except that which must proceed to avoid injury to persons; (5-1-94)

iii. All manufacturing establishments except those required to have in force an air pollution emergency

plan; (5-1-94)

iv. All wholesale trade establishments, i.e. places of business primarily engaged in selling merchandise to retailers or industrial, commercial, institutional or professional users, or to other wholesalers, or acting as agents in buying merchandise for or selling merchandise to such persons or companies except those engaged in the distribution of drugs, surgical supplies and food; (5-1-94)

v. All offices of local, county and State government including authorities, joint meetings, and other public bodies excepting such agencies which are determined by the chief administrative officer of local, county, or State government authorities, joint meetings and other public bodies to be vital for public safety and welfare and the enforcement of the provisions of this order; (5-1-94)

vi. All retail trade establishments except pharmacies, surgical supply distributors, and stores primarily engaged in the sale of food; (5-1-94)

vii. Banks, credit agencies other than banks, securities and commodities brokers, dealers, exchanges and services; offices of insurance carriers, agents and brokers, real estate offices; (5-1-94)

viii. Wholesale and retail laundries, laundry services and cleaning and dyeing establishments; photographic studios; beauty shops, barber shops, shoe repair shops; (5-1-94)

ix. Advertising offices, consumer credit reporting, adjustment and collection agencies; duplicating, addressing, blueprinting; photocopying, mailing, mailing list and stenographic services; equipment rental services, commercial testing laboratories; (5-1-94)

x. Automobile repair, automobile services, garages except those located adjacent to state or interstate highways; (5-1-94)

xi. Establishments rendering amusement and recreational services including motion picture theaters; (5-1-94)

xii. Elementary and secondary schools, colleges, universities, professional schools, junior colleges, vocational schools, and public and private libraries. (5-1-94)

d. All commercial and manufacturing establishments not included in this order will institute such actions as will result in maximum reduction of the applicable air pollutant(s) from their operation by ceasing, curtailing, or postponing operations which emit the applicable air pollutants to the extent possible without causing injury to persons or damage to equipment. These actions include limiting boiler lancing or soot blowing operations for fuel burning equipment to between the hours of 12:00 pm (noon) and 4:00 p.m. (4-11-06)

e. When the emergency episode is declared for carbon monoxide, the use of motor vehicles is prohibited except in emergencies or with the approval of local or state police or the Department. (5-1-94)

562. SPECIFIC EMERGENCY EPISODE ABATEMENT PLANS FOR POINT SOURCES.

In addition to the general rules presented in Section 561, the Department shall require that specific point sources adopt and implement their own Emergency Episode Abatement Plans in accordance with the criteria set forth in Sections 551 through 556. An individual plan can be revised periodically by the Department after consultation between the Department and the owners and/or operators of the source. (5-1-94)

563. TRANSPORTATION CONFORMITY.

The purpose of Sections 563 through 574 is to adopt and implement Section 176(c) of the Clean Air Act (CAA), as amended [42 U.S.C. 7401 et seq.], and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects developed, funded, or approved by the United States Department of Transportation (USDOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). These sections set forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to Section 110 and Part D of the CAA. The publications referred to in Sections 563 through 574

are available from the IDEQ. (3-25-16)

564. (RESERVED)

565. ABBREVIATIONS.

- 01. CAA.** Clean Air Act, as amended. (3-30-01)
- 02. CFR.** Code of Federal Regulations. (3-30-01)
- 03. CO.** Carbon Monoxide. (3-30-01)
- 04. EPA.** Environmental Protection Agency. (3-30-01)
- 05. FHWA.** Federal Highway Administration of USDOT. (3-30-01)
- 06. FTA.** Federal Transit Administration of USDOT. (3-30-01)
- 07. HPMS.** Highway Performance Monitoring System. (3-30-01)
- 08. ICC.** Interagency Consultation Committee. (3-30-01)
- 09. IDEQ.** Idaho Department of Environmental Quality. (3-30-01)
- 10. ITD.** Idaho Transportation Department. (3-30-01)
- 11. LHTAC** Local Highway Technical Assistance Council. (3-30-01)
- 12. LRTP.** Long Range Transportation Plan. (3-30-01)
- 13. MPO.** Metropolitan Planning Organization. (3-30-01)
- 14. NAAQS.** National Ambient Air Quality Standards. (3-30-01)
- 15. NEPA.** National Environmental Policy Act, as amended. (3-30-01)
- 16. O3.** Ozone. (3-30-01)
- 17. PM.** Particulate matter. (3-30-01)
- 18. PM_x.** Particles with an aerodynamic diameter less than or equal to a nominal X micrometers, where X denotes any size fraction number regulated by the NAAQs (e.g.: 10, 2.5). (3-30-01)
- 19. STIP.** Statewide Transportation Improvement Program. (3-30-01)
- 20. TCM.** Transportation Control Measure. (3-30-01)
- 21. TIP.** Transportation Improvement Program. (3-30-01)
- 22. USDOT.** United States Department of Transportation. (3-30-01)
- 23. VMT.** Vehicle Miles Traveled. (3-30-01)

566. DEFINITIONS FOR THE PURPOSE OF SECTIONS 563 THROUGH 574 AND 582.

Terms used but not defined in Sections 563 through 574 and 582 shall have the meaning given them by the CAA, Titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other USDOT regulations, in that order of priority. For the purpose of Sections 563 through 574 and 582: (3-30-01)

01. Applicable Implementation Plan. Applicable Implementation Plan is defined in Section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under Section 110 of the CAA, or promulgated under Section 110(c) of the CAA, or promulgated or approved pursuant to regulations promulgated under Section 301(d) of the CAA and which implements the relevant requirements of the CAA. (3-30-01)

02. Consult or Consultation. The lead agency confers with other ICC members and persons on the distribution list and considers their views prior to taking actions relating to transportation conformity. The lead agency shall distribute all appropriate information necessary to make a conformity determination and, prior to making a conformity determination, shall consider the views of such parties and shall provide a timely, written response to those views. Such views and written responses shall be included in the record of decision or action. Consultation shall not occur with respect to a transportation plan or transportation improvement program (TIP) revision that merely adds or exempts projects listed in 40 CFR 93.126. (3-30-01)

03. Distribute. Make available relevant documents and information by electronic and manual means, whichever is more appropriate, to all ICC members and persons on the distribution list. Electronic distribution may include existing and future technological applications, such as electronic mail, internet web-site posting including downloadable files, or the use of an electronic mail reply system based on the distribution list. Manual distribution may include the United States Postal Service, the state internal mail system, a facsimile machine, or any commercially available mail service provider. (3-30-01)

04. Distribution List. A list containing the names and addresses of ICC members and any person(s) expressing an interest in receiving information and material pertaining to ICC meetings. To express interest, a person may contact the lead agency by postal mail, electronic mail, telephone or in person, and inform the ICC member of their interest in being on the distribution list for information and material pertaining to ICC meetings. (3-30-01)

05. Exempt Projects. Projects exempt from conformity requirements based on the general criteria of safety, mass transit, and other factors, as described in 40 CFR 93.126. (3-30-01)

06. Lead Agency. The transportation or air quality agency responsible for conducting the consultation process, as identified in Subsections 568.01 through 568.03. (3-30-01)

07. Lead Air Quality Agency. An agency designated pursuant to Section 174 of the CAA as responsible for developing an applicable implementation plan, or alternatively the agency designated by the Governor as the lead air quality agency for a county, region, or any jurisdiction. (3-30-01)

08. Local Highway Jurisdiction. A county with jurisdiction over a highway system, a city with jurisdiction over a highway system, or a highway district, as defined by Section 40-113(3), Idaho Code. (3-30-01)

09. Local Highway Technical Assistance Council (LHTAC). The public agency created in Chapter 24, Title 40, Idaho Code. (3-30-01)

10. Maximum Priority. (3-30-01)

a. All possible actions must be taken to shorten the time periods necessary to complete essential steps in TCM implementation - for example, by increasing the funding rate - even though timing of other projects may be affected. It is not permissible to have prospective discrepancies with the applicable implementation plan's TCM implementation schedule due to: (3-30-01)

i. Lack of funding in the TIP; (3-30-01)

ii. Lack of commitment to the project by the sponsoring agency; (3-30-01)

iii. Unreasonably long periods to complete future work due to lack of staff or other agency resources; (3-30-01)

- iv. Lack of approval or consent by local governmental bodies; or (3-30-01)
- v. Failure to have applied for a permit where necessary work preliminary to such application has been completed. (3-30-01)
- b. Where statewide and metropolitan funding resources, planning, and management capabilities are fully consumed within the flexibility of the Transportation Equity Act of 1998 (TEA-21), Pub. L. No. 105-178, 112 Stat 107, as amended by Pub. L. No. 105-206, 112 Stat 685, or future federal omnibus transportation funding bills, with responding to damage from natural disasters, civil unrest, or terrorist acts, TCM implementation can be determined to be timely without regard to the above, provided reasonable efforts are being made. (3-30-01)
- 11. Metropolitan Planning Organization (MPO).** The organization designated as being responsible, together with the State, for conducting the continuing cooperative and comprehensive transportation planning process under 23 U.S.C. 134 and 49 U.S.C. 5303 and 23 CFR 450. It is the forum for cooperative transportation decision-making. (3-30-01)
- 12. Public Notice.** Distribution of the meeting times, location, duration and agenda, to all the ICC members and persons on the distribution list. (3-30-01)
- 13. Recipient of Funds Designated Under Title 23 U.S.C. or the Federal Transit Laws.** Any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C. or Federal Transit Laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners, developers, contractors, or entities that are only paid for services or products created by their own employees. (3-30-01)
- 14. Regionally Significant Project.** A transportation project, other than an exempt project, that is on a facility which serves regional transportation needs (such as access to and from the area outside the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including, at a minimum: (3-30-01)
 - a. All principal arterial highways; (3-30-01)
 - b. All fixed guideway transit facilities that offer an alternative to regional highway travel; and (3-30-01)
 - c. Any other facilities determined to be regionally significant through Section 570, interagency consultation. (3-30-01)
- 15. Transportation Agency.** The public agency responsible for one (1) or more of the following transportation modes: (3-30-01)
 - a. Air; (3-30-01)
 - b. Rail; (3-30-01)
 - c. Water; (3-30-01)
 - d. Highway; (3-30-01)
 - e. Bicycle and pedestrian paths; and (3-30-01)
 - f. Transit. (3-30-01)
- 16. Transit Agency.** Any agency involved in providing mass transportation services by bus, rail, or other conveyance providing general or special service to the public on a regular and continuing basis. The term

“Transit Agency” does not include school buses or charter or sightseeing services. (3-30-01)

567. AGENCIES AFFECTED BY CONSULTATION.

This Section identifies those agencies and other entities (federal, tribal, state and local) involved in the consultation process and those general actions requiring consultation. (3-30-01)

01. Interagency Consultation Committee. A committee of representatives shall be formed in each nonattainment or maintenance area of the state, to convene on conformity determinations, as necessary, and shall be called the Interagency Consultation Committee (ICC) for that nonattainment or maintenance area. The ICC shall undertake consultation procedures, as applicable, in preparing for and before making conformity determinations in developing long-range transportation plans (LRTP), transportation improvement programs (TIP), and applicable implementation plans. (3-30-01)

02. ICC Members. The ICC shall consist of the following agencies or entities, as applicable: (3-30-01)

- a.** A Metropolitan Planning Organization (MPO) where one exists; (3-30-01)
- b.** The Idaho Transportation Department (ITD); (3-30-01)
- c.** The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) divisional office; (3-30-01)
- d.** The Idaho Department of Environmental Quality (IDEQ); (3-30-01)
- e.** Affected Local Highway Jurisdictions involved in transportation, (3-30-01)
- f.** Affected Transit agency(ies); (3-30-01)
- g.** The Local Highway Technical Assistance Council (LHTAC); (3-30-01)
- h.** Indian Tribal governments with transportation planning responsibilities; and (3-30-01)
- i.** The United States Environmental Protection Agency (EPA). (3-30-01)

03. Agencies Entitled to Participate. Agencies which may be affected by the consultation process and which are entitled to participate in the consultation process include: (3-30-01)

- a.** Any local transit agency or provider, local highway jurisdiction, and any city or county transportation or air quality board or agency where the nonattainment or maintenance area is located; and (3-30-01)
- b.** Any other state or federal or tribal organization in the state responsible under state or federal law for developing, submitting or implementing transportation related provisions of an implementation plan. (3-30-01)

04. More Than One Pollutant. Areas that are nonattainment for more than one (1) pollutant may conduct consultation, as specified in this section, through a single committee for all pollutants. (3-30-01)

05. Open to the Public. All meetings of the ICC shall be open to the public. (3-30-01)

06. Delegation. An ICC member may delegate its role or responsibility in the consultation process to another entity pursuant to applicable state law. An ICC member making such delegation shall notify all other ICC members in writing when the delegation occurs. The written notice shall provide the name, address, and telephone number of one (1) or more contact persons representing the entity accepting the delegated role or responsibility. (3-30-01)

07. General Actions Requiring Consultation. The ICC shall undertake the consultation process prior to the development of the following: (3-30-01)

- a. The implementation plan(s), including the emission budget and list of TCMs in the applicable implementation plan(s), prepared by the lead air quality agency in a nonattainment or maintenance area; (3-30-01)
- b. All other conformity determinations for transportation plans, projects, and programs; and (3-30-01)
- c. Revisions to the preceding documents which may directly or indirectly affect conformity determinations. (3-30-01)

568. ICC MEMBER ROLES IN CONSULTATION.

The lead agency as identified in this section is the ICC member responsible for initiating the consultation process, preparing the initial and final drafts of the document or decision, and assuring the adequacy of the consultation process for all conformity processes and procedures. (3-30-01)

01. Designated Lead Air Quality Agency. IDEQ or the MPO, as the designated lead air quality agency, shall be the lead agency for the development of the implementation plan, the associated emission budgets, and the list of Transportation Control Measures (TCMs) in the plan. The concurrence of IDEQ on each applicable implementation plan is required before IDEQ adopts the plan and submits it to EPA for inclusion in the applicable implementation plan. (3-30-01)

02. Areas with an MPO. For areas in which an MPO has been established, the designated MPO shall be the lead agency responsible for conformity determinations, development of the LRTP, development of the TIP, and project level documentation under 23 CFR 450. (3-30-01)

03. Areas Without an MPO. For areas in which an MPO has not been established, ITD shall be the lead agency for preparing the final document on conformity determinations, the development of the statewide transportation plan, the development of the STIP, and project level documentation under 23 CFR 450. (3-30-01)

569. ICC MEMBER RESPONSIBILITIES IN CONSULTATION.

This Section identifies the specific responsibilities of ICC members. (3-30-01)

01. Designated Lead Air Quality Agency Responsibilities. The designated lead air quality agency shall be responsible for developing or providing and distributing draft and final documentation, data and analyses for: (3-30-01)

- a. Air emission inventories; (3-30-01)
- b. Emission budgets; (3-30-01)
- c. Attainment and maintenance demonstrations; (3-30-01)
- d. Control strategy implementation plan revisions; (3-30-01)
- e. Updated motor vehicle emission factors; (3-30-01)
- f. Proposal and evaluation of TCMs; and (3-30-01)
- g. Public outreach on draft air quality plans pursuant to 40 CFR Part 51. (3-30-01)

02. Designated MPO Responsibilities. The designated MPO shall be responsible for: (3-30-01)

- a. Conformity determinations corresponding to LRTPs and TIPs; (3-30-01)
- b. Making conformity determinations for the entire nonattainment or maintenance area, including areas beyond the boundaries of the MPO, where no agreement is in effect as required by 23 CFR 450.310(f); (3-30-01)

- c.** Identify regionally significant projects through the consultation process; (3-30-01)
- d.** Implementing TCMs in air quality nonattainment and/or maintenance areas, as applicable; (3-30-01)
- e.** Providing technical and policy input on emissions budgets; (3-30-01)
- f.** Performing transportation modeling, regional emissions analyses, and project level analysis, as necessary; (3-30-01)
- g.** Documenting timely implementation of TCMs, as required, for determining conformity; and (3-30-01)
- h.** Distributing relevant draft and final project environmental documents to ICC members and persons on the distribution list per the schedule in Subsection 570.01.c. (3-30-01)
- 03. Non-MPO Area Responsibilities.** In areas without an established MPO, ITD shall be responsible for: (3-30-01)

 - a.** Conformity determinations corresponding to STIPs and project-level analyses; (3-30-01)
 - b.** Providing technical and policy input on proposed revisions to motor vehicle emissions factors and to emission budgets; (3-30-01)
 - c.** Distributing relevant draft and final project environmental documentation prepared by, or for ITD, to ICC members and persons on the distribution list per the schedule in Subsection 570.01.c.; (3-30-01)
 - d.** Convening air quality technical review meetings on specific projects when requested by other ICC members, or as needed; (3-30-01)
 - e.** Convening interagency consultation meetings required for purposes of making conformity determinations in nonattainment or maintenance areas, outside of MPO boundaries, as necessary; (3-30-01)
 - f.** Making conformity determinations in nonattainment or maintenance areas, outside of MPO boundaries, as necessary; and (3-30-01)
 - g.** Implementing TCMs in air quality nonattainment and/or maintenance areas, as applicable. (3-30-01)
- 04. FHWA and FTA Responsibilities.** FHWA and FTA shall be responsible for: (3-30-01)

 - a.** Assuring timely action on final findings of conformity for transportation plans, TIPs, and federally funded projects, including the basis for those findings after consultation with other agencies as provided in Section 569 and 40 CFR 93.105; and (3-30-01)
 - b.** Providing guidance on conformity and the transportation planning process to ICC members. FHWA and FTA may rely solely on the consultation process initiated by ITD or the MPO, where one exists, and shall not be required to duplicate that process. (3-30-01)
- 05. EPA Responsibilities.** EPA shall be responsible for providing policy and technical guidance on conformity criteria to ICC members. (3-30-01)
- 06. Responsibility to Disclose Potentially Regionally Significant Projects.** ITD, the local highway jurisdiction, transit agency, or transportation project sponsor shall be responsible for disclosing potentially regionally significant projects within air quality nonattainment and maintenance areas to the ICC in a timely manner. (3-30-01)

 - a.** Local Highway Jurisdictions shall disclose of potentially regionally significant projects upon

written request of ITD within fourteen (14) days of such request, or when annual local and MPO project lists are due to ITD District Offices as part of the annual STIP development process; (3-30-01)

b. In an MPO area, to help assure timely disclosure, the sponsor of any potentially regionally significant project shall disclose such projects to the MPO annually on or before March 1 of that calendar year; and (3-30-01)

c. In MPO nonattainment and maintenance areas, the TIP and associated conformity demonstration shall be deemed to be incomplete if any regionally significant project has not been disclosed to the ICC in a timely manner. Therefore, such a TIP shall be considered to be non-conforming to applicable implementation plan(s). (3-30-01)

570. GENERAL CONSULTATION PROCESS.

Section 570 provides the general procedures for interagency consultation (federal, tribal, state, and local) and public participation for transportation conformity determinations in air quality nonattainment and maintenance areas in the state of Idaho. (3-30-01)

01. Lead Agency in Consultation. The following are the responsibilities of the lead agency at each stage of the consultation process: (3-30-01)

a. Initiating the consultation process by notifying other ICC members of the document or decision that must undergo the consultation process and by scheduling and convening consultation meetings and agendas; (3-30-01)

b. Developing and maintaining a distribution list of all ICC members and any other persons expressing an interest in receiving information and materials pertaining to ICC meetings; (3-30-01)

c. Distributing an agenda and all supporting material, including minutes of ICC meetings, to ICC members and persons on the distribution list as follows: (3-30-01)

i. Fourteen (14) days in advance of an ICC meeting if there are non-technical issues to be resolved by the ICC; (3-30-01)

ii. Thirty (30) days in advance of an ICC meeting if there are technical issues to be resolved by the ICC; or (3-30-01)

iii. If distribution of technical material pursuant to Subsection 570.01.c.ii. is not feasible thirty (30) days prior to an ICC meeting, then the lead agency shall notify the ICC members and persons on the distribution list in writing at least thirty (30) days prior to the ICC meeting. Together with the notification, the lead agency shall distribute and disclose all available material and documentation to the ICC members and persons on the distribution list, informing them of the nature, purpose, and details of possible program changes that are expected to occur from earlier analyses of the actions. All technical material and documentation shall be distributed at a minimum of fourteen (14) days prior to the ICC meeting. (3-30-01)

d. Conferring with other agencies and persons not on the distribution list that have expressed an interest in the document or decision to be developed; (3-30-01)

e. Providing ICC members and persons on the distribution list access to all information needed for meaningful input; (3-30-01)

f. Soliciting early and continuing input from other ICC members and persons on the distribution list; (3-30-01)

g. Following the public consultation procedures outlined in Section 574; (3-30-01)

h. Providing an opportunity for informal question and answer on the draft document or proposed

decision; (3-30-01)

i. Considering the views of ICC members and persons on the distribution list and responding in writing to significant comments in a timely and substantive manner prior to finalizing or taking any final action on those documents or determinations enumerated in Section 567.07.a. through 567.07.c.; and (3-30-01)

j. Assuring all comments and written responses of ICC members and persons on the distribution list are made part of the record of any action. (3-30-01)

02. Public Comment Period to Satisfy Thirty Day Document Distribution Requirement. A lead agency may use all or any part of another public comment period established for public outreach procedures pursuant to 23 CFR 450 for a transportation plan, program, or project to satisfy the thirty (30) day advance distribution requirement for technical issues, and shall notify all ICC members and other persons on the distribution list when so doing fourteen (14) days prior to commencement of the public comment period. (3-30-01)

03. Separate Times or in Combination. The above actions may be conducted at separate times or in combination, as required, to enhance the efficiency of the process. (3-30-01)

04. Final Document Distribution. A lead agency, upon completion of a final document subject to the consultation process under Sections 563 through 574 of these rules (including any federal agency), shall distribute each final document to all other ICC members and persons on the distribution list within thirty (30) days of adopting or approving such document or making such determination. (3-30-01)

05. Use of Checklist for Distribution of Material. The lead agency may supply a checklist of available supporting information to ICC members and persons on the distribution list to be used to request all or part of the supporting information, in lieu of generally distributing all supporting information. (3-30-01)

06. Use of Other Meetings for Consultation. A meeting that is scheduled or required for another purpose may be used for the purposes of consultation only if the public notice for the meeting identifies consultation as an agenda item. (3-30-01)

571. CONSULTATION PROCEDURES.

The consultation process among ICC members and persons on the distribution list shall be undertaken for the following specific major activities (federal, tribal, state, and local), specific routine activities and specific air quality related activities, in accordance with the procedures in Section 570. Participating agencies shall be all ICC members unless otherwise specified in Subsections 571.01 through 571.04. (3-30-01)

01. Specific Major Activities. The consultation process shall be undertaken for the following specific major activities. The lead agency for each activity shall be the designated MPO or ITD in the absence of an MPO. (3-30-01)

a. Evaluating and choosing each air quality model and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses including vehicle miles traveled forecasting. The hot-spot analyses shall be performed consistent with procedures described in 40 CFR 93.116 and 40 CFR 93.123 and regional emissions analysis shall be performed using procedures outlined on 40 CFR 93.122. (3-30-01)

b. Determining which minor arterials and other transportation projects should be considered “regionally significant” for the purposes of regional emissions analysis, in addition to those functionally classified as principal arterial or higher or fixed guideway transit systems or extensions that offer an alternative to regional highway travel. (3-30-01)

c. Evaluating whether projects otherwise exempted from meeting the requirements of Sections 563 through 574 of these rules should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason per 40 CFR 93.126 and 127. (3-30-01)

d. Making a determination as to whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and

whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This consultation procedure shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs with other emission reduction measures. (3-30-01)

e. Identifying projects located at sites in PM nonattainment or maintenance areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM hot-spot analysis. In case a method for quantitative hot-spot analysis has not been formally adopted by EPA, a sound qualitative analysis developed in conjunction with FHWA may be used for the same. (3-30-01)

f. Making a determination whether the project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, and whether the project's design concept and scope have changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility. (3-30-01)

g. For areas in the state with no MPOs, making a determination whether a project has undergone project-level analysis and whether the project's design concept and scope have changed significantly from those which were included in the project-level analysis, or in a manner which would significantly impact use of the facility. (3-30-01)

h. Establishing appropriate public participation opportunities for project-level conformity determinations, as applicable, in the manner specified by Section 574, to be initiated by the recipient of the funds designated under 23 U.S.C. or the Federal Transit Act. (3-30-01)

i. Choosing conformity tests and methodologies for isolated and rural nonattainment and maintenance areas as required by 40 CFR 93.109(g)(2)(iii). (3-30-01)

02. Specific Routine Activities. The consultation process shall be undertaken for the following specific routine activities. The lead agency shall be the MPO or ITD in the absence of an MPO. (3-30-01)

a. Evaluating events that will trigger new conformity determinations in addition to those triggering events established in 40 CFR 93.104. Participating agencies shall be the MPO and state, tribal, regional, and local air quality planning agencies. (3-30-01)

b. Consulting on emissions analysis for transportation activities that cross the borders of MPOs or nonattainment or maintenance areas. Participating agencies shall be the MPO and state, tribal, regional, and local air quality planning agencies. (3-30-01)

c. Determining whether the project sponsor or MPO has demonstrated that the requirements are satisfied without a particular mitigation, such as emissions offsets or other control measures, or determining that a conforming project approved with mitigation no longer requires mitigation. (3-30-01)

d. Assuring that plans for construction of regionally significant projects that are not FHWA/FTA projects, including projects for which alternative locations, design concept and scope, or the no-build option are still being considered, are disclosed to the MPO or ITD in the absence of an MPO on a regular basis, and assuring that any changes to those plans are immediately disclosed. (3-30-01)

e. Determining whether a project, which was previously found to conform, has or will have a significant change in design concept and scope since the project plan and TIP conformity determination. (3-30-01)

f. Designing, scheduling, and funding of research and data collection effort pertaining to transportation or air quality planning with implications for transportation conformity. (3-30-01)

g. Reviewing and recommending regional transportation model development by the MPO (e.g., household/travel transportation surveys). (3-30-01)

- h.** Development of transportation improvement programs. (3-30-01)
- i.** Development of regional transportation plans. (3-30-01)
- j.** Consulting when the metropolitan planning area does not include the entire nonattainment area or maintenance area, for planning requirements which may fall under the jurisdiction of more than one (1) MPO or the MPO and ITD. (3-30-01)

03. Specific Air Quality Related Activities. The consultation process shall be undertaken when preparing an applicable implementation plan that includes the revision or addition of a motor vehicle emissions inventory and budget activities in accordance with the procedures in Section 570. Consultation is not required for administrative amendments that do not affect conformity. The lead agency for each activity shall be IDEQ or the MPO. In addition to the Section 570 consultation process, the lead agency shall undertake the following: (3-30-01)

- a.** Scheduling consultation meetings early in the process of decision on the applicable implementation plan, and prior to making a final recommendation to their management, committees, boards or commissions, for a final decision on such documents; (3-30-01)
- b.** Arranging for technical committees or teams to assist ICC members in reviewing documents provided by the lead agency. The lead agency may convene technical meetings as necessary; and (3-30-01)
- c.** Scheduling and conducting meetings of the ICC at regularly scheduled intervals, no less frequently than quarterly. (3-30-01)
- d.** The ICC may appoint subcommittees to address specific issues pertaining to applicable implementation plan development. Any recommendations of a subcommittee shall be considered by the ICC. (3-30-01)

04. Notification Process. The designated MPO, or ITD in the absence of an MPO, shall notify ICC members and persons on the distribution list of a transportation plan or TIP revisions that merely add or delete exempt projects listed in 40 CFR 93.126 early in the process of decision, and by supplying all relevant documents and information to the same. (3-30-01)

572. FINAL CONFORMITY DETERMINATIONS BY USDOT.

Section 572 establishes the process USDOT shall follow when making final determinations on proposed or anticipated transportation actions subject to transportation conformity. (3-30-01)

01. Final Conformity Determination Process. USDOT will make making final determinations on proposed or anticipated STIP or transportation plan or project conformity by: (3-30-01)

- a.** Distributing a draft conformity determination to EPA for review and comment. USDOT shall allow a maximum of thirty (30) days for EPA to respond; and (3-30-01)
- b.** USDOT shall respond in writing to any significant comments raised by EPA within fourteen (14) days of receipt in writing before making a final decision. (3-30-01)

02. New or Revised Information. If USDOT requests any new or revised information to support a STIP, TIP or transportation plan or project conformity determination, then USDOT shall either return the conformity determination for additional consultation pursuant to Section 570, or USDOT shall distribute the new information to the ICC members and persons on the distribution list for review and comment; (3-30-01)

- a.** When USDOT distributes such new or additional information to ICC members and persons on the distribution list, USDOT shall allow for a maximum of thirty (30) days for the lead agency to respond to any new or revised supporting information; and (3-30-01)
- b.** USDOT shall distribute a written response within fourteen (14) days of receipt to any significant comments raised by the ICC members and persons on the distribution list on the new or revised supporting

information before making a final decision. (3-30-01)

573. RESOLVING CONFLICTS.

Conflicts between state agencies or between state agencies and the MPO regarding a determination of conformity, applicable implementation plan submittal, or other policy decision under Sections 563 through 574, shall be resolved in the following manner. (3-30-01)

01. Conflict Resolution at the Level of IDEQ Regions and ITD Districts. Every effort shall be made to resolve any conflicts among state agencies or between state agencies and an MPO at the regional level. The regional administrator of IDEQ, the District Engineer of ITD and the other agency managers at the regional level of the affected jurisdictions, or their designated representatives shall be involved in conflict resolution at the regional level. (3-30-01)

02. Conflict Resolution at the Level of IDEQ and ITD Headquarters. If conflict(s) are not resolved at the regional level, the issue shall be raised to the level of agency directors for resolution. (3-30-01)

03. Conflict Resolution at the Governor's Level. If conflict(s) are not resolved through Subsection 569.02, then IDEQ shall raise the conflict to the Governor, as follows: (3-30-01)

a. The IDEQ administrator shall request in writing that ITD or the MPO provide IDEQ with written notification of resolution of IDEQ's comments. ITD or the MPO shall provide IDEQ with the requested written notification within fourteen (14) days of receipt of IDEQ's written request. (3-30-01)

b. Within fourteen (14) days of its receipt of the requested written notification, IDEQ may appeal the conformity determination in writing to the Governor. If IDEQ appeals to the Governor, then the final conformity determination must have the concurrence of the Governor. If IDEQ does not appeal in writing to the Governor within fourteen (14) days of its receipt of written notification of resolution of its comments, then the lead transportation agency may proceed with the final conformity determination. (3-30-01)

c. The fourteen (14) days shall start on the date when the IDEQ administrator receives notification of the written resolution of his comments regarding a determination of conformity, applicable implementation plan submittal, or other decision under Sections 563 through 574. (3-30-01)

04. Process for Conflict Resolution at the Governor's Level. The Governor may delegate to another independent official or agency within the state his or her role in this process. The Governor may not delegate his or her role to the head or staff of the state air quality agency or any local air quality agency, ITD, a state transportation commission or board, any agency that has responsibility for any one (1) of these functions, or an MPO. (3-30-01)

574. PUBLIC CONSULTATION PROCEDURES.

Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, reasonable public access to technical and policy information considered by the agency, and consistent with these requirements and those of 23 CFR 450. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.95. In addition, these agencies must specifically address, in writing, all public comments relating to known plans for a regionally significant project, which is not receiving FHWA or FTA funding, or approval. This is especially important if the project's emissions have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law. (3-30-01)

575. AIR QUALITY STANDARDS AND AREA CLASSIFICATION.

Ambient Air Quality Standards. The purpose of Sections 575 through 587 is to establish air quality standards for the state of Idaho which define acceptable ambient concentrations consistent with established air quality criteria. (4-11-06)

576. GENERAL PROVISIONS FOR AMBIENT AIR QUALITY STANDARDS.

01. Applicability. The ambient air quality standards established herein shall apply to all of the state. (5-1-94)

02. Standard Conditions. Where applicable, air quality measurements shall be corrected to a reference temperature of twenty-five degrees Celsius (25C) and to a reference pressure of seven hundred and sixty (760) millimeters of mercury absolute. (5-1-94)

03. Revisions. As pertinent air quality criteria information becomes available, such information shall be considered and new or revised air quality standards promulgated as appropriate. (5-1-94)

04. Control of Unregulated Contaminants. The absence of an air quality standard for a specific contaminant shall not preclude action by the Department to control such contaminants to assure the health, welfare and comfort of the people of the State. (5-1-94)

05. Methods. All measurement techniques for determining compliance with 40 CFR Part 50 shall be consistent with those specified in 40 CFR Parts 50 and 53. (5-1-94)

577. AMBIENT AIR QUALITY STANDARDS FOR FLUORIDES.

Primary and secondary air quality standards are those concentrations in the ambient air which result in a total fluoride content in vegetation used for feed and forage of no more than: (5-1-94)

01. Annual Standard. Forty (40) ppm, dry basis -- annual arithmetic mean. (5-1-94)

02. Bimonthly Standard. Sixty (60) ppm, dry basis -- monthly concentration for two (2) consecutive months. (5-1-94)

03. Monthly Standard. Eighty (80) ppm, dry basis -- monthly concentration never to be exceeded. (5-1-94)

578. DESIGNATION OF ATTAINMENT, UNCLASSIFIABLE, AND NONATTAINMENT AREAS.

01. Annual Review. The Department shall annually review the available ambient air quality data and when appropriate, redesignate areas as attainment, unclassifiable or nonattainment with the standards in 40 CFR Part 50. (5-1-94)

02. Boundaries. Boundaries for such areas will be based, as much as possible, on actual ambient concentrations and shall take into account such things as the location of air pollutant sources, modeled air quality concentrations, terrain, geographical boundaries and political jurisdictions. (5-1-94)

03. Area Designation. Designation of attainment and unclassifiable areas shall generally be made on a county basis. Redesignation of attainment or unclassifiable areas cannot intersect or be smaller than the area of impact of any major facility or major modification which establishes the baseline date or is subject to a PSD permit. (5-1-94)

04. Redesignations. Redesignations shall be adopted by the Department after public notice and opportunity for a public hearing and will be submitted by the Governor (or if delegated, the Director) to the U.S. Environmental Protection Agency. (5-1-94)

579. BASELINES FOR PREVENTION OF SIGNIFICANT DETERIORATION.

01. Baseline Date(s). (5-1-94)

a. Major Source Baseline Date. (4-11-15)

i. In the case of PM₁₀ and sulfur dioxide, January 6, 1975; (4-11-15)

- ii. In the case of nitrogen dioxide, February 8, 1988; and (4-11-15)
- iii. In the case of PM_{2.5}, October 20, 2010. (4-11-15)
- b.** Minor Source Baseline Date. The earliest date after the trigger date on which a major stationary source or a major modification subject to prevention of significant deterioration (PSD) submits a complete application. The trigger date is: (4-5-00)
 - i. In the case of PM₁₀ and sulfur dioxide, August 7, 1977; and (4-11-15)
 - ii. In the case of nitrogen dioxide, February 8, 1988. (4-5-00)
 - iii. In the case of PM_{2.5}, October 20, 2011. (4-11-15)
- c.** The baseline date is established for each pollutant for which increments or other equivalent measures have been established if: (4-5-00)
 - i. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d) of the Clean Air Act for the pollutant on the date of its complete prevention of significant deterioration (PSD) application; and (4-5-00)
 - ii. In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant. (4-5-00)
- d.** Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that the Department may rescind any such minor source baseline date where it can be shown, to the satisfaction of the Department, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM₁₀ emissions. (4-5-00)

02. Baseline Area. Any intrastate area designated as attainment or unclassifiable under 42 U.S.C. Section 7407(d), in which the major facility or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: Equal to or greater than 1 µg/m³ (annual average) for SO₂, NO₂, or PM₁₀; or equal or greater than 0.3 µg/m³ (annual average) for PM_{2.5}. (4-11-15)

03. Baseline Concentration. The ambient concentration for a particular regulated air pollutant which exists in the applicable baseline area on the applicable minor source baseline date. (4-5-00)

- a.** The baseline concentration shall represent: (5-1-94)
 - i. The actual emissions from sources in existence on the applicable minor source baseline date; and (5-1-94)
 - ii. The allowable emissions of major facilities and major modifications which commenced construction before the applicable major source baseline date, but were not in operation by the applicable minor source baseline date. (5-1-94)
- b.** The baseline concentration shall not include the actual emissions of new major facilities and major modifications which commenced construction on or after the applicable major source baseline date. (5-1-94)

580. CLASSIFICATION OF PREVENTION OF SIGNIFICANT DETERIORATION AREAS.

- 01. Restrictions On Area Classification.** (5-1-94)
 - a.** All of the following areas which were in existence on August 7, 1977, are Class I and may not be redesignated: (5-1-94)

- i. International parks; (5-1-94)
- ii. National wilderness areas which exceed five thousand (5,000) acres; (5-1-94)
- iii. National memorial parks which exceed five thousand (5,000) acres; (5-1-94)
- iv. National parks which exceed six thousand (6,000) acres. (5-1-94)
- b.** The following areas are Class II and may be redesignated only as Class I or II: (5-1-94)
 - i. National monuments, national primitive areas, national preserves, national recreational areas, national wild and scenic rivers, national wildlife refuges, and national lakeshores or seashores which exceed ten thousand (10,000) acres; or (5-1-94)
 - ii. National parks or national wilderness areas established after August 7, 1977, which exceed ten thousand (10,000) acres. (5-1-94)
- c.** All other areas in the State are Class II and may be redesignated Class I, II or III. (5-1-94)

02. Procedures for Redesignation of Prevention of Significant Deterioration (PSD) Areas. The Governor may submit to the U.S. Environmental Protection Agency a proposal to redesignate areas as a revision to the SIP. In preparing any such proposal the Department shall: (4-5-00)

- a.** Consult with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation; (5-1-94)
- b.** Prepare a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposal. This document will be made available for public inspection at least thirty (30) days prior to the public hearing on the proposed redesignation and the notice announcing the hearing will include notification of the availability of the document; (5-1-94)
- c.** Provide written notice to the appropriate Federal Land Manager of any federal lands proposed for redesignation and provide at least thirty (30) days for the Federal Land Manager to confer with the Department and to submit written comments and recommendations. If written comments and recommendations are submitted, the Department shall publish a list of any inconsistency between the proposed redesignation and the comments and recommendations, including the reasons for making a redesignation against the recommendation of the Federal Land Manager; (5-1-94)
- d.** Notify other states, Indian governing bodies, and federal land managers whose land may be affected by the proposed redesignation at least thirty (30) days prior to the public hearing; (5-1-94)
- e.** For a redesignation to Class III: After consulting with the appropriate committees of the legislature, if it is in session, or the leadership of the legislature, if it is not in session, obtain specific approval by the Governor and by all general purpose units of local government representing a majority of the residents of the area to be redesignated; demonstrate that the redesignation would not cause, or contribute to, violations of any ambient air quality standard, or violations of PSD increments in any other area; and make available, for public inspection prior to the public hearing, any permit application and accompanying material for any major facility or major modification which could only be permitted if the area were designated as Class III; and (5-1-94)
- f.** Hold at least one (1) public hearing on the proposed redesignation. (5-1-94)

581. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) INCREMENTS.

The purpose of Section 581 is to establish the allowable degree of deterioration for the areas within the State which have air quality better than the ambient standards. (5-1-94)

01. Incorporated Federal Program Requirements - Class I, II and III Areas. Class I, II, and III area PSD increment requirements contained in 40 CFR 52.21(c) are incorporated by reference into these rules at Section 107. These CFR sections have been codified in the electronic CFR at www.ecfr.gov. (4-7-11)

02. Exceedances. For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location. (5-1-94)

03. Exclusions. The following concentrations shall be excluded in determining compliance with the maximum allowable increases: (5-1-94)

a. Concentrations attributable to the increase in emissions from facilities which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, over the emissions from such facilities before the effective date of such order or plan; this shall not apply more than five (5) years after the effective date of such order or plan; (5-1-94)

b. Concentrations of PM-10 attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified facilities; (7-1-97)

c. The increase in concentrations attributable to new facilities outside the United States over the concentrations attributable to existing facilities which are included in the baseline concentration; and (5-1-94)

d. Concentrations attributable to the temporary increase in emissions of sulfur dioxide, nitrogen dioxide, or particulate matter from facilities which are affected by a revision to the SIP approved by the U.S. Environmental Protection Agency; this exclusion shall not exceed two (2) years unless a longer time is approved by the U.S. Environmental Protection Agency, is not renewable, and applies only to revisions which: (5-1-94)

i. Would not affect the applicable pollutant concentrations in a Class I area or an area where an applicable increment is known to be violated and would not cause or contribute to a violation of an ambient air quality standard; and (4-11-06)

ii. Require limitations to be in effect at the end of the approved time period which would ensure that the emissions from facilities affected by the revision would not exceed those concentrations occurring before the revision was approved. (5-1-94)

582. -- 584. (RESERVED)

585. TOXIC AIR POLLUTANTS NON-CARCINOGENIC INCREMENTS.

The screening emissions levels (EL) and acceptable ambient concentrations (AAC) for non-carcinogens are as provided in the following table. The AAC in this section are twenty-four (24) hour averages. (6-30-95)

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
60-35-5	Acetamide (NY)	--	0.002	0.0003
64-19-7	Acetic acid	25	1.67	1.25
108-24-7	Acetic anhydride	20	1.33	1
67-64-1	Acetone	1780	119	89
75-05-8	Acetonitrile	67	4.47	3.35
540-59-0	Acetylene dichloride, See 1,2-Dichloroethylene			
79-27-6	Acetylene tetrabromide	15	1	.75

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
107-02-8	Acrolein	0.25	0.017	0.0125
79-10-7	Acrylic acid	30	2	1.5
107-18-6	Allyl alcohol	5	0.333	.25
106-92-3	Allyl glycidyl ether	22	1.47	1.1
2179-59-1	Allyl propyl disulfide	12	0.8	0.6
7429-90-5	Aluminum Including:			
NA	Metal & Oxide	10	0.667	0.5
NA	Pyro powders	5	0.333	0.25
NA	Soluble salts	2	0.133	0.10
NA	Alkyls not otherwise classified	2	0.133	0.10
141-43-5	2-Aminoethanol, See Ethanolamine			
504-29-0	2-Aminopyridine	2	0.133	0.10
7664-41-7	Ammonia	18	1.2	0.9
12125-02-9	Ammonium chloride fume	10	0.667	0.5
3825-26-1	Ammonium perfluorooctanoate	0.1	0.007	0.05
7773-06-0	Ammonium sulfamate	10	0.667	0.5
628-63-7	n-Amyl acetate	530	35.3	26.5
626-38-0	Sec-Amyl acetate	665	44.3	33.25
7440-36-0	Antimony & compounds, as Sb (handling & use)	0.5	0.033	0.025
86-88-4	ANTU	0.3	0.02	0.015
7784-42-1	Arsine	0.2	0.013	0.01
86-50-0	Azinphos-methyl	0.2	0.013	0.01
7440-39-3	Barium, soluble compounds, as Ba	0.5	0.033	0.025
17804-35-2	Benomyl	10	0.67	0.5
7106-51-4	p-Benzoquinone, See Quinone			
94-36-0	Benzoyl peroxide	5	0.333	0.25
92-52-4	Biphenyl	1.5	0.1	0.075
1304-82-1	Bismuth telluride undoped	10	0.667	0.05
NA	Bismuth telluride if selenium doped	5	0.333	0.25
1303-96-4	Borates, tetra odium salts - Including:			
NA	Anhydrous	1	0.067	0.05
NA	Decahydrate	5	0.333	0.25
NA	Pentahydrate	1	0.067	0.05
1303-86-2	Boron oxide	10	0.667	0.5

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
10294-33-4	Boron tribromide	10	0.667	0.5
7637-07-2	Boron trifluoride	3	0.2	0.25
314-40-9	Bromacil	10	0.667	0.5
7726-95-6	Bromine	0.7	0.047	0.035
7789-30-2	Bromine penta-fluoride	0.7	0.047	0.035
75-25-2	Bromoform	5	0.333	0.25
109-79-5	Butanethiol, see Butyl mercaptan			
78-93-3	2-Butanone, see Methyl ethyl ketone			
112-07-2	2-butoxyethyl acetate	---	8.33	1.25
111-76-2	2-Butoxyethanol (EGBG)	120	8	6
123-86-4	n-Butyl acetate	710	47.3	35.5
105-46-4	sec-Butyl acetate	950	63.3	47.5
540-88-5	tert-Butyl acetate	950	63.3	47.5
141-32-2	Butyl acrylate	55	3.67	2.75
71-36-3	n-Butyl alcohol	150	10	7.5
78-92-2	Sec-Butyl alcohol	305	20.3	15.25
75-65-0	tert-Butyl alcohol	300	20	15
109-73-9	Butylamine	15	1	.75
124-17-4	Butyl carbitol acetate (ID)	---	0.846	.625
1189-85-1	tert-Butyl chromate, as CrO3	0.1	0.007	.005
2426-08-6	n-Butyl glycidyl ether	135	9	6.75
138-22-7	n-Butyl lactate	25	1.67	1.25
109-79-5	Butyl mercaptan	1.8	0.12	0.09
89-72-5	o-sec-Butylphenol	30	2	1.5
98-51-1	p-tert-Butyltoluene	60	4	3
1317-65-3	Calcium carbonate	10	0.667	0.5
156-62-7	Calcium cyanamide	0.5	0.033	0.025
1305-62-0	Calcium hydroxide	5	0.333	0.25
1305-78-8	Calcium oxide	2	0.133	0.1
1344-95-2	Calcium silicate (synthetic)	10	0.667	0.5
13397-24-5	Calcium sulfate	10	0.667	0.5
76-22-2	Camphor, synthetic	12	0.8	0.6
105-60-2	Caprolactam - Including: Dust	1	0.067	0.05

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
	Vapor	20	1.33	1.0
1333-86-4	Carbon black	3.5	0.23	0.175
2425-06-1	Captafol	0.1	0.007	0.005
133-06-2	Captan	5	0.333	0.25
463-58-1	Carbonyl sulfide	0.4	0.027	0.02
63-25-2	Carbaryl	5	0.333	0.25
1563-66-2	Carbofuran	0.1	0.007	0.005
75-15-0	Carbon disulfide	30	2	1.5
558-13-4	Carbon tetrabromide	1.4	0.093	0.07
75-44-5	Carbonyl chloride, See Phosgene			
353-50-4	Carbonyl fluoride	5	0.333	0.25
120-80-9	Catechol	20	1.33	1.0
21351-79-1	Cesium hydroxide	2	0.133	0.10
133-90-4	Chloramben (PL)	---	887	133
8001-35-2	Chlorinated camphene	0.5	0.0333	0.025
31242-93-0	Chlorinated diphenyl oxide	0.5	0.033	0.025
7782-50-5	Chlorine	3	0.2	0.15
10049-04-4	Chlorine dioxide	0.3	0.02	0.015
7790-91-2	Chlorine trifluoride (CL)	0.38	0.025	0.002
107-20-0	Chloroacetaldehyde	0.32	0.021	0.015
78-95-5	Chloroacetone	0.38	0.0253	0.019
532-27-4	a-Chloroacetophenone	0.32	0.021	0.016
79-04-9	Chloroacetyl chloride	0.2	0.013	0.01
108-90-7	Chlorobenzene	350	23.3	17.5
510-15-6	Chlorobenzilate (PL1)	---	0.047	0.035
2698-41-1	O-Chlorobenzylidene malononitrile (CL)	0.4	0.0027	0.03
126-99-8	2-Chloro-1,3-butadiene, see B-Chloroprene			
107-07-3	2-Chloroethanol, see Ethylene chlorohydrin			
600-25-9	1-Chloro-1-nitro propane	10	0.667	0.5
95-57-8	2-Chlorophenol (and all isomers) (ID)	---	0.033	0.025
76-06-2	Chloropicrin	0.7	0.047	0.037
126-99-8	B-chloroprene	36	2.4	1.8
2039-87-4	o-Chlorostyrene	285	19	14.25
95-49-8	o-Chlorotoluene	250	16.7	12.5

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
1929-82-4	2-Chloro-6-(tri-chloromethyl) pyridine, see Nitrapyrin			
2921-88-2	Chlorpyrifos	0.2	0.013	0.01
7440-47-3	Chromium metal - Including:	0.5	0.033	0.025
7440-47-3	Chromium (II) compounds, as Cr	0.5	0.033	0.025
16065-83-1	Chromium (III) compounds, as Cr	0.5	0.033	0.025
2971-90-6	Clopidol	10	0.667	0.5
NA	Coal dust (<5% silica)	2	0.133	0.1
10210-68-1	Cobalt carbonyl as Co	0.1	0.007	0.005
16842-03-8	Cobalt hydrocarbonyl as Co	0.1	0.007	0.005
7440-48-4	Cobalt metal, dust, and fume	0.05	0.0033	0.0025
7440-50-8	Copper:			
7440-50-8	Fume	0.2	0.013	0.01
7440-50-8	Dusts & mists, as Cu	1	0.067	0.05
95-48-7	o-Cresol	22	1.47	1.1
108-39-4	m-Cresol	22	1.47	1.1
106-44-5	p-Cresol	22	1.47	1.1
1319-77-3	Cresols/Cresylic Acid (isomers and mixtures)	22	1.47	1.1
123-73-9	Crotonaldehyde	5.7	0.38	0.285
299-86-5	Cruformate	5	0.333	0.25
98-82-8	Cumene	245	16.3	12.25
420-04-2	Cyanamide	2	0.133	0.1
592-01-8	Cyanide and compounds as CN	5	0.333	0.25
110-82-7	Cyclohexane	1050	70	52.5
108-93-0	Cyclohexanol	200	13.3	10
108-94-1	Cyclohexanone	100	6.67	5
110-83-8	Cyclohexene	1015	67.7	50.75
108-91-8	Cyclohexylamine	41	2.73	2.05
121-82-4	Cyclonite	1.5	0.1	0.075
542-92-7	Cyclopentadiene	200	13.3	10
287-92-3	Cyclopentane	1720	114.667	86
94-75-7	2,4-D	10	0.667	0.5
17702-41-9	Decaborane	0.3	0.02	0.015
8065-48-3	Demeton	0.1	0.007	0.005
123-42-2	Diacetone alcohol	240	16	12

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
39393-37-8	Dialkyl phthalate (ID)	---	16.4	2.46
107-15-3	1,2-Diaminoethane, See Ethylenediamine			
333-41-5	Diazinon	0.1	0.007	0.005
334-88-3	Diazomethane	0.34	0.023	0.017
19287-45-7	Diborane	0.1	0.007	0.005
102-81-8	2-N-Dibutylamino ethanol	14	0.933	0.7
2528-36-1	Dibutyl phenyl phosphate	3.5	0.233	0.175
107-66-4	Dibutyl phosphate	8.6	0.573	0.43
84-74-2	Dibutyl phthalate	5	0.333	0.25
7572-29-4	Dichloroacetylene	0.39	0.0026	0.0195
95-50-1	o-Dichlorobenzene	300	20	15
106-46-7	1,4-Dichlorobenzene	450	30	22.5
118-52-5	1,3-Dichloro-5, 5-dimethyl hydantoin	0.2	0.013	0.025
75-34-3	Dichloroethane	405	27	20.25
540-59-0	1,2-Dichloroethylene	790	52.7	39.5
111-44-4	Dichloroethyl ether	30	2	1.5
75-43-4	Dichlorofluoromethane	40	2.67	2
594-72-9	1, 1-Dichloro-1-nitroethane	10	0.667	0.5
78-87-5	1,2-Dichloropropane, see Propylene dichloride			
75-99-0	2,2-Dichloropropionic acid	6	0.4	0.3
62-73-7	Dichlorvos	1	0.067	0.05
141-66-2	Dicrotophos	0.25	0.017	0.125
77-73-6	Dicyclopentadiene	30	2	1.5
102-54-5	Dicyclopentadienyl iron	10	0.667	0.5
111-42-2	Diethanolamine	15	1	0.75
109-89-7	Diethylamine	30	2	1.5
100-37-8	2-Diethylamino-ethanol	50	3.33	2.5
111-40-0	Diethylene triamine	4	0.267	0.2
60-29-7	Diethyl ether	1200	80	60
96-22-0	Diethyl Ketone	705	47	35.25
84-66-2	Diethyl phthalate	5	0.333	0.25
2238-07-5	Diglycidyl ether (DGE)	0.53	0.035	0.0265
123-31-9	Dihydroxybenzene, see Hydroquinone			
108-83-8	Diisobutyl ketone	145	9.67	7.25

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
108-18-9	Diisopropylamine	20	1.33	1
127-19-5	Dimethyl acetamide	35	2.33	1.75
124-40-3	Dimethylamine	9.2	0.613	0.46
60-11-7	Dimethyl aminoazo-benzene (NY)	---	0.002	0.0003
1300-73-8	Dimethylamino-benzene, see Xylidine			
121-69-7	Dimethylaniline (N,N-Dimethylaniline)	25	1.67	1.25
1330-20-7	Dimethylbenzene, see Xylene			
300-76-5	Dimethyl-1,2-dibromo-2-dichloroethyl phosphate, see Naled			
68-12-2	Dimethylformamide	30	2	1.5
108-83-8	2,6-Dimethyl-4-heptanone, see Diisobutyl ketone			
131-11-3	Dimethylphthalate	5	0.333	0.25
148-01-6	Dinitolmide	5	0.333	0.25
528-29-0	Dinitrobenzene	1	0.067	0.05
99-65-0	m (or) 1,3-Dinitrobenzene	1	0.067	0.05
100-25-4	p (or) 1,4-Dinitrobenzene	1	0.067	0.05
534-52-1	Dinitro-o-cresol	0.2	0.013	0.01
148-01-6	3,5-Dinitro-o-toluamide, see Dinitolmide			
117-84-0	N-Dioctyl Phthalate	5	0.333	0.25
78-34-2	Dioxathion	0.2	0.013	0.01
92-52-4	Diphenyl, see Biphenyl			
122-39-4	Diphenylamine	10	0.667	0.5
	Diphenyl methane diisocyanate, see Methylene-diphenyl diisocyanate			
34590-94-8	Dipropylene glycol methyl ether	600	40	30
123-19-3	Dipropyl ketone	235	15.7	11.75
85-00-7	Diquat	0.5	0.033	0.01
97-77-8	Disulfiram	2	0.133	0.1
298-04-4	Disulfoton	0.1	0.007	0.005
128-37-0	2,6-Ditert. butyl-p-cresol	10	0.667	0.5
330-54-1	Diuron	10	0.667	0.5
108-57-6	Divinyl benzene	50	3.33	2.5
1302-74-5	Emery (corundum) total dust (> 1% silica)	10	0.667	0.5
115-29-7	Endosulfan	0.1	0.007	0.005

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
72-20-8	Endrin	0.1	0.007	0.005
13838-16-9	Enflurane	566	37.7	28.3
1395-21-7	Enzymes, see Subtilisins			
2104-64-5	EPN (Ethoxy-4-Nitro-phenoxy phenylphosphine)	0.5	0.033	0.025
106-88-7	1,2-Epoxybutane (MI)	---	0.8	0.6
75-56-9	1,2-Epoxypropane, see Propylene oxide			
556-52-5	2,3-Epoxy-1-propanol, see Glycidol			
75-08-1	Ethanethiol, see Ethyl mercaptan			
141-43-5	Ethanolamine	8	0.533	0.4
563-12-2	Ethion	0.4	0.027	0.02
110-80-5	2-Ethoxyethanol	19	1.27	0.95
111-15-9	2-Ethoxyethyl acetate (EGEEA)	27	1.8	1.35
141-78-6	Ethyl acetate	1400	93.3	70
64-17-5	Ethyl alcohol	1880	125	94
75-04-7	Ethylamine	18	1.2	0.9
541-85-5	Ethyl amyl ketone	130	8.67	6.5
100-41-4	Ethyl benzene	435	29	21.75
74-96-4	Ethyl bromide	22	1.47	1.1
106-35-4	Ethyl butyl ketone	230	15.3	11.5
51-79-6	Ethyl carbamate (Urethane) (WA)	---	0.002	0.0015
75-00-3	Ethyl chloride	2640	176	132
107-07-3	Ethylene chlorohydrin	3	0.2	0.15
107-15-3	Ethylenediamine	25	1.67	1.25
107-06-2	Ethylene dichloride	40	2.667	2
107-21-1	Ethylene glycol vapor (CL)	127	0.846	6.35
628-96-6	Ethylene glycol denigrate	0.31	0.021	0.016
110-49-6	Ethylene glycol methyl ether acetate, see 2-Methoxyethyl acetate			
96-45-7	Ethylene thiourea (PL2)	---	0.047	0.035
109-94-4	Ethyl formate	300	20	15
16219-75-3	Ethylidene norbornene (CL)	25	0.167	1.25
75-08-1	Ethyl mercaptan	1	0.067	0.05
100-74-3	N-Ethylmorpholine	23	1.53	1.15
78-10-4	Ethyl silicate	85	5.67	4.25

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
22224-92-6	Fenamiphos	0.1	0.007	0.005
115-90-2	Fensulfothion	0.1	0.007	0.005
55-38-9	Fenthion	0.2	0.013	0.01
14484-64-1	Ferbam	10	0.667	0.5
12604-58-9	Ferovanadium dust	1	0.067	0.05
NA	Fibrous glass dust	10	0.667	0.5
NA	Fine Mineral Fibers - Including: mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less. (ID)	--	0.661	0.5
NA	Fluorides, as F	2.5	0.167	0.125
7782-41-4	Fluorine	2	0.133	0.1
944-22-9	Fonofos	0.1	0.007	0.005
75-12-7	Formamide	30	2	1.5
64-18-6	Formic acid	9.4	0.627	0.47
98-01-1	Furfural	8	0.533	0.4
98-00-0	Furfuryl alcohol	40	2.67	2
7782-65-2	Germanium tetrahydride	0.6	0.04	0.03
NA	Glass, Fibrous or dust, see Fibrous glass dust			
111-30-8	Glutaraldehyde (CL)	0.82	0.0047	0.041
556-52-5	Glycidol	75	5	3.75
110-80-5	Glycol monoethyl ether, see 2-Ethoxyethanol			
7440-58-6	Hafnium	0.5	0.033	0.025
110-43-0	2-Heptanone, see Methyl n-amyl ketone			
106-35-4	3-Heptanone, see Ethyl butyl ketone			
151-67-7	Halothane	404	26.9	20.2
142-82-5	Heptane (n-Heptane)	1640	109	82
77-47-4	Hexachlorocyclopentadiene	0.1	0.007	0.005
1335-87-1	Hexachloronaphthalene	0.2	0.013	0.010
684-16-2	Hexafluoroacetone	0.7	0.047	0.035
822-06-0	Hexamethylene diisocyanate	0.03	0.002	0.0015
680-31-9	Hexamethylphosphoramide (WA)	---	0.002	0.0015
110-54-3	Hexane (n-Hexane)	180	12	9
591-78-6	2-Hexanone, see Methyl n-butyl ketone			
108-10-1	Hexone, see Methyl isobutyl ketone			

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
108-84-9	sec-Hexyl acetate	300	20	15
107-41-5	Hexylene glycol (CL)	121	0.806	6.05
37275-59-5	Hydrogenated terphenyls	5	0.333	0.25
10035-10-6	Hydrogen bromide (CL)	10	0.0667	0.5
7647-01-0	Hydrogen chloride (CL)	7.5	0.05	0.375
7722-84-1	Hydrogen peroxide	1.5	0.1	0.075
7783-06-4	Hydrogen sulfide	14	0.933	0.7
123-31-9	Hydroquinone	2	0.133	0.1
123-42-2	4-Hydroxy-4-Methyl-2-pentanone, see Diacetone alcohol			
999-61-1	2 -Hydroxypropyl acrylate	3	0.2	0.15
95-13-6	Indene	45	3	2.25
7440-74-6	Indium & compounds as In	0.1	0.007	0.005
7553-56-2	Iodine (CL)	0.1	0.0067	0.005
75-47-8	Iodoform	10	0.667	0.5
1309-37-1	Iron oxide fume (Fe ₂ O ₃) as Fe	5	0.333	0.25
13463-40-6	Iron pentacarbonyl as Fe	0.8	0.053	0.04
7439-89-6	Iron salts, soluble, as Fe	1	0.067	0.05
123-92-2	Isoamyl acetate	525	35	26.25
123-51-3	Isoamyl alcohol	360	24	18
110-19-0	Isobutyl acetate	700	46.7	35
78-83-1	Isobutyl alcohol	150	10	6
26952-21-6	Isooctyl alcohol	270	18	13.5
78-59-1	Isophorone	28	1.867	1.4
4098-71-9	Isophorone diisocyanate	0.09	0.006	0.0045
109-59-1	Isopropoxyethanol	105	7	5.25
108-21-4	Isopropyl Acetate	1040	69.3	52
67-63-0	Isopropyl alcohol	980	65.3	49
75-31-0	Isopropylamine	12	0.8	0.6
643-28-7	N-Isopropylaniline	10	0.667	0.5
108-20-3	Isopropyl ether	1040	69.3	52
4016-14-2	Isopropyl glycidyl ether (IGE)	240	16	12
1332-58-7	Kaolin (respirable dust)	2	0.133	0.1
463-51-4	Ketene	0.9	0.06	0.045
7580-67-8	Lithium hydride	0.025	0.002	0.00125

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
546-93-0	Magnesite	10	0.667	0.5
1309-48-4	Magnesium oxide fume	10	0.667	0.5
121-75-5	Malathion	10	0.667	0.5
108-31-6	Maleic anhydride	1	0.067	0.05
7439-96-5	Manganese as Mn Including:			
7439-96-5	Dust & compounds	5	0.333	0.25
7439-96-5	Fume	1	0.067	0.05
101-68-8	MDI, see Methylene diphenyl isocyanate			
NA	Mercaptans not otherwise listed (ID)	---	0.033	0.025
141-79-7	Mesityl oxide	60	4	3
79-41-4	Methacrylic acid	70	4.67	3.5
74-93-1	Methanethiol, see Methyl mercaptan			
67-56-1	Methanol	260	17.3	13
16752-77-5	Methomyl	2.5	0.17	0.125
72-43-5	Methoxychlor	10	0.667	0.5
109-86-4	2-Methoxyethanol	16	1.07	0.8
110-49-6	2-Methoxyethyl acetate	24	1.6	1.2
150-76-5	4-Methoxyphenol	5	0.333	0.25
108-65-6	1-methoxy-2-proanol acetate (ID)	n/a	24	3.6
79-20-9	Methyl acetate	610	40.7	30.5
74-99-7	Methyl acetylene	1640	109	82
NA	Methyl acetylene-propadiene mix (MAPP)	1640	109	82
96-33-3	Methyl acrylate	35	2.33	1.75
126-98-7	Methylacrylonitrile	3	0.2	0.15
74-89-5	Methylamine	12	0.8	0.6
108-11-2	Methyl emyl alcohol, see Methyl isobutyl carbinol			
110-43-0	Methyl n-amyl ketone	235	15.7	11.75
100-61-8	N-Methyl aniline	2	0.133	0.1
74-83-9	Methyl bromide	19	1.27	0.95
591-78-6	Methyl n-butyl ketone	20	1.33	1
74-87-3	Methyl chloride	103	6.867	5.15
71-55-6	Methyl chloroform	1910	127	95.5
137-05-3	Methyl 2-cyano-acrylate	8	0.533	0.4
25639-42-3	Methylcyclohexanol	235	15.7	11.75

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
583-60-8	o-Methylcyclohexanone	230	15.3	11.5
8022-00-2	Methyl demeton	0.5	0.033	0.01
101-68-8	Methylenediphenyl diisocyanate (MDI)	0.05	0.003	0.0025
5124-30-1	Methylene bis (4-cyclohexyl isocyanate)	0.11	0.007	0.0055
78-93-3	Methyl ethyl ketone (MEK)	590	39.3	29.5
1338-23-4	Methyl ethyl ketone peroxide (CL)	1.5	0.01	0.0075
107-31-3	Methyl formate	246	16.4	12.3
541-85-5	5-Methyl-3-heptanone, see Ethyl amyl ketone			
110-12-3	Methyl isoamyl ketone	240	16	12
108-11-2	Methyl isobutyl carbinol	104	6.93	5.2
108-10-1	Methyl isobutyl ketone	205	13.7	10.25
624-83-9	Methyl isocyanate	0.05	0.003	0.0025
563-80-4	Methyl isopropyl ketone	705	47	35.25
74-93-1	Methyl mercaptan	0.5	0.033	0.025
80-62-6	Methyl methacrylate	410	27.3	20.5
298-00-0	Methyl parathion	0.2	0.013	0.01
107-87-9	Methyl propyl ketone	700	46.7	35
681-84-5	Methyl silicate	6	0.4	0.3
98-83-9	a-Methyl styrene	240	16	10.20
109-87-5	Methylal (dimethoxymethane)	3110	207	155.5
108-87-2	Methylcyclohexane	1610	107	80.5
21087-64-9	Metribuzin	5	0.333	0.25
7786-34-7	Mevinphos	0.1	0.007	0.005
12001-26-2	Mica (Respirable dust)	3	0.2	0.15
NA	Mineral Wool Fiber (no asbestos)	10	0.667	0.5
7439-98-7	Molybdenum as Mo - Including:			
NA	Soluble compounds	5	0.333	0.25
NA	Insoluble compounds	10	0.667	0.5
108-90-7	Monochlorobenzene, see Chlorobenzene			
6923-22-4	Monocrotophos	0.25	0.017	0.0125
110-91-8	Morpholine	70	4.67	0.35
300-76-5	Naled	3	0.2	0.15
91-20-3	Naphthalene	50	3.33	2.5
54-11-5	Nicotine	0.5	0.033	0.025

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
1929-82-4	Nitrapyrin	10	0.667	0.5
7697-37-2	Nitric acid	5	0.333	0.25
100-01-6	p-Nitroaniline	3	0.2	0.15
98-95-3	Nitrobenzene	5	0.333	0.25
100-00-5	p-Nitrochlorobenzene	3	0.2	0.15
79-24-3	Nitroethane	310	20.7	15.5
7783-54-2	Nitrogen trifluoride	29	1.93	1.45
55-63-0	Nitroglycerin	0.46	0.031	0.023
75-52-5	Nitromethane	50	3.333	2.5
108-03-2	1-Nitropropane	90	6	4.5
99-08-1	m (or) 3-Nitrotoluene	11	0.733	0.55
88-72-2	o (or) 2-Nitrotoluene	11	0.733	0.55
99-99-0	p (or) 4-Nitrotoluene	11	0.733	0.55
76-06-2	Nitrotrichloromethane, see Chloropicrin			
10024-97-2	Nitrous oxide	90	6	4.5
111-84-2	Nonane	1050	70	52.5
2234-13-1	Octachloronaphthalene	0.1	0.007	0.005
111-65-9	Octane	1400	93.3	70
NA	Oil mist, mineral	5	0.333	0.25
20816-12-0	Osmium tetroxide as Os	0.002	0.0001	0.0001
144-62-7	Oxalic acid	1	0.067	0.05
7783-41-7	Oxygen difluoride (CL)	0.11	0.0007	0.0005
8002-74-2	Paraffin wax fume	2	0.133	0.1
4685-14-7	Paraquat	0.1	0.007	0.007
NA	Paraquat, all Compounds	0.1	0.007	0.005
56-38-2	Parathion	0.1	0.007	0.005
19624-22-7	Pentaborane	0.01	0.001	0.0005
1321-64-8	Pentachloronaphthalene	0.5	0.033	0.025
82-68-8	Pentachloronitrobenzene	0.5	0.0333	0.025
87-86-5	Pentachlorophenol	0.5	0.033	0.025
109-66-0	Pentane	1770	118	88.5
107-87-9	2-Pentanone, see Methyl propyl ketone			
594-42-3	Perchloromethyl mercaptan	0.8	0.053	0.04
7616-94-6	Perchloryl Fluoride	13	0.867	0.65

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
93763-70-3	Perlite	10	0.667	0.5
532-27-4	Phenacyl chloride, see a-Chloroacetophenone			
108-95-2	Phenol	19	1.27	0.95
92-84-2	Phenothiazine	5	0.333	0.25
108-45-2	m-Phenylenediamine	0.1	0.0067	0.005
106-50-3	p-Phenylenediamine	0.1	0.007	0.005
101-84-8	Phenyl ether, vapor	7	0.467	0.035
122-60-1	Phenyl glycidyl ether (PGE)	6	0.4	0.3
108-98-5	Phenyl mercaptan	2	0.133	0.1
638-21-1	Phenylphosphine (CL)	0.25	0.0017	0.00125
298-02-2	Phorate	0.05	0.003	0.001
7786-34-7	Phosdrin, see Mevinphos			
75-44-5	Phosgene	0.4	0.027	0.02
7803-51-2	Phosphine	0.4	0.027	0.02
7664-38-2	Phosphoric acid	1	0.067	0.05
7723-14-0	Phosphorus	0.1	0.007	0.005
10025-87-3	Phosphorus oxychloride	0.6	0.04	0.030
10026-13-8	Phosphorus penta-chloride	1	0.067	0.05
1313-80-3	Phosphorus penta-sulfide	1	0.067	0.05
1314-56-3	Phosphorus pentoxide (ID)	--	0.067	0.05
7719-12-2	Phosphorus trichloride	1.5	0.1	0.075
85-44-9	Phthalic anhydride	6	0.4	0.3
626-17-5	m-Phthalodinitrile	5	0.333	0.25
1918-02-1	Picloram	10	0.667	0.5
88-89-1	Picric acid	0.1	0.006	0.005
83-26-1	Pindone	0.1	0.007	0.005
142-64-3	Piperazine dihydro-chloride	5	0.333	0.25
83-26-1	2-Pivaloyl-1,3-indandione, see Pindone			
7440-06-4	Platinum - Including:			
7440-06-4	Metal	1	0.067	0.05
NA	Soluble salts, as Pt	0.002	0.0001	0.0001
65997-15-1	Portland cement	10	0.667	0.5
1310-58-3	Potassium hydroxide	2	0.133	0.1
107-19-7	Propargyl alcohol	2.3	0.153	0.115

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
123-38-6	Propionaldehyde (LA)	0.43	0.0287	0.0215
79-09-4	Propionic acid	30	2	1.5
114-26-1	Propoxur (Baygon)	0.5	0.033	0.025
109-60-4	n-Propyl acetate	840	56	42
71-23-8	Propyl alcohol	500	33.3	25
78-87-5	Propylene dichloride	347	23.133	17.35
6423-43-4	Propylene glycol dinitrate	0.34	0.023	0.017
107-98-2	Propylene glycol monomethyl ether	360	24	18
75-56-9	Propylene oxide	48	3.2	2.4
627-13-4	n-Propyl nitrate	105	7	5.25
8003-34-7	Pyrethrum	5	0.333	0.25
110-86-1	Pyridine	15	1	0.75
120-80-9	Pyrocatechol, see Catechol			
106-51-4	Quinone	0.4	0.027	0.02
121-84-4	RDX, see Cyclonite			
NA	Refractory Ceramic Fibers (see entry for specific content of emissions, ex: silica)			
108-46-3	Resorcinol	45	3	2.25
7440-16-6	Rhodium - Including:			
7440-16-6	Metal	1	0.067	0.05
NA	Insoluble compounds, as Rh	1	0.067	0.05
NA	Soluble compounds, as Rh	0.01	0.001	0.0005
299-84-3	Ronnel	10	0.667	0.5
83-79-4	Rotenone (commercial)	5	0.333	0.25
8030-30-6	Rubber solvent (Naphtha)	1590	106	79.5
14167-18-1	Salcoine as CO	0.1	0.007	0.005
7782-49-2	Selenium	0.2	0.013	0.010
NA	Selenium and compounds as Se	0.2	0.013	0.01
136-78-7	Sesone	10	0.667	0.5
7803-62-5	Silane, see silicon tectrahydride			
NA	Silica - amorphous - Including:			
61790-53-2	Diatomaceous earth (uncalcined)	10	0.667	0.5
112926-00-8	Precipitated silica	10	0.667	0.5

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
112926-00-8	Silica gel	10	0.667	0.5
NA	Silica, crystalline - Including:			
14464-46-1	Cristobalite	0.05	0.0033	0.0025
14808-60-7	quartz	0.1	0.0067	0.005
60676-86-0	silica, fused	0.1	0.0067	0.005
15468-32-3	tridymite	0.05	0.0033	0.0025
1317-95-9	Tripoli	0.1	0.0067	0.005
7440-21-3	Silicon	10	0.667	0.5
409-21-2	Silicon carbide	10	0.667	0.5
7803-62-5	Silicon tetrahydride	7	0.467	0.35
7440-22-4	Silver - Including			
7440-22-4	Metal	0.1	0.007	0.005
7440-22-4	Soluble compounds, as Ag	0.01	0.001	0.005
26628-22-8	Sodium azide (CL)	0.3	0.002	0.0015
7631-90-5	Sodium bisulfite	5	0.333	0.25
136-78-7	Sodium 2,4-dichloro-phenoxyethyl sulfate, see Sesone			
62-74-8	Sodium fluoroacetate	0.05	0.003	0.0025
1310-73-2	Sodium hydroxide	2	0.133	0.1
7681-57-4	Sodium metabisulfite	5	0.333	0.25
NA	Stearates (not including toxic metals)	10	0.667	0.5
7803-52-3	Stibine	0.5	0.033	0.025
8052-41-3	Stoddard solvent	525	35	26.25
57-24-9	Strychnine	0.15	0.01	0.0075
60-41-3	Strychnine sulfate as strichnine	0.15	0.01	0.01
100-42-5	Styrene monomer (ID)	--	6.67	1
1395-21-7	Subtilisins (Proteolytic enzymes as 100% pure crystalline enzyme)	0.00006	4.OE-07	3.0E-7
3689-24-5	Sulfotep	0.2	0.013	0.01
7664-93-9	Sulfuric acid	1	0.067	0.05
10025-67-9	Sulfur monochloride (CL)	6	0.04	0.03
5714-22-7	Sulfur pentafluoride (CL)	0.1	0.0007	0.0005
7783-60-0	Sulfur tetrafluoride (CL)	0.4	0.0027	0.002
2699-79-8	Sulfuryl fluoride	20	1.33	1
35400-43-2	Sulprofos	1	0.067	0.05

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
8065-48-3	Systox, see Demeton			
93-76-5	2,4,5-Trichlorophen-oxyacetic acid (2,4,5,-T)	10	0.667	0.05
7440-25-7	Tantalum	5	0.333	0.25
3689-24-5	TEDP, see Sulfotep			
13494-80-9	Tellurium & Compounds as Te	0.1	0.007	0.005
7783-80-4	Tellurium hexafluoride as Te	0.2	0.013	0.01
3383-96-8	Temephos	10	0.667	0.5
107-49-3	TEPP (Tetraethyl-pyrophosphate)	0.05	0.003	0.0025
26140-60-3	Terphenyls	4.7	0.313	0.235
1335-88-2	Tetrachloronaphthalene	2	0.133	0.10
78-00-2	Tetraethyl Lead	0.1	0.007	0.005
597-64-8	Tetraethyltin as organic tin	0.1	0.007	0.005
109-99-9	Tetrahydrofuran	590	39.3	29.5
75-74-1	Tetramethyl lead, as Pb	0.15	0.01	0.0075
3333-52-6	Tetramethyl succinonitrile	3	0.2	0.15
509-14-8	Tetranitromethane	8	0.533	0.4
7722-88-5	Tetrasodium pyrophosphate	5	0.333	0.25
479-45-8	Tetryl	1.5	0.1	0.075
7440-28-0	Thallium, soluble Compounds, as Tl	0.1	0.007	0.005
96-69-5	4,4-Thiobis (6 tert, butyl-m-cresol)	10	0.667	0.5
68-11-1	Thioglycolic acid	4	0.267	0.2
7719-09-7	Thionyl chloride (CL)	4.9	0.0327	0.245
137-26-8	Thiram	5	0.333	0.25
7440-31-5	Tin - Including:			
7440-31-5	Metal	2	0.133	0.1
NA	Oxide & inorganic compounds, except SnH4, as Sn	2	0.133	0.1
NA	Organic compounds as Sn	0.1	0.007	0.005
108-88-3	Toluene (toluol)	375	25	18.75
584-84-9	Toluene-2,4-di-isocyanate (TDI)	0.04	0.003	0.002
10-41-54	p-Toluenesulfonic acid (ID)	n/a	0.067	0.05
126-73-8	Tributyl phosphate	2.2	0.147	0.11
76-03-9	Trichloroacetic acid	7	0.467	0.35
120-82-1	1,2,4-Trichlorobenzene (CL)	37	2.47	1.85
79-01-6	Trichloroethylene	269	17.93	13.45

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
1321-65-9	Trichloronaphthalene	5	0.333	0.25
76-06-2	Trichloronitromethane, See Chloropicrin			
95-95-4	2,4,5-Trichlorophenol (MA)	---	---	0.0016
96-18-4	1,2,3-Trichloropropane	60	4	3
121-44-8	Triethylamine	4.1	0.27	0.2
1582-09-8	Trifluralin (PL3)	---	7.7	1.15
552-30-7	Trimellitic anhydride	0.04	0.003	0.002
75-50-3	Trimethylamine	12	0.8	0.6
25551-13-7	Trimethyl benzene (mixed and individual isomers)	123	8.2	6.15
540-84-1	2,2,4-Trimethyl-pentane	350	23.3	17.5
121-45-9	Trimethyl phosphite	10	0.667	0.5
479-45-8	2,4,6-Trinitrophenyl-methylnitramine, see Tetryl			
78-30-8	Triorthocresyl phosphate	0.1	0.007	0.005
603-34-9	Triphenyl amine	5	0.333	0.25
115-86-6	Triphenyl phosphate	3	0.2	0.15
7440-33-7	Tungsten - Including:			
NA	Insoluble compounds	5	0.333	0.25
NA	Soluble compounds	1	0.067	0.05
8006-64-2	Turpentine	560	37.3	28
7440-61-1	Uranium (natural) Soluble & insoluble compounds as U	0.2	0.013	0.01
110-62-3	n-Valeraldehyde	175	11.7	8.75
1314-62-1	Vanadium, as V2O5 Respirable Dust & fume	0.05	0.003	0.0025
108-05-4	Vinyl acetate	35	2.3	1.75
25013-15-4	Vinyl toluene	240	16	12
8032-32-4	VM & P Naphtha	1370	91.3	68.5
81-81-2	Warfarin	0.1	0.007	0.005
1330-20-7	Xylene (o-, m-, p-isomers)	435	29	21.75
1477-55-0	m-Xylene a, a-diamine (CL)	0.1	0.0007	0.0005
1300-73-8	Xylidine	2.5	1.67	0.125
7440-65-5	Yttrium (Metal and compounds as Y)	1	0.067	0.05
7440-66-6	Zinc metal (ID)	--	0.667	0.5
7646-85-7	Zinc chloride fume	1	0.067	0.05
1314-13-2	Zinc oxide fume	5	0.333	0.05

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
1314-13-2	Zinc oxide dust	10	0.667	0.5
7440-67-7	Zirconium compounds as Zr	5	0.333	0.25

(4-4-13)

586. TOXIC AIR POLLUTANTS CARCINOGENIC INCREMENTS.

The screening emissions levels (EL) and acceptable ambient concentrations (AACC) for carcinogens are as provided in the following table. The AACC in this section are annual averages.

CAS NUMBER	SUBSTANCE	URF	EL lb/hr	AACC ug/m3
75-07-0	Acetaldehyde	2.2E-06	3.0E-03	4.5E-01
79-06-1	Acrylamide	1.3E-03	5.1E-06	7.7E-04
107-13-1	Acrylonitrile	6.8E-05	9.8E-05	1.5E-02
309-00-2	Aldrin	4.9E-03	1.3E-06	2.0E-04
62-53-3	Aniline	7.4E-06	9.0E-04	1.4E-01
140-57-8	Aramite	7.1E-06	9.3E-04	1.4E-01
NA	Aroclor, all (PCB) (ID)	---	6.6E-05	1.0E-02
7440-38-2	Arsenic compounds	4.3E-03	1.5E-06	2.3E-04
1332-21-4	Asbestos (Fibers /M.L.)	2.3E-01	N/A	4.0E-06
71-43-2	Benzene	8.3E-06	8.0E-04	1.2E-01
92-87-5	Benzidine	6.7E-02	9.9E-08	1.5E-05
50-32-8	Benzo(a)pyrene	3.3E-03	2.0E-06	3.0E-04
7440-41-7	Beryllium & compounds	2.4E-04	2.8E-05	4.2E-03
106-99-0	1,3-Butadiene	2.8E-04	2.4E-05	3.6E-03
111-44-4	Bis (2-chloroethyl) ether	3.3E-04	2.0E-05	3.0E-03
542-88-1	Bis (chloromethyl) ether	6.2E-02	1.0E-07	1.6E-05
108-60-1	Bis (2-chloro-1-methyl- ethyl) ether	2.0E-05	3.3E-04	5.0E-02
117-81-7	Bis (2-ethylhexyl) phthalate	2.4E-07	2.8E-02	4.2E+00
7440-43-9	Cadmium and compounds	1.8E-03	3.7E-06	5.6E-04
56-23-5	Carbon tetrachloride	1.5E-05	4.4E-04	6.7E-02
57-74-9	Chlordane	3.7E-04	1.8E-04	2.7E-03
67-66-3	Chloroform	2.3E-05	2.8E-04	4.3E-02
18540-29-9	Chromium (VI) & compounds as Cr+6	1.2E-02	5.6E-07	8.3E-05
NA	Coal Tar Volitiles as benzene			
NA	Coke oven emissions	6.2E-04	1.1E-05	1.6E-03

CAS NUMBER	SUBSTANCE	URF	EL lb/hr	AACC ug/m3
8001-58-9	Creosote (ID) See coal tar volatiles as benzene extractables			
50-29-3	DDT (Dichlorodi phenyltrichloroethane)	9.7E-05	6.8E-05	1.0E-02
96-12-8	1,2-Dibromo-3-chloropropane	6.3E-03	1.0E-06	1.6E-04
75-34-3	1,1 dichloroethane	2.6E-05	2.5E-04	3.8E-02
107-06-2	1,2 dichloroethane	2.6E-05	2.5E-04	3.8E-02
75-35-4	1,1 dichloroethylene	5.0E-05	1.3E-04	2.0E-02
75-09-2	Dichloromethane (Methylenechloride)	4.1E-06	1.6E-03	2.4E-01
542-75-6	1,3 dichloropropene	4.0E-06	1.7E-03	2.5E-01
764-41-0	1,4-Dichloro-2-butene	2.6E-03	2.5E-06	3.8E-04
60-57-1	Dieldrin	4.6E-03	1.4E-06	2.1E-04
56-53-1	Diethylstilbestrol	1.4E-01	4.7E-08	7.1E-06
123-91-1	1,4 dioxane	1.4E-06	4.8E-03	7.1E-01
	Dioxin and Furans (2,3,7,8,TCDD & mixtures) Dioxin and Furan emissions shall be considered as one TAP and expressed as an equivalent emission of 2,3,7,8, TCDD based on the relative potency of the isomers in accordance with US EPA guidelines. U.S. EPA (Environmental Protection Agency), (2010) Recommended Toxicity Equivalence Factors (TEFs) for Human Health Risk Assessments of 2,3,7,8-Tetrachlorodibenzo-p-dioxin and Dioxin-Like Compounds. Risk Assessment Forum, Washington, DC. EPA/600/R-10/005.			
122-66-7	1,2-Diphenylhydrazine	2.2E-04	3.0E-05	4.5E-03
106-89-8	Epichlorohydrin	1.2E-06	5.6E-03	8.3E-01
106-93-4	Ethylene dibromide	2.2E-04	3.0E-05	4.5E-03
75-21-8	Ethylene oxide	1.0E-04	6.7E-05	1.0E-02
50-00-0	Formaldehyde	1.3E-05	5.1E-04	7.7E-02
76-44-8	Heptachlor	1.3E-03	5.1E-06	7.7E-04
1024-57-3	Heptachlor Epoxide	2.6E-03	2.5E-06	3.5E-04
118-74-1	Hexachlorobenzene	4.9E-04	1.3E-05	2.0E-03
87-68-3	Hexachlorobutadiene	2.0E-05	3.3E-04	5.0E-02
	Hexachlorocyclo-hexane, Technical	5.1E-04	1.3E-05	1.9E-03
319-84-6	Hexachlorocyclohexane (Lindane) Alpha (BHC)	1.8E-03	3.7E-06	5.6E-04
319-85-7	Hexachlorocyclohexane (Lindane) Beta (BHC)	5.3E-04	1.3E-05	1.8E-03
58-89-9	Hexachlorocyclohexane (Lindane) Gamma (BHC)	3.8E-04	1.7E-05	2.6E-03
67-72-1	Hexachloroethane	4.0E-06	1.7E-03	2.5E-01
302-01-2	Hydrazine	2.9E-03	2.3E-06	3.4E-04
10034-93-2	Hydrazine Sulfate	2.9E-03	2.2E-06	3.5E-04

CAS NUMBER	SUBSTANCE	URF	EL lb/hr	AACC ug/m3
56-49-5	3-methylcholanthrene	2.7E-03	2.5E-06	3.7E-04
75-09-2	Methylene Chloride	4.1E-06	1.6E-03	2.4E-01
74-87-3	Methyl chloride	3.6E-06	1.9E-03	2.8E-01
101-14-4	4,4-Methylene bis(2-Chloroaniline)	4.7E-05	1.4E-04	2.1E-02
60-34-4	Methyl hydrazine	3.1E-04	2.2E-05	3.2E-03
7440-02-0	Nickel	2.4E-04	2.7E-05	4.2E-03
12035-72-2	Nickel Subsulfide	4.8E-04	1.4E-05	2.1E-02
7440-02-0	Nickel Refinery Dust	2.4E-04	2.8E-05	4.2E-02
79-46-9	2-Nitropropane	2.7E-02	2.5E-07	3.7E-05
55-18-5	N-Nitrosodiethylamine (diethylnitrosoamine) (DEN)	4.3E-02	1.5E-07	2.3E-05
62-75-9	N-Nitrosodimethylamine	1.4E-02	4.8E-07	7.1E-05
924-16-3	N-Nitrosodi-n-butylamine	1.6E-03	4.1E-06	6.3E-04
930-55-2	N-Nitrosopyrrolidine	6.1E-04	1.1E-05	1.6E-03
684-93-5	N-Nitroso-N-methylurea (NMU)	3.5E-01	1.9E-08	2.9E-06
82-68-8	Pentachloronitrobenzene	7.3E-05	9.1E-05	1.4E-02
127-18-4	Perchloroethylene (see tetrachloroethylene)			
NA	Polycyclic Hydrocarbons (except 7-PAH group)	7.3E-05	9.1E-05	1.4E-02
	(Polycyclic Organic Matter or 7-PAH group) For emissions of the 7-PAH group, the following PAHs shall be considered together as one TAP, equivalent in potency to benzo(a)pyrene: benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenzo(a,h)anthracene, chrysene, indeno(1,2,3,-cd)pyrene, benzo(a)pyrene. (WA)			
23950-58-5	Promanide	4.6E-06	1.5E-03	2.2E-01
50-55-5	Reserpine	3.0E-03	2.2E-06	3.3E-04
1746-01-6	2,3,7,8,-Tetrachlorodibenzo-p-dioxin (2,3,7,8, -TCDD)	4.5.E+01	1.5E-10	2.2E-08
NA	Soots and Tars (ID) See coal tar volatiles as benzene extractables.			
79-34-5	1,1,2,2,Tetrachloro-ethane	5.8E-05	1.1E-05	1.7E-02
127-18-4	Tetrachloroethylene	4.8E-07	1.3E-02	2.1E+00
79-00-5	1,1,2 - trichloroethane	1.6E-05	4.2E-04	6.2E-02
62-56-6	Thiourea	5.5E-04	1.2E-05	1.8E-03
8001-35-2	Toxaphene	3.2E-04	2.0E-05	3.0E-03
79-01-6	Trichloroethylene	1.3E-06	5.1E-04	7.7E-01
88-06-2	2,4,6 - Trichlorophenol	5.7E-06	1.2E-03	1.8E-01
75-01-4	Vinyl chloride	7.1E-06	9.4E-04	1.4E-01

(4-11-19)

587. LISTING OR DELISTING TOXIC AIR POLLUTANT INCREMENTS.

Persons may request the listing of any toxic substance or delisting of any toxic air pollutant in Sections 585 or 586 by filing a petition for adoption of rules in accordance with IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

588. -- 589. (RESERVED)

590. NEW SOURCE PERFORMANCE STANDARDS.

The owner or operator of any stationary source shall comply with 40 CFR Part 60 as applicable to the stationary source. The applicable definitions for this Section shall be the definitions set forth in 40 CFR Part 60. (4-5-00)

591. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS.

The owner or operator of any stationary source shall comply with 40 CFR Part 61 and 40 CFR Part 63 as applicable to the stationary source. (5-1-94)

592. STAGE 1 VAPOR COLLECTION.

The purpose of Sections 592 through 598 is to set forth requirements for Stage 1 vapor collection systems. Section 599 sets forth the requirements for gasoline cargo tanks that deliver gasoline to those required to install and operate Stage 1 vapor collection systems. These sections apply to gasoline dispensing facilities (GDF) and gasoline cargo tanks in Ada and Canyon Counties only. Nothing in these rules is intended to supersede or render inapplicable any federal, state, or local laws, including, but not limited to, the National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities, 40 CFR Part 63, Subpart CCCCCC, of the federal Clean Air Act. (3-29-10)

593. AFFECTED EQUIPMENT OR PROCESSES.

01. Applicability. Sections 592 through 598 apply to transfers of gasoline to underground storage tanks with a tank capacity of ten thousand (10,000) gallons and not otherwise subject to 40 CFR 63.11118. The emission sources include the underground gasoline storage tanks and associated equipment components in vapor or liquid gasoline service at new, reconstructed, or existing GDFs. Pressure/vacuum vents on underground gasoline storage tanks and the equipment necessary to unload product from cargo tanks into the storage tanks at GDFs are covered emission sources. (3-29-10)

02. New Sources. A source is a new source if construction commenced on the source after April 1, 2009. (3-29-10)

03. Reconstructed Sources. A source is reconstructed if meeting the criteria for reconstruction as defined in 40 CFR 63.2, incorporated by reference into these rules at Section 107. (3-29-10)

04. Existing Sources. A source is an existing source if it is not new or reconstructed. (3-29-10)

594. COMPLIANCE DATES.

01. New or Reconstructed Sources. For a new or reconstructed source, the owner or operator must comply with the standards in Sections 595 and 596 no later than April 1, 2009 or upon startup, whichever is later. Owners or operators of new sources shall install dual point systems. (3-29-10)

02. Existing Sources. For an existing source, the owner or operator must comply with the standards in Sections 595 and 596 upon installation of the Stage 1 vapor collection system, or by May 1, 2010, whichever is earlier. (3-29-10)

595. SUBMERGED FILL REQUIREMENTS.

The owner or operator must only load gasoline into underground storage tanks at the facility by utilizing submerged filling. (3-29-10)

01. Installed On or Before November 9, 2006. Submerged fill pipes installed on or before November 9, 2006 must be no more than twelve (12) inches from the bottom of the storage tank. (3-29-10)

02. Installed After November 9, 2006. Submerged fill pipes installed after November 9, 2006 must be no more than six (6) inches from the bottom of the storage tank. (3-29-10)

596. VAPOR BALANCE REQUIREMENTS.

The owner or operator of a GDF must comply with the following requirements on and after the applicable compliance date in Section 594: (3-29-10)

01. Loading. When loading an underground gasoline storage tank equipped with a vapor balance system, connect and ensure the proper operation of the vapor balance system whenever gasoline is being loaded. (3-29-10)

02. Maintenance. Maintain all equipment associated with the vapor balance system to be vapor tight and in good working order. (3-29-10)

03. Inspection. In order to ensure that the vapor balance equipment is maintained to be vapor tight and in good working order, inspect the vapor balance equipment on an annual basis to discover potential or actual equipment failures. A log form is available on the Department's website at <http://www.deq.idaho.gov>. (3-29-10)

04. Repair. Replace, repair or modify any worn or ineffective component or design element within twenty-four (24) hours to ensure the vapor-tight integrity and efficiency of the vapor balance system. If repair parts must be ordered, either a written or verbal order for those parts must be initiated within two (2) working days of detecting such a leak. Such repair parts must be installed within five (5) working days after receipt. (3-29-10)

597. TESTING AND MONITORING REQUIREMENTS.

The owner or operator of a GDF must comply with the following requirements within ninety (90) days of registration under Section 598 and every three (3) years thereafter. (3-29-10)

01. Testing. (3-29-10)

a. The owner or operator must demonstrate compliance with the leak rate and cracking pressure requirements, specified in item 1(g) of Table 1 to 40 CFR Part 63, Subpart CCCCCC, incorporated by reference into these rules at Section 107, for pressure-vacuum vent valves installed on underground gasoline storage tanks using the test methods identified in Subsection 597.01.a.i. or 597.01.a.ii. (3-29-10)

i. California Air Resources Board Vapor Recovery Test Procedure TP-201.1E,--Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, adopted October 8, 2003 (see 40 CFR 63.14, incorporated by reference into these rules at Section 107). (3-29-10)

ii. Use alternative test methods and procedures in accordance with the alternative test method requirements in 40 CFR 63.7(f), incorporated by reference into these rules at Section 107. (3-29-10)

b. The owner or operator must demonstrate compliance with the static pressure performance requirement, specified in item 1(h) of Table 1 to 40 CFR Part 63, Subpart CCCCCC, for the vapor balance system by conducting a static pressure test on the underground gasoline storage tanks using the test methods identified in paragraph 597.01.b.i. or 597.01.b.ii. (3-29-10)

i. California Air Resources Board Vapor Recovery Test Procedure TP-201.3,--Determination of 2-Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, adopted April 12, 1996, and amended March 17, 1999 (see 40 CFR 63.14, incorporated by reference into these rules at Section 107). (3-29-10)

ii. Use alternative test methods and procedures in accordance with the alternative test method requirements in 40 CFR 63.7(f), incorporated by reference into these rules at Section 107. (3-29-10)

02. Alternative Testing. The owner or operator of a GDF, choosing, under the provisions of 40 CFR 63.6(g), to use a vapor balance system other than that described in Table 1 to 40 CFR Part 63, Subpart CCCCCC, must demonstrate to the Department the equivalency of their vapor balance system to that described in Table 1 to 40 CFR Part 63, Subpart CCCCCC, using the procedures specified in Subsections 597.02.a. and 597.02.b. (3-29-10)

a. The owner or operator must demonstrate compliance by conducting a performance test on the vapor balance system to demonstrate that the vapor balance system achieves 95 percent reduction using the California Air Resources Board Vapor Recovery Test Procedure TP-201.1,--Volumetric Efficiency for Phase I Vapor Recovery Systems, adopted April 12, 1996, and amended February 1, 2001, and October 8, 2003, (see 40 CFR 63.14, incorporated by reference into these rules at Section 107). (3-29-10)

b. The owner or operator must, during the performance test required under Subsection 597.02.a., determine and document alternative acceptable values for the leak rate and cracking pressure requirements specified in item 1(g) of Table 1 to 40 CFR Part 63, Subpart CCCCCC, and for the static pressure performance requirement in item 1(h) of Table 1 to 40 CFR Part 63, Subpart CCCCCC. (3-29-10)

598. REGISTRATION, RECORDKEEPING, AND REPORTING REQUIREMENTS.

01. Registration. (3-29-10)

a. Any GDF subject to these rules shall: (3-29-10)

i. Within thirty (30) days of installation of the Stage 1 vapor collection system, the owner or operator of the GDF shall submit to the Department a registration which provides, at a minimum, the operation name and address, signature of the owner or operator in accordance with Section 123 of these rules, the location of records and reports required by Subsections 598.02 and 598.03 (including contact person's name, address and telephone number), the number of underground gasoline storage tanks, the number of gasoline tank pipe vents, and the date of completion of installation of the Stage 1 vapor collection system and pressure/vacuum relief valve; and (3-29-10)

ii. The registration certification shall be displayed at the GDF. (3-29-10)

b. Upon modification of an existing Stage 1 vapor collection system or pressure/vacuum relief valve, the owner or operator of the GDF shall submit to the Department a registration that details the changes to the information provided in the previous registration and which includes the signature of the owner or operator. The registration must be submitted to the Department within thirty (30) days after completion of such modification. (3-29-10)

c. A new registration must be submitted to the Department within thirty (30) days after any change in ownership of the GDF. (3-29-10)

02. Recordkeeping Requirements. (3-29-10)

a. Each owner or operator must keep the following records: (3-29-10)

i. Records of all tests performed under Section 597; (3-29-10)

ii. Records related to the operation and maintenance of vapor balance equipment required under Section 596. Any vapor balance component defect must be logged and tracked by station personnel on a monthly basis using forms provided by the Department or a reasonable facsimile; and (3-29-10)

iii. Records of permanent changes made at the GDF and vapor balance equipment which may affect emissions. (3-29-10)

b. Records required under 598.02.a. must be kept for a period of five (5) years and must be made available for inspection by the Department upon request. (3-29-10)

03. Reporting Requirements. Each owner or operator subject to the management practices in Section 596 must report to the Department the results of all volumetric efficiency tests required under Section 597. Reports submitted under these rules must be submitted within thirty (30) days of the completion of the performance testing. (3-29-10)

599. GASOLINE CARGO TANKS.

01. Prohibitions. After May 1, 2010, or if a Stage 1 vapor collection system is installed and operating, whichever is earlier, owners or operators of gasoline cargo tanks that unload gasoline into an underground gasoline storage tank with a capacity of ten thousand (10,000) gallons or more, in Ada or Canyon Counties, shall comply with Table 2 to 40 CFR Part 63, Subpart CCCCCC, incorporated by reference into these rules at Section 107. Table 2 requires that the following conditions are met prior to unloading the gasoline: (3-29-10)

- a.** All hoses in the vapor balance system are properly connected; (3-29-10)
- b.** The adapters or couplers that attach to the vapor line on the storage tank have closures that seal upon disconnect; (3-29-10)
- c.** All vapor return hoses, couplers, and adapters used in the gasoline delivery are vapor-tight; (3-29-10)
- d.** All tank truck vapor return equipment is compatible in size and forms a vapor-tight connection with the vapor balance equipment on the GDF storage tank; and (3-29-10)
- e.** All hatches on the tank truck are closed and securely fastened. (3-29-10)
- f.** The filling of storage tanks at GDF shall be limited to unloading by vapor-tight gasoline cargo tanks. Documentation that the cargo tank has met the specifications of EPA Method 27 (40 CFR Part 60, Appendix A-8, incorporated by reference into these rules at Section 107), shall be carried on the cargo tank. (3-29-10)

02. Compliance. The owner or operator of a gasoline cargo tank subject to Section 599 shall ensure compliance with Table 2 to 40 CFR Part 63, Subpart CCCCCC, by visually inspecting the requirements set out in Subsections 599.01.a., 599.01.b., 599.01.d., and 599.01.e. and by successfully completing the testing requirements set out in Subsections 599.01.c. and 599.01.f. (3-29-10)

03. Recordkeeping and Reporting. (3-29-10)

- a.** The owner or operator of the gasoline cargo tank subject to Section 599 shall maintain records of all certification testing and repairs. The records must identify the gasoline cargo tank; the date of the test or repair; and if applicable, the type of repair and the date of retest. The records must be maintained in a legible, readily available condition for at least two (2) years after the date of testing or repair was completed and must be available for inspection by the Department upon request. (3-29-10)
- b.** Copies of all tests required under Subsection 599.01 shall be submitted to the Department within thirty (30) days of certification testing. (3-29-10)

600. RULES FOR CONTROL OF OPEN BURNING.

The purpose of Sections 600 through 624 is to reduce the amount of emissions and minimize the impact of open burning to protect human health and the environment from air pollutants resulting from open burning as well as to reduce the visibility impairment in mandatory Class I Federal Areas in accordance with the regional haze long-term strategy referenced at Section 667. (5-8-09)

601. FIRE PERMITS, HAZARDOUS MATERIALS, AND LIABILITY.

Compliance with the provisions of Sections 600 through 623 does not exempt or excuse any person from complying with applicable laws and ordinances of other jurisdictions responsible for fire control or hazardous material disposal or from liability for damages or injuries which may result from open burning. (5-8-09)

602. NONPREEMPTION OF OTHER JURISDICTIONS.

The provisions of Sections 600 through 623 are not intended to interfere with the rights of any city, county or other governmental entities or agencies to provide equal or more stringent control of open burning within their respective jurisdictions. (5-8-09)

603. GENERAL RESTRICTIONS.

01. Categories and Materials. No person shall allow, suffer, cause or permit any open burning operation unless it is a category of open burning set forth in Sections 600 through 623 and the materials burned do not include any of the following: (5-8-09)

- a. Garbage, as defined in Section 006. (3-21-03)
- b. Dead animals, animal parts, or animal wastes (feces, feathers, litter, etc.) except as provided in Section 616. (3-21-03)
- c. Motor vehicles, parts, or any materials resulting from a salvage operation. (3-21-03)
- d. Tires or other rubber materials or products. (3-21-03)
- e. Plastics. (3-21-03)
- f. Asphalt or composition roofing or any other asphaltic material or product. (3-21-03)
- g. Tar, tar paper, waste or heavy petroleum products, or paints. (3-21-03)
- h. Lumber or timbers treated with preservatives. (3-21-03)
- i. Trade waste, as defined in Section 006, except as specifically allowed under Sections 600 through 623. (5-8-09)
- j. Insulated wire. (3-21-03)
- k. Pathogenic wastes. (3-21-03)
- l. Hazardous wastes. (5-1-94)

02. Air Pollution Episodes. No person shall allow, suffer, cause or permit any open burning to be initiated during any stage of an air pollution episode declared by the Department in accordance with Sections 550, through 562. (3-21-03)

03. Emergency Authority. In accordance with Title 39, Chapter 1, Idaho Code, the Department has the authority to require immediate abatement of any open burning in cases of emergency requiring immediate action to protect human health or safety. (3-21-03)

604. -- 605. (RESERVED)

606. CATEGORIES OF ALLOWABLE BURNING.

The purpose of Sections 606 through 623 is to establish categories of open burning that are allowed when done according to prescribed conditions. Unless specifically exempted each category in Sections 606 through 623 is subject to all of the provisions of Sections 600 through 605. (5-8-09)

607. RECREATIONAL AND WARMING FIRES.

Fires used for the preparation of food or for recreational purposes (e.g. campfires, ceremonial fires, and barbecues), or small fires set for handwarming purposes, are allowable forms of open burning. (3-21-03)

608. WEED CONTROL FIRES.

Open outdoor fires used for the purpose of weed abatement such as along fence lines, canal banks, and ditch banks is

an allowable forms of open burning. (5-1-94)

609. TRAINING FIRES.

Fires used by qualified personnel to train firefighters in the methods of fire suppression and fire fighting techniques, or to display certain fire ecology or fire behavior effects are allowable forms of open burning. Training facilities shall notify the Department prior to igniting any training fires. Training fires shall not be allowed to smolder after the training session has terminated. Training fires are exempt from Subsections 603.01.c. and 603.01.e. through 603.01.j. (3-21-03)

610. INDUSTRIAL FLARES.

Industrial flares, used for the combustion of flammable gases are allowable forms of open burning. Industrial flares are subject to permitting requirements in Sections 200 through 223. (3-21-03)

611. RESIDENTIAL SOLID WASTE DISPOSAL FIRES.

01. Fires Allowed. Open outdoor fires used to dispose of solid waste (e.g. rubbish, tree leaves, yard trimmings, gardening waste, etc.) excluding garbage produced by the operation of a domestic household is an allowable form of open burning when the following provisions are met: (5-1-94)

- a.** No scheduled house to house solid waste collection service is available; and (5-1-94)
- b.** The burning is conducted on the property where the solid waste was generated. (5-1-94)

02. Fires Exempt. Open outdoor fires used to dispose of tree leaves, gardening waste or yard trimmings are exempt from Subsection 611.01.a. when conducted in accordance with local governmental ordinances or rules which allow for the open burning of tree leaves, gardening waste or yard trimming during certain periods of the year. (5-1-94)

612. LANDFILL DISPOSAL SITE FIRES.

The use of fires for the disposal of solid waste at any solid waste landfill disposal site or facility is an allowable form of open burning only if conducted in accordance with IDAPA 58.01.06, "Solid Waste Management Rules and Standards" or the Solid Waste Facilities Act, Chapter 74, Title 39, Idaho Code. (3-21-03)

613. ORCHARD FIRES.

The use of heating devices to protect orchard crops from frost damage and the use of fires to dispose of orchard clippings are allowable forms of open burning when the following provisions are met: (3-21-03)

01. Open-Pot Heaters. The use of stackless open-pot heaters is prohibited. (5-1-94)

02. Heating Device Opacity. Orchard heating device with visible emissions exceeding forty percent (40%) opacity at normal operating conditions shall not be used. Opacity shall be determined by the procedures contained in Section 625. (3-21-03)

03. Heating Device Emissions. All heaters purchased after September 21, 1970, shall emit no more than one (1.0) gram per minute of solid carbonaceous matter at normal operating conditions as certified by the manufacturer. At the time of purchase, the seller shall certify in writing to the purchaser that all new equipment is in compliance with Section 613. (3-21-03)

04. Orchard Clippings. The open burning of orchard clippings shall be conducted on the property where the clippings were generated. (5-1-94)

614. PRESCRIBED BURNING.

The use of open outdoor fires to obtain the objectives of prescribed fire management burning is an allowable form of open burning when the provisions of Section 614 are met. (5-1-94)

- 01. Burning Permits or Prescribed Fire Plans.** (5-1-94)

a. Whenever a burning permit or prescribed fire plan is required by the Department of Lands, U.S.D.A. Forest Service, or any other state or federal agency responsible for land management, any person who conducts or allows prescribed burning shall meet all permit and/or plan conditions and terms which control smoke. (5-1-94)

b. The Department will seek interagency agreements to assure permits or plans issued by agencies referred to in Subsection 614.01.a. provide adequate consideration for controlling smoke from prescribed burning. (5-1-94)

02. Smoke Management Plans for Prescribed Burning. (5-1-94)

a. Whenever a permit or plan is not required by the Department of Lands, U.S.D.A. Forest Service, or any other state or federal agency responsible for land management, any person who conducts or allows prescribed burning shall meet all conditions set forth in a Smoke Management Plan for Prescribed Burning. (5-1-94)

b. The Department will develop and put into effect a Smoke Management Plan for Prescribed Burning consistent with the purpose of Sections 600 through 616. (5-1-94)

03. Rights-of-Way Fires. The open burning of woody debris generated during the clearing of rights of way shall be open burned according to Sections 38-101 and 38-401, Idaho Code, IDAPA 20 Title 16 and Sections 606 through 616 of these rules. (5-1-94)

615. DANGEROUS MATERIAL FIRES.

Fires used or permitted by a public or military fire chief to dispose of materials (including military ordnance) which present a danger to life, valuable property or the public welfare, or for the purpose of prevention of a fire hazard when no practical alternative method of disposal or removal is available are allowable forms of open burning. (3-21-03)

616. INFECTIOUS WASTE BURNING.

Upon the order of a public health officer, fires used to dispose of diseased animals or infested material are an allowable form of open burning and exempt from Subsection 603.01.k. (3-21-03)

617. CROP RESIDUE DISPOSAL.

The open burning of crop residue on fields where the crops were grown is an allowable form of open burning if conducted in accordance with Section 39-114, Idaho Code, and Sections 618 through 624 of these rules. (3-29-12)

618. PERMIT BY RULE.

01. General Requirements. All persons shall be deemed to have a permit by rule if they comply with all the provisions of Sections 618 through 624. No person shall conduct an open burn of crop residue without obtaining the applicable permit by rule. Those persons applying for a spot burn, baled agricultural residue burn, or propane flaming permit shall comply with the provisions in Section 624. The permit by rule does not relieve the applicant from obtaining all other required permits and approvals required by other state and local fire agencies or permitting authorities. (3-29-12)

02. Forms. The Department shall provide the appropriate forms to complete the permit by rule. Forms may be available at the Department offices or on the Department website <http://www.deq.idaho.gov>. (5-8-09)

619. REGISTRATION FOR PERMIT BY RULE.

Any person applying to burn crop residue shall annually provide the following registration information to the Department at least thirty (30) days prior to the date the applicant proposes to burn: (5-8-09)

01. Location of Property. Street address of the property upon which the proposed burning of crop residue will occur or, if there is no street address of the property, the legal description of the property using longitude and latitude coordinates or township, range and section for the Idaho meridian; (5-8-09)

02. Applicant Information. Name, mailing address, and telephone number of the applicant, and the person who will be responsible for conducting the proposed burning of crop residue and the portable form of

communication referenced in Subsection 622.01.c. of this rule; (5-8-09)

03. Plot Plan. A plot plan showing the location of each proposed crop residue burning area in relation to the property lines and indicating the distances and directions of the nearest residential, public, and commercial properties, and roads; (5-8-09)

04. Type, Acreage and Fuel Characteristics of Crop Residue Proposed to be Burned. The crop type, area over which burning will be conducted (acres), and other fuel characteristics; (5-8-09)

05. Preventive Measures. A description of the measures that will be taken to prevent escaped burns or withhold additional material such that the fire burns down, including but not limited to, the availability of water and plowed firebreaks; and (5-8-09)

06. Date of Burning. The requested date(s) when the proposed crop residue burning would be conducted or the proposed date the field will be available to be burned. (5-8-09)

620. BURN FEE.

01. Burn Fee. The burn fee in Section 39-114, Idaho Code, shall be paid in its entirety within thirty (30) days following the receipt of the annual burn fee invoice. See also Subsection 624.02.a. for registration and fee requirements for burning under a spot and baled agricultural residue burn permit. The burn fee should be sent to:

Crop Residue Burn Fee
Fiscal Office
Idaho Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706-1255 (4-11-19)

02. Effect of Delinquent Fee Payment. The Department shall not accept or process a registration for a permit by rule to burn for any person having burn fees delinquent, in full or in part. (4-11-19)

621. BURN DETERMINATION.

01. Burn Approval Criteria. The Department shall develop a Crop Residue Operating Guide to use in assisting in the determination of burn approvals. The permittee shall obtain initial approval from the Department for the proposed burn at least twelve (12) hours in advance of the burn. The permittee shall confirm, with the Department, the approval the morning of the proposed burn. The Department may shorten this time frame if meteorological or other applicable conditions change that will impact the air quality during the proposed burn period. To approve a permittee's request to burn, the Department must determine that ambient air quality levels do not exceed ninety percent (90%) of the ozone national ambient air quality standard (NAAQS) and seventy-five percent (75%) of the level of any other NAAQS on any day and are not projected to exceed such level over the next twenty-four (24) hours, and ambient air quality levels have not reached, and are not forecasted to reach and persist at, eighty percent (80%) of the one (1) hour action criteria for particulate matter under Section 556 of these rules. In making this determination, the Department shall consider the following: (3-28-18)

- a. Expected Emissions.** Expected emissions from all burns proposed for the same dates; (5-8-09)
- b. Proximity of Other Burns.** The proximity of other burns and other potential emission sources within the area to be affected by the proposed burn; (5-8-09)
- c. Moisture Content.** Moisture content of the material to be burned; (5-8-09)
- d. Acreage, Crop Type, and Fuel Characteristics.** Acreage, crop type, and fuel characteristics to be burned; (5-8-09)
- e. Meteorological Conditions.** Meteorological conditions; (5-8-09)
- f. Proximity to Institutions with Sensitive Populations.** The proximity of the burn to institutions with

sensitive populations, including public schools while in session; hospitals; residential health care facilities for children, the elderly or infirm; and other institutions with sensitive populations as approved by the Department. The Department shall not authorize a burn if conditions are such that institutions with sensitive populations will be adversely impacted or when the plume is predicted to impact such institutions; (5-8-09)

g. Proximity to Public Roadways. Proximity to public roadways; (5-8-09)

h. Proximity to Airports. Proximity to airports; and (5-8-09)

i. Other Relevant Factors. Any other factors relevant to preventing exceedances of the air quality concentrations of Section 621. (5-8-09)

02. Notification of Approval. If the Department approves the burn, then it will post on its website written notification of the approval and any specific conditions under which the burn is approved. Special conditions may include, but are not limited to: (5-8-09)

a. Conditions for burns near institutions with sensitive populations; (5-8-09)

b. The requirement to withhold additional material such that the fire burns down if the Department determines pollutant concentrations reach the levels in Subsection 621.01 of this rule; (5-8-09)

c. Conditions to ensure the burn does not create a hazard for travel on a public roadway; and (5-8-09)

d. The requirement to consult with the Department to determine actions to be taken if conditions at the burn site fail to satisfy the conditions specified in the notice of approval to burn. (5-8-09)

622. GENERAL PROVISIONS.

01. Burn Provisions. All persons in Idaho intending to dispose of crop residue through burning shall abide by the following provisions: (5-8-09)

a. Burning Prohibitions. Burning of crop residue shall not be conducted on weekends, federal or state holidays, or after sunset or before sunrise; (5-8-09)

b. Designated Burn Day. Burning of crop residue shall not be conducted unless the Department has designated that day a burn day and the permittee has received individual approval specifying the conditions under which the burn may be conducted; (5-8-09)

c. Portable Form of Communication. The person conducting the burning must have on their possession a portable form of communication such as a cellular phone or radio of compatible frequency with the Department in order to receive burn approval information or information that might require measures to withhold additional material such that the fire burns down; (5-8-09)

d. Location of Field Burning. Open burning of crop residue shall be conducted in the field where it was generated; (5-8-09)

e. Limitations on Burning. When required by the conditions of the notice of approval to burn, the permittee burning in proximity to institutions with sensitive populations shall immediately extinguish the fire or withhold additional material such that the fire burns down, unless the Department determines that the burn will not have an adverse impact on such institutions; (5-8-09)

f. Training Session. All persons intending to burn crop residue shall attend a crop residue burning training session provided by the Idaho Department of Environmental Quality or the Idaho State Department of Agriculture and shall attend a crop residue disposal refresher training session every five (5) years; (5-8-09)

g. Air Stagnation or Degraded Air Quality. All field burning shall be prohibited when the Department issues an air quality forecast and caution, alert, warning or emergency as identified in Section 552 of these rules;

(5-8-09)

h. Allowable Forms of Open Burning. The use of reburn machines, propane flammers, or other portable devices to ignite or reignite a field for the purposes of crop residue burning shall be considered an allowable form of open burning. Tires and other restricted material described in Subsection 603.01, of this rule, are not allowed for ignition of fields; (5-8-09)

i. Additional Burn Permits. All persons intending to burn crop residue shall obtain any additional applicable permits from federal, state or local fire control authorities prior to receiving approval from the Department to burn crop residue; and (5-8-09)

j. Reporting to the Department. All persons burning crop residue shall report to the Department the date burning was conducted, the actual number and location of acres burned, and other information as required by the Department. The Department may restrict further burning by a permittee until completed burns are reported. (5-8-09)

k. Specific Conditions. The open burning of crop residue shall be conducted in accordance with the specific conditions in the permittee's permit by rule. (3-29-12)

02. Annual Report. The Department shall develop an annual report that shall include, at a minimum, an analysis of the causes of each exceedance of a limitation in Section 621 of this rule, if any, and an assessment of the circumstances associated with any reported endangerment to human health associated with a burn. The report shall include any proposed revisions to these rules or the Crop Residue Operating Guide deemed necessary to prevent future exceedances. (5-8-09)

03. Advisory Committee. The Department will assemble an advisory committee consisting of representatives from environmental organizations, farming organizations, health organizations, tribal organizations, the Idaho State Department of Agriculture, the Idaho Department of Environmental Quality, and others to discuss open burning of crop residue issues. (5-8-09)

623. PUBLIC NOTIFICATION.

01. Designation of Burn Days. The Director or his designee shall designate for a given county or airshed within a county burn or no-burn days. (5-8-09)

02. Posting on Website. The Department shall post daily on its website (www.deq.idaho.gov): (3-29-12)

a. Whether a given day is a burn or no-burn day; (5-8-09)

b. The location and number of acres permitted to be burned; (5-8-09)

c. Meteorological conditions and any real time ambient air quality monitoring data; and (5-8-09)

d. A toll-free number to receive requests for information (1-800-345-1007). (3-29-12)

03. E-Mail Update Service. The Department shall provide an opportunity for interested persons to sign up to receive automatic e-mail updates for information regarding the open burning of crop residue. (5-8-09)

624. SPOT BURN, BALED AGRICULTURAL RESIDUE BURN, AND PROPANE FLAMING PERMITS.

01. Applicability. (3-29-12)

a. Spot Burn. A spot burn includes no more than one (1) acre of evenly distributed crop residue or two (2) tons of piled crop residue. The open burning of weed patches, spots of heavy residue, equipment plugs and dumps, pivot corners of fields, and pastures may constitute a spot burn. Spot burn does not include the open burning of wind

rows. (3-29-12)

b. Baled Agricultural Residue Burn. An open burn used to dispose of broken, mildewed, diseased, or otherwise pest-ridden bales still in the field where they were generated. (3-29-12)

c. Propane Flaming. The use of flame-generating equipment to briefly apply flame and/or heat to the topsoil of a cultivated field of pre-emerged or plowed-under crop residue with less than five hundred fifty (550) pounds of burnable, non-green residue per acre in order to control diseases, insects, pests, and weed emergence. (3-29-12)

02. Spot and Baled Agricultural Residue Burn Permit. (3-29-12)

a. Registration and Fee Requirements. Any person applying for a spot and baled agricultural residue burn permit under Section 624 shall provide the registration information listed in Subsections 619.01 and 619.02 and pay a nonrefundable fee of twenty dollars (\$20) to the Department (see Section 620) at least fourteen (14) days prior to the date the applicant proposes to conduct the first burn of the calendar year. (3-29-12)

b. Term and Acreage. A spot and baled agricultural residue burn permit is valid for the calendar year in which it is issued and is good for a cumulative total of no more than ten (10) acres of spots and/or equivalent piled or baled agricultural residue during the year and no more than one (1) acre of spots and/or equivalent piled or baled agricultural residue per day. Two (2) tons of piled or baled agricultural residue is assumed to be equivalent to one (1) acre. (3-29-12)

03. Propane Flaming Permit. Persons conducting propane flaming as defined under Subsection 624.01.c. shall be deemed to have a permit by rule if they comply with the applicable provisions in Subsections 624.04 and 624.05. (3-29-12)

04. General Provisions. All persons intending to burn under Section 624 shall comply with the provisions of Subsections 622.01.c., 622.01.d., 622.01.f., through 622.01.i., and 622.01.k. in addition to the following: (3-29-12)

a. The permittee is responsible to ensure that adequate measures are taken so the burn does not create a hazard for travel on a public roadway. (3-29-12)

b. Burning is not allowed if the proposed burn location is within three (3) miles of an institution with a sensitive population and the surface wind speed is greater than twelve (12) miles per hour or if the smoke is adversely impacting or is expected to adversely impact an institution with a sensitive population. (3-29-12)

c. Designated Burn Day. Burning shall not be conducted unless the Department has designated that day a burn day, which for purposes of Section 624 may include weekends and holidays, and the permittee burns within the burn window provided on the Department's website at www.deq.idaho.gov. Spot and baled agriculture residue burns shall not smolder and create smoke outside of the designated time period burning is allowed. (3-29-12)

05. Recordkeeping. Permittees shall record the date, time frame, type of burn, type of crop, and amount burned on the date of the burn. Records of such burns shall be retained for two (2) years and made available to the Department upon request. (3-29-12)

625. VISIBLE EMISSIONS.

A person shall not discharge any air pollutant into the atmosphere from any point of emission for a period or periods aggregating more than three (3) minutes in any sixty (60) minute period which is greater than twenty percent (20%) opacity as determined by this section. (4-5-00)

01. Exemptions. The provisions of this section shall not apply to: (4-5-00)

a. Kraft Process Lime Kilns, if operating prior to January 24, 1969; or (5-1-94)

b. Carbon Monoxide Flare Pits on Elemental Phosphorous Furnaces, if operating prior to January 24,

- 1969; or (5-1-94)
- c. Liquid Phosphorous Loading Operations, if operating prior to January 24, 1969; or (5-1-94)
 - d. Wigwam Burners; or (5-1-94)
 - e. Kraft Process Recovery Furnaces. (5-1-94)
 - f. Calcining Operations Utilizing an Electrostatic Precipitator to Control Emissions, if operating prior to January 24, 1969. (5-1-94)

02. Standards for Exempted Sources. Except as provided in Section 626, for sources exempted from the provisions of this section, a person shall not discharge into the atmosphere from any point of emission, for any air pollutant for a period or periods aggregating more than three (3) minutes in any sixty (60) minute period which is greater than forty percent (40%) opacity as determined by this section. (4-5-00)

03. Exception. The provisions of this section shall not apply when the presence of uncombined water, nitrogen oxides and/or chlorine gas are the only reason(s) for the failure of the emission to comply with the requirements of this rule. (4-5-00)

04. Test Methods and Procedures. The appropriate test method under this section shall be EPA Method 9 (contained in 40 CFR Part 60) with the method of calculating opacity exceedances altered as follows: (4-5-00)

a. Opacity evaluations shall be conducted using forms available from the Department or similar forms approved by the Department. (4-5-00)

b. Opacity shall be determined by counting the number of readings in excess of the percent opacity limitation, dividing this number by four (4) (each reading is deemed to represent fifteen (15) seconds) to find the number of minutes in excess of the percent opacity limitation. This method is described in the Procedures Manual for Air Pollution Control, Section II (Evaluation of Visible Emissions Manual), September 1986. (4-5-00)

c. Sources subject to New Source Performance Standards must calculate opacity as detailed above and as specified in 40 CFR Part 60. (4-5-00)

05. Applicability. Section 625 shall not apply to the open burning of crop residue. (5-8-09)

626. GENERAL RESTRICTIONS ON VISIBLE EMISSIONS FROM WIGWAM BURNERS.

Except for a period of one (1) hour following start up a person shall not discharge into the atmosphere from any wigwam burner any air pollutant for a period or periods aggregating more than three (3) minutes in any sixty (60) minute period which is greater than twenty percent (20%) opacity as determined by the procedures contained in Section 625. (4-5-00)

627. -- 649. (RESERVED)

650. RULES FOR CONTROL OF FUGITIVE DUST.

The purpose of Sections 650 through 652 is to require that all reasonable precautions be taken to prevent the generation of fugitive dust. (4-11-15)

651. GENERAL RULES.

All reasonable precautions shall be taken to prevent particulate matter from becoming airborne. In determining what is reasonable, consideration will be given to factors such as the proximity of dust emitting operations to human habitations and/or activities, the proximity to mandatory Class I Federal Areas and atmospheric conditions which might affect the movement of particulate matter. Some of the reasonable precautions may include, but are not limited to, the following: (3-30-07)

01. Use of Water or Chemicals. Use, where practical, of water or chemicals for control of dust in the

demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land. (5-1-94)

02. Application of Dust Suppressants. Application, where practical, of asphalt, oil, water or suitable chemicals to, or covering of dirt roads, material stockpiles, and other surfaces which can create dust. (5-1-94)

03. Use of Control Equipment. Installation and use, where practical, of hoods, fans and fabric filters or equivalent systems to enclose and vent the handling of dusty materials. Adequate containment methods should be employed during sandblasting or other operations. (5-1-94)

04. Covering of Trucks. Covering, when practical, open bodied trucks transporting materials likely to give rise to airborne dusts. (5-1-94)

05. Paving. Paving of roadways and their maintenance in a clean condition, where practical. (5-1-94)

06. Removal of Materials. Prompt removal of earth or other stored material from streets, where practical. (5-1-94)

652. AGRICULTURAL ACTIVITIES.

For agricultural activity purposes, operating in conformance with generally recognized agricultural practices constitutes reasonable control of fugitive dust. For the purpose of Section 652: (4-11-15)

01. Agricultural Activity. An “agricultural activity” means any activity that is exempt from the requirement to obtain a permit to construct under Subsection 222.02.f., wherein “agricultural activities and services” is defined in Section 007, that occurs in connection with the production of agricultural products for food, fiber, fuel, feed and other lawful purposes, and including, but not limited to: (4-11-15)

a. Preparing land for agricultural production; (4-11-15)

b. Applying or handling pesticides herbicides, or other chemicals, compounds or substances labeled for insects, pests, crops, weeds, water or soil; (4-11-15)

c. Planting, irrigating, growing, fertilizing, harvesting or producing agricultural, horticultural, floricultural and viticulture crops, fruits and vegetable products, field grains, seeds, hay, sod and nursery stock, and other plant products, plant by-products, plant waste and animal compost; (4-11-15)

d. Breeding, hatching, raising, producing, feeding and keeping livestock, dairy animals, swine, fur-bearing animals, poultry, eggs, fish and other aquatic species, and other animals, animal products and animal by-products, animal waste, animal compost, and bees, bee products and bee by-products; (4-11-15)

e. Transporting agricultural products to or from an agricultural facility; (4-11-15)

f. Grinding, chopping, cubing, or any other means of preparing or converting a commodity for animal feed; and (4-11-15)

g. Piling, stacking or other means of storing commodities outdoors. (4-11-15)

02. Generally Recognized Agricultural Practices. “Generally recognized agricultural practices” means economically feasible practices that are customary among or appropriate to farms and ranches of a similar nature in the local area. In determining whether an agricultural activity is consistent with generally recognized agricultural practices, the Idaho Department of Environmental Quality shall consult with the Idaho Department of Agriculture. (4-11-15)

653. -- 664. (RESERVED)

665. REGIONAL HAZE RULES.

The purpose of Sections 665 through 668 is to address regional haze visibility impairment in mandatory Class I

Federal Areas. The intent of Sections 665 through 668 is to set forth the requirements to implement the federal programs for visibility protection and regional haze. (3-30-07)

666. REASONABLE PROGRESS GOALS.

The Department will establish reasonable progress goals, expressed in deciviews for each mandatory Class I Federal Area located within Idaho. These goals will provide for reasonable progress toward achieving natural visibility conditions. The reasonable progress goals must provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period. The reasonable progress goals are not directly enforceable, but will be implemented through enforceable strategies in the long-term strategy. (3-30-07)

01. Process for Setting Reasonable Progress Goals. In establishing a reasonable progress goal for any mandatory Class I Federal Area within Idaho, the Department shall: (3-30-07)

a. Consider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting the goal. (3-30-07)

b. Analyze and determine the rate of progress needed to attain natural visibility conditions by the year 2064. To calculate this rate of progress, the Department will compare baseline visibility conditions to natural visibility conditions in the mandatory Class I Federal Area and determine the uniform rate of visibility improvement (measured in deciviews) that would need to be maintained during each implementation period in order to attain natural visibility conditions by 2064. In establishing the reasonable progress, the Department will consider the uniform rate of improvement in visibility and the emission reduction measures needed to achieve it for the period covered by the implementation plan. (3-30-07)

c. Consult with those states which may reasonably be anticipated to cause or contribute to visibility impairment in the mandatory Class I Federal Area. (3-30-07)

02. Justification for Reasonable Progress Goals. If the Department establishes a reasonable progress goal that provides for a slower rate of improvement in visibility than the rate that would be needed to attain natural conditions by 2064, the Department will demonstrate, based on the factors in Subsection 666.01.a., that the rate of progress for the implementation plan to attain natural conditions by 2064 is not reasonable; and that the progress goal adopted by the Department is reasonable. The Department will provide to the public for review, as part of its implementation plan, an assessment of the number of years it would take to attain natural conditions if visibility improvement continues at the rate of progress selected by the Department as reasonable. (3-30-07)

667. LONG-TERM STRATEGY FOR REGIONAL HAZE.

The purpose of Section 667 is to develop a long-term strategy for making reasonable progress toward the national goal of preventing any future and remedying any existing impairment of visibility in mandatory Class I Federal Areas in which impairment results from man-made air pollution. (3-30-07)

01. Submittal of Long-Term Strategy. The Department will submit to EPA a long-term strategy that addresses regional haze visibility impairment for each mandatory Class I Federal Area within the state and for each mandatory Class I Federal Area located outside the state which may be affected by emissions from the state. (3-30-07)

02. Enforceable Emission Limitations. The long-term strategy must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals established by the Department. (3-30-07)

03. Requirements for Long-Term Strategy. In establishing long-term strategy for regional haze, the Department will meet the following requirements: (3-30-07)

a. The Department will document the technical basis, including modeling, monitoring and emissions information, on which the state is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I Federal Area it affects. The Department may meet this

requirement by relying on technical analyses developed by the regional planning organization and approved by all state participants. The Department will identify the baseline emission inventory on which its strategies are based. The baseline emissions inventory year is presumed to be the most recent year of the consolidated periodic emissions inventory. (3-30-07)

b. The Department will identify all anthropogenic sources of visibility impairment considered by the Department in developing its long-term strategy. The Department should consider major and minor stationary sources, mobile sources, and area sources. (3-30-07)

c. The Department will consider, at a minimum, the following factors in developing its long-term strategy: (3-30-07)

i. Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (3-30-07)

ii. Measures to mitigate the impacts of construction activities; (3-30-07)

iii. Emissions limitations and schedules for compliance to achieve the reasonable progress goal; (3-30-07)

iv. Source retirement replacement schedules; (3-30-07)

v. Smoke management techniques for agricultural and forestry management purposes including plans as currently exist with the state for these purposes; (3-30-07)

vi. Enforceability of emissions limitations and control measures; and (3-30-07)

vii. The anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. (3-30-07)

04. Interstate Consultation. The Department will undertake the following process in developing the long-term strategy where interstate consultation is required. (3-30-07)

a. Where Idaho has emissions that are reasonably anticipated to contribute to visibility impairment in any mandatory Class I Federal Area located in another state or states, the Department will consult with the other state(s) in order to develop coordinated emission management strategies. (3-30-07)

b. The Department will consult with any other state having emissions that are reasonably anticipated to contribute to visibility impairment in any mandatory Class I Federal Area within Idaho. (3-30-07)

c. Where other states cause or contribute to impairment in a mandatory Class I Federal Area, the Department must demonstrate that the state has included in its implementation plan all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for the area. If the state of Idaho has participated in a regional planning process, the Department must ensure the state has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. (3-30-07)

668. BART REQUIREMENT FOR REGIONAL HAZE.

The purpose of Section 668 is to implement the BART requirements in 40 CFR 51.308(e). The following analysis and documentation is required for each BART-eligible source: (3-30-07)

01. BART-Eligible Sources. The Department shall identify a list of all BART-eligible sources within the state. (3-30-07)

02. BART Determination. The Department shall complete a determination of BART for each BART-eligible source in the state that emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class 1 Federal Area. All such sources are subject to BART. (3-30-07)

a. A single source that is responsible for a one (1.0) deciview change or more in any mandatory Class I Federal Area is considered to “cause” visibility impairment. (3-30-07)

b. A single source that is responsible for a one-half (0.5) deciview change or more in any mandatory Class I Federal Area is considered to “contribute” to visibility impairment. (3-30-07)

c. The determination of BART must be based on an analysis of the best system of continuous emission control technology available and associated emission reductions achievable for each BART-eligible source that is subject to BART within the state. In this analysis, the following must be taken into consideration: (3-30-07)

i. Costs of compliance; (3-30-07)

ii. Energy and non-air quality environmental impacts of compliance; (3-30-07)

iii. Any pollution control equipment in use at the source; (3-30-07)

iv. The remaining useful life of the source; and (3-30-07)

v. The degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. (3-30-07)

d. The Department may determine that a BART determination is not required: (3-30-07)

i. For sulfur dioxide (SO₂) or for nitrogen oxides (NO_x) if a BART-eligible source has the potential to emit less than forty (40) tons per year of such pollutant(s); or (3-30-07)

ii. For PM₁₀ if a BART-eligible source emits less than fifteen (15) tons per year of such pollutant. (3-30-07)

03. Alternative to Infeasible Emission Standards. If the Department determines in establishing BART that technological or economic limitations on the applicability of measurement methodology to a particular source would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice, or other operational standard, or combination thereof, to require the application of BART. Such standard, to the degree possible, is to set forth the emission reduction to be achieved by implementation of such design, equipment, work practice, or operation and must provide for compliance by means which achieve equivalent results. (3-30-07)

04. BART Installation and Operation Due Date. Each source subject to BART is required to install and operate BART as expeditiously as practicable, but in no event later than five (5) years after approval of the implementation plan. (3-30-07)

05. Maintenance of BART Equipment. Each source subject to BART is required to maintain the control equipment required by the Department and establish procedures to ensure such equipment is properly operated and maintained. (3-30-07)

06. BART Alternative. As an alternative to the installation of BART for a source or sources, the Department may approve a BART alternative. If the Department approves source grouping as a BART alternative, only sources (including BART-eligible and non-BART eligible sources) causing or contributing to visibility impairment to the same mandatory Class I Federal Area may be grouped together. (3-30-07)

a. If a source(s) proposes a BART alternative, the resultant emissions reduction and visibility impacts must be compared with those that would result from the BART options evaluated for the source(s). (3-30-07)

b. Source(s) proposing a BART alternative must demonstrate that this BART alternative will achieve greater reasonable progress than would be achieved through the installation and operation of BART. (3-30-07)

c. Source(s) proposing a BART alternative shall include in the BART analysis an analysis and

justification of the averaging period and method of evaluating compliance with the proposed emission limitation. (3-30-07)

07. Reasonable Progress Goal Requirements for BART-Eligible Sources. Once the Department has met the requirements for BART or BART alternative, as identified in Subsection 668.06, BART-eligible sources will be subject to the requirements of reasonable progress goals, as defined in 40 CFR 51.308(d), in the same manner as other sources. (3-30-07)

669. -- 674. (RESERVED).

675. FUEL BURNING EQUIPMENT -- PARTICULATE MATTER.
The purpose of Sections 675 through 681 is to establish particulate matter emission standards for fuel burning equipment. (4-5-00)

676. STANDARDS FOR NEW SOURCES.
A person shall not discharge into the atmosphere from any fuel burning equipment with a maximum rated input of ten (10) million BTU's per hour or more, and commencing operation on or after October 1, 1979, particulate matter in excess of the concentrations shown in the following table:

FUEL TYPE	ALLOWABLE PARTICULATE gr/dscf	EMISSIONS Oxygen
Gas	.015	3%
Liquid	.050	3%
Coal	.050	8%
Wood Product	.080	8%

The effluent gas volume shall be corrected to the oxygen concentration shown. (5-1-94)

677. STANDARDS FOR MINOR AND EXISTING SOURCES.
A person shall not discharge into the atmosphere from any fuel burning equipment in operation prior to October 1, 1979, or with a maximum rated input of less than ten (10) million BTU per hour, particulate matter in excess of the concentrations shown in the following table:

FUEL TYPE	ALLOWABLE PARTICULATE gr/dscf	EMISSIONS Oxygen
Gas	.015	3%
Liquid	.050	3%
Coal	.100	8%
Wood Product	.200	8%

The effluent gas volume shall be corrected to the oxygen concentration shown. (5-1-94)

678. COMBINATIONS OF FUELS.
When two (2) or more types of fuel are burned concurrently, the allowable emission shall be determined by proportioning the gross heat input and emission standards for each fuel. (5-1-94)

679. AVERAGING PERIOD.
For purposes of Sections 675 through 680, emissions shall be averaged according to the following, whichever is the lesser period of time: (5-1-94)

- 01. One Cycle.** One (1) complete cycle of operation; or (5-1-94)
- 02. One Hour.** One (1) hour of operation representing worst-case conditions for the emission of

particulate matter. (4-11-06)

680. ALTITUDE CORRECTION.

For purposes of Sections 675 through 680, standard conditions shall be adjusted for the altitude of the source by subtracting one-tenth (0.10) of an inch of mercury for each one hundred (100) feet above sea level from the standard atmospheric pressure at sea level of twenty-nine and ninety-two one hundredths (29.92) inches of mercury. (5-1-94)

681. TEST METHODS AND PROCEDURES.

The appropriate test method under Sections 675 through 680 shall be EPA Method 5 contained in 40 CFR Part 60 or such comparable and equivalent method approved in accordance with Subsection 157.02.d. Test methods and procedures shall also comply with Section 157. (4-5-00)

682. -- 699. (RESERVED)

700. PARTICULATE MATTER -- PROCESS WEIGHT LIMITATIONS.

01. Particulate Matter Emission Limitations. The purpose of Sections 700 through 703 is to establish particulate matter emission limitations for process equipment. (5-3-03)

02. Minimum Allowable Emission. Notwithstanding the provisions of Sections 701 and 702, no source shall be required to meet an emission limit of less than one (1) pound per hour. (4-5-00)

03. Averaging Period. For the purposes of Sections 701 through 703, emissions shall be averaged according to the following, whichever is the lesser period of time: (4-5-00)

a. One (1) complete cycle of operation; or (4-5-00)

b. One (1) hour of operation representing worst-case conditions for the emissions of particulate matter. (4-5-00)

04. Test Methods and Procedures. The appropriate test method under Sections 700 through 703 shall be EPA Method 5 contained in 40 CFR Part 60 or such comparable and equivalent methods approved in accordance with Subsection 157.02.d. Test methods and procedures shall comply with Section 157. (4-5-00)

701. PARTICULATE MATTER -- NEW EQUIPMENT PROCESS WEIGHT LIMITATIONS.

01. General Restrictions. No person shall emit into the atmosphere from any process or process equipment commencing operation on or after October 1, 1979, particulate matter in excess of the amount shown by the following equations, where E is the allowable emission from the entire source in pounds per hour, and PW is the process weight in pounds per hour. (4-5-00)

a. If PW is less than 9,250 pounds per hour,
 $E = 0.045(PW)^{0.60}$ (4-5-00)

b. If PW is equal to or greater than 9,250 pounds per hour,
 $E = 1.10(PW)^{0.25}$ (4-5-00)

02. Exemption. The provisions of Section 701 shall not apply to fuel burning equipment. (4-5-00)

03. Emission Standards -- Table. The following table illustrates the emission standards set forth in Section 701.

PROCESS WEIGHT	ALLOWABLE EMISSIONS FROM ENTIRE SOURCE	PROCESS WEIGHT	EMISSIONS FROM ENTIRE SOURCE
lb/hr	lb/hr	lb/hr	lb/hr
175 or less	1	20,000	13.08
200	1.08	40,000	15.56
400	1.64	60,000	17.22
600	2.09	80,000	18.50
800	2.40	100,000	19.56
1,000	2.84	200,000	23.26
2,000	4.30	400,000	27.66
4,000	6.52	600,000	30.61
6,000	8.32	800,000	32.90
8,000	9.89	1,000,000	34.79
10,000	11.00	2,000,000	41.37

(4-5-00)

702. PARTICULATE MATTER -- EXISTING EQUIPMENT PROCESS WEIGHT LIMITATIONS.

The provisions of Section 702 shall become effective on January 1, 1981. (4-5-00)

01. General Restrictions. No person shall emit into the atmosphere from any process or process equipment operating prior to October 1, 1979, particulate matter in excess of the amount shown by the following equations, where E is the allowable emission from the entire source in pounds per hour, and PW is the process weight in pounds per hour: (4-5-00)

a. If PW is less than 17,000 pounds per hour,
 $E = 0.045 (PW)^{0.60}$ (4-5-00)

b. If PW is equal to or greater than 17,000 pounds per hour,
 $E = 1.12 (PW)^{0.27}$. (4-5-00)

02. Exemptions. The provisions of Section 702 shall not apply to: (4-5-00)

a. Fuel burning equipment; or (5-1-94)

b. Equipment used exclusively to dehydrate sugar beet pulp or alfalfa. (5-1-94)

03. Emission Standards -- Table. The following table illustrates the emission standards set forth in Section 702.

PROCESS WEIGHT	EMISSIONS FROM ENTIRE SOURCE	PROCESS WEIGHT	EMISSIONS FROM ENTIRE SOURCE
lb/hr	lb/hr	lb/hr	lb/hr
175 or less	1	20,000	16.24

PROCESS WEIGHT	EMISSIONS FROM ENTIRE SOURCE	PROCESS WEIGHT	EMISSIONS FROM ENTIRE SOURCE
lb/hr	lb/hr	lb/hr	lb/hr
200	1.08	40,000	19.58
400	1.64	60,000	21.84
600	2.09	80,000	23.61
800	2.48	100,000	25.07
1,000	2.84	200,000	30.23
2,000	4.30	400,000	36.46
4,000	6.52	600,000	40.67
6,000	8.32	800,000	43.96
8,000	9.89	1,000,000	46.69
10,000	11.30	2,000,000	56.30

(4-5-00)

703. PARTICULATE MATTER -- OTHER PROCESSES.

01. Other Processes. No person with processes exempt under Subsection 702.02.b. shall emit particulate matter to the atmosphere from any process or process equipment in excess of the amount shown in the following equations, where E is the total rate of emission from all emission points from the source in pounds per hour and P is the process weight rate in pounds per hour. (4-5-00)

a. If P is less than sixty thousand (60,000) pounds per hour,
 $E = 0.02518(P)^{0.67}$ (4-5-00)

b. If P is greater than or equal to sixty thousand (60,000) pounds per hour,
 $E = 23.84(P)^{0.11} - 40$ (4-5-00)

02. Emission Standards -- Table. The following table illustrates the emission standards set forth in Section 703.

ALLOWABLE RATE OF EMISSION BASED ON PROCESS WEIGHT RATE			
Process Weight Rate	Rate of Emission	Process Weight Rate	Rate of Emission
Lb/Hr	Lb/Hr	Lb/Hr	Lb/Hr
100	0.551	16,000	16.5
200	0.877	18,000	17.9
400	1.40	20,000	19.2
600	1.83	30,000	25.2
800	2.22	40,000	30.5
1,000	2.58	50,000	35.4

ALLOWABLE RATE OF EMISSION BASED ON PROCESS WEIGHT RATE			
Process Weight Rate	Rate of Emission	Process Weight Rate	Rate of Emission
Lb/Hr	Lb/Hr	Lb/Hr	Lb/Hr
1,500	3.38	60,000	40.0
2,000	4.10	70,000	41.3
2,500	4.76	80,000	42.5
3,000	5.38	90,000	43.6
3,500	5.96	100,000	44.6
4,000	6.52	120,000	46.3
5,000	7.58	140,000	47.8
6,000	8.56	160,000	49.0
7,000	9.49	200,000	51.2
8,000	10.4	1,000,000	69.0
9,000	11.2	2,000,000	77.6
10,000	12.0	6,000,000	92.7
12,000	13.6		

(4-5-00)

704. -- 724. (RESERVED)

725. RULES FOR SULFUR CONTENT OF FUELS.

This section applies to fuel burning sources in Idaho. Its purpose is to prevent excessive ground level concentrations of sulfur dioxide. The reference test method for measuring fuel sulfur content shall be ASTM method, D129-95 Standard Test for Sulfur in Petroleum Products (General Bomb Method) or such comparable and equivalent method approved in accordance with Subsection 157.02.d. Test methods and procedures shall comply with Section 157.

(5-8-09)

01. Definitions. (5-8-09)

a. ASTM. American Society for Testing and Materials. (5-1-94)

b. Distillate Fuel Oil. Any oil meeting the specifications of ASTM Grade 1 or Grade 2 fuel oils. (5-1-94)

c. Residual Fuel Oil. Any oil meeting the specifications of ASTM Grade 4, Grade 5 and Grade 6 fuel oils. (5-1-94)

02. Residual Fuel Oils. No person shall sell, distribute, use or make available for use, any residual fuel oil containing more than one and three-fourths percent (1.75%) sulfur by weight. (5-8-09)

03. Distillate Fuel Oil. No person shall sell, distribute, use or make available for use, any distillate fuel oil containing more than the following percentages of sulfur: (5-8-09)

a. ASTM Grade 1. ASTM Grade 1 fuel oil - zero point three percent (0.3%) by weight. (5-8-09)

b. ASTM Grade 2. ASTM Grade 2 fuel oil - zero point five percent (0.5%) by weight. (5-8-09)

04. Coal. No person shall sell, distribute, use or make available for use, any coal containing greater than one percent (1.0%) sulfur by weight. (5-8-09)

05. Alternative. The Department may approve in a permit issued in accordance with these rules an alternative fuel sulfur content if the applicant demonstrates that, through control measures or other means, sulfur dioxide emissions (based on a one (1) hour averaging period) are equal to or less than those resulting from the combustion of fuels complying with the limitations of Subsections 725.01 through 725.04. (4-11-15)

726. -- 749. (RESERVED)

750. RULES FOR CONTROL OF FLUORIDE EMISSIONS.

The purpose of Sections 750 through 751 is to prevent the emission of fluorides such that the accumulation of fluorine in feed and forage for livestock does not exceed the safe limits specified below. (5-1-94)

751. GENERAL RULES.

Any owner or operator of a facility subject to Sections 750 and 751 shall demonstrate compliance with Section 751 by January 1, 1982, in accordance with a compliance schedule, listing increments of progress, which shall be submitted to the Department on or before August 1, 1980. (5-1-94)

01. Emission Limitations -- Phosphate Fertilizer Plants. No person shall allow, suffer, cause or permit the discharge into the atmosphere of total fluoride emissions in gaseous and in particulate form, expressed as fluoride (F-), from the phosphate fertilizer plant sources listed in Subsection 751.03 in excess of thirty hundredths (0.30) pounds of fluoride per ton of P₂O₅ input to the calciner operation, calculated at maximum rated capacity. (5-1-94)

02. Monitoring, Testing, and Reporting Requirements. Compliance with Subsection 751.01 will be adjudged upon the results of the continuing program of fluoride sampling of potential grazing areas and alfalfa growing areas conducted by the Department. Sampling conducted by any person subject to Section 751 may be accepted for determining compliance with Subsection 751.01 if such sampling is conducted at sites approved by the Department in advance of sampling, using analytical procedures appearing in the Procedures Manual for Air Pollution Control, Section I (Source Test Methods) or equivalent methods approved by the Department in advance of sampling. Compliance with Subsection 751.01 shall be demonstrated by testing methods approved in advance by the Department. When approved by the Director in advance of sampling, engineering calculations may be submitted in lieu of emission data. Monitoring and reporting requirements shall be included in operating permits granted to each facility. (5-1-94)

03. Source Specific Permits. To assure compliance with Subsection 751.01, the Director shall specify methods for calculating total allowable emissions and shall issue source specific permits containing emission limitations for the following sources within phosphate fertilizer plants: (5-1-94)

a. Calciner operation; and (5-1-94)

b. Wet phosphoric acid plants; and (5-1-94)

c. Super phosphoric acid production; and (5-1-94)

d. Diammonium phosphate plants; and (5-1-94)

e. Monoammonium phosphate production; and (5-1-94)

f. Triple super phosphate (mono calcium phosphate) production. (5-1-94)

04. Exemptions. The provisions of Subsections 751.01, 751.02, and 751.03 shall not apply to any phosphate fertilizer facility which produces mono ammonium phosphate exclusively if no animal feed is grown or if no animal grazing occurs or if the animal feed and forage meets the ambient air quality standards for fluorides

specified in Section 577 within a three (3) mile radius of such facility. This exemption shall only apply if the owner or operator of the facility, on an annual basis: (4-7-11)

a. Conducts a fluoride sampling program of potential grazing areas at locations approved in advance of sampling by the Department, using analytical techniques appearing in the Procedures Manual for Air Pollution Control, Section I (Source Test Methods); and (5-1-94)

b. Submits the results of such sampling program to the Department as soon as they become available. (5-1-94)

752. -- 759. (RESERVED)

760. RULES FOR THE CONTROL OF AMMONIA FROM DAIRY FARMS.

The purpose of Sections 760 through 764 is to set forth the requirements for the control of ammonia through best management practices (BMPs) for certain size dairy farms licensed by the Idaho State Department of Agriculture to sell raw milk for human consumption. Compliance with these sections does not relieve the owner or operator of a dairy farm from the responsibility of complying with all other federal, state and local applicable laws, regulations, and requirements, including, but not limited to, Sections 161, 650 and 651 of these rules. Registration forms and guidance documents relating to these rules are located at www.deq.idaho.gov. (3-30-07)

761. GENERAL APPLICABILITY.

The requirements of Sections 760 through 764 apply to the following size dairy farms:

SUMMARY: Animal Unit (AU) or mature cow threshold to produce 100 ton NH₃/year

Animal Unit (AU) Basis	Drylot	Free Stall/Scrape	Free Stall/Flush
AU (100 t NH ₃) Threshold			
No land app	7089	3893	2293
27% volatilization 1	6842	3827	
80% volatilization 2	6397	3700	
Total Cows (100 t NH ₃) Threshold			
Cow Basis (1400 lbs)	Drylot	Free Stall/Scrape	Free Stall/Flush
No land app	5063	2781	1638
27% volatilization 1	4887	2733	
80% volatilization 2	4569	2643	
1 Assumes: Expected level of N->NH ₃ volatilization for: drop-hose or ground level liquid manure application 2 Assumes: Expected level of N->NH ₃ volatilization for: center pivot or other conventional sprinkler irrigation liquid manure application			

(3-30-07)

762. PERMIT BY RULE.

01. General Requirement. Owners and operators of dairy farms shall be deemed to have a permit by rule if they comply with all of the applicable provisions of Sections 760 through 764. Owners and operators of dairy farms subject to Sections 760 through 764 shall not operate without obtaining the applicable permit by rule within the time frame specified. (3-30-07)

02. Optional Permit by Rule. Nothing in Sections 760 through 764 shall preclude any owner or operator of a dairy farm from requesting and obtaining an air quality permit pursuant to Section 200, nor shall Sections 760 through 764 preclude an owner or operator of a dairy farm below the threshold size in Section 761 from complying with Sections 760 through 764 and thereby obtaining a permit by rule. (3-30-07)

03. Exemption. If a dairy farm not subject to Sections 760 through 764 otherwise would become subject to those sections as a result of an emergency, the dairy farm shall notify the Director in writing within fourteen (14) days of the emergency. The notification shall include an explanation of the emergency circumstances. The dairy farm shall be exempt from the requirements of Sections 760 through 764 as long as the consequences of the emergency continue (but in no case for more than one (1) year) unless for good cause the Director determines it is appropriate to limit, condition or revoke the exemption. For the purpose of this rule “emergency” shall be defined as a serious situation or occurrence that happens unexpectedly and demands immediate action. (3-30-07)

763. REGISTRATION FOR PERMIT BY RULE.

01. Registration Process. Any owner or operator of a new dairy farm subject to sections 760 through 764, or an existing dairy farm that becomes subject to these sections due to change in size or type of operation, shall register prior to fifteen (15) days of triggering the threshold for which a permit is required. (3-30-07)

02. Registration Due Date. Any owner or operator of an existing dairy farm subject to Sections 760 through 764 shall register within fifteen (15) days of the effective date of Sections 760 through 764. (3-30-07)

03. Registration Information. The following information shall be provided by the registrant to the Department of Environmental Quality and the Department of Agriculture: (3-30-07)

- a. Name, address, location of dairy farm, and telephone number. (3-30-07)
- b. Information sufficient to establish that the dairy farm is of the size and type described in Section 761. (3-30-07)
- c. Information describing what BMPs, as described in Section 764, are employed to total twenty-seven (27) points. (3-30-07)

04. Exemption from Registration Fee. Dairy farms subject to Sections 760 through 764 are exempt from paying the permit by rule registration fee set forth in Section 800. (3-30-07)

05. Inspection. Within thirty (30) days of receipt of the registration information, the state of Idaho shall conduct a qualifying inspection to ensure the requisite point total of BMPs are employed. (3-30-07)

764. DAIRY FARM BEST MANAGEMENT PRACTICES.

01. BMPs. Each dairy farm subject to Sections 760 through 764, or that otherwise obtains a permit by rule under these sections, shall employ BMPs for the control of ammonia to total twenty-seven (27) points. Points may be obtained through third party export with sufficient documentation. The table located at Subsection 764.02. lists available BMPs and the associated point value. As new information becomes available or upon request, the Director may determine a practice not listed in the table constitutes a BMP and assign a point value. (3-30-07)

02. Table - Ammonia Control Practices for Idaho Dairies.

		Ammonia Control Effectiveness ¹			
System	Component	Open Lot	Freestall Scrape	Freestall Flush	Compliance Method ³

		Ammonia Control Effectiveness ¹			
System	Component	Open Lot	Freestall Scrape	Freestall Flush	Compliance Method ³
Waste Storage and Treatment Systems	Synthetic Lagoon Cover	15	20	20	1
	GeoteXtile Covers	10	13	13	1
	Solids Separation	3	3	3	3, 4
	Composting	4	4	4	1
	Separate Slurry and Liquid Manure Basins	6	10	-	1
	In-House Separation	0	12	0	1
	Direct Utilization of Collected Slurry	6	10	-	1, 3, 4
	Direct Utilization of Parlor Wastewater	10	10	10	1
	Direct Utilization of Flush Water	8	0	13	3, 4
	Anaerobic Digester	-	-	-	-
	Anaerobic Lagoon	-	-	-	-
	Aerated Lagoon	10	12	15	2
	Sequencing-Batch Reactor	15	20	20	2
	Lagoon Nitrification/Denitrification Systems	15	20	20	2
	Fixed-Media Aeration Systems	15	20	20	2
Zeolite Treatment of Liquid Manure 1lb/cow/day	4	5	5	2	
Zeolite Treatment of Liquid Manure 2lb/cow/day	8	10	10	2	
General Practices	Vegetative or Wooded Buffers (established)	7	7	7	1
	Vegetative or Wooded Buffers (establishing)	2	2	2	1
	Alternatives to Copper Sulfate	-	-	-	-
Freestall Barns	Scrape Built Up Manure	-	3	3	1
	Frequent Manure Removal	UD	UD	UD	-
	Tunnel Ventilation	-	-	-	-
	Tunnel Ventilation w/Biofilters	-	10	10	1

		Ammonia Control Effectiveness ¹			
System	Component	Open Lot	Freestall Scrape	Freestall Flush	Compliance Method ³
	Tunnel Ventilation w/Washing Wall	-	10	10	3, 4
Open Lots and Corrals	Rapid Manure Removal	4	2	2	1, 2
	Corral Harrowing	4	2	2	1
	Surface Amendments	10	5	5	2
	In-Corral Composting / Stockpiling	4	2	2	1
	Summertime Deep Bedding	10	5	5	1
Animal Nutrition	Manage Dietary Protein	2	2	2	2
Composting Practices	Alum Incorporation	12	8	6	2
	Carbon:Nitrogen Ratio (C:N) Ratio Manipulation	10	7.5	5	2
	Composting with Windrows	-	-	-	-
	Composting Static Pile	6	4.5	3	1
	Forced Aeration Composting	10	7.5	5	1
	Forced Aeration Composting with Biofilter	12	8	6	1
	Zeolite Incorporation	12	8	6	2
Land Application ²	Soil Injection - Slurry	10	15	7.5	2
	Incorporation of Manure within 24 hrs	10	10	10	2
	Incorporation of Manure within 48 hrs	5	5	5	2
	Nitrification of Lagoon Effluent	10	10	15	3, 4
	Low Energy/Pressure Application Systems	7	7	10	1
	Freshwater Dilution	5	8	8	1, 2
	Pivot Drag Hoses	8	8	10	1
	Subsurface Drip Irrigation	10	10	12	1

		Ammonia Control Effectiveness ¹			
System	Component	Open Lot	Freestall Scrape	Freestall Flush	Compliance Method ³
<p>Notes:</p> <p>1. The ammonia emission reduction effectiveness of each practice is rated numerically based on practical year-round implementation. Variations due to seasonal practices and expected weather conditions have been factored into these ratings. Not implementing a BMP when it is not practicable to do so, does not reduce the point value assigned to the BMP, nor does it constitute failure to perform the BMP. UD indicates that the practice is still under development.</p> <p>2. Land application practices assume practice is conducted on all manure; points will be pro-rated to reflect actual waste treatment; points can be obtained on exported material with sufficient documentation.</p> <p>3. Method used by inspector to determine compliance 1=Observation by Inspector 2=On-Site Recordkeeping Required 3, 4=Deviation Reporting Required. Equipment upsets and/or breakdowns shall be recorded in a deviation log and if repaired in a reasonable timeframe does not constitute non-compliance with this rule.</p>					

(5-8-09)

765. -- 774. (RESERVED)

775. RULES FOR CONTROL OF ODORS.

The purpose of Sections 775 through 776 is to control odorous emissions from all sources for which no gaseous emission control rules apply. (5-1-94)

776. GENERAL RULES.

01. General Restrictions. No person shall allow, suffer, cause or permit the emission of odorous gases, liquids or solids into the atmosphere in such quantities as to cause air pollution. (5-1-94)

02. Restrictions on Rendering Plants. No person shall allow, suffer, cause or permit any plant engaged in the processing of animal, mineral, or vegetable matter or chemical processes utilizing animal, mineral or vegetable matter to be operated without employing reasonable measures for the control of odorous emissions including wet scrubbers, incinerators, chemicals or such other measures as may be approved by the Department. (5-1-94)

777. -- 784. (RESERVED)

785. RULES FOR CONTROL OF INCINERATORS.

The purpose of Sections 785 through 788 is to prevent excessive emissions of particulate matter from incinerators. (5-1-94)

786. EMISSION LIMITS.

01. General Restrictions. No person shall allow, suffer, cause or permit any incinerator to discharge more than two-tenths (0.2) pounds of particulates per one hundred (100) pounds of refuse burned. (4-5-00)

02. Averaging Period. For the purposes of Section 786, emissions shall be averaged according to the following, whichever is the lesser period of time: (4-5-00)

- a. One (1) complete cycle of operation; or (4-5-00)

b. One (1) hour of operation representing worst-case conditions for the emissions of particulate matter. (4-5-00)

03. Test Methods and Procedures. The appropriate test method under Sections 785 through 788 shall be EPA Method 5 contained in 40 CFR Part 60 or such comparable and equivalent methods approved in accordance with Subsection 157.02.d. Test methods and procedures shall comply with Section 157. (4-5-00)

787. EXCEPTIONS.
Sections 785 and 786 do not apply to wigwam burners. (3-23-98)

788. -- 789. (RESERVED)

790. RULES FOR THE CONTROL OF NONMETALLIC MINERAL PROCESSING PLANTS.
The purpose of Sections 790 through 799 is to set forth the requirements for nonmetallic mineral processing plants, frequently referred to as rock crushers. Definitions specific to nonmetallic mineral processing permits are located in Section 011 while other general terms may be defined in Sections 006 through 008. Compliance with Section 790 does not relieve the owner or operator of a nonmetallic mineral processing plant from the responsibility of complying with other federal, state, and local applicable laws, regulations, and requirements. (3-15-02)

791. GENERAL CONTROL REQUIREMENTS.

01. Prohibition. No owner or operator of a nonmetallic mineral processing plant shall allow, suffer, or cause the emissions of any air pollutant to the atmosphere in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property. (3-15-02)

02. Control of Fugitive Dust. In accordance with Sections 650 and 651, owners and operators of nonmetallic mineral processing plants shall take all reasonable precautions to prevent the generation of fugitive dust. In determining what is reasonable, consideration will be given to factors such as the proximity to human habitations and/or activities and atmospheric conditions which might affect the movement of particulate matter. (3-15-02)

792. EMISSIONS STANDARDS FOR NONMETALLIC MINERAL PROCESSING PLANTS SUBJECT TO 40 CFR 60, SUBPART OOO.

01. Applicability and Designation of Affected Facilities. The provisions of 40 CFR 60.670(a)(1) are applicable to the following affected facilities in fixed or portable nonmetallic mineral processing plants that commence construction, modification, or reconstruction after August 31, 1983: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, and enclosed truck or railcar loading station. Also, crushers and grinding mills at hot mix asphalt facilities that reduce the size of nonmetallic minerals embedded in recycled asphalt pavement and subsequent affected facilities up to, but not including the first storage silo or bin, are subject to the provisions of 40 CFR 60.670(a)(1). (4-4-13)

02. Facilities Not Applicable to 40 CFR 60.670(a)(2), (b), and (c). The provisions of 40 CFR 60.670(a)(2), (b), and (c) do not apply to the following operations: all facilities located in underground mines, plants without crushers or grinding mills above ground, and wet processing operations (as defined in 40 CFR 60.671). (4-4-13)

a. An affected facility that is subject to the provisions of 40 CFR 60, Subpart F (Standards of Performance for Portland Cement Plants) or Subpart I (Standards of Performance for Hot Mix Asphalt Plants) or that follows the in plant process any facility subject to the provisions of 40 CFR 60, Subparts F or I, is not subject to the provisions of 40 CFR 60, Subpart OOO. (4-4-13)

b. Facilities at the following plants are not subject to the provisions of 40 CFR 60, Subpart OOO: (4-4-13)

i. Fixed sand and gravel plants and crushed stone plants with capacities, as defined in 40 CFR 60.671,

of twenty-three (23) megagrams per hour (twenty-five (25) tons per hour) or less; (4-4-13)

ii. Portable sand and gravel plants and crushed stone plants with capacities, as defined in 40 CFR 60.671, of one hundred thirty-six (136) megagrams per hour (one hundred fifty (150) tons per hour) or less; and (4-4-13)

iii. Common clay plants and pumice plants with capacities, as defined in 40 CFR 60.671, of nine (9) megagrams per hour (ten (10) tons per hour) or less. (4-4-13)

03. Standards of Performance for Nonmetallic Mineral Processing Plants. Affected facilities subject to 40 CFR 60, Subpart OOO, shall comply with all applicable emissions standards, monitoring requirements, test methods and procedures, and reporting and recordkeeping requirements. (4-4-13)

793. EMISSIONS STANDARDS FOR NONMETALLIC MINERAL PROCESSING PLANTS NOT SUBJECT TO 40 CFR 60, SUBPART OOO.

Owners and operators of nonmetallic mineral processing plants that are not subject to a NSPS requirement shall comply with the emissions standards set forth in Section 793. (3-15-02)

01. Processing Plants Not Regulated by NSPS. Fixed or portable plants that commenced construction, reconstruction, or modification before August 31, 1983 are not subject to 40 CFR 60, Subpart OOO. (3-15-02)

02. Emissions Standards for Fugitive Emissions. No owner or operator shall cause to be discharged into the atmosphere emissions which exhibit greater than twenty percent (20%) opacity from any crusher, grinding mill, screening operation, bucket elevator, belt conveyor, conveying system, transfer point, vent, capture system, storage bin, stockpile, truck dumping operation, vehicle traffic on an affected paved public roadway, vehicle traffic on or wind erosion of an unpaved haul road, or other source of fugitive emissions. Opacity shall be determined using the test methods and procedures in Section 625. The plant is not required to have a certified opacity reader. (3-15-02)

794. PERMIT REQUIREMENTS.

No owner or operator may commence construction, reconstruction, modification or operation of any nonmetallic mineral processing plant regardless of whether or not the source is an affected facility pursuant to 40 CFR 60.670(e) without first obtaining a permit or complying with Sections 795 through 799. The owner or operator shall comply with the permitting requirements of Subsection 794.02 or Subsection 794.03 and the applicable portions of Subsection 794.04 and/or Subsection 794.05. (4-11-15)

01. Permit by Rule Eligibility. New major facilities or major modifications subject to Sections 204 and 205 are not eligible for a Permit by Rule. (4-11-15)

02. Permit by Rule. Owners and operators of nonmetallic mineral processing plants that meet all of the applicable requirements set forth in Sections 795 through 799 shall be deemed to have a permit by rule (PBR) and shall not be required to obtain a permit to construct under Sections 200 through 228. (3-15-02)

03. Permit to Construct. Owners and operators of nonmetallic mineral processing plants that do not meet all of the requirements set forth in Sections 795 through 799, or that operate or intend to operate a nonmetallic mineral processing plant at a single site of operations for more than twelve (12) consecutive months, or that choose to construct and operate under specific permit requirements rather than the provisions of the permit by rule shall obtain a permit to construct pursuant to Sections 200 through 228. An existing permit to construct shall be considered valid until the permit is modified, incorporated into a Tier II operating permit, or terminated by the Department. Existing permits to construct may be terminated by the Department by registering the source under the permit by rule provisions in accordance with Section 797 after June 15, 2001. (3-15-02)

04. Tier I Operating Permits. Owners and operators of nonmetallic mineral processing plants that are affected facilities subject to a requirement of the New Source Performance Standards (NSPS) in 40 CFR 60 are Tier I sources as defined in Section 006. Tier I sources must comply with the applicable permitting requirements of Sections 300 through 399. (4-11-06)

05. Tier II Operating Permits. Owners and operators of nonmetallic mineral processing plants that are required by the Department or choose to obtain a Tier II operating permit pursuant to Sections 400 through 410 shall operate in accordance with the specific provisions of the Tier II operating permit until such time as the operating permit is terminated in writing by the Department. The Department may require owners and operators of nonmetallic mineral processing plants to obtain a Tier II operating permit whenever the Department determines that: (3-15-02)

a. Emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increment; or (3-15-02)

b. Specific emissions standards, or requirements on operation or maintenance are necessary to ensure compliance with any applicable emission standard or rule. (3-15-02)

795. PERMIT BY RULE REQUIREMENTS.

The purpose of Sections 795 through 799 is to establish the requirements for a permit by rule for nonmetallic mineral processing plants. (3-15-02)

796. APPLICABILITY.

01. Permit by Rule. Owners and operators of nonmetallic mineral processing plants shall be deemed to have a permit by rule if they comply with all of the applicable provisions of Sections 795 through 799. Nothing in Sections 795 through 799 shall preclude any owner or operator from obtaining a permit. Portable sources that operate or may be operated at a single location or site of operations for more than twelve (12) consecutive months must obtain a permit to construct or a Tier II operating permit. (3-15-02)

02. Permit Option. Owners and operators of nonmetallic mineral processing plants that hold a valid permit to construct or a Tier II operating permit must comply with the terms and conditions of the permit and are not subject to the requirements of the permit by rule in Sections 795 through 799. (3-15-02)

797. REGISTRATION FOR PERMIT BY RULE.

01. Registration Process. Any owner or operator of a nonmetallic mineral processing plant that opts to operate under the permit by rule shall register in the following manner: (3-15-02)

a. Any new or modified processing plant shall register fifteen (15) days prior to commencing operation or modification. The Department shall acknowledge registration in writing within fifteen (15) days. (3-15-02)

b. Any permitted processing plant shall register with the Department and request termination of the current permit to construct or Tier II operating permit. The Department shall normally act on the request within fifteen (15) days and notify the registrant in writing. (3-15-02)

Registration for permit by rule does not relieve the owner or operator of portable equipment from the registration and relocation requirements of Section 500. (3-15-02)

02. Registration Information. The following information shall be provided by the registrant to the Department: (3-15-02)

a. For all crushers and grinding mills, the registrant shall supply information on the manufacturer, crusher type (such as jaw, cone), serial number, date of manufacture, and maximum throughput capacity; (3-15-02)

b. For all screen decks, the registrant shall supply manufacturer name, physical size of screen, number of decks, serial number, and date of manufacture; and (3-15-02)

c. For all electrical generators, the registrant shall supply manufacturer name, rated output, and fuel. (3-15-02)

798. ELECTRICAL GENERATORS.

The following requirements apply to all electrical generators used to provide electrical power to any nonmetallic mineral processing plant. The requirements apply to each site of operations. (3-15-02)

01. Fuel Type. Only ASTM (American Society of Testing and Materials) Grade 1 or 2 fuel oil shall be used. The sulfur content of the fuel used shall not exceed the percentages of sulfur given in Section 725. (5-8-09)

02. Generator Operating Requirements. For the purposes of Sections 790 through 799, the following apply to all electrical generators.

Rated Output Capacities (kW)	Allowable Operating Hours (hr/day)		Allowable Operating Hours (hr/yr)	
	Attainment Unclassifiable Areas	PM-10 Nonattainment Areas	Attainment Unclassifiable Areas	PM-10 Nonattainment Areas
0 - 454	24	8	8760	2880
455 - 1000	24	24	8760	8760
1001 - 2000	24	24	5200	5200

kW = kilowatts
 hr/day = hours per day
 hr/yr = hours per year (3-15-02)

03. Generator Opacity Limit. Visible emissions from any generator stack, vent, or other functionally equivalent opening shall not exceed twenty percent (20%) opacity for a period or periods aggregating more than three (3) minutes in any sixty (60) minute period. Opacity shall be determined using the test methods and procedures contained in Section 625. (3-15-02)

04. Monitoring and Recordkeeping Requirements. (3-15-02)

a. The owner or operator shall monitor and record the following information. (3-15-02)

i. The rated output capacity, in kilowatts (kW), of the electrical generator(s) used; (3-15-02)

ii. Operating hours on a monthly and annual basis so compliance can be continuously determined for the previous twelve (12) month period; and (3-15-02)

iii. Vendor receipts of the fuel oil purchased clearly identifying the ASTM Grade. (3-15-02)

b. Records of monitoring and recordkeeping requirements for current operations shall be maintained at the site of operations for the duration of operations at that location and shall be available to Department representatives upon request. Records for previous sites of operation shall be kept for the most recent two (2) year period at a location where they can be reasonably accessed and shall be made available to the Department upon request. (3-15-02)

799. NONMETALLIC MINERAL PROCESSING PLANT FUGITIVE DUST BEST MANAGEMENT PRACTICE.

The owner or operator of a nonmetallic mineral processing plant shall use the Best Management Practices (BMP) contained in Section 799 to control the emissions of fugitive dust. Fugitive dust emissions shall be reasonably controlled as required by Sections 650 and 651. It shall be the responsibility of the owner or operator to reasonably control fugitive emissions at each site of operations but only for the duration of operations at each site under the control of the owner or operator. (3-15-02)

01. Generally Applicable Requirements. All reasonable precautions shall be taken to prevent

particulate matter from becoming airborne. The following requirements apply generally to this Fugitive Dust BMP. (3-15-02)

a. Control strategy triggers. The owner or operator of a nonmetallic mineral processing plant shall at all times be observant of all sources of fugitive dust emissions and monitor control strategies at least once per day when operating. When fugitive dust emissions are observed at any time to be exceeding any control strategy trigger specified in Subsections 799.02 through 799.06, that event shall trigger initiation of the prescribed control strategy or control strategies to control the fugitive dust emissions. (3-15-02)

b. Control strategies. A progressive control strategy shall be used to reasonably control the emissions of fugitive dust. Progressive control strategy means that if the initial control strategy or strategies chosen do not adequately control fugitive dust emissions, the owner or operator shall employ successive control strategies as listed until fugitive dust control is achieved. Fugitive dust control shall be applied on a frequency such that visible emissions do not exceed any emission standard specified in Sections 790 through 799. (3-15-02)

c. Monitoring and recordkeeping. The owner or operator shall maintain a record of each event where a control strategy is triggered. The trigger shall be recorded with a summary of the control strategy employed. If the trigger is a citizen complaint, the owner or operator shall record the complaint, an evaluation of whether the complaint has merit, and a summary of the corrective action taken. The record shall be maintained on forms provided by the Department or other forms that contain similar information. Records for current operations shall be maintained at the site of operations for the duration of operations at that location and shall be available to Department representatives upon request. Records for previous sites of operation shall be kept for the most recent two (2) year period at a location where they can be reasonably accessed and shall be made available to the Department upon request. (3-15-02)

02. Requirements for Paved Public Roadways. (3-15-02)

a. Definitions. (3-15-02)

i. Paved public roadway. A paved public roadway means a roadway accessible to the general public having a surface of asphalt or concrete. (3-15-02)

ii. Track-out. Track-out means the deposition of mud, dirt, or similar debris onto the surface of a paved public roadway from the tires and/or undercarriage of any vehicle associated with the operation of a nonmetallic mineral processing plant. (3-15-02)

b. Control strategy triggers. Triggers that require initiation of a strategy or strategies to control fugitive dust emissions from track-out include, but are not limited to: (3-15-02)

i. Visible deposition of mud, dirt, or similar debris on the surface of a paved public roadway. (3-15-02)

ii. Visible fugitive emissions from vehicle traffic on an affected paved public roadway that approach twenty percent (20%) opacity for a period or periods aggregating more than one (1) minute in any sixty (60) minute period. (3-15-02)

iii. Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. (3-15-02)

c. Control strategies. The following are control strategies for track-out. (3-15-02)

i. Prompt removal of mud, dirt, or similar debris from the affected surface of a paved public roadway. (3-15-02)

ii. Water flush, and/or water flush and vacuum sweep, the affected surface of the paved public roadway. Runoff shall be controlled so it does not saturate the surface of the adjacent unpaved haul road such that track-out is enhanced. If runoff is not, or cannot be controlled, gravel shall be applied to the surface of the adjacent unpaved haul road over an area sufficient to control track-out. (3-15-02)

iii. Apply gravel to the surface of the adjacent unpaved haul road. The area of application shall be sufficient to control track-out. (3-15-02)

iv. Apply an environmentally safe chemical soil stabilizer or chemical dust suppressant to the surface of the adjacent unpaved haul road. The area of application shall be sufficient to control track-out. (3-15-02)

v. Other control strategy or strategies as approved by the Department. (3-15-02)

03. Requirements for Unpaved Haul Roads. (3-15-02)

a. Definition of “unpaved haul roads.” Any unsurfaced roadway within the physical boundary of a nonmetallic mineral processing facility that is used as a haul road, access road, or similar. (3-15-02)

b. Control strategy triggers. Triggers that require initiation of a strategy or strategies to control fugitive dust emissions from unpaved haul roads include, but are not limited to: (3-15-02)

i. Visible fugitive emissions from vehicle traffic on an affected paved public roadway that approach twenty percent (20%) opacity for a period or periods aggregating more than one (1) minute in any sixty (60) minute period. (3-15-02)

ii. Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. (3-15-02)

c. Control strategies. The following are control strategies for fugitive dust emissions from unpaved haul roads. (3-15-02)

i. Limit vehicle traffic on unpaved haul roads. (3-15-02)

ii. Limit vehicle speeds on unpaved haul roads. If a speed limit is imposed, signs shall be posted along the haul road route and clearly indicate the speed limit. Signs shall be placed so they are visible to vehicles entering and leaving the site of operations. (3-15-02)

iii. Apply water to the surface of the unpaved haul road. Runoff shall be controlled so it does not saturate the surface of the unpaved haul road such that it causes track-out. If runoff is not, or cannot be controlled, gravel shall be applied to the surface of the unpaved haul road over an area sufficient to control track-out. (3-15-02)

iv. Apply gravel to the surface of the unpaved haul road. (3-15-02)

v. Apply an environmentally safe chemical soil stabilizer or chemical dust suppressant to the surface of the unpaved haul road. (3-15-02)

vi. Other control strategy or strategies as approved by the Department. (3-15-02)

04. Requirements for Transfer Points, Screening Operations, and Stacks and Vents. (3-15-02)

a. Definitions. (3-15-02)

i. Transfer point. Transfer point means a point in a conveying operation where the nonmetallic mineral is transferred to or from a belt conveyor except where the nonmetallic mineral is being transferred to a

- stockpile. (3-15-02)
- ii. Belt conveyor. Belt conveyor means a conveying device that transports material from one (1) location to another by means of an endless belt that is carried on a series of idlers and routed around a pulley at each end. (3-15-02)
- iii. Conveying system. Conveying system means a device for transporting materials from one (1) piece of equipment or location to another location within a plant. Conveying systems include but are not limited to the following: feeders, belt conveyors, bucket elevators and pneumatic systems. (3-15-02)
- iv. Bucket elevator. Bucket elevator means a conveying device of nonmetallic minerals consisting of a head and foot assembly which supports and drives an endless single or double strand chain or belt to which buckets are attached. (3-15-02)
- v. Screening operation. Screening operation means a device for separating material according to size by passing undersize material through one (1) or more mesh surfaces (screens) in series, and retaining oversize material on the mesh surfaces (screens). (3-15-02)
- vi. Capture system. Capture system means the equipment (including enclosures, hoods, ducts, fans, dampers, etc.) used to capture and transport particulate matter generated by one (1) or more process operations to a control device. (3-15-02)
- vii. Control device. Control device means the air pollution control equipment used to reduce particulate matter emissions released to the atmosphere from one (1) or more process operations at a nonmetallic mineral processing plant. (3-15-02)
- viii. Vent. Vent means an opening through which there is mechanically induced air flow for the purpose of exhausting from a building air carrying particulate matter emissions from one (1) or more affected facilities. (3-15-02)
- b.** Control strategy triggers. Triggers that require initiation of a strategy or strategies to control fugitive dust emissions from transfer points, belt conveyors, bucket elevators, screening operations, conveying systems, capture systems, and building vents include, but are not limited to, the following: (3-15-02)
- i. NSPS regulated processing plants. (3-15-02)
- (1) Opacity greater than ten percent (10%) from any transfer point on a belt conveyor, conveying system, bucket elevator, or screening operation. (3-15-02)
- (2) For any transfer point on a belt conveyor, conveying system, bucket elevator, or screening operation located within a building, opacity greater than seven percent (7%) from any building vent. (3-15-02)
- (3) Opacity greater than seven percent (7%) from any capture system stack. (3-15-02)
- (4) Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. (3-15-02)
- ii. Processing plants not regulated by NSPS. (3-15-02)
- (1) Opacity greater than twenty percent (20%) from any transfer point on a belt conveyor, conveying system, bucket elevator, or screening operation. (3-15-02)
- (2) For any transfer point on a belt conveyor, conveying system, bucket elevator, or screening operation located within a building, opacity greater than twenty percent (20%) from any building vent. (3-15-02)

- (3) Opacity greater than twenty percent (20%) from any capture system stack. (3-15-02)
- (4) Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. (3-15-02)
- c. Control Strategies.** The following are control strategies for transfer points, belt conveyors, bucket elevators, screening operations, conveying systems, capture systems, and building vents. Controls shall be applied on a frequency such that visible fugitive emissions do not exceed any applicable opacity limit. (3-15-02)
- i. Limit drop heights of materials such that there is a homogeneous flow of material. (3-15-02)
- ii. Install, operate, and maintain water spray bars to control fugitive dust emissions at transfer points on belt conveyors, conveying systems, bucket elevators, and screening operations as necessary. (3-15-02)
- iii. Other control strategy or strategies as approved by the Department. (3-15-02)
- 05. Requirements for Crushers and Grinding Mills.** (3-15-02)
- a. Definitions.** (3-15-02)
- i. Crusher. Crusher means a machine used to crush any nonmetallic mineral, and includes, but is not limited to, the following types: jaw, gyratory, cone, roll, rod mill, hammermill, and impactor. (3-15-02)
- ii. Grinding mill. Grinding mill means a machine used for the wet or dry fine crushing of any nonmetallic mineral. Grinding mills include, but are not limited to, the following types: hammer, roller, rod, pebble and ball, and fluid energy. The grinding mill includes the air conveying system, air separator, or air classifier, where such systems are used. (3-15-02)
- iii. Initial crusher. Initial crusher means any crusher into which nonmetallic minerals can be fed without prior crushing in the plant. (3-15-02)
- b. Control strategy triggers.** Triggers that require initiation of a strategy or strategies to control fugitive dust emissions from any crusher, grinding mill, building vent, or capture system stack include, but are not limited to, the following. (3-15-02)
- i. NSPS regulated processing plants. (3-15-02)
- (1) Opacity greater than fifteen percent (15%) from any crusher or grinding mill at which capture system is not used. (3-15-02)
- (2) For any crusher or grinding mill located within a building, opacity greater than seven percent (7%) from any building vent. (3-15-02)
- (3) Opacity greater than seven percent (7%) from any capture system stack. (3-15-02)
- (4) Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. (3-15-02)
- ii. Processing plants not regulated by NSPS. (3-15-02)

(1) Opacity greater than twenty percent (20%) from any crusher or grinding mill at which capture system is not used. (3-15-02)

(2) For any crusher or grinding mill located within a building, opacity greater than twenty percent (20%) from any building vent. (3-15-02)

(3) Opacity greater than twenty percent (20%) from any capture system stack. (3-15-02)

(4) Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. (3-15-02)

c. Control strategies. The following are control strategies for any crusher, grinding mill, building vent, or capture system stack. Controls shall be applied on a frequency such that visible fugitive emissions do not exceed any applicable opacity limit. (3-15-02)

i. Limit drop heights of materials such that there is a homogeneous flow of material. (3-15-02)

ii. Install, operate, and maintain water spray bars to control fugitive dust emissions at crusher drop points as necessary. (3-15-02)

iii. Other control strategy or strategies as approved by the Department. (3-15-02)

06. Requirements for Stockpiles. (3-15-02)

a. Definitions. (3-15-02)

i. Stockpile. Stockpile means any nonmetallic mineral storage pile, reserve supply, or similar. Nonmetallic minerals shall have the meaning given in 40 CFR Part 60, Subpart OOO. Nonmetallic minerals may be stockpiled by belt conveyor, truck dumping, or similar. (3-15-02)

ii. Truck dumping. Truck dumping means the unloading of nonmetallic minerals from movable vehicles designed to transport nonmetallic minerals from one (1) location to another. Movable vehicles include but are not limited to: trucks, front-end loaders, skip hoists, and railcars. (3-15-02)

b. Control strategy triggers. Triggers that require immediate initiation of a strategy or strategies to control fugitive dust emissions from stockpiles include, but are not limited to: (3-15-02)

i. Visible fugitive emissions from wind erosion of any stockpile that approaches twenty percent (20%) opacity for a period or periods aggregating more than one (1) minute in any sixty (60) minute period. (3-15-02)

ii. Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. (3-15-02)

c. Control strategies. The following are control strategies for stockpiles. (3-15-02)

i. Limit the height of the stockpiles. (3-15-02)

ii. Limit the disturbance of the stockpiles. (3-15-02)

iii. Apply water onto the surface of the stockpile. (3-15-02)

- iv. Other control strategy or strategies as approved by the Department. (3-15-02)

800. REGISTRATION FEE FOR PERMIT BY RULE.

A registration fee of two hundred fifty dollars (\$250) shall be submitted to the Department with each permit by rule registration. (7-1-02)

801. PAYMENT OF FEES FOR PERMITS BY RULE REGISTRATION.

The permit by rule registration fee shall be paid in its entirety at the time the required registration form is submitted to the Department. The permit by rule registration form and fee should be sent to:

Permit by Rule Registration Fees
Fiscal Office
Idaho Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706-1255 (7-1-02)

802. RECEIPT AND USAGE OF FEES.

Permit by rule registration fee receipts shall be deposited by the Department into a stationary source permit account. Monies from this account shall be used solely toward technical, legal and administrative support of the Department's Permit to Construct and Tier II permit programs and shall not be used for those activities supported by the fund created for implementing the operating permit program required under Title V of the federal Clean Air Act amendments of 1990. Fees payable under Section 800 shall be retained by the Department regardless of whether a permit by rule registration is accepted by the Department in response to a registration request. (7-1-02)

803. -- 804. (RESERVED)

805. RULES FOR CONTROL OF HOT-MIX ASPHALT PLANTS.

The purpose of Sections 805 through 808 is to establish for hot-mix asphalt plants restrictions on the emission of particulate matter. (5-1-94)

806. EMISSION LIMITS.

No person shall cause, allow or permit a hot-mix asphalt plant to have particulate emissions which exceed the limits specified in Sections 700 through 703. (5-1-94)

807. MULTIPLE STACKS.

In the case of more than one (1) stack to a hot-mix asphalt plant, the emission limitation will be based on the total emission from all stacks. (5-1-94)

808. FUGITIVE DUST CONTROL.

01. Fugitive Emission Controls. No person shall cause, allow or permit a plant to operate that is not equipped with an efficient fugitive dust control system. The system shall be operated and maintained in such a manner as to satisfactorily control the emission of particulate material from any point other than the stack outlet. (5-1-94)

02. Plant Property Dust Controls. The owner or operator of the plant shall maintain fugitive dust control of the plant premises and plant owned, leased or controlled access roads by paving, oil treatment or other suitable measures. Good operating practices, including water spraying or other suitable measures, shall be employed to prevent dust generation and atmospheric entrainment during operations such as stockpiling, screen changing and general maintenance. (5-1-94)

809. -- 814. (RESERVED)

815. RULES FOR CONTROL OF KRAFT PULP MILLS.

The purpose of Sections 815 through 818 is to establish emission standards for recovery furnaces and notification and reporting requirements for low volume high concentration (LVHC) and high volume low concentration (HVLC) gas venting at kraft pulp mills. (3-29-12)

816. RECOVERY FURNACE TRS STANDARD.

The average daily emissions of total reduced sulfur (TRS) from each recovery furnace shall not exceed fifteen (15) ppm expressed as hydrogen sulfide on a dry basis. Recovery furnaces at kraft pulp mills subject to 40 CFR Part 60 TRS standards are exempt from the requirements of Section 816. (3-29-12)

817. RECOVERY FURNACE TRS MONITORING AND RECORDKEEPING.

Owners and operators of each recovery furnace subject to the TRS emission standard in Section 816 shall maintain and operate equipment to continuously monitor and record the daily average TRS concentrations. (3-29-12)

818. KRAFT PULP MILL LVHC AND HVLC GAS VENTING NOTIFICATION AND REPORTING.

Section 818 is applicable to kraft pulp mill LVHC and HVLC gas venting from sources required to be controlled pursuant to 40 CFR 63, Subpart S. For purposes of Sections 130 through 136, an excess emission is defined as a continuous uncontrolled gas venting in excess of five (5) minutes. Excess emissions notification and reporting shall be conducted pursuant to the requirements contained in Sections 130 through 136 and the permit issued to the kraft pulp mill. (3-29-12)

819. -- 834. (RESERVED).

835. RULES FOR CONTROL OF RENDERING PLANTS.

The purpose of Sections 835 through 839 is to establish for rendering plants limitations on the emission of odors. (5-1-94)

836. CONTROL OF COOKERS.

No person shall allow, suffer, cause, or permit the operation or use of any device, machine, equipment, or other contrivance to cook inedible animal or marine matter unless all gases, vapors, and gas entrained effluents from these processes are passed through condensers to remove all steam and other condensable materials. All noncondensibles passing through the condensers must then be incinerated at one thousand two hundred degrees Fahrenheit (1,200) for a minimum of three-tenths (0.3) seconds, or treated in an equally effective manner. (5-1-94)

837. CONTROL OF EXPELLERS.

No person shall allow, suffer, cause, or permit the installation or operation of an expeller unless it is properly hooded and all exhaust gases are ducted to odor control equipment. (5-1-94)

838. CONTROL OF PLANT AIR.

No person shall allow, suffer, cause, or permit the installation or operation of a rendering plant unless plant ventilation air is collected and ducted to odor control equipment. (5-1-94)

839. EXCEPTIONS.

Section 838 shall not apply when it can be demonstrated that without ducting plant ventilation air to the odor control equipment no noticeable odors from the plant can be detected at the property line. (5-1-94)

840. -- 844. (RESERVED)

845. RULES FOR CONTROL OF SULFUR OXIDE EMISSIONS FROM SULFURIC ACID PLANTS.

The purpose of Sections 845 through 848 is to establish sulfur oxide emission limits for sulfuric acid plants using elemental sulfur for the production of sulfuric acid. (5-1-94)

846. EMISSION LIMITS.

01. General Restrictions. No person shall allow, suffer, cause or permit the operation of any sulfuric acid plant which emits sulfur oxides into the atmosphere in excess of twenty-eight (28) lbs/ton of one hundred percent (100%) sulfuric acid produced. (4-5-00)

02. Averaging Period. For the purposes of Section 846, emissions shall be averaged according to the following, whichever is the lesser period of time: (4-5-00)

- a. One (1) complete cycle of operation; or (4-5-00)
- b. Three (3) hours of operation representing worst-case conditions for the emissions of sulfur oxide. (4-5-00)

847. MONITORING AND TESTING.

The appropriate test method under Sections 845 through 848 shall be EPA Method 8 contained in 40 CFR Part 60 or such comparable and equivalent methods approved in accordance with Subsection 157.02.d. Test methods and procedures shall comply with Section 157. (4-5-00)

848. COMPLIANCE SCHEDULE.

Any owner or operator of a source subject to Sections 845 through 848 shall no later than December 31, 1972, submit to the Department a proposed Compliance Schedule that demonstrates compliance as expeditiously as feasible but no later than July 31, 1975. (5-1-94)

849. -- 854. (RESERVED)

855. COMBINED ZINC AND LEAD SMELTERS.

The purpose of Sections 855 through 858 is to establish requirements for combined zinc and lead smelters. (5-1-94)

856. COMBINED ZINC AND LEAD SMELTERS -- CONTROL OF FUGITIVE SULFUR DIOXIDE EMISSIONS.

The owner or operator of any combined zinc and lead smelter shall utilize best engineering techniques to capture and vent fugitive sulphur dioxide emissions through one (1) or more stacks. Such techniques shall include, but not be limited to: (5-1-94)

01. Condition of Ducts, Flues, and Stacks. Maintaining and operating all ducts, flues, and stacks in a leak free condition. (5-1-94)

02. Prevention of Leakage in Equipment and Systems. Maintaining and operating all process equipment and gas collection systems in such a fashion that leakage of sulfur dioxide gases will be prevented to the maximum extent possible. (5-1-94)

03. Other Techniques. Wherever possible, using gas collection systems and/or ducting emissions through the tallest stack or stacks serving the facility. (5-1-94)

857. COMBINED ZINC AND LEAD SMELTERS -- OXIDES OF SULFUR.

01. Final Emission Limitation. Oxides of sulfur, expressed as sulfur dioxide (SO₂), in excess of one thousand nine hundred (1900) pounds per hour from all sources within any combined zinc and lead smelter shall not be discharged into the atmosphere. To assure compliance with this requirement, the Director shall issue permits specifying emission limits for equipment within the smelter. (5-1-94)

02. Effective Date. Compliance with the emission limitation established in Subsection 857.01 may be delayed until December 31, 1984, provided that there is compliance with the provisions of Subsections 857.04, 857.05 and 857.06. (5-1-94)

03. Exception. The provisions of Section 857 shall not apply to emissions generated solely from the combustion of fuel for the exclusive purpose of space heating or steam generation. (5-1-94)

04. Interim Emission Limitations. The owner or operator of the combined zinc and lead smelter shall obtain a non-ferrous smelter order for sulfur dioxide emissions issued pursuant to 42 U.S.C. Section 7419, which may be in the form of an interim compliance agreement, permit to operate, or regulation, covering the period from September 1, 1979, until December 31, 1982. Failure to adhere to the terms and conditions of such order shall result in the provisions contained in Subsection 857.01 becoming effective in accordance with a compliance schedule to be established by the Director which shall require compliance within the minimum time the Director determines is technically feasible. (5-1-94)

a. Review of Non-Ferrous Smelter Order Provisions. The owner or operator of a combined zinc and lead smelter shall obtain the Director's approval of any interim control measure to be employed pursuant to Subsection 857.04. (5-1-94)

i. Use of any such interim control measure shall be disapproved by the Director if he has reasonable cause to believe it is not designed or implemented adequately to achieve and maintain the state and federal ambient air quality standards for sulfur dioxide. (5-1-94)

ii. Prior to the Director's disapproval of use of any such interim control measure, he shall notify the owner or operator of the smelter of his intention and reasons for his decision. (5-1-94)

iii. Prior to the Director's decision becoming final, the owner or operator of the smelter shall have thirty (30) days in which to either: amend the interim control measure to the Director's satisfaction; or request a public hearing on the matter. (5-1-94)

iv. The Director shall not require enactment of any new interim control measures earlier than the timetable for implementation established by the nonferrous smelter order described in Subsection 857.04. (5-1-94)

b. Violations. Once approved by the Director, a violation of any term or condition of an interim control measure shall constitute a violation of Section 857. (5-1-94)

c. Records Required. The owner or operator of a combined zinc and lead smelter shall submit, on a monthly basis and within two (2) weeks after the end of each calendar month, copies of all records required pursuant to an applicable non-ferrous smelter order, as described in Subsection 857.04. (5-1-94)

05. Compliance Schedule. If the owner or operator of a combined zinc and lead smelter qualifies for a second nonferrous smelter order pursuant to 42 U.S.C. Section 7419, which may be in the form of an interim compliance agreement, permit to operate, or rule, and if the provisions of Subsection 857.01 are not being complied with on or before December 31, 1982, he shall comply with the following schedule of increments of progress. During the period of this compliance schedule, the owner or operator of the combined zinc and lead smelter shall comply with interim emission limitations established in the first non-ferrous smelter order which has been approved by the Director and issued pursuant to 42 U.S.C. Section 7419. (5-1-94)

a. By January 1, 1983, submit final plans and specifications of equipment or modifications to achieve compliance with Subsection 857.01. (5-1-94)

b. By May 1, 1983, issue contracts or purchase orders for the required emission controls or process modifications. (5-1-94)

c. By September 1, 1983, initiate on-site construction of the required emission controls or process modifications. (5-1-94)

d. By September 1, 1984, complete on-site construction of the required emission controls or process modifications. (5-1-94)

e. By December 31, 1984, assure final compliance with the provisions of Subsection 857.01. (5-1-94)

06. Extension of Compliance Date. The following dates shall be extended for a period as prescribed by a second non-ferrous smelter order, issued pursuant to 42 U.S.C. Section 7419, provided that such order has been approved by the Director and provided that such order shall not exceed three (3) years: (5-1-94)

a. The compliance date extension allowed pursuant to Subsection 857.02; and (5-1-94)

b. The compliance schedule specified in Subsection 857.05. (5-1-94)

07. Appeal. On or before January 1, 1982, the owner or operator of the combined zinc and lead smelter

may request a hearing on the emission limit set forth in Subsection 857.01. (5-1-94)

a. After public hearing and consideration of all testimony, if the Board determines that use of increased stack height or other dispersion techniques are valid pursuant to law, the Board shall amend Section 857 in accordance with the Idaho Administrative Procedure Act, Sections 67-5201 through 67-5299, Idaho Code, setting a new emission limit at a level to assure compliance with state and federal ambient air quality standards for sulfur dioxide. (5-1-94)

b. The emission limit in Subsection 857.01 shall become final after Board action in accordance with the Idaho Administrative Procedure Act either: (5-1-94)

i. As specified in Subsection 857.07.a.; or (5-1-94)

ii. On January 1, 1982, if no appeal and public hearing is requested pursuant to Subsection 857.07. (5-1-94)

858. STACK MONITORING REQUIREMENTS.

The provisions of Section 858 shall apply during any time when a nonferrous smelter order, which may be in the form of an interim compliance agreement, permit to operate, or rule, is not in effect. (5-1-94)

01. Measurement Systems. The owner or operator of the combined zinc and lead smelter shall install, calibrate, maintain and operate measurement systems for continuously monitoring and recording emission rates of sulfur dioxide from each stack with an emission potential of fifty (50) tons or more sulfur dioxide per year. Measurement systems required pursuant to Subsection 858.01 shall be: (5-1-94)

a. Demonstrated in accordance with procedures prescribed by the Director; and (5-1-94)

b. Maintained, operated and calibrated in accordance with the methods prescribed by the Director. (5-1-94)

02. Record-Keeping and Reporting Requirements. The owner or operator of the combined zinc and lead smelter shall maintain a record of all measurements required by Section 858. (5-1-94)

a. One (1) hour average sulfur dioxide emission rates shall be calculated each calendar month and submitted to the Director within fifteen (15) days following the end of each calendar month to enable him to determine the impact of the smelter on ambient air quality. The records of such measurements shall be retained by the owner or operator for a minimum of two (2) years following the date of such measurements. (5-1-94)

b. Records of maintenance and/or calibration of any measurement system required pursuant to Section 858 shall be kept on site for a minimum of two (2) years and shall be submitted to the Director upon request. These records shall clearly show instrument readings before and after such calibration and/or maintenance. (5-1-94)

c. When any ambient air quality monitor from which data are telemetered to the smelter indicates that a state or federal ambient air quality standard for sulfur dioxide is equalled or exceeded, the owner or operator of the combined zinc and lead smelter shall notify the Director within twelve (12) hours of the occurrence. (5-1-94)

859. STANDARDS OF PERFORMANCE FOR MUNICIPAL SOLID WASTE LANDFILLS THAT COMMENCED CONSTRUCTION, RECONSTRUCTION OR MODIFICATION ON OR AFTER MAY 30, 1991.

01. Applicability. All owners or operators of each small or large municipal solid waste landfills in any one (1) of the following categories are subject to Section 859: (4-5-00)

a. Landfills constructed after May 30, 1991; (4-5-00)

b. Existing landfills with modifications after May 30, 1991; or (4-5-00)

- c. Landfills that closed after November 8, 1987 with modifications after May 30, 1991. (4-5-00)

02. Definitions. Unless specifically provided otherwise immediately below, the definitions for all terms set forth in Section 859 shall be the definitions set forth in 40 CFR Part 60. The following definitions apply to this Section: (4-5-00)

a. "Closed municipal solid waste landfill" (closed landfill) means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of 40 CFR 258.60. (4-5-00)

- b. "Effective date" means July 2, 1999. (4-5-00)

c. "Existing municipal solid waste landfill" (existing landfill) means a municipal solid waste landfill that began construction, reconstruction or modification before May 30, 1991 and has accepted waste at any time since November 8, 1987 or has additional design capacity available for future waste deposition. (4-5-00)

d. "Large municipal solid waste landfill" (large landfill) means a municipal solid waste landfill with a design capacity greater than or equal to two point five (2.5) million megagrams or two point five (2.5) million cubic meters. (4-5-00)

e. "Modification" means an action that results in an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991. Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion. (4-5-00)

f. "Municipal solid waste landfill" (landfill) means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads and may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion (modification). (4-5-00)

g. "New municipal solid waste landfill" (new landfill) means a municipal solid waste landfill that began construction, reconstruction or modification or began accepting waste on or after May 30, 1991. (4-5-00)

h. "Small municipal solid waste landfill" (small landfill) means a municipal solid waste landfill with a design capacity less than two point five (2.5) million megagrams or two point five (2.5) million cubic meters. (4-5-00)

03. General Requirements. All owners or operators of landfills subject to Section 859 must comply with 40 CFR Part 60, Subpart WWW, as amended by 63 Fed. Reg. 32,743-53 (June 16, 1998) and 64 Fed. Reg. 9,257- 62 (February 24, 1999) and incorporated by reference into these rules at Section 107. Where "Administrator" or "EPA" appears in 40 CFR Part 60, "Department" shall be substituted, except in any section of 40 CFR Part 60 for which a federal rule or delegation specifically indicates that authority will not be delegated to the state. (4-5-00)

04. Permitting Requirements. All owners or operators of landfills subject to Section 859 must comply with Federal Operating Permit Requirements (Title V) as specified in Sections 300 through 399 of these rules: (4-5-00)

a. All owners or operators of existing large landfills with modifications after May 30, 1991 must submit a complete Federal Operating Permit application by June 1, 2000. (4-5-00)

b. All owners or operators of existing large landfills with modifications after March 12, 1996 must submit a complete Federal Operating Permit application the earliest of one (1) year from the date EPA approves the

Clean Air Act Section 111(d) State Plan for Section 859, or within one (1) year of the modification. (4-5-00)

c. All owners or operators of new large landfills, which includes newly constructed large landfills after March 12, 1996 and existing small landfills that become large landfills after March 12, 1996 must submit a complete Federal Operating Permit application within one (1) year of becoming subject to this requirement. (4-5-00)

d. All owners or operators of new and modified existing small landfills that are major sources as defined in 40 CFR Part 60, Subpart WWW, as amended by 63 Fed. Reg. 32,743-53 (June 16, 1998) and 64 Fed. Reg. 9,257-62 (February 24, 1999), must submit a complete Federal Operating Permit application within one (1) year of becoming a major source. (4-5-00)

05. Reporting Requirements. All owners or operators of landfills subject to Section 859 must comply with the following: (4-5-00)

a. All owners or operators of large landfills must: (4-5-00)

i. Submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within thirty (30) days of the effective date of Section 859; and (4-5-00)

ii. Submit an annual Nonmethane Organic Compound Report until nonmethane emissions are less than fifty (50) Mg/yr. (4-5-00)

b. All owners or operators of small landfills of Section 859 must submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within thirty (30) days of the effective date of Section 859. (4-5-00)

c. All owners or operators of landfills subject to Section 859 after the effective date of Section 859 must submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within thirty (30) days of becoming subject to Section 859. (4-5-00)

860. EMISSION GUIDELINES FOR MUNICIPAL SOLID WASTE LANDFILLS THAT COMMENCED CONSTRUCTION, RECONSTRUCTION OR MODIFICATION BEFORE MAY 30, 1991.

01. Applicability. All owners or operators of any small or large municipal solid waste landfills in the following categories are subject to Section 860: (4-5-00)

a. Landfills that have accepted waste since November 8, 1987; (4-5-00)

b. Landfills with no modifications after May 30, 1991; or (4-5-00)

c. Landfills that closed after November 8, 1987 with no modifications after May 30, 1991. (4-5-00)

02. Definitions. Unless specifically provided otherwise immediately below, the definitions for all terms set forth in Section 860 shall be the definitions set forth in 40 CFR Part 60. The following definitions apply to Section 860: (4-5-00)

a. "Closed municipal solid waste landfill" (closed landfill) means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of 40 CFR 258.60. (4-5-00)

b. "Effective date" means July 2, 1999. (4-5-00)

c. "Existing municipal solid waste landfill" (existing landfill) means a municipal solid waste landfill that began construction, reconstruction or modification before May 30, 1991 and has accepted waste at any time since November 8, 1987 or has additional design capacity available for future waste deposition. (4-5-00)

d. “Large municipal solid waste landfill” (large landfill) means a municipal solid waste landfill with a design capacity greater than or equal to two point five (2.5) million megagrams or two point five (2.5) million cubic meters. (4-5-00)

e. “Modification” means an action that results in an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991. Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion. (4-5-00)

f. “Municipal solid waste landfill” (landfill) means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads and may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion (modification). (4-5-00)

g. “New municipal solid waste landfill” (new landfill) means a municipal solid waste landfill that began construction, reconstruction or modification or began accepting waste on or after May 30, 1991. (4-5-00)

h. “Small municipal solid waste landfill” (small landfill) means a municipal solid waste landfill with a design capacity less than two point five (2.5) million megagrams or two point five (2.5) million cubic meters. (4-5-00)

03. General Requirements. All owners or operators of landfills subject to Section 860 must comply with, 40 CFR Section 60.30c through 60.36c and 40 CFR Section 60.751 through 60.759 as amended by 63 Fed. Reg. 32,743-53 (June 16, 1998) and 64 Fed. Reg. 9,257-62 (February 24, 1999) and incorporated by reference into these rules at Section 107. Where “Administrator” or “EPA” appears in 40 CFR Part 60, “Department” shall be substituted, except in any section of 40 CFR Part 60 for which a federal rule or delegation specifically indicates that authority will not be delegated to the state. (4-5-00)

04. Permitting Requirements. All owners or operators of landfills subject to Section 860 must comply with Federal Operating Permit Requirements (Title V) as specified in Sections 300 through 399 of these rules: (4-5-00)

a. All owners or operators of existing large landfills must submit a complete Federal Operating Permit application one (1) year after EPA approves the Clean Air Act Section 111(d) State Plan associated with Section 860. (4-5-00)

b. All owners or operators of existing small landfills that are major sources must submit a complete Federal Operating Permit application within one (1) year of becoming a major source. (4-5-00)

05. Reporting Requirements. All owners or operators of landfills subject to Section 860 shall comply with the following: (4-5-00)

a. All owners or operators of large landfills must: (4-5-00)

i. Submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within ninety (90) days of the effective date of Section 860 and; (4-5-00)

ii. Submit an annual Nonmethane Organic Compound Report until nonmethane emissions are less than fifty (50) Mg/yr. (4-5-00)

b. All owners or operators of small landfills must submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within ninety (90) days of the effective date of Section 860. (4-5-00)

06. Compliance Schedules and Increments of Progress. All owners or operators of landfills subject to Section 860 that have a nonmethane organic compound emission rate fifty (50) Mg/yr or greater as specified in 40 CFR Section 60.752(b)(2) shall comply with the following schedule: (4-5-00)

a. The owner or operator of an existing large landfill must submit their first Annual Emission Rate Report with the design capacity report no later than July 31, 2000. (4-5-00)

b. The owner or operator of an existing landfill shall submit a collection and control system design plan within one (1) year of the date of the first Annual Emission Rate Report showing that the nonmethane organic compound emission rate is fifty (50) Mg/yr or greater as specified in 40 CFR Section 60.752(b)(2). (4-5-00)

c. The owner or operator of an existing landfill shall award contracts for construction of collection and control systems or orders for purchase of components no later than January 31, 2002. (4-5-00)

d. The owner or operator of an existing landfill shall initiate on-site construction or installation of the collection and control systems no later than April 30, 2002. (4-5-00)

e. The owner or operator of an existing landfill shall complete, no later than September 30, 2002, on-site construction or installation of collection and control systems capable of meeting the requirements of Section 860. (4-5-00)

f. The owner or operator of an existing landfill shall comply with Section 860 no later than September 30, 2002. (4-5-00)

07. Compliance Schedules and Increments of Progress for Municipal Solid Waste Landfills That Have Nonmethane Organic Compound Emission Rates Less Than 50 Mg/yr. All owners or operators of landfills subject to Section 860 that have nonmethane organic compound emission rates less than fifty (50) Mg/yr on or after November 19, 1999 shall install collection and control systems within thirty (30) months after the date the first annual nonmethane organic compound emission rate equals or exceeds fifty (50) Mg/yr as specified in 40 CFR Section 60.36c(b). (4-5-00)

861. -- 999. (RESERVED)