

IDAHO ADMINISTRATIVE BULLETIN

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August 5, 1998

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Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rule-making documents in Idaho. The Bulletin publishes the official text notice and full text of such actions.

The state of Idaho administrative rule-making process comprises five distinct activities; Proposed, Negotiated, Temporary, Pending, and Final rule-making. In the majority of cases, the process begins with proposed rule-making and ends with final rule-making.

State agencies are required to provide public notice of rule-making activity and invite public input. The public receives notice of a rule-making activity through the Idaho Administrative Bulletin and the Legal Notice published monthly in local newspapers. The Legal Notice provides reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time and manner specified in the Legal Notice. After the comment period closes, the agency considers fully all information submitted in regard to the rule. Comment periods are not provided in temporary or final rule-making activities.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin 97-1 refers to the first Bulletin issued in calendar year 1997, Bulletin 96-1 refers to the first Bulletin issued in calendar year 1996, etc. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 1 refers to January; Volume No. 2 refers to February; and so forth. Example: The Bulletin published in January of 1998 is cited as Volume 98-1. The December 1997 Bulletin is cited as Volume 97-12.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

*The Idaho Administrative Code is published once a year and is a compilation or supplemental compilation of all final and enforceable administrative rules in effect in Idaho. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in the Administrative Code. Temporary rules and final rules that have been approved by the legislature during the legislative session, and published in the monthly Idaho Administrative Bulletin, supplement the Administrative Code. Negotiated, proposed, and pending rules are **not** printed in the Administrative Code and are published only in the Bulletin.*

*To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Index of Administrative Rule-Making**, printed in each Bulletin.*

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

The Idaho Administrative Code and all monthly Bulletins are available for viewing and use by the public in all 44 county law libraries, state university and college and community college libraries, the state law library, the state library, the Public Libraries in Boise, Pocatello, Idaho Falls and Twin Falls, the Lewiston City Library, East Bonner County Library, Eastern Idaho Technical College Library, Ricks College Library, and Northwest Nazarene College Library.

SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0004, telephone (208) 334-3577.

The Administrative Bulletin is an official monthly publication of the State of Idaho. Yearly subscriptions or individual copies are available for purchase.

The Administrative Code, is an annual compilation or supplemental compilation of all final and enforceable temporary administrative rules and includes tables of contents, reference guides, and a subject index.

Individual Rule Chapters and **Individual Rule-Making Dockets**, are specific portions of the Bulletin and Administrative Code produced on demand.

Internet Access - The Administrative Code and Administrative Bulletin are available on the Internet at the following address:

<http://www.state.id.us> - from Idaho Home Page select State Agencies, then the Department of Administration link, then Administrative Rules.

EDITOR'S NOTE: All rules are subject to frequent change. Users should reference all current issues of the Administrative Bulletin for negotiated, temporary, proposed, pending, and final changes to all rules, or call the Office of the Administrative Rules at (208) 334-3577.

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

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

IDAPA 16.07.01.010.01.a.ii.

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

"**IDAPA 16**" refers to the Idaho Department of Health and Welfare.

"**07.**" refers to Title 07, Division of Veterans Services within the Department.

"**01.**" refers to Chapter 01 of Title 07, "Rules Governing Eligibility For Admission into the Veterans Home for Domiciliary Care."

"**010.**" refers to Major Section 010, "Definitions."

"**01.**" refers to Subsection 010.01.

"**a.**" refers to Subsection 010.01.a.

"**ii.**" refers to Subsection 010.01.a.ii.

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rule-making actions (documents) are assigned a "DOCKET NUMBER." The "Docket Number" is a series of numbers separated by a hyphen "-", (16-0701-9601). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket:

"DOCKET NO. 16-0701-9601"

"16-" denotes the agency's IDAPA number; in this case the Department of Health and Welfare.

"0701-" refers to the TITLE AND CHAPTER numbers of the agency rule being changed; in this case the Division of Veteran's Services (TITLE 07), Rules Governing Eligibility For Admission into the Veterans Home for Domiciliary Care (Chapter 01).

"9601" denotes the year and sequential order of the docket received during the year; in this case the first rule-making action in calendar year 1996.

Within each Docket, only the affected sections of chapters are printed. (see **Sections Affected Index** in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section "200" appears before Section "345" and so on). Whenever the sequence of the numbering is broken the following statement will appear:

"(BREAK IN CONTINUITY OF SECTIONS)"

A typical citation to a rule or a Section or Subsection of a rule that are found with the text of a rule appear as follows:

"IDAPA 16.07.01.200"

"16." denotes the IDAPA number of the agency.

"07.01." denotes the TITLE and Chapter number of the agency rule.

"200" reference the main section number of the rule that is being amended or added.

Citations made within a rule to another rule should also include the name of the Department and the Title of the rule being referenced, as well as the IDAPA number.

BULLETIN PUBLICATION SCHEDULE FOR 1998

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date
98-1	January, 1998	November 19, 1997	January 7, 1998
98-2	February, 1998	December 24, 1997	February 4, 1998
98-3	March, 1998	January 21, 1998	March 4, 1998
98-4	April, 1998	February 25, 1998	April 1, 1998
98-5	May, 1998	March 25, 1998	May 6, 1998
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98-11	November, 1998	September 23, 1998	November 4, 1998
98-12	December, 1998	October 21, 1998	December 2, 1998

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99-3	March, 1999	January 20, 1999	March 3, 1999
99-4	April, 1999	February 24, 1999	April 7, 1999
99-5	May, 1999	March 24, 1999	May 5, 1999
99-6	June, 1999	April 21, 1999	June 2, 1999
99-7	July, 1999	May 26, 1999	July 7, 1999
99-8	August, 1999	June 23, 1999	August 4, 1999
99-9	September, 1999	July 21, 1999	September 1, 1999
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THE OFFICE OF THE GOVERNOR

EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 98-05

**ESTABLISHING STATEWIDE POLICIES ON COMPUTER, THE INTERNET AND
ELECTRONIC MAIL USAGE BY STATE EMPLOYEES**

REPEALING AND REPLACING EXECUTIVE ORDER NO. 97-17

WHEREAS, computers, the Internet and electronic mail are powerful research, communication and time-saving tools that are made available to state employees; and

WHEREAS, like any tools, computers, the Internet and electronic mail have the potential to be used for inappropriate purposes; and

WHEREAS, perceptions are important and state employees must constantly be aware of how their actions are perceived by the public;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby order as follows:

The following statewide policies on computer, the Internet and electronic mail usage shall be observed by all state employees:

1. *The following uses are acceptable and encouraged:*
 - a. *Communications and information exchanges directly relating to the mission, charter and work tasks of the state agency;*
 - b. *Announcements of state laws, procedures, hearings, policies, services or activities;*
 - c. *Use for advisory, standards, research, analysis and professional society or development activities related to the user's state governmental duties;*
 - d. *Use in applying for or administering grants or contracts for state government research programs; and*
 - e. *Occasional personal use of electronic mail in lieu of telephonic communication.*
2. *All other uses not enumerated in Section 1 are prohibited.*
3. *The following sanctions shall be imposed by state government agencies for violations of the above policies:*
 - a. *Upon the first abuse of this policy, the staff member will receive at a minimum: a verbal warning of the infraction.*
 - b. *Upon the second occurrence of abuse, the staff member will receive at a minimum: a written reprimand placed in the employee's permanent file.*
 - c. *Upon the third occurrence of abuse, the employee may receive additional sanctions deemed appropriate by the state agency head, up to, and including dismissal.*
4. *The above policies are the minimum standards for usage of computers, the Internet and electronic*

mail. Individual state agencies may implement more restrictive policies as long as those policies are consistent with those developed by the Governor's Information Technology Resource Management Council (ITRMC).

This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this thirteenth day of May in the year of our Lord nineteen hundred ninety-eight and of the Independence of the United States of America the two hundred twenty-second and of the Statehood of Idaho the one hundred eighth.

PHILIP E. BATT
GOVERNOR

PETE T. CENARRUSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR
EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 98-06

**ESTABLISHING THE STATE PLANNING COUNCIL ON MENTAL HEALTH
REPLACING EXECUTIVE ORDER NO. 94-03**

WHEREAS, adults with severe mental illness and children with serious emotional disturbance have unique abilities, motivations, concerns and diverse needs; and

WHEREAS, severe mental illness and serious emotional disturbance interfere with the vital development and maturation of our state's most important resource--its people; and

WHEREAS, severe mental illness and serious emotional disturbance are increasingly treatable disabilities with excellent prospects for remedy and recovery with the appropriate treatment and support; and

WHEREAS, the appropriate treatment of adults with severe mental illness and children and youth with serious emotional disturbance is cost-effective because it restores productivity, reduces utilization of services, and lessens social dependence and family disruption; and

WHEREAS, the State of Idaho must promote a coordinated service delivery approach by establishment of a comprehensive, community-based system of care emphasizing the natural support that families and peers provide; and

WHEREAS, these persons have a right to individualized services which are acceptable and accountable to them and others in the communities where they choose to live; and

WHEREAS, individuals and families are stigmatized by the myths and fears surrounding severe mental illness and serious emotional disturbance; and

WHEREAS, it is the responsibility of all Idahoans to reduce the stigma and promote the understanding of severe mental illness and serious emotional disturbance; and

WHEREAS, adults with severe mental illness have the right to and responsibility for ongoing participation in determining their destiny at the direct service level and at the policy and planning level; and children and youth with serious emotional disturbance and their families have this same right; and

WHEREAS, the service delivery system exists for only one purpose--to improve the lives of persons suffering from mental illnesses;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me by law do hereby establish the State Planning Council on Mental Health.

The Planning Council's responsibilities will be:

- 1. To serve as an advocate for adults with a severe mental illness and for seriously emotionally disturbed children and youth;*
- 2. To advise the State Mental Health Authority on issues of concern, policies and programs and provide guidance to the Authority in the development and implementation of the State Mental Health Systems Plan;*
- 3. To monitor and evaluate the allocation and adequacy of mental health services within the State not*

less than once a year;

4. *To ensure individuals with severe mental illness and serious emotional disturbance access to treatment, prevention, and rehabilitation services including those services that go beyond the traditional mental health system;*
5. *To serve as a vehicle for intra- and inter-agency policy and program development; and*
6. *To present to the Governor on June 30 of each year a report on the Council's achievements and impact on the quality of life for mental health services consumers and their families.*

The Planning Council membership shall be appointed by the Director of the Department of Health and Welfare and composed of not less than fifty percent (50%) non-state employees or providers of mental health services. Membership shall also reflect to the extent possible collective demographic characteristics of Idaho's citizens.

The Planning Council membership shall include representation from the following:

1. *Consumers;*
2. *Families of adult individuals with severe mental illness;*
3. *Families of children or youth with serious emotional disturbance;*
4. *Principal state agencies with respect to mental health, education, vocational rehabilitation, criminal justice, Title XIX of the Social Security Act, and other entitlement programs;*
5. *Public and private entities concerned with the need, planning, operation, funding, and use of mental health services, and related support services; and*
6. *The Regional Mental Health Advisory Board in each Department of Health and Welfare region.*

Planning Council members will serve a term of two (2) years or at the pleasure of the Director, provided, however, that of the members first appointed, one-half the appointments shall be for a term of one (1) year and one-half the appointments for two (2) years. The Director will appoint a chairman and vice-chairman whose terms will be one year. The Council may establish an executive committee and subcommittees at its discretion.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capitol, the 15th day of March, in the year of our Lord nineteen hundred ninety-eight, and of the Independence of the United States of America the two hundred twenty-second, and of the Statehood of Idaho the one hundred eighth.

PHILIP E. BATT
GOVERNOR

PETE T. CENARRUSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR
EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 98-07

*ESTABLISHMENT OF THE CRIMINAL JUSTICE RECORDS IMPROVEMENT
ADVISORY COUNCIL
REPEALING AND REPLACING EXECUTIVE ORDER NO. 95-12*

WHEREAS, automated criminal histories are relied upon at virtually every stage of the criminal justice system and play a vital role in almost every decision in the process; and

WHEREAS, under legislative directive, the use of criminal histories for noncriminal justice purposes -- such as background screening for public and private employment and occupational licensing -- is expanding; and

WHEREAS, national studies have found that the accuracy and completeness of criminal justice records are seriously deficient, thereby compromising the usefulness of these important records; and

WHEREAS, concern about the quality of criminal justice records has led the U.S. Congress and state governments to initiate programs to improve data quality; and

WHEREAS, the Federal Crime Control Act of 1990 requires states to allocate five percent of their total law enforcement assistance formula grant award for the improvement of criminal justice records, and federal guidelines for use of the set-aside grant funds call for the states to establish and interagency advisory council to assist in meeting certain data quality goals; and

WHEREAS, the continued assistance of an advisory council representing the broad spectrum of the criminal justice community is crucial to the success of the Idaho's records improvement project;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me by law, do hereby establish the Criminal Justice Records Improvement Advisory Council and charge it with the responsibility of promoting interagency and intergovernmental cooperation involving efforts to improve the quality of Idaho's criminal justice records.

The Advisory Council shall have the following duties:

- 1. Assisting the effort to ascertain the reasons for incomplete and inaccurate records;*
- 2. Recommending remedial actions for correcting deficiencies in the accuracy, completeness, and timeliness of criminal justice records;*
- 3. Evaluating the criminal justice records improvement plan prepared for submission to the U.S. Department of Justice;*
- 4. Reviewing the implementation of the criminal justice records improvement plan;*
- 5. Reviewing funding proposals or initiatives to link information systems operated by criminal justice agencies with the state's central repository;*
- 6. Recommending initiatives for achieving the goals of an approved records improvement plan and form meeting the varied needs of the criminal justice community regarding automated criminal histories;*
- 7. Evaluating the adequacy of state laws and other reporting requirements relating to criminal justice*

records and assisting in the formulation of needed statutory revision.

The Advisory Council shall consist of the board created by Idaho Code, Section 19-5203, to manage the Idaho law enforcement teletypewriter system (ILETS). The chairman of the ILETS board shall serve as chairman of the advisory council.

The Advisory Council may appoint ad hoc subcommittees to assist it in developing solutions to problems adversely affecting the quality of criminal history records. The subcommittees may include members representing the Attorney General, Prosecuting Attorneys, Department of Correction, Department of Juvenile Corrections, the courts, and noncriminal justice users.

The Department of Law Enforcement shall have the responsibility of insuring that the criminal justice records improvement project satisfies federal requirements and achieves the goals of the State's records improvement plan. To accomplish this responsibility, the Department of Law Enforcement shall undertake the following duties:

- 1. Preparing the criminal justice records improvement plan for submission to the U.S. Department of Justice;*
- 2. Administering a criminal justice records improvement project that is based on a federally-approved records improvement plan and funded by five percent of the State's law enforcement assistance formula grant award;*
- 3. Seeking the guidance of the Criminal Justice Records Improvement Advisory Council and supporting it through:
 - a. scheduling the meetings of the council,*
 - b. briefing the council on the records improvement project, and*
 - c. providing the council with needed administrative and clerical assistance;**

This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this Eleventh day of June in the year of our Lord nineteen hundred ninety-eight and of the Independence of the United States of America the two hundred twenty-second and of the Statehood of Idaho the one hundred eighth.

PHILIP E. BATT
GOVERNOR

PETE T. CENARRUSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR
EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 98-08

*DESIGNATING THE IDAHO PUBLIC UTILITIES COMMISSION
AS THE STATE AGENCY (CLEARINGHOUSE) TO RECEIVE NOTICES OF
ENVIRONMENTAL AND ENERGY MATTERS UNDER THE
SURFACE TRANSPORTATION BOARD'S IMPLEMENTATION
OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969; AND
DESIGNATING THE IDAHO PUBLIC UTILITIES COMMISSION
AS THE AGENCY TO REPRESENT THE STATE ON
MATTERS PERTAINING TO RAILROADS BEFORE
THE SURFACE TRANSPORTATION BOARD
REPEALING AND REPLACING EXECUTIVE ORDER NO. 94-01*

WHEREAS, the subjects of railroad abandonments, acquisitions, consolidations, and sales are significant to the state of Idaho and particularly its more sparsely populated rural areas; and

WHEREAS, it is the policy of the state of Idaho to promote the development and viability of railroad transportation within the state; and

WHEREAS, the state of Idaho has a significant interest in maintaining and promoting rail access of Idaho communities to vital goods, services, and markets; and

WHEREAS, the Surface Transportation Board (STB), under: (1) the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. Section 4332; (2) 49 U.S.C. Section 10502; (3) 49 U.S.C. Sections 10903-06; and (4) 49 C.F.R. Parts 1105, 1121, 1150, 1152, and 1180, requires railroads operating within the state of Idaho to serve notice of certain required actions upon a designated state agency; and

WHEREAS, Idaho Code Section 62-424 vests the Idaho Public Utilities Commission with the authority to make findings and represent the state of Idaho before the STB;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby order as follows:

Designate the Idaho Public Utilities Commission to represent the state on matters pertaining to railroads before the Surface Transportation Board and to receive notices of environmental and energy matters from railroads operating within the state of Idaho, as provided under the applicable federal statutes and regulations. I further direct all state agencies to notify the Public Utilities Commission of information received by them of potential railroad abandonments and to cooperate with the Public Utilities Commission on all matters pertaining to railroads. The Public Utilities Commission is designated as the lead agency for railroad matters and shall approve all state agency submissions to the STB prior to transmittal.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this Twelfth day of June in the year of our Lord nineteen hundred ninety-eight and of the Independence of the United States of America the two hundred twenty-second and of the Statehood of Idaho the one hundred eighth.

PHILIP E. BATT
GOVERNOR

PETE T. CENARRUSA
SECRETARY OF STATE

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.06.01 - RULES GOVERNING THE PURE SEED LAW
DOCKET NO. 02-0601-9801

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective July 1, 1998.

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 regular rule-making procedures have been initiated. The action is authorized pursuant to Section 22-434, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 1998.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making.

The proposed rules will establish a seed dealer's license fee structure for services rendered (conditioning, labeling, and selling seed). Under the proposed fee structure, seed dealers will pay only for the service or services they render.

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

House Bill 739 amended Title 22, Chapter 4, Idaho Code, to provide that service and license fees be established by rule. It is necessary to make the fee structure effective concurrently with the amendments to the law in order to provide consistent operating funds for the state seed laboratory pursuant to Section 22-418(4).

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

\$50 – License to condition or clean agricultural seeds in Idaho.

\$50 – License to label container or bulk agricultural seeds for sale in Idaho.

\$50 – License to sell, offer for sale, expose for sale, or deliver agricultural seeds in packages of eight (8) ounces or more in bulk under a contract in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Mr. Richard C. Lawson, Bureau Chief, at (208) 332-8630 or Dr. Roger R. Vega, Administrator, at (208) 332-8620.

Anyone may submit written comments regarding this temporary and proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 26, 1998.

DATED this 24th day of June, 1998.

Mike Everett, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701-0790
(208) 332-8500
(208) 334-4623 FAX

TEXT OF DOCKET NO. 02-0601-9801

501. – 9599. (RESERVED).

600. SEED DEALER'S LICENSE FEES.

Seed dealers shall obtain a seed dealer's license for each location in Idaho before they can sell, offer for sale, expose for sale or deliver agricultural seeds in packages of eight (8) ounces or more or bulk under contract within the state of Idaho. Seed dealers shall pay only for the service or services they render according to the following fee schedule:

(7-1-98)T

01. Condition or Clean Seeds. License to condition or clean agricultural seeds in Idaho - fifty dollars (\$50).

(7-1-98)T

02. Label Container or Bulk Seeds. License to label container or bulk agricultural seeds for sale in Idaho - fifty dollars (\$50).

(7-1-98)T

03. Sell, Offer or Expose For Sale, or Deliver Seeds. License to sell, offer for sale, expose for sale, or deliver agricultural seeds in packages of eight (8) ounces or more or in bulk under a contract in Idaho - fifty dollars (\$50).

(7-1-98)T

601. FINDINGS.

The adoption of IDAPA 02.06.01, "Rules Governing the Pure Seed Law," Section 600, will comply with the deadline established by HB 739 to provide that service and license fees be established by rule. It is necessary to make the fee structure effective concurrently with the amendments to the law in order to provide consistent operating funds for the state seed laboratory pursuant to Section 22-418(4), Idaho Code.

(7-1-98)T

602. – 999. (RESERVED).

IDAPA 08 - STATE BOARD OF EDUCATION

**08.01.11 - OUT-OF-STATE INSTITUTIONS, IN-STATE NON-ACCREDITED INSTITUTIONS,
AND CORRESPONDENCE OR PRIVATE COURSES**

DOCKET NO. 08-0111-9801

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective on July 1, 1998.

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 regular rule-making procedures have been initiated. The action is authorized pursuant to Sections 33-107(6), 33-105(1) and 33-2403, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 1998.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

The proposed rules address the statutory requirements for the registration of out-of-state and non-accredited schools in Idaho.

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

Protection of the public health, safety, or welfare.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811 negotiated rule-making was not conducted because of the need to comply and have rules in place before the proprietary school registration period begins on July 1, 1998.

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

Registration Fee: One hundred dollars (\$100) per institution per year for non-accredited institutions.

Processing Fees: One hundred dollars (\$100) per year per course/program request for out-of-state accredited institutions.

One hundred dollars (\$100) per year per course request for non-accredited institutions not seeking transfer of credits.

One hundred fifty dollars (\$150) per year per course request for non-accredited institutions seeking transfer of credits.

Agent Fee: Twenty-five dollars (\$25) per agent per year.

Impact Fee: Fifty dollars (\$50) per student per year for use of library facilities.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary rule-making and proposed rule, contact Mr. Kevin Satterlee, State Board of Education, (208) 334-2270.

Anyone may submit written comments regarding this temporary and proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 26, 1998.

DATED this 19th day of June, 1998.

Mr. Kevin D. Satterlee
Deputy Attorney General

State Board of Education
650 West State Street
P.O. Box 83720
Boise, Idaho 83720-0037
Phone: (208) 334-2270
FAX: (208) 334-2632

TEXT OF DOCKET NO. 08-0111-9801

000. --099. (RESERVED) LEGAL AUTHORITY.

In accordance with Sections 33-105 and 33-107(6), Idaho Code, the Idaho State Board of Education shall promulgate rules implementing the provisions of Chapter 24, Title 33, Idaho Code. (7-1-98)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 08.01.11, "Out-of-State Institutions, In-State Non-Accredited Institutions and Correspondence or Private Courses". (7-1-98)T

02. Scope. These rules constitute the requirements for the registration of out-of-state institutions, non-accredited institutions and other educational sources in Idaho. (7-1-98)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, any written interpretation of the rules of this chapter are available at the Office of the State Board of Education located at 650 W. State Street, Room 307, Boise, Idaho 83702. (7-1-98)T

003. ADMINISTRATIVE APPEALS.

004. -- 099. (RESERVED).

100. STATUTORY AUTHORITY OF THE BOARD.

01. Establishment of Minimum Standards. Sections 33-107(6)(b) and 33-2403, Idaho Code, authorizes the Board to establish minimum standards for institutions that ~~desire to receive Title IV federal funds and wish to~~ offer courses or programs in Idaho. Such standards and the procedures for Board recognition are set forth in Subsections 101.01 through Section 102.03. (7-1-93)(7-1-98)T

02. Courses and Programs. Section 33-107(6), Idaho Code, authorizes the Board to: (7-1-93)

a. Maintain a register of courses and programs offered anywhere in the state of Idaho by postsecondary institutions which are located outside the state of Idaho and are offering courses or programs for academic credit or otherwise or located within the state of Idaho but are not accredited by a regional or national accrediting agency recognized by the Board and are offering a courses or programs for academic credit. The register of courses and programs shall be maintained at the Office of the State Board. (7-1-93)

b. Critically evaluate each of the components of the courses or programs offered by the institutions described in a. above. The standards and procedures for such a comparability review are set forth in Subsection 101.01 and Section 102 below. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

102. BOARD RECOGNITION.

Any out-of-state institution that wishes to be recognized by the Board as an accredited institution and meets the registration requirements set forth in Subsections 101.01 through 101.10 of these rules will submit documentation showing its accreditation status with an accrediting organization recognized by the Board to the Board's Chief Academic Officer for consideration and action. Board recognition is of indefinite duration. However, institutions must notify the Office of the State Board of Education of any changes in accreditation status. (7-1-98)T

~~01. Accredited Institutions. Any institution that wishes to be recognized by the Board as an accredited institution and meets the standards set forth in Subsection 101.01.a. of these rules must submit to the executive director at least ten (10) days prior to a regularly scheduled Board meeting documentation showing its accreditation status with an accrediting organization recognized by the Board. The executive director will verify the institution's status and make a recommendation to the Board. Board recognition is of indefinite duration. However, institutions shall notify the executive director of any changes in accreditation status.~~ (7-1-93)

~~02. Nonaccredited Institutions. Any nonaccredited institution that wishes to be recognized by the Board as meeting the minimum standards set forth in Section 101.01.b. of these rules shall submit documentation demonstrating compliance with the standards in accordance with the following:~~ (7-1-93)

~~a. Such submission should be forwarded to the chief academic officer of the Office of the State Board of Education.~~ (7-1-93)

~~b. The chief academic officer will present the documentation to the Academic Affairs and Program Committee which shall prepare a draft recommendation for the full Board. If the recommendation is against recognition, the institution shall be afforded an opportunity for a hearing before the full Board or a designated hearing officer of the Board, who shall prepare formal findings and recommendations for the Board. Such hearing shall constitute a "contested case" pursuant to Section 67-5209, Idaho Code, and shall be governed by its terms and the procedures set forth in IDAPA 08-01-01.~~ (7-1-93)

~~03. Registration. Notwithstanding the standards set forth herein, an institution which does not meet such standards may register with the Board under the provisions of Section 33-2401 et seq., Idaho Code, providing it meets the requirements thereof.~~ (7-1-93)

~~04. Course Comparability. A registration form submitted by any out-of-state institution or in-state nonaccredited institution for each course or program to be offered in Idaho will be submitted to the Academic Affairs and Program Committee for critical evaluation of each of the components of such offering by comparison with courses, programs, credit awarded, and faculty of postsecondary institutions under governance of the board. Should the course be evaluated as comparable to a course offered by an Idaho institution, it will be designated as "comparable" on the registration form; should the course not be comparable, it will be designated as "not comparable" on the form. Any interested person who makes inquiry concerning such course will be told whether the course is comparable or not comparable to offerings available from Idaho institutions.~~ (7-1-93)

~~05. Transferability of Course Credit. Academic credit for courses evaluated as not comparable shall not be accepted by Idaho postsecondary institutions under the direction and control of the Board.~~ (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

105. ~~999.~~ (RESERVED) REGISTRATION OF INSTITUTIONS AND COURSES.

01. Establishment of Registry. Section 33-107(6), Idaho Code, establishes as a general power and duty of the Board the maintenance of a register of courses and programs offered anywhere in the state of Idaho by postsecondary institutions. In addition, Chapter 24, Title 33, Idaho Code, establishes requirements for non-accredited

registration, agent's permit, purchase statement, surety bond and student tuition recovery account. The acceptance of academic or nonacademic credit at public postsecondary institutions in Idaho is the prerogative of the Board.

(7-1-98)T

106. REGISTER OF ACCREDITED OUT-OF-STATE INSTITUTIONS.

01. Definitions. A course is defined as set forth in Section 33-2401(5), Idaho Code. A program is defined as a series of courses leading to the awarding of a certificate or degree.

(7-1-98)T

02. Maintenance of Register. A register of courses and programs is maintained at the Office of the State Board of Education. The Office will establish written procedures, available upon request, for compliance with the requirements of Section 33-107(6), Idaho Code.

(7-1-98)T

03. Submission to Academic Affairs and Program Committee. A registration form/application submitted by any out-of-state institution for each course or program to be offered in Idaho will be submitted to the Office of the State Board of Education. Critical evaluation of each of the components of such offerings by comparison with courses, programs, credit awarded, and faculty of postsecondary institutions under the governance of the Board will be accomplished by the Board's Academic Affairs and Program Committee (AAPC) or its designee. Should the course be evaluated as comparable to a course offered by an Idaho institution, it will be designated as "comparable" on the registration form; should the course not be comparable, it will be designated as "not comparable" on the form. Any interested person who makes inquiry concerning such course will be told whether the course is comparable or not comparable to offerings available from Idaho institutions. Academic credit for courses evaluated as not comparable shall not be accepted by Idaho postsecondary institutions under the direction and control of the Board. Courses or programs evaluated as comparable will be accepted for academic credit by Idaho's public postsecondary institutions and thus shall be fully transferable among the institutions.

(7-1-98)T

04. Fee Schedules. The State Board of Education, through its Academic Affairs and Program Committee, has set the following fee schedule:

(7-1-98)T

a. Processing fee of one hundred dollars (\$100) per course or program.

(7-1-98)T

b. Impact fee for use of library facilities of fifty dollars (\$50) per student.

(7-1-98)T

107. REGISTER OF NON-ACCREDITED INSTITUTIONS AND OTHER EDUCATIONAL SOURCE OFFERINGS.

01. Statutory Authority. In addition to the powers conferred by Chapter 24, Title 33, Idaho Code, Section 33-107(6), requires the Board to maintain a register of institutions and their courses to be offered anywhere in the state of Idaho by postsecondary institutions which are located outside or within the state of Idaho but not accredited by a regional or national accrediting agency recognized by the Board. Idaho statute does not permit the offering of programs or degrees in Idaho by non-accredited institutions.

(7-1-98)T

02. Registration Without Acceptance of Credit. All schools not accredited by an accrediting agency recognized by the Board must register with the Board. In addition to the requirements of Chapter 24, Title 33, Idaho Code, the registration will include:

(7-1-98)T

a. Performance/Surety Bond Based on Idaho Student Enrollment. Section 33-2407, Idaho Code, provides for an exemption from the standard Bond requirements. An applicant who can demonstrate through an Idaho licensed CPA audit that the institution's total annual tuition received from any source is less than ten thousand dollars (\$10,000) per year may provide a performance/surety bond of ten thousand dollars (\$10,000) per year.

(7-1-98)T

b. Fee Schedule. In addition to the Agent fee in Section 33-2405, Idaho Code, the State Board of Education through its Academic Affairs and Program Committee, has set the following fee schedule for non-accredited institutions:

(7-1-98)T

i. Registration fee of one hundred dollars (\$100) per institution per year.

(7-1-98)T

- ii. Processing fee of one hundred dollars (\$100) per course request. (7-1-98)T
- 03. Registration With Acceptance of Credit. A non-accredited in-state or out-of-state institution or educational source in Idaho that wishes to have its academic or non-academic courses accepted by the Board and the Idaho public postsecondary institutions, must submit each course or workshop request to be offered in Idaho to the Board's Academic Affairs and Program Committee for critical evaluation and review. The AAPC shall establish an evaluation and review process in compliance with Section 33-107(6), Idaho Code, Chapter 24, Title 33, Idaho Code, and the AAPC Guidelines for Program Review and Approval. The registration will include: (7-1-98)T
 - a. On-site visit requirements (in-state campus, and/or out-of-state home (main) campus or sending site) not less than once every five (5) years. The on-site visit shall be conducted by a representative of the State Board of Education and may occur more frequently at the Board's discretion. The registered institution is required to pay the costs of the inspection and visitation by Idaho authorities. The on-site visit procedures are available upon request from the OSBE. (7-1-98)T
 - b. The applying institution shall provide the following: (7-1-98)T
 - i. A current financial statement with an opinion audit prepared by a certified public accountant. (7-1-98)T
 - ii. A description of instructional methods used by the institution including mission statements, methods for assigning, monitoring and evaluating work, design of curriculum, and awarding credit. (7-1-98)T
 - iii. Submission of credentials for faculty, including the submission of official copies of academic transcripts, verification of educational degrees attained and description of courses taught by that individual.(7-1-98)T
 - c. Restrictions against an institution's awarding credit, earned or honorary, primarily on the basis of: (7-1-98)T
 - i. Payment of tuition or a fee; (7-1-98)T
 - ii. Credit earned at another school; (7-1-98)T
 - iii. Credit for life experience or other equivalency; (7-1-98)T
 - iv. Testing out of required course work; (7-1-98)T
 - v. Research and writing; or (7-1-98)T
 - vi. Any combination of the foregoing. (7-1-98)T
 - d. Should the course or workshop be evaluated as acceptable or comparable to a course or workshop offered by an Idaho institution, it will be accepted for academic or non-academic credit by the State Board of Education and thus be accepted by the public postsecondary institutions in Idaho. (7-1-98)T
 - e. Academic or non-academic credit evaluated as non-acceptable or not comparable shall not be accepted by Idaho's public postsecondary institutions. (7-1-98)T
 - f. Performance/Surety Bond Based on Idaho Student Enrollment. Section 33-2407, Idaho Code, provides for an exemption from the standard bond requirements. An applicant who can demonstrate through an Idaho licensed CPA audit that the institution's total annual tuition received from any source is less than ten thousand dollars (\$10,000) per year may provide a performance/surety bond of ten thousand dollars (\$10,000) per year. (7-1-98)T
 - g. Fee Schedule. The State Board of Education through its Academic Affairs and Program Committee, has set the following fee schedule for non-accredited institutions requesting that their credits be accepted by the Board. (7-1-98)T

- i. Registration fee of one hundred dollars (\$100) per institution per year. (7-1-98)T
 - ii. Processing fee of one hundred fifty dollars (\$150) per course/workshop request. (7-1-98)T
 - iii. Agent fee of twenty-five dollars (\$25) per agent per year. (7-1-98)T
 - iv. On-site Visit costs will vary. (7-1-98)T
- 108. -- 999. (RESERVED).**

IDAPA 08 - STATE BOARD OF EDUCATION
08.02.01 - RULES GOVERNING ADMINISTRATION
DOCKET NO. 08-0201-9801

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective on July 1, 1998.

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 regular rule-making procedures have been initiated. The action is authorized pursuant to Sections 33-105(1) and 33-308, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 1998.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

To govern the application and hearing procedures for alteration of school boundary requests to the State Board of Education.

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

Compliance with statutory changes to Idaho Code, Section 33-308, for school district boundary alterations.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811 negotiated rule-making was not conducted because of the need to have rules in place before the State Board of Education can address pending school district boundary alteration requests.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary rule-making and proposed rule, contact Dr. Darrell Loosle, State Department of Education, (208) 332-6800.

Anyone may submit written comments regarding this temporary and proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 26, 1998.

DATED this 19th day of June, 1998.

Mr. Kevin D. Satterlee, Deputy Attorney General
State Board of Education
650 West State Street
P.O. Box 83720, Boise, Idaho 83720-0037
Phone: (208) 334-2270
FAX: (208) 334-2632

TEXT OF DOCKET NO. 08-0201-9801

050. ALTERING SCHOOL DISTRICT BOUNDARIES.

The State Board of Education sets forth the following rules to govern the application and hearing procedures for alteration of school boundaries pursuant to Section 33-308, Idaho Code. A written application from the person or persons requesting alteration of school district boundaries, including the reasons for making the request, will be submitted to the State Board of Education (Section 33-307, Idaho Code). The application will include shall also contain that information as required by Section 33-308, Idaho Code: (4-1-97)(7-1-98)T

01. Written Statement of Support. A written statement supporting or opposing the proposed alteration will be prepared by each board of trustees ~~within thirty~~ no later than ten (310) days following its first regular meeting held following receipt of the written application prepared by the person or persons requesting the alteration. Such request and supporting materials shall be forwarded to the Superintendent of Public Instruction. (4-1-97)(7-1-98)T

02. Alteration of Boundaries. ~~The person or persons requesting alteration of school boundaries will make every reasonable effort to obtain a written statement supporting or opposing the proposed alteration from each property owner in the area to be transferred.~~ Review of Request. The Superintendent of Public Instruction shall appoint a hearing officer in accordance with State Board of Education Governing Policies and Procedures to review the proposed alteration of boundaries. (4-1-97)(7-1-98)T

03. List of Attendees. ~~The applicant will submit a list of the names of each child presently attending school from the area or of preschool age. The list will include age, grade, the school the child is now attending and district in which that school is located.~~ Criteria for Review of Request. The hearing officer shall review the proposed alteration of boundaries taking into account the following criteria: (4-1-97)(7-1-98)T

a. Will the alteration as proposed leave a school district with a bonded debt in excess of the limit proscribed by law: (7-1-98)T

b. Is the proposed alteration in the best interests of the children residing in the area described in the petition. In determining the best interests of the children the hearing officer shall consider all relevant factors which may include: (7-1-98)T

i. The safety and distance of the children from the applicable schools; (7-1-98)T

ii. The views of the interested parties as these views pertain to the interests of the children residing in the petition area; (7-1-98)T

iii. The adjustment of the children to their home and neighborhood environment; and (7-1-98)T

iv. The suitability of the school(s) and school district which is gaining students in terms of capacity and community support. (7-1-98)T

04. Map of Area. ~~A map of the area indicating the existing boundary and showing the proposed new boundary will be submitted. This map must be in no smaller scale than one-half (1/2) inch to the mile.~~ (4-1-97)

05. Legal Description. ~~A legal description of the area to be transferred will be submitted.~~ (4-1-97)

064. Market Value. The market value, for tax purposes, of the two (2) districts prior to the requested transfer and of the area proposed to be transferred will be provided. (4-1-97)(7-1-98)T

05. Decision By State Board of Education. The recommendation from the hearing on the matter shall be forwarded to the State Board of Education for decision in accordance with the Board's Governing Policies and Procedures. (7-1-98)T

076. Additional Information. The applicant may submit any additional information which is deemed to be appropriate in assisting the State Board of Education to make the decision. (4-1-97)

IDAPA 08 - STATE BOARD OF EDUCATION
08.02.04 - RULES GOVERNING CHARTER SCHOOLS
DOCKET NO. 08-0204-9801

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective on July 1, 1998.

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 regular rule-making procedures have been initiated. The action is authorized pursuant to Sections 33-105 and 33-5207 (effective July 1, 1998), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 1998.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

The proposed rule addresses the registration process for charter schools in Idaho.

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

To comply with change in governing law that allows charter school registration beginning July 1, 1998.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811 negotiated rule-making was not conducted because of the need to comply with the July 1, 1998 implementation of the Charter Schools legislation, Section 33-5207, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary rule-making and proposed rule, contact Dr. Darrell Loosle, State Department of Education, (208) 332-6800.

Anyone may submit written comments regarding this temporary and proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 26, 1998.

DATED this 19th day of June, 1998.

Mr. Kevin D. Satterlee
Deputy Attorney General
State Board of Education
650 West State Street
P.O. Box 83720
Boise, Idaho 83720-0037
Phone: (208) 334-2270
FAX: (208) 334-2632

TEXT OF DOCKET NO. 08-0204-9801

IDAPA 08
TITLE 02
Chapter 04

RULES GOVERNING CHARTER SCHOOLS

000. LEGAL AUTHORITY.

In accordance with Section 33-105, Idaho Code, the Idaho State Board of Education shall promulgate rules implementing the provisions of Chapter 52, Title 33, Idaho Code. (7-1-98)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 08.02.04, "Rules Governing Charter Schools". (7-1-98)T
02. Scope. These rules constitute the requirements for the registration of charter schools in Idaho. (7-1-98)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 64-5201(19)(b)(iv), Idaho Code, any written interpretation of the rules of this chapter are available at the Office of the State Board of Education located at 650 W. State Street, Room 307, Boise, Idaho 83702. (7-1-98)T

003. ADMINISTRATIVE APPEAL.

Pursuant to Section 33-5207(5)(b), Idaho Code, any appeals pertaining to charter school registration shall be on such procedures as set forth in the governing policies and procedures of the State Board of Education. (7-1-98)T

004. CHARTER SCHOOLS.

The State Board of Education sets forth the following rules to govern the application procedure for registration of charter schools pursuant to Chapter 52, Title 33, Idaho Code. The State Board of Education hereby designates the Department of Education to implement all aspects of this chapter unless the implementation is specifically vested in rule, or by law, with another entity. (7-1-98)T

005. -- 009. (RESERVED).

010. EDUCATIONAL CLASSIFICATION REGIONS.

Solely for the purposes of Section 33-5203(2)(c), Idaho Code, the following educational classification regions are hereby established. (7-1-98)T

01. Region I. Consisting of the counties of: (7-1-98)T
 - a. Boundary; (7-1-98)T
 - b. Bonner; (7-1-98)T
 - c. Kootenai; (7-1-98)T
 - d. Benewah; and (7-1-98)T
 - e. Shoshone. (7-1-98)T
02. Region II. Consisting of the counties of: (7-1-98)T
 - a. Latah; (7-1-98)T
 - b. Clearwater; (7-1-98)T

- c. Nez Perce; (7-1-98)T
- d. Lewis; and (7-1-98)T
- e. Idaho. (7-1-98)T
- 03. Region III. Consisting of the counties of: (7-1-98)T
 - a. Adams; (7-1-98)T
 - b. Valley; (7-1-98)T
 - c. Washington; (7-1-98)T
 - d. Payette; (7-1-98)T
 - e. Gem; (7-1-98)T
 - f. Boise; (7-1-98)T
 - g. Canyon; (7-1-98)T
 - h. Ada; (7-1-98)T
 - i. Elmore (except the Glens Ferry School District); and (7-1-98)T
 - j. Owyhee. (7-1-98)T
- 04. Region IV. Consisting of the counties of: (7-1-98)T
 - a. Camas; (7-1-98)T
 - b. Blaine; (7-1-98)T
 - c. Gooding; (7-1-98)T
 - d. Lincoln; (7-1-98)T
 - e. Jerome; (7-1-98)T
 - f. Minidoka; (7-1-98)T
 - g. Twin Falls; (7-1-98)T
 - h. Cassia; and (7-1-98)T
 - h. That portion of Elmore County that includes the Glens Ferry School District. (7-1-98)T
- 05. Region V. Consisting of the counties of: (7-1-98)T
 - a. Power; (7-1-98)T
 - b. Caribou; (7-1-98)T
 - c. Bannock; (7-1-98)T

- d. Oneida; (7-1-98)T
- e. Franklin; (7-1-98)T
- f. Bear Lake; and (7-1-98)T
- g. That part of Bingham county that includes the Snake River and Aberdeen School Districts. (7-1-98)T
- 06. Region VI. Consisting of the counties of: (7-1-98)T
 - a. Lemhi; (7-1-98)T
 - b. Custer; (7-1-98)T
 - c. Butte; (7-1-98)T
 - d. Clark; (7-1-98)T
 - e. Jefferson; (7-1-98)T
 - f. Madison; (7-1-98)T
 - g. Fremont; (7-1-98)T
 - h. Teton; (7-1-98)T
 - i. Bonneville; and (7-1-98)T
 - j. That portion of Bingham county that includes the Blackfoot, Firth and Shelley School Districts. (7-1-98)T

011. FILING WITH THE BOARD.

For the purposes of Section 33-5206(5), Idaho Code, filing with the State Board of Education shall be on a first in time is first in right basis. (7-1-98)T

01. Filing. Filing with the State Board of Education shall be allowed during regular business hours, 8:00 am to 5:00 pm Mountain Time on regular business days, Monday through Friday, excluding all holidays as allowed by law. (7-1-98)T

02. Numbering of Petitions. All petitions received at the Office of the State Board of Education via hand delivery, fax or mail shall be chronologically numbered, date stamped, and time stamped in the order received. (7-1-98)T

03. Board Office. Petitions shall be filed at the State Board of Education at the following physical address: Idaho State Board of Education 650 W. State Street, Room 307, Boise, Idaho. 83702. (7-1-98)T

04. Transmission to the Department. Following the filing with the Office of the State Board of Education, all petitions shall be forwarded to the State Department of Education for further processing as required. (7-1-98)T

05. Time of Filing. Beginning in the calendar year 1999 and for each calendar year thereafter petitions shall not be accepted prior to May 1. (7-1-98)T

012. UNASSIGNED ALLOTMENTS.

Within five (5) business days following October 1 of each calendar year, any unused allotments as provided for in Section 33-5203(2), Idaho Code, shall be distributed among the other regions by random drawing. (7-1-98)T

01. Random Drawing. The random drawing shall be conducted in the Office of the State Board of Education during regular business hours on a regular business day not to exceed five (5) regular business days following October 1. (7-1-98)T

02. Notice to Requesting Entities. The Office of the State Board of Education shall take reasonable efforts to notify all requesting districts whose petition is available for the random distribution of the date and time of the random drawing. Such notice may be by U.S. Mail, facsimile, electronic mail, or telephone. (7-1-98)T

03. Method of Random Drawing. The random drawing shall be conducted via the following method. The petition number as assigned pursuant to Section 33-5206(5), Idaho Code, shall be placed upon a three inch by five inch (3" x 5") index card for each requesting district qualified for the random distribution. All three inch by five inch (3" x 5") cards shall be placed in a receptacle deemed sufficient by the Executive Director of the State Board of Education. The State Superintendent of Public Instruction or his or her designee, shall randomly draw one (1) three inch by five inch (3" x 5") index card for each unused allotment. Only the petitions drawn at such drawing shall be allowed as charter schools and no further drawings shall be made for that calendar year under any circumstance whatsoever. (7-1-98)T

04. Notification. The State Board of Education shall notify the charter school or schools selected via the random drawing and shall further notify all of the requesting petitioners not so selected. (7-1-98)T

05. No Carryover of Petitions. Any petition that is not allowed as a charter school pursuant to Section 33-5203(2), Idaho Code, through either the one (1) per district or two (2) per region allotment or by the random drawing for any unused allotments, shall be returned to the petitioners. Such petitions shall thereafter be null and void and shall not be carried over as petitions for future calendar years. Provided however, that nothing shall be construed as prohibiting the petitioners from submitting a similar or identical petition the following calendar year pursuant to these rules. (7-1-98)T

013. -- 019. (RESERVED).

020. APPEAL TO SUPERINTENDENT OF PUBLIC INSTRUCTION.

Appeals to the State Superintendent of Public Instruction shall follow the procedures as set forth in Section 33-5207, Idaho Code. (7-1-98)T

021. -- 029. (RESERVED).

030. APPEALS TO THE STATE BOARD OF EDUCATION.

Appeals to the State Board of Education shall be on such procedures and conditions set forth by the State Board of Education in its Governing Policies and Procedures. (7-1-98)T

01. State Board Approval. Approval by the State Board of Education of a charter pursuant to Section 33-5207(5)(b), Idaho Code, shall constitute full approval of the charter school. The State Board of Education shall assume the role of chartering entity and the employees of such charter school shall not be considered employees of the school district nor of the State Board of Education. (7-1-98)T

031. -- 999. (RESERVED).

IDAPA 11 - DEPARTMENT OF LAW ENFORCEMENT

**11.03.01 - RULES GOVERNING ALCOHOL TESTING
IDAHO STATE FORENSIC LABORATORY**

DOCKET NO. 11-0301-9801

NOTICE OF RESCISSION OF TEMPORARY RULEMAKING

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has rescinded the temporary rulemaking previously initiated under this docket. The action is authorized pursuant to Section 19-5504, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons to rescind temporary rulemaking:

This temporary rule is being rescinded under this docket effective August 1, 1998 and the changes are being incorporated into the proposed and temporary rule under Docket No. 16-0301-9802.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this action, contact R. Dan Charboneau at (208) 884-7171.

DATED this 23rd day of July, 1998.

R. Dan Charboneau, Bureau Chief
Bureau of Forensic Services
Department of Law Enforcement/Police Services Division
700 S. Stratford Drive
P.O. Box 700
Meridian, ID 83680-0700
Phone: 208/884-7171, Fax: 208/884-7197

**IDAPA 11 - DEPARTMENT OF LAW ENFORCEMENT
11.03.01 - RULES GOVERNING ALCOHOL TESTING
IDAHO STATE FORENSIC LABORATORY**

DOCKET NO. 11-0301-9802

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective August 1, 1998.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rule-making procedures have been initiated. The action is authorized pursuant to Section(s) 19-5504, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 1998.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

The purpose of this proposed rule is to allow Idaho Department of Law Enforcement to determine the methodology, approval and certification requirements for laboratories performing breath alcohol concentration.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5221(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rules is appropriate for the following reasons:

It is necessary to protect the public health, safety, or welfare.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact: R. Dan Charboneau at (208) 884-7171.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 26, 1998.

DATED this 16th day of June, 1998.

R. Dan Charboneau, Bureau Chief
Bureau of Forensic Services
Department of Law Enforcement/Police Services Division
700 S. Stratford Drive
P.O. Box 700
Meridian, ID 83680-0700
Phone: 208/884-7171, Fax: 208/884-7197

TEXT OF DOCKET NO. 13-0301-9802

004. DEFINITIONS.

01. Alcohol. "Alcohol" shall mean the chemical compound, ethyl alcohol. (7-1-93)

02. Blood Alcohol Analysis. "Blood alcohol analysis" shall mean an analysis of blood to determine the concentration of alcohol present. (7-1-93)
03. Breath Alcohol Analysis. "Breath alcohol analysis" shall mean an analysis of breath to determine the concentration of alcohol present. (7-1-93)
04. Department. "Department" shall mean the Idaho Department of Law Enforcement. (7-1-93)
05. Laboratory. "Laboratory" shall mean the place at which specialized devices, instruments and methods are used by trained personnel to measure the concentration of alcohol in samples of blood, breath or urine for law enforcement purposes. (7-1-93)
06. Proficiency Testing. "Proficiency testing" shall mean a periodic analysis of specimens whose alcohol content is unknown to the testing laboratory, to evaluate the capability of that laboratory to perform accurate ~~analyses~~ analysis for alcohol concentration. (7-1-93)(8-1-98)T
07. Quality Control. "Quality control" shall mean an analysis of referenced samples whose alcohol content is known, which is performed with each batch of urine or blood ~~analyses~~ analysis to ensure that the laboratory's determination of alcohol concentration is reproducible and accurate. (7-1-93)(8-1-98)T
08. Urine Alcohol Analysis. "Urine alcohol analysis" shall mean an analysis of urine to determine the concentration of alcohol present. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

012. REQUIREMENTS FOR ~~BLOOD AND URINE~~ LABORATORY ALCOHOL ANALYSES.

01. Laboratory. Any laboratory desiring to perform urine alcohol or blood alcohol ~~analyses~~ analysis shall meet the following standards: (7-1-93)(8-1-98)T
- a. The laboratory shall prepare and maintain a written procedure governing its method of analysis, including guidelines for quality control and proficiency testing; (7-1-93)
 - b. The laboratory shall provide adequate facilities and space for the procedure used; (7-1-93)
 - c. Specimens shall be maintained in a secure storage area prior to analysis; (7-1-93)
 - d. All equipment, reagents and glassware necessary for the performance of the chosen procedure shall be on hand or readily available on the laboratory premises; (7-1-93)
 - e. The laboratory shall participate in approved proficiency testing and pass this proficiency testing according to standards set by the department. Failure to pass a proficiency test shall result in disapproval until the problem is corrected and a proficiency test is successfully completed; (7-1-93)
 - f. For a laboratory performing blood or urine alcohol ~~analyses~~ analysis, approval shall be awarded to the laboratory director or primary analyst responsible for that laboratory. The responsibility for the correct performance of tests in that laboratory rests with that person; however, the duty of performing such tests may be delegated to any person designated by such director or primary analyst; (7-1-93)(8-1-98)T
 - g. Urine samples shall be collected in clean, dry containers. (7-1-93)
02. Blood Collection. Blood collection shall be accomplished according to the following requirements: (7-1-93)

a. Blood samples shall be collected using sterile, dry syringes and hypodermic needles, or other equipment of equivalent sterility; (7-1-93)

b. The skin at the area of puncture shall be cleansed thoroughly and disinfected with an aqueous solution of a nonvolatile antiseptic. Alcohol or phenolic solutions shall not be used as a skin antiseptic; (7-1-93)

c. Blood specimens shall contain ten (10) milligrams of sodium fluoride per cubic centimeter of blood plus an appropriate anticoagulant. (7-1-93)

03. Results. The results of ~~analyses~~ analysis on blood for alcohol concentration shall be reported in units of grams of alcohol per one hundred (100) cubic centimeters of whole blood. ~~(7-1-93)~~(8-1-98)T

04. Reported. The results of ~~analyses~~ analysis on urine for alcohol concentration shall be reported in units of grams of alcohol per sixty-seven (67) milliliters of urine. Results of alcohol ~~analyses~~ analysis of urine specimens shall be accompanied by a warning statement about the questionable value of urine alcohol results. ~~(7-1-93)~~(8-1-98)T

05. Records. All records regarding proficiency tests, quality control and results shall be retained for three (3) years. (7-1-93)

013. REQUIREMENTS FOR PERFORMING BREATH ALCOHOL TESTING.

01. Instruments. Breath testing instruments shall either have been approved by the department or shall be listed in the "Conforming Products List of Evidential Breath Measurement Devices" published in the Federal Register by the United States Department of Transportation, or appear in that list's successor whatever its current name may be. (7-1-93)

02. Report. Each direct breath testing instrument shall report alcohol concentration as grams of alcohol per two hundred ten (210) liters of breath. (7-1-93)

03. Administration. Breath tests shall be administered in conformity with standards established by the department. Standards shall be developed for each type of breath testing instrument used in Idaho, and such standards shall be issued in the form of ~~policy statements~~ standard operating procedures and training manuals. ~~(7-1-93)~~(8-1-98)T

04. Training. Each individual operator shall demonstrate that he has sufficient training to operate the instrument correctly. This shall be accomplished by successfully completing a training course approved by the department. Officers must retrain periodically as required by the department. (7-1-93)

05. Checks. Each breath testing instrument shall be checked ~~at least once each calendar month~~ on a schedule established by the Department for accuracy with a simulator solution provided by the department or by a source approved by the department. These checks shall be performed according to a procedure established by the department. ~~(7-1-93)~~(8-1-98)T

a. ~~If the results of the simulator tests are acceptable, the department shall issue a notice that the instrument is approved for legal use, providing all other requirements of Section 013 have been met. Effective dates of this approval shall appear on the form.~~ (7-1-93)

b. ~~If the results of the simulator test are not acceptable, the department shall issue a notice that the instrument has been disapproved for legal use, with the effective date listed.~~ (7-1-93)

06. Records. All records regarding ~~calibration checks~~, maintenance and results shall be retained for three (3) years. ~~(7-1-93)~~(8-1-98)T

07. Deficiencies. Failure to Meet Any of the Conditions Listed in Sections 012 and 013. Any laboratory or breath testing instrument may be disapproved for failure to meet one or more of the requirements listed in Sections 012 and 013, and approval may be withheld until the deficiency is corrected. (7-1-93)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 16-0101-9703

NOTICE OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Health and Welfare (Board) and is now pending review by the 1999 Idaho State Legislature for final approval. In November 1997, the Board adopted this rule as a temporary rule, which is currently effective. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-fifth Idaho Legislature unless prior to that date the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code. In addition, this rulemaking is mandated by the United States Environmental Protection Agency pursuant to 40 CFR 70.9.

DESCRIPTIVE SUMMARY: The rule was adopted by the Board, upon recommendation of the Department, because the rule responds to the needs of the regulated community while protecting the public health and environment. In addition, the rule maintains consistency with federal programs. A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 98-1, January 7, 1998, pages 154 through 156.

The Department received no comments from the public concerning the proposed rule. The rule has been adopted as initially proposed in the Idaho Administrative Bulletin, Volume 98-1, January 7, 1998, pages 154 through 156. The rulemaking record is maintained at the Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rule, contact Sue Richards at (208)373-0502.

Dated this 5th day of August, 1998.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255

IDAPA 16
TITLE 01
Chapter 01

RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-1, January 7, 1998,
pages 154 through 156.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO
DOCKET NO. 16-0101-9801

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective June 15, 1998.

AUTHORITY: In compliance with Sections 67-5226(1) and 67-5221(1), Idaho Code, notice is hereby given that the Board of Health and Welfare (Board) has adopted a temporary rule and the Department of Health and Welfare, Division of Environmental Quality (Department) is commencing proposed rulemaking to promulgate a final rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this proposed rulemaking will be held as follows:

September 9, 1998, 7:00 p.m.
Division of Environmental Quality Conference Center
1410 N. Hilton, Boise, Idaho.

The hearing site will be accessible to the physically disabled. Interpreters for persons with hearing impairments and brailled or taped information for persons with visual impairments can be provided upon five days' notice. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: This rulemaking is in response to a request to negotiate changes to Sections 380-387 of IDAPA 16.01.01, "Rules for the Control of Air Pollution in Idaho". This rule is intended to simplify the language and clarify the existing requirements for Tier I operating permit revisions, including administrative amendments, modifications, and re-openings, by changing the structure of the rule, but not the requirements of the rule. This rule will enable the regulated community to better comply with the rules when making changes to their Tier I operating permits.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

NEGOTIATED RULE-MAKING: The text of the rule is based on a consensus recommendation resulting from the negotiated rulemaking process. The negotiation was open to the public. Participants in the negotiation included industry representatives. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 98-2, February 4, 1998, page 35.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit on industry by clarifying certain sections of the Rules for the Control of Air Pollution in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact Dan Salgado at (208) 373-0502.

Anyone may submit written comments regarding this proposed rule. All written comments must be received by the undersigned on or before September 11, 1998.

Dated this 5th day of August, 1998.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
Fax No. (208)373-0481

TEXT OF DOCKET NO. 16-0101-9801

008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 387~~6~~.

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. (5-1-94)
02. 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)
03. 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. (5-1-94)
04. Allowance. An authorization allocated to a Phase II source by the EPA to emit during or after a specified calendar year, one ton of sulfur dioxide. (5-1-94)
05. 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 225 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. (5-1-94)
- 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)

06. 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)

07. 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)

08. Emergency. (5-1-94)

a. For the purposes of Sections 326 through 332, an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including natural disasters, 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. (5-1-94)

b. For the purposes of Sections 380 through 387~~6~~ an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including natural disasters, which situation requires immediate corrective action to restore normal operation. ~~(5-1-94)~~(6-15-98)T

09. Emissions Allowable Under the Tier I Operating Permit. A federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emission cap that the facility has assumed to avoid an applicable requirement to which the source would otherwise be subject. (5-1-94)

10. Excess Emissions. Emissions of an air pollutant in excess of any applicable air quality standard, emission standard emission limit or permit terms or conditions. (5-1-94)

11. 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)

12. General Permit. A Tier I permit issued pursuant to Section 335. (3-23-98)

13. Insignificant Activity. Those activities that qualify as insignificant in accordance with Section 317. (3-23-98)

14. 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 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: (3-23-98)
- i. Designated facilities. (3-23-98)
- ii. All other source categories regulated, as of August 7, 1980, 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. (3-23-98)
15. Part 70. Unless specified otherwise in this chapter, all definitions adopted under 40 CFR Part 70, revised as of July 1, 1998, are hereby incorporated by reference. (6-15-98)T
- ~~156.~~ Permit Revision. Any ~~minor~~ permit modification, ~~substantive permit modification~~, administrative ~~permit~~ amendment or reopening. (~~5-1-94~~)(6-15-98)T
- ~~167.~~ Phase II Source. A source that is subject to emissions reduction requirements of 42 U.S.C. Section 7651 through 7651o and shall have the meaning given to it pursuant to those sections. (5-1-94)
- ~~178.~~ Phase II Unit. A unit that is subject to emissions reduction requirements of 42 U.S.C. Sections 7651 through 7651o and the term shall have the meaning given to it pursuant to those sections. (5-1-94)
- ~~189.~~ Proposed Permit. The version of a permit that the Department proposes to issue and forwards to the EPA for review. (5-1-94)
- ~~1920.~~ Quantifiable. The Department must be able to determine the emissions impact of any SIP trading programs requirement(s) or emission limit(s). (5-1-94)
- ~~201.~~ Regulated Air Pollutant. The following air pollutants: (5-1-94)
- a. Nitrogen oxides including nitrogen dioxide, volatile organic compounds, ozone, lead, carbon monoxide, PM-10 and sulfur oxides. (7-1-97)
- b. Any air pollutant that is regulated in 40 CFR Part 60. (5-1-94)
- c. Any Class I or II substance listed in, or listed in accordance with 42 U.S.C. Sections 7671a(a) or 7671a(b). (5-1-94)
- d. Any air pollutant subject to a standard promulgated under 42 U.S.C. Section 7412 or other

requirements established under 42 U.S.C. Section 7412, including 42 U.S.C. Section 7412(g), (j), and (r), including the following: (5-1-94)

i. Any air pollutant subject to requirements under 42 U.S.C. Section 7412(j). If the EPA fails to promulgate a standard by the date established pursuant to 42 U.S.C. Section 7412(e), any air pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to 42 U.S.C. Section 7412(e); and (5-1-94)

ii. Any air pollutant for which the requirements of 42 U.S.C. Section 7412(g)(2) have been met, but only with respect to the individual source subject to 42 U.S.C. Section 7412(g)(2) requirement. (5-1-94)

24. 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. (5-1-94)

23. Section 502(b)(10) Changes. Changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements. (6-15-98)T

24. Tier I Operating Permit. Any permit covering a Tier I source that is issued, renewed, amended, or revised pursuant to Sections 300 through 3876. (~~5-1-94~~)(6-15-98)T

(BREAK IN CONTINUITY OF SECTIONS)

128. CONFIDENTIAL INFORMATION.

Persons may request that information submitted to the Department be treated as confidential information by separating the confidential information from non-confidential information, clearly identifying each page or portion of the information as confidential and certifying that the information qualifies for confidential treatment in accordance with Idaho Code 39-111. If the information for which the person is requesting confidential treatment is submitted to the Department under Sections 300 through 3876 or the terms or conditions of a Tier I operating permit, the person shall also submit the same information directly to the EPA. All documents shall be subject to disclosure in accordance with Idaho Code Sections 9-301 through 9-350 and, if it is applicable, Idaho Code Section 39-111.

(~~5-1-94~~)(6-15-98)T

(BREAK IN CONTINUITY OF SECTIONS)

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. 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)

- 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 new major facility or major modification, any new facility or modification which would cause a significant contribution to existing ambient concentrations or 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, and any other application which the Director determines an opportunity for public comment should be provided. (6-30-95)
- 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 air pollutant, except for those new major facilities and major modifications exempted under Subsection 205.04. (3-23-98)
- 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 air pollutants would not exceed the maximum allowable increases for a Class I area. (5-1-94)

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 225. 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., 209.02.b. and 209.04, shall only apply if the permit revision results in an increase in allowable emissions or if deemed appropriate by the Director. (5-1-94)

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. (3-23-98)

iv. ~~Within twelve (12) months after commencing operation, the owner or operator shall submit an application for a Tier I operating permit or a request for a minor or substantive permit modification, whichever is appropriate. 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 269). 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.

~~(3-23-98)~~(6-15-98)T

v. The application or minor or ~~substantive~~ significant permit modification request shall be processed in accordance with timelines: Section 361 and Subsections 367.02 through 367.05. ~~(3-23-98)~~(6-15-98)T

vi. The final Tier I operating permit action shall supersede the permit to construct; or (3-23-98)

b. Submit all information required by Sections 200 through 219 and 300 through 387~~6~~ for a permit to construct and a Tier I operating permit, in which case: ~~(3-23-98)~~(6-15-98)T

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 and a draft Tier I operating permit, in accordance with Sections 200 through 219 and 300 through 387~~6~~, within sixty (60) days. ~~(3-23-98)~~(6-15-98)T

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 denial. (3-23-98)

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 after 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. 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. (3-23-98)

v. The final permit to construct will be sent to EPA as the proposed Tier I operating permit, or as a proposed amendment to the Tier I operating permit, for review in accordance with Section 366. (3-23-98)

vi. The permittee shall request that the permit to construct requirements be incorporated into the Tier I operating permit through an administrative amendment in accordance with Section 384~~1~~. ~~(5-1-94)~~(6-15-98)T

(BREAK IN CONTINUITY OF SECTIONS)

300. PROCEDURES AND REQUIREMENTS FOR TIER I OPERATING PERMITS.

The purposes of Sections 300 through 387~~6~~ are to establish requirements and procedures for the issuance of Tier I operating permits. ~~(5-1-94)~~(6-15-98)T

(BREAK IN CONTINUITY OF SECTIONS)

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.:
- 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)
- e. For Tier I sources identified in Subsection 301.02.b.iv.:
- i. Existing on January 1, 2000, 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, 2000, 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 January 1, 2000, 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 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 substantive significant permit modification applications. ~~(5-1-94)~~(6-15-98)T
- 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 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 nine (9) months before, but no earlier than eighteen (18) months before, the expiration date of the existing Tier I operating permit. (3-23-98)

04. ~~Alterations~~ Changes to Tier I Operating Permits. Sections 380 through 387~~6~~ provide the requirements and procedures for ~~alterations~~ changes at Tier I sources ~~or~~ and to Tier I operating permits. ~~(5-1-94)~~(6-15-98)T

(BREAK IN CONTINUITY OF SECTIONS)

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. ~~(3-23-98)~~(6-15-98)T

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.

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 Department or EPA approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit. (3-23-98)

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 must be clearly identified in such reports. All required reports must be certified in accordance with Section 123. (5-1-94)

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. Initial Compliance Plan. All Tier I operating permits shall contain terms and conditions regarding the compliance plan submitted in the application in accordance with Subsection 314.11 including all of the following: (5-1-94)

a. For emissions units triggering the requirement to submit a compliance schedule, terms and conditions consistent with the compliance schedule submitted by the applicant including all of the following: (5-1-94)

i. A schedule of remedial measures leading to compliance including a verifiable sequence of actions and specific dates for achieving the milestones and achieving compliance. (3-23-98)

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 emissions units not triggering the requirement to submit a compliance schedule, terms and conditions, as applicable, requiring the permittee to continue to comply with applicable requirements, to meet the applicable requirements on a timely basis or on the schedule described in the applicable requirement, or to meet the applicable requirement by the time the Tier I operating permit is issued. (5-1-94)

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 for which compliance is being certified; (5-1-94)

ii. The compliance history of the emissions unit with the identified term or condition, including a statement of the emissions unit's current compliance status; (5-1-94)

iii. A statement of whether compliance was continuous or intermittent during the reporting period and, if it was intermittent, provide the dates of noncompliance; (5-1-94)

iv. A description of the method(s) used for determining the compliance status of the emissions unit

throughout the reporting period; (5-1-94)

v. All other information necessary to determining the compliance status of the emissions unit; and (5-1-94)

vi. Such additional contents and requirements as may be specified by the Department or the EPA pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section 7661c(b), Sections 121 or 122 of these rules. (5-1-94)

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. Periodic Compliance Plan. Each Tier I operating permit shall require submittal of compliance plans during the term of the permit for each emissions unit to the Department as follows: (5-1-94)

a. Compliance plans for all emissions units shall be submitted no less frequently than annually, or more frequently if specified by the underlying term or condition or by the Department. (5-1-94)

b. The compliance plan shall provide a compliance description as follows: (5-1-94)

i. For each term or condition with which the emissions unit is in compliance, state that the emissions unit will continue to comply with the term or condition. (5-1-94)

ii. For each term or condition 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 term or condition on a timely basis. (5-1-94)

iii. For each term or condition that will become effective during the term of the Tier I operating permit that expressly contains a more detailed schedule, state that the emissions unit will comply with the term or condition on the schedule provided in the term or condition. (5-1-94)

iv. For each term or condition with which the emission unit is not in compliance, state that the emissions unit shall be in compliance during the entire subsequent reporting period or provide a compliance schedule that complies with Subsection 322.12.c. (5-1-94)

c. All compliance schedules shall: (5-1-94)

i. Include a schedule of remedial measures leading to compliance, including a verifiable sequence of actions and specific dates for achieving milestones and achieving compliance. (5-1-94)

ii. Include 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 is specified in the underlying permit term or condition or by the Department. (5-1-94)

iii. Incorporate the terms and conditions of any applicable consent order, judicial order, judicial consent decree, administrative order, settlement agreement or judgment. (5-1-94)

iv. Be supplemental to, and shall not sanction noncompliance with, the terms or conditions on which it is based. (5-1-94)

d. The Department may develop terms and conditions consistent with the compliance schedule submitted by the permittee including all of the terms and conditions specified in Subsection 322.10.a. (5-1-94)

13. 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)

14. 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)

15. 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)

16. 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 under Section 122 and any information that the Department may request in writing to determine whether cause exists for modifying, revoking, revoking and reissuing or terminating the permit or to determine compliance with the permit or other requirements. (5-1-94)

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 is prohibited from making any alteration without complying with applicable provisions of Sections 380 through 387. Sections 380 through 387 are hereby incorporated by reference into this permit. shall comply with Sections 380 through 386.~~ (5-1-94)(6-15-98)T

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. Applicable requirements proposed or promulgated after the date of issuance; (5-1-94)
 - iv. The applicable requirements of the acid rain program, consistent with 42 U.S.C. Section 7651g(a); (5-1-94)
 - v. 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 525 through 538, which are hereby incorporated by reference. (5-1-94)
- 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)

(BREAK IN CONTINUITY OF SECTIONS)

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. ~~Alterations including, but not limited to, permit deviations, permit revisions and off-permit changes, Permit revisions~~ and other actions authorized by Sections 300 through 387~~6~~ may eliminate, modify or suspend the permit shield. (5-1-94)(6-15-98)T

(BREAK IN CONTINUITY OF SECTIONS)

380. ALTERATIONS PERMIT AMENDMENTS, MODIFICATIONS, CHANGES REQUIRING NOTICE, AND REOPENINGS.

~~The purposes of Sections 380 through 387 is to establish procedures and requirements for alterations.~~ (5-1-94)

01. Applicability. Sections 380 through 386 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 225. (6-15-98)T

02. Amendments and Modifications. A permittee may elect or be required by the Department to make a Tier I permit revision -- administrative amendment (Section 381), significant (Section 382) or minor permit modifications (Section 383) -- as appropriate, if the proposed or actual change at or involving the Tier I source: (6-15-98)T

a. Requires a change to the text of a Tier I permit; (6-15-98)T

b. Triggers a new applicable requirement not addressed in the Tier I permit; (6-15-98)T

c. Contravenes an existing term or condition in the Tier I permit; or (6-15-98)T

d. Is a modification under any provision of Title I of the Clean Air Act. (6-15-98)T

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).

(6-15-98)T

04. Reopening. Section 386 establishes procedures for reopening the permit for cause by the Department, EPA, or the permittee.

(6-15-98)T

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.

(6-15-98)T

381. ~~ALTERATIONS GENERALLY~~ ADMINISTRATIVE PERMIT AMENDMENTS.

01. ~~Generally. Criteria.~~ An administrative permit amendment is a permit revision that:

(5-1-94)(6-15-98)T

a. ~~Alterations are changes at or involving a Tier I source occurring after the issuance of a Tier I operating permit for the Tier I source and changes in the text of a Tier I operating permit including, but not limited to, modifications, new construction, monitoring, compliance procedures, hours of production, production rates, recordkeeping and reporting requirements, trades and typographical corrections.~~ Corrects typographical errors;

(5-1-94)(6-15-98)T

b. ~~Alterations may be authorized by the Department or accomplished as off-permit changes, permissible variations and permit revisions. Permit revisions are made through administrative permit amendments, minor permit modifications, substantive permit modifications, or reopenings. 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;~~

(3-23-98)(6-15-98)T

c. ~~Requires more frequent monitoring or reporting by the permittee;~~

(6-15-98)T

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;~~

(6-15-98)T

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.b.; or~~

(6-15-98)T

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.~~

(6-15-98)T

02. ~~Permittee Alterations. Alterations by the permittee are prohibited unless the permittee complies with applicable provisions of Sections 200 through 219 and Sections 380 through 387. Administrative Permit Amendment Application Procedures.~~

(3-23-98)(6-15-98)T

a. ~~If initiated by the permittee, the permittee shall submit a request to the Department. The request shall:~~

(6-15-98)T

i. ~~State at the beginning of the request that it is a "REQUEST FOR ADMINISTRATIVE PERMIT AMENDMENT".~~

(6-15-98)T

ii. ~~Describe the proposed administrative permit amendment including any permit to construct to be incorporated;~~

(6-15-98)T

iii. ~~State the date on which the proposed administrative amendment will occur at the facility;~~

(6-15-98)T

iv. Identify any Tier I operating permit term or condition that is no longer applicable as a result of the change; and (6-15-98)T

v. Identify any applicable requirement that would apply to the Tier I source as a result of the change. (6-15-98)T

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. (6-15-98)T

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. Unless the Department has already submitted a copy of the revised permit to EPA under Subsection 209.05.b.v., the Department shall submit a copy of the revised permit, or an addendum, to the EPA and send the original to the permittee. (6-15-98)T

03. Required Alterations. Alterations may be required by the Department if the Department revises the Tier I operating permit through an administrative permit amendment, or reopening. Implementation Procedures. (5-1-94)(6-15-98)T

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. (6-15-98)T

b. If the permittee obtains a permit to construct under Subsection 209.05.b., 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. (6-15-98)T

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. (6-15-98)T

382. OFF-PERMIT CHANGES SIGNIFICANT PERMIT MODIFICATION.

01. Generally: 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: (5-1-94)(6-15-98)T

a. Off-permit changes are alterations that are neither addressed nor prohibited by the Tier I operating permit, meet all applicable requirements and are not related to whether the Tier I source is being operated in compliance with all applicable requirements. Off-permit changes include, but are not limited to, practices that do not have any relation to air pollution emissions and practices that result only in the emission of pollutants for which the Tier I source is not regulated. Violate an existing Tier I permit term or condition derived from an applicable requirement: (5-1-94)(6-15-98)T

b. Alterations constituting a modification or requiring a permitting action under Sections 200 through 219, 42 U.S.C. Sections 7651 through 7651o, 42 U.S.C. Sections 7401 through 7515, 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, or otherwise regulated under 42 U.S.C. Sections 7651 through 7651o are not off-permit changes, unless the modification or permitting action only involves toxic air pollutants. 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: (3-23-98)(6-15-98)T

c. Alterations that violate any Tier I operating permit term or condition are not off-permit changes. 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; (5-1-94)(6-15-98)T

d. ~~Alterations that result in an exceedance of the emissions allowable under the Tier I operating permit (whether expressed therein as a rate of emissions or in terms of total emissions) are not off permit changes. 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;~~ (5-1-94)(6-15-98)T

e. Constitute a modification under any provision of Title I of the Clean Air Act; or (6-15-98)T

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. (6-15-98)T

02. ~~Authorization. A permittee may make an off permit change if it is an insignificant activity or if:~~ 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: (5-1-94)(6-15-98)T

a. ~~The permittee provides written notification to the Department and EPA so that the notification is received within seven (7) days of making the off permit change. 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";~~ (5-1-94)(6-15-98)T

b. ~~The written notification provided to the Department and EPA:~~ Meet the standard application requirements of Sections 314 and 315; (5-1-94)(6-15-98)T

i. ~~States at the beginning of the notification "NOTIFICATION OF OFF-PERMIT CHANGE".~~ (5-1-94)

ii. ~~Describes the off permit change.~~ (5-1-94)

iii. ~~States the date on which the off permit change will occur or has occurred.~~ (5-1-94)

iv. ~~Describes and quantifies any change in emissions resulting from the off permit change including, but not limited to, an identification of any new air pollutants that will be emitted.~~ (5-1-94)

v. ~~Identifies any permit term or condition that is no longer applicable as a result of the change.~~ (5-1-94)

vi. ~~Identifies any applicable requirement that is applicable to the Tier I source as a result of the off permit change.~~ (5-1-94)

c. ~~The permittee keeps 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. All such changes must be recorded on or before the day the off permit change is made. Provide a summary sheet;~~ (3-23-98)(6-15-98)T

i. Describing the proposed significant permit modification; (6-15-98)T

ii. Describing and quantifying any change in emissions resulting from the significant permit modification including, but not limited to, an identification of any new air pollutants that will be emitted; (6-15-98)T

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 (6-15-98)T

iv. Identifying new applicable requirement resulting from the change. (6-15-98)T

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). (6-15-98)T

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. (6-15-98)T

~~03. Permit Shield Applicability. The permit shield described in Section 325 shall not apply to any off-permit change. Implementation Procedures. The permittee shall comply with Sections 200 through 225 as applicable, including Subsection 209.05 governing permit to construct procedures for Tier I sources.~~ (5-1-94)(6-15-98)T

04. Permit Shield. Upon final action by the Department, the permit shield described in Section 325 shall extend to significant permit modifications. (6-15-98)T

383. PERMISSIBLE VARIATIONS MINOR PERMIT MODIFICATION.

~~01. Generally. Criteria.~~ (5-1-94)(6-15-98)T

~~a. Permissible variations are any of the following: 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.~~ (3-23-98)(6-15-98)T

~~i. Type I permissible variations are alterations that do not contravene express Tier I operating permit terms regarding monitoring (including test methods), recordkeeping, reporting, or compliance requirements and that do not violate applicable requirements. Type I permissible variations are also known as changes permissible under Section 502(b)(10) of the Clean Air Act.~~ (3-23-98)

~~ii. Type II permissible variations are alterations 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.~~ (3-23-98)

~~iii. Type III permissible variations are alterations made under the terms and conditions of the Tier I operating permit that authorize the trading of emissions increases and decreases within the permitted facility solely 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.~~ (3-23-98)

~~b. Alterations constituting a modification or requiring a permitting action under Sections 200 through 219, 42 U.S.C. Sections 7401 through 7515, 42 U.S.C. Sections 7651 through 7651o, 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, or otherwise regulated under 42 U.S.C. Sections 7651 through 7651o are not permissible variations, unless the modification or permitting action only involves toxic air pollutants. Any other permit modification that is not required to be processed as a significant permit modification under Section 382.~~ (3-23-98)(6-15-98)T

c. Alterations that result in an exceedance of the emissions allowable under the Tier I operating permit (whether expressed therein as a rate of emissions or in terms of total emissions) are not permissible variations. 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: (3-23-98)(6-15-98)T

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; (6-15-98)T

ii. Twenty percent (20%) of the major facility criteria in Subsection 008.14; or (6-15-98)T

iii. Five (5) tons per year. (6-15-98)T

~~02. Authorization for Type I Permissible Variations. A permittee may make a Type I permissible variation if:~~ 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: (3-23-98)(6-15-98)T

~~a. 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 permissible variations; 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 permissible variations. 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;~~ (3-23-98)(6-15-98)T

i. Describing the proposed minor permit modification; (6-15-98)T

ii. Stating the date on which the proposed minor permit modification will occur at the facility; (6-15-98)T

iii. Describing and quantifying any change in emissions resulting from the minor permit modification including, but not limited to, an identification of any new air pollutants that will be emitted; (6-15-98)T

iv. Identifying any Tier I operating permit term or condition that will no longer be applicable as a result of the minor permit modification; (6-15-98)T

v. Identifying any new applicable requirement that is applicable to the Tier I source as a result of the minor permit modification; (6-15-98)T

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 (6-15-98)T

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. (6-15-98)T

~~b. The permittee attaches the notification to the original Tier I operating permit at least two (2) days in advance of the proposed permissible variation; or, in the event of an emergency, the permittee attaches the notification within two (2) days of making the permit deviation. Include completed forms for the Department to use to notify the EPA and affected States as required under Sections 364 and 366.~~ (3-23-98)(6-15-98)T

~~c. The written notification provided to the Department and EPA: Include the applicant's suggested draft Tier I permit with the minor permit modification.~~ (5-1-94)(6-15-98)T

~~i. States at the beginning of the notification "NOTIFICATION OF TYPE I PERMISSIBLE VARIATION. Attach to Department copy of the Tier I operating permit".~~ (3-23-98)

~~ii. Describes the proposed permissible variation.~~ (3-23-98)

~~iii. States the date on which the proposed permissible variation will occur.~~ (3-23-98)

~~iv. Describes and quantifies any change in emissions resulting from the permissible variation, including an identification of any new air pollutants that will be emitted. (3-23-98)~~

~~v. Identifies any permit term or condition that is no longer applicable as a result of the change. (5-1-94)~~

~~vi. Specifically identifies and describes the emergency, if any. (5-1-94)~~

~~vii. Identifies any applicable requirement that would apply to the Tier I source as a result of the permissible variation. (3-23-98)~~

~~d. The Department shall attach a copy of the notification to the Department's copy of the Tier I operating permit for that facility. (3-23-98)~~

~~03. Authorization for Type II Permissible Variations. A permittee may make a Type II permissible variation if: EPA and Affected State Notification Procedures. (3-23-98)(6-15-98)T~~

~~a. 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 permissible variation; 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 permissible variation. 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. (3-23-98)(6-15-98)T~~

~~b. The permittee attaches the notification to the original Tier I operating permit at least two (2) days in advance of the proposed permissible variation; or, in the event of an emergency, the permittee attaches the notification within two (2) days of making the permissible variation. 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. (3-23-98)(6-15-98)T~~

~~c. The written notification provided to the Department and EPA: 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. (5-1-94)(6-15-98)T~~

~~i. States at the beginning of the notification "NOTIFICATION OF TYPE II PERMISSIBLE VARIATION. Attach to Department copy of the Tier I operating permit". (3-23-98)~~

~~ii. Describes the proposed permissible variation. (3-23-98)~~

~~iii. States the date on which the proposed permissible variation will occur. (3-23-98)~~

~~iv. Identifies the provisions in the SIP that provide for the emissions trade. (5-1-94)~~

~~v. Provides all of the information as may be required by the provision in the SIP authorizing the emissions trade. (5-1-94)~~

~~vi. Describes and quantifies any change in emissions resulting from the permissible variation including, but not limited to, an identification of any new air pollutants that will be emitted and an identification of the pollutants emitted that are subject to the emissions trade. (3-23-98)~~

~~vii. Specifically identifies the provisions with which the source will comply in the SIP while operating under the Type II permissible variation. (3-23-98)~~

~~viii. Identifies any applicable requirement that would apply to the Tier I source as a result of the permissible variation. (3-23-98)~~

~~ix. Specifically identifies all of the Tier I operating permit terms and conditions with which the permittee will comply while operating under the Type II permissible variation. (3-23-98)~~

~~x. Identifies any permit term or condition that is no longer applicable as a result of the change. (5-1-94)~~

~~xi. Specifically identifies and describes the emergency, if any. (5-1-94)~~

~~d. The Department shall attach a copy of the notification to the Department's copy of the Tier I operating permit for that facility. 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. (3-23-98)(6-15-98)T~~

~~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: (6-15-98)T~~

~~i. Issue the minor permit modification as proposed; (6-15-98)T~~

~~ii. Deny the minor permit modification application; (6-15-98)T~~

~~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 (6-15-98)T~~

~~iv. Revise the proposed minor permit modification, transmit the revised proposal to the EPA in accordance with Section 366, and notify the permittee. (6-15-98)T~~

~~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. (6-15-98)T~~

~~04. Authorization for Type III Permissible Variations. A permittee may make a Type III permissible variation if: Implementation Procedures. (3-23-98)(6-15-98)T~~

~~a. 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 permissible variation; 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 permissible variation. 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. (3-23-98)(6-15-98)T~~

~~b. The permittee attaches the notification to the original Tier I operating permit at least two (2) days in advance of the proposed permissible variation; or, in the event of an emergency, the permittee attaches the notification within two (2) days of making the permissible variation. 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. (3-23-98)(6-15-98)T~~

~~c. The written notification provided to the Department and EPA: 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. (5-1-94)(6-15-98)T~~

- i. ~~States at the beginning of the notification "NOTIFICATION OF TYPE III PERMISSIBLE VARIATION. Attach to Department copy of the Tier I operating permit".~~ (3-23-98)
 - ii. ~~Describes the proposed permissible variation.~~ (3-23-98)
 - iii. ~~States the date on which the proposed permissible variation will occur.~~ (3-23-98)
 - iv. ~~Describes and quantifies any change in emissions resulting from the permissible variation, including an identification of any new air pollutants that will be emitted.~~ (3-23-98)
 - v. ~~Identifies any permit term or condition that is no longer applicable as a result of the change.~~ (5-1-94)
 - vi. ~~Specifically identifies and describes the emergency, if any.~~ (5-1-94)
 - vii. ~~Identifies any applicable requirement that would apply to the Tier I source as a result of the permissible variation.~~ (3-23-98)
 - viii. ~~Describes how the Type III permissible variation will comply with the terms and conditions of the permit.~~ (3-23-98)
- d. ~~The Department shall attach a copy of the notification to the Department's copy of the Tier I operating permit for that facility.~~ (3-23-98)

05. Applicability. Permit Shield. The permit shield described in Section 325 shall not apply to any minor permit modification. (5-1-94)(6-15-98)T

- a. ~~The permit shield described in Section 325 shall not apply to any Type I or Type II permissible variation.~~ (3-23-98)
- b. ~~Compliance with the Tier I operating permit requirements that the source will meet while operating under a Type II permissible variation shall be determined according to requirements of the SIP authorizing the emissions trade.~~ (3-23-98)
- e. ~~The permit shield described in Section 325 shall extend to the terms and conditions of the Tier I operating permit that allow Type III permissible variations.~~ (3-23-98)

384. ADMINISTRATIVE PERMIT AMENDMENTS SECTION 502(b)(10) CHANGES AND CERTAIN EMISSION TRADES.

01. Generally. 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). (5-1-94)(6-15-98)T

- a. An administrative permit amendment is an alteration that does any of the following: Changes authorized are changes that: (5-1-94)(6-15-98)T
 - i. Corrects typographical errors. Are Section 502(b)(10) changes; (5-1-94)(6-15-98)T
 - ii. 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. 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 (5-1-94)(6-15-98)T

~~iii. Requires more frequent monitoring or reporting by the permittee. 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. (5-1-94)(6-15-98)T~~

~~iv. 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. (5-1-94)~~

~~v. 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.b. (5-1-94)~~

~~b. Alterations constituting a modification, requiring a permitting action or otherwise regulated under 42 U.S.C. Sections 7651 through 7651e are not administrative permit amendments. 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. (5-1-94)(6-15-98)T~~

~~02. Authorization for Administrative Permit Amendments. 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. (5-1-94)(6-15-98)T~~

~~a. For administrative permit amendments initiated by the permittee, the permittee shall submit a request to the Department. The request shall: For each such change, the written notification shall: (5-1-94)(6-15-98)T~~

~~i. State at the beginning of the request that it is a "REQUEST FOR ADMINISTRATIVE PERMIT AMENDMENT". State at the beginning of the notification "NOTIFICATION OF SECTION 502(b)(10) CHANGE" or "NOTIFICATION OF EMISSION TRADE"; (5-1-94)(6-15-98)T~~

~~ii. Describe the proposed administrative permit amendment. Describe the proposed change; (5-1-94)(6-15-98)T~~

~~iii. State the date on which the proposed administrative amendment will occur at the facility. Provide the date on which the proposed change will occur; (5-1-94)(6-15-98)T~~

~~iv. Identify any Tier I operating permit term or condition that is no longer applicable as a result of the change. Describe and quantify any expected change in emissions including identification of any new air pollutants that will be emitted; (5-1-94)(6-15-98)T~~

~~v. Identify any applicable requirement that would apply to the Tier I source as a result of the change. Identify any permit term or condition that is no longer applicable as a result of the change; (5-1-94)(6-15-98)T~~

~~vi. Specifically identify the permit to construct, if any. Specifically identify and describe the emergency, if any; and (5-1-94)(6-15-98)T~~

~~vii. Identify any new applicable requirement that would apply to the Tier I source as a result of the change. (6-15-98)T~~

~~b. For administrative permit amendments 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. For changes described in Subsection 384.01.a.ii., the written notification shall also include: (5-1-94)(6-15-98)T~~

~~i. Identification of the provisions in the SIP that provide for the emissions trade; (6-15-98)T~~

- ii. All of the information required by the provision in the SIP authorizing the emissions trade; (6-15-98)T
- iii. Specific identification of the provisions in the SIP with which the permittee will comply; and (6-15-98)T
- iv. The pollutants subject to the trade. (6-15-98)T
- 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. (6-15-98)T

03. ~~Procedures. An administrative permit amendment may be made by the Department consistent with the following: Permit Shield. The permit shield described in Section 325 shall only extend to changes made in accordance with Subsection 384.01.a.iii.~~ (5-1-94)(6-15-98)T

a. ~~The Department shall, within sixty (60) days of receipt of a request for an administrative permit amendment or within sixty (60) days of sending notice to the permittee, take final action and may incorporate such changes without providing notice to the public or affected States provided that it designates any such administrative permit amendment as having been made pursuant to Section 384.~~ (5-1-94)

b. ~~Unless the Department has already submitted a copy of the revised permit to EPA under Subsection 209.05.b.v., the Department shall submit a copy of the revised permit, or an addendum, to the EPA and send the original to the permittee.~~ (3-23-98)

e. ~~The permittee may implement the alterations addressed in the request for an administrative permit amendment under Subsections 384.01.a.i. through 384.01.a.v. immediately upon submittal of the request. If the permittee obtains a permit to construct under Subsection 209.05.b., then so long as the permit to construct 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.~~ (3-23-98)

d. ~~The permittee shall implement the alterations addressed in the administrative permit amendment immediately upon receiving the original revised Tier I operating permit, or an addendum, unless the Department establishes a different date in the administrative permit amendment.~~ (5-1-94)

04. ~~Permit Shield Applicability.~~ (5-1-94)

a. ~~Upon final action by the Department, the permit shield described in Section 325 shall extend to administrative permit amendments identified in Subsection 384.01.a.v.~~ (5-1-94)

b. ~~The permit shield described in Section 325 shall not apply to any administrative permit amendment not identified in Subsection 384.01.a.v.~~ (5-1-94)

385. MINOR PERMIT MODIFICATIONS OFF-PERMIT CHANGES AND NOTICE.

01. ~~Generally. A minor permit modification is an alteration that:~~ 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. (3-23-98)(6-15-98)T

a. ~~Does not do any of the following:~~ (5-1-94)

i. ~~Violate any applicable requirement;~~ (3-23-98)

ii. ~~Involve substantive alterations as defined under Subsection 386.01;~~ (3-23-98)

~~iii. Require or change: a case by case determination of an emission limitation or other standard; a source-specific determination of ambient impacts; or a visibility or increment analysis; (3-23-98)~~

~~iv. 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); or (3-23-98)~~

~~v. Constitute a modification under any provisions of Title I of the Clean Air Act. (3-23-98)~~

~~b. May involve the use of economic incentives, marketable permits, emissions trading, and other similar approaches; provided that the SIP or an applicable requirement explicitly provides that such alterations may be made as minor permit modifications. (3-23-98)~~

~~02. Authorization for Minor Permit Modifications. A permittee may initiate a minor permit modification by submitting a complete application to the Department. The application shall: 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. (5-1-94)(6-15-98)T~~

~~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 -- INDIVIDUAL PROCESSING". The written notification provided to the Department and EPA shall: (5-1-94)(6-15-98)T~~

~~i. State at the beginning of the notification "NOTIFICATION OF OFF-PERMIT CHANGE"; (6-15-98)T~~

~~ii. Describe the off-permit change; (6-15-98)T~~

~~iii. State the date on which the off-permit change will occur or has occurred; (6-15-98)T~~

~~iv. Describe and quantify any change in emissions resulting from the off-permit change including, but not limited to, an identification of any new air pollutants that will be emitted; and (6-15-98)T~~

~~v. Identify any new applicable requirement that is applicable to the Tier I source as a result of the off-permit change. (6-15-98)T~~

~~b. Meet the requirements of Sections 311 through 315. 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. (5-1-94)(6-15-98)T~~

~~e. Provide a summary sheet. (5-1-94)~~

~~i. Describing the proposed minor permit modification. (5-1-94)~~

~~ii. Stating the date on which the proposed minor permit modification will occur at the facility. (5-1-94)~~

~~iii. Describing and quantifying any change in emissions resulting from the minor permit modification including, but not limited to, an identification of any new air pollutants that will be emitted. (5-1-94)~~

~~iv. Identifying any Tier I operating permit term or condition that will no longer be applicable as a result of the minor permit modification. (5-1-94)~~

~~v. Identifying any applicable requirement that is applicable to the Tier I source as a result of the minor~~

~~permit modification. (5-1-94)~~

~~d. Present suggested revisions to the text of the Tier I operating permit in legislative format. (5-1-94)~~

~~e. Include a certification consistent with Section 123, that the proposed minor permit modification meets the criteria for use of minor permit modification procedures and that the suggested revisions fully and accurately implement and demonstrate compliance with all applicable requirements governing the proposed minor permit modification. (5-1-94)~~

~~f. Include completed forms for the Department to use to notify the EPA and affected States as required under Sections 364 and 366. (5-1-94)~~

~~03. Procedures. A minor permit modification may be made by the Department consistent with the following: Permit Shield Applicability. The permit shield described in Section 325 shall not apply to any off-permit change. (5-1-94)(6-15-98)T~~

~~a. Within five (5) working days of receipt of a complete minor permit modification application, the Department shall 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. (5-1-94)~~

~~b. The Department shall promptly notify EPA and any affected States in writing if the Department refuses to accept all the timely recommendations submitted by affected States. (5-1-94)~~

~~e. 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. (3-23-98)~~

~~d. Within ninety (90) days of the Department's receipt of a complete minor permit modification application 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 following actions: (3-23-98)~~

~~i. Issue the minor permit modification as proposed. (3-23-98)~~

~~ii. Deny the minor permit modification application. (5-1-94)~~

~~iii. Determine that the requested minor permit modification does not meet the minor permit modification criteria and should be reviewed under the substantive modification procedures. (5-1-94)~~

~~iv. Revise the proposed minor permit modification, transmit the revised proposal to the EPA and affected States in accordance with Sections 364 and 366, notify the permittee and re-initiate the ninety (90) day timeline identified in Subsection 385.03.e. (3-23-98)~~

~~e. The permittee may make the alteration proposed in its minor permit modification application at any time after it files such application with the Department and before final action by the Department. (5-1-94)~~

~~f. The permittee shall implement the alterations addressed in the minor permit modification immediately upon receiving the original revised Tier I operating permit, or an addendum, unless the Department establishes a different date in the minor permit modification. (5-1-94)~~

~~04. Transitional Compliance. The permittee may make the proposed alteration at any time before the revised Tier I operating permit is issued, and compliance shall be determined as follows until the Department takes any of the actions specified in Subsections 385.03.e.i. through 385.03.e.iii.: (3-23-98)~~

~~a. The permittee must comply with both the applicable requirements governing the alteration and the suggested revisions to the text of the Tier I operating permit. (5-1-94)~~

~~b. 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 alteration and the suggested revisions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it. (5-1-94)~~

~~05. Permit Shield Applicability. The permit shield described in Section 325 shall not apply to any minor permit modification. (5-1-94)~~

~~06. Group Processing Procedures. The permittee may initiate group processing of its minor permit modification applications and the Department may process minor permit modification applications in groups as follows: (5-1-94)~~

~~a. The group may only consist of minor permit modification applications submitted by a single permittee for a single Tier I operating permit. (5-1-94)~~

~~b. The increased emissions requested in the minor permit modification applications in the group must not exceed the lesser of the following: (5-1-94)~~

~~i. Ten percent (10%) of the emissions allowed by the existing Tier I operating permit for the emissions unit for which the alteration is requested. (5-1-94)~~

~~ii. Twenty percent (20%) of the criteria in Major Facility as defined in Section 008. (3-23-98)~~

~~iii. Five (5) tons per year. (5-1-94)~~

~~e. A permittee may initiate the group processing of minor permit modifications by submitting an application to the Department. The application shall: (5-1-94)~~

~~i. Request the use of group processing procedures and state at the beginning of the request that it is a "REQUEST FOR MINOR PERMIT MODIFICATION - GROUP PROCESSING". (5-1-94)~~

~~ii. Comply with all of the requirements of Subsections 385.02.b. through 385.02.f. (3-23-98)~~

~~iii. List the permittee's other pending minor permit modification applications that are awaiting group processing. (5-1-94)~~

~~iv. State whether the minor permit modification, when aggregated with other pending minor permit modification applications awaiting group processing, is less than, equal to, or greater than the threshold provided in Subsection 385.06.b. and provide calculations supporting the statement. (3-23-98)~~

~~v. List the permittee's other minor permit modifications that have been approved within the preceding twelve (12) months or that are awaiting individual processing. (5-1-94)~~

~~vi. Certify, consistent with Section 123, that the permittee has provided a brief written notification describing the requested minor permit modification to the EPA. (5-1-94)~~

~~d. The Department may process minor permit modifications in groups in accordance with Subsection 385.03 except as modified by the following: (3-23-98)~~

~~i. Every three (3) months or within five (5) working days of receiving a minor permit modification application in which the permittee states that emissions increases proposed in the minor permit modification applications awaiting group processing are equal to or greater than the threshold provided in Subsection 385.06.b., whichever is the earlier, the Department shall identify the minor permit modification applications that will be processed as a group. (3-23-98)~~

~~ii. Promptly after identifying the group of minor permit modification applications that will be processed as a group, the Department shall notify EPA and affected States as provided in Subsection 385.03.a.~~

~~(3-23-98)~~

~~iii. The Department shall take one of the actions provided in Subsections 385.03.e. through 385.03.d.iv. for each of the proposed minor permit modifications in the group within one hundred eighty (180) days of the Department's receipt of the first complete minor permit modification application processed in the group.~~

~~(3-23-98)~~

~~iv. If the Department takes the action provided in Subsections 385.03.e. or 385.03.d., the Department shall issue the minor permit modifications identified as eligible to be processed as a group within one hundred eighty (180) days of receipt of the application or fifteen (15) days after the end of EPA's forty five (45) day review period, whichever is later.~~

~~(3-23-98)~~

~~v. If the Department takes the action provided in Subsection 385.03.d.iv., the Department shall initiate a new timeline requiring a further action within ninety (90) days.~~

~~(3-23-98)~~

386. SUBSTANTIVE PERMIT MODIFICATIONS REOPENING FOR CAUSE.

The Department shall reopen a Tier I permit if cause exists.

(6-15-98)T

01. Generally, A substantive permit modification is an alteration that does not qualify as a minor permit modification or administrative amendment. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or record-keeping permit terms or conditions shall be considered significant. Nothing in this section shall be construed to preclude the permittee from making alterations consistent with Sections 382 through 385. Criteria. Cause for reopening exists under any of the following circumstances:

~~(3-23-98)~~(6-15-98)T

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;

(6-15-98)T

b. Whenever additional applicable requirements become applicable to an affected source, as defined for the purposes of the acid rain program;

(6-15-98)T

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

(6-15-98)T

d. The Department or EPA determines that the Tier I operating permit does not ensure compliance with the applicable requirements.

(6-15-98)T

02. ~~Authorization. A permittee may initiate a substantive permit modification by submitting a complete substantive permit modification application to the Department. The application shall:~~ Procedures for Reopenings.

~~(5-1-94)~~(6-15-98)T

a. ~~Request the use of substantive permit modification procedures and state at the beginning of the request that it is a "REQUEST FOR SUBSTANTIVE PERMIT MODIFICATION". 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.~~

~~(5-1-94)~~(6-15-98)T

b. ~~Meet the requirements of Sections 311 through 315. 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.~~

~~(5-1-94)~~(6-15-98)T

c. ~~Provide a summary sheet:~~ 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.

~~(5-1-94)(6-15-98)T~~

~~i. Describing the proposed substantive permit modification. 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.~~ ~~(5-1-94)(6-15-98)T~~

~~ii. Describing and quantifying any change in emissions resulting from the substantive permit modification including, but not limited to, an identification of any new air pollutants that will be emitted. The EPA will review the proposed determination from the Department within ninety (90) days of receipt.~~ ~~(5-1-94)(6-15-98)T~~

~~iii. Identifying any Tier I operating permit term or condition that will no longer be applicable as a result of the substantive permit modification. 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.~~ ~~(5-1-94)(6-15-98)T~~

~~iv. Identifying any applicable requirement that is applicable to the Tier I source as a result of the substantive permit modification. 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:~~ ~~(5-1-94)(6-15-98)T~~

~~(1) Providing at least thirty (30) days' notice to the permittee in writing of the reason for such action.~~ ~~(6-15-98)T~~

~~(2) Providing the permittee an opportunity for comment on the EPA's proposed action and an opportunity for a hearing.~~ ~~(6-15-98)T~~

~~d. Present suggested revisions to the text of the Tier I operating permit in legislative format.~~ ~~(5-1-94)~~

~~03. Procedures.~~ ~~(5-1-94)~~

~~a. Substantive permit modifications shall be issued in accordance with all requirements of Sections 300 through 387 as they apply to Tier I operating permit issuance and Tier I operating permit renewal, including those for applications, public participation, review by affected States, and review by EPA.~~ ~~(5-1-94)~~

~~b. The Department will process the majority of significant permit modifications within nine (9) months of receiving a complete substantive permit modification application. The Department shall determine which substantive permit modification applications will be processed within nine (9) months.~~ ~~(5-1-94)~~

~~e. The permittee may not make the alteration proposed in its substantive permit modification application at any time before final action by the Department. Final action in this instance may include issuance of a permit to construct or receipt of a pre-permit construction approval letter in accordance with Subsection 213.02.e. So long as the permit to construct 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 upon its issuance.~~ ~~(3-23-98)~~

~~d. The permittee shall implement the alterations addressed in the substantive permit modification immediately upon receiving the original revised Tier I operating permit, or an addendum, unless the Department establishes a different date in the substantive permit modification.~~ ~~(5-1-94)~~

~~04. Permit Shield Applicability. Upon final action by the Department, the permit shield described in Section 325 shall extend to substantive permit modifications.~~ ~~(5-1-94)~~

387. REOPENINGS.

~~01. Generally.~~ ~~(5-1-94)~~

- ~~a. Reopenings are alterations resulting in the termination, revocation, revision or revocation and reissuance of a Tier I operating permit for cause. (5-1-94)~~
- ~~b. Cause for reopening exists under any of the following circumstances: (5-1-94)~~
- ~~i. Type 1: 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. (5-1-94)~~
- ~~ii. Type 2: Whenever additional applicable requirements become applicable to an affected source, as defined for the purposes of the acid rain program. (5-1-94)~~
- ~~iii. Type 3: 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. (5-1-94)~~
- ~~iv. Type 4: The Tier I operating permit does not ensure compliance with the applicable requirements. (5-1-94)~~
- ~~v. Type 5: The Department determines that emissions from the Tier I source are alone or in combination with other contaminants, injuring or unreasonably affecting human or animal life or vegetation. (5-1-94)~~
- ~~vi. Type 6: The Department determines that emissions from the source are a danger to human health or the environment. (5-1-94)~~
- ~~vii. Type 7: The Department determines that emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable PSD increment. (5-1-94)~~
- ~~viii. Type 8: The Department determines that specific emission standards, or requirements on operation or maintenance are necessary to ensure compliance with any applicable emission standard or rule. (5-1-94)~~
- ~~02. Authorization for Reopenings. (5-1-94)~~
- ~~a. The Department may initiate reopenings for Type 1 through Type 8 causes by notifying the permittee in writing that the Department is initiating a reopening and providing a brief summary of the proposed alterations. (5-1-94)~~
- ~~i. For Types 1 through 4, 7 and 8 causes, the notice shall be sent at least thirty (30) days prior to the reopening. (5-1-94)~~
- ~~ii. For Types 5 and 6, the notice shall be sent at least three (3) days prior to the reopening. (5-1-94)~~
- ~~iii. For any Type when the Department declares an emergency, the notice shall be sent at least one (1) day prior to the reopening. (3-23-98)~~
- ~~b. The EPA may initiate reopenings for Type 1 though Type 4 causes by providing written notification to the Department and the permittee. (3-23-98)~~
- ~~03. Procedures for Reopenings by the Department or EPA. The Department shall process reopenings in accordance with Sections 360 through 379 except as otherwise provided by Subsections 387.04 and 387.05 and the following: (5-1-94)~~
- ~~a. Proceedings for reopenings shall affect only those parts of the Tier I operating permit for which cause to reopen exists. (5-1-94)~~

~~b. Reopenings for Type 1 causes shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. (5-1-94)~~

~~e. Reopenings for Type 2 causes that are excess emissions offset plans shall be deemed incorporated into the Tier I operating permit without additional procedures upon approval of the plan by EPA. (5-1-94)~~

~~d. As soon as practicable, the Department shall determine whether the Department has sufficient information to process the reopening. If additional information is needed, the Department may: (5-1-94)~~

~~i. Require the permittee to submit a new or revised Tier I operating permit application within forty-five (45) days. (5-1-94)~~

~~ii. Require the permittee to submit additional information as specified by the Department. (5-1-94)~~

~~04. Additional Procedures for Reopenings Initiated by the Department. Reopenings shall be made as expeditiously as practicable, unless a different timeline is provided in Subsection 387.03.b. (5-1-94)~~

~~05. Additional Procedures for Reopenings Initiated by EPA. (5-1-94)~~

~~a. If the Department determined that it had sufficient information to process the reopening, 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. (5-1-94)~~

~~b. If the Department determined that it did not have sufficient information to process the reopening, the Department may request an extension from EPA and within one hundred and eighty (180) days after receipt of notification from EPA forward to EPA a determination of termination, revocation, revision, or revocation and reissuance, as appropriate. (5-1-94)~~

~~e. If EPA submits objections to the Department within ninety (90) days from receipt of the proposed determination, the Department shall review the objections and terminate, revoke, revise, revoke and reissue, or reconfirm the Tier I operating permit within ninety (90) days of receipt of the objection. (5-1-94)~~

~~3887. -- 399. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

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 net out of) Sections 300 through 387~~6~~ may apply to the Department for an operating permit to: ~~(5-1-94)~~(6-15-98)T

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 or 206; (5-1-94)

c. Authorize the use of an emission reduction or netting transaction to exempt a facility or modification from certain requirements for a permit to construct; (5-1-94)

d. Authorize the use of an emission reduction to exempt the facility from Tier I permitting requirements. (5-1-94)

e. Bank an emission reduction credit pursuant to Section 461; (5-1-94)

02. Required Tier II Operating Permits. A Tier II operating permit is required for any stationary source or facility which is not subject to Sections 300 through 3876 with a permit to construct which establishes any emission standard different from those in these rules. (~~5-1-94~~)(6-15-98)T

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 PSD increment; or (5-1-94)

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. 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. (5-1-94)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.06 - SOLID WASTE MANAGEMENT RULES AND STANDARDS

DOCKET NO. 16-0106-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Health and Welfare (Board) and is now pending review by the 1999 Idaho State Legislature for final approval. The rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-fifth Idaho Legislature if prior to that date the rule is approved by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. The rule may be rejected, amended or modified by concurrent resolution of the Legislature.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapters 1 and 74, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: The rule was adopted by the Board, upon recommendation of the Department of Health and Welfare (Department), because the rule responds to the needs of the regulated community while protecting the public health and environment. In addition, the rule maintains consistency with federal programs. A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 98-2, February 4, 1998, pages 44 through 48.

The Department received no comments from the public concerning the proposed rule but has revised Section 994 to correct a typographical error. The rulemaking record is maintained at the Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706.

IDAPA 16.01.06 Sections 003 and 995 have been adopted as initially proposed in the Idaho Administrative Bulletin, Volume 98-2, February 4, 1998, pages 44 through 48 and, therefore, have not been republished with this notice.

FEE SUMMARY: This rule imposes a siting license fee based on the proposed size of the commercial solid waste facility and the proposed volume of waste to be received at the facility. The fee starts at \$3500 for commercial solid waste facilities less than 5 acres in size and accepting less than 20 tons per day, the fee schedule ends at \$7500 for facilities on greater than 50 acres and proposed to receive more than 100 tons per day. Idaho Code Section 39-7408C authorizes imposition of this fee. Because this rule imposes a fee, the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact Barry Burnell at (208)373-0502.

DATED this 5th day of August, 1998.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255

IDAPA 16
TITLE 01
Chapter 06

SOLID WASTE MANAGEMENT RULES AND STANDARDS

**There are substantive changes
from the proposed rule text.**

**Only those sections that have changed from the
original proposed text are printed in this
Bulletin following this notice.**

**The complete original text was published in the
Idaho Administrative Bulletin, Volume 98-2, February 4, 1998,
pages 44 through 48.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature
for final adoption.**

TEXT OF DOCKET NO. 16-0106-9801

101. -- 9953. (RESERVED).

994. COMMERCIAL SOLID WASTE SITING LICENSE FEE.

An application for a commercial solid waste siting license, required by the Idaho Solid Waste Facilities Act, shall be accompanied by a siting license fee in an amount established by these rules. The license fee shall not exceed seven thousand five hundred dollars (\$7,500) and shall be submitted with the siting license application. ()

01. Commercial Solid Waste Siting License Fee Criteria. The commercial solid waste siting license fee, required by the Idaho Solid Waste Facilities Act and these rules, shall be based on the cost of the Department's review and the characteristics of the proposed commercial solid waste facility, including the projected site size, projected waste volume, and the hydrogeological and atmospheric characteristics surrounding the site. ()

02. Commercial Solid Waste Siting License Fee Scale. The commercial solid waste siting license fee, required by the Idaho Solid Waste Facilities Act and these rules, shall be determined using the table below. The fee, determined using the table below, may then be adjusted by the Department, if necessary, to reflect the cost of the Department's review taking into account the hydrogeological and atmospheric characteristics surrounding the site. ()

<u>COMMERCIAL SOLID WASTE SITING LICENSE FEE SCALE</u>			
<u>PROJECTED SOLID WASTE VOLUME</u>			
<u>Tons per day (TPD)</u>			
<u>Site Size</u>	<u>Up to 20 TPD</u>	<u>20 to 100 TPD</u>	<u>More than 100 TPD</u>
<u>5 acres or less</u>	<u>\$3,500</u>	<u>\$4,500</u>	<u>\$5,500</u>
<u>5 to 50 acres</u>	<u>\$4,500</u>	<u>\$5,500</u>	<u>\$6,500</u>
<u>more than 50 acres</u>	<u>\$5,500</u>	<u>\$6,500</u>	<u>\$7,500</u>

03. Notification of Adjustment of the Fee. Within thirty (30) days of receipt of the application and fee, the Department shall notify the applicant if the fee has been adjusted and the date by which any additional fee must be paid by the applicant. ()

04. Expansion or Enlargement of a Commercial Solid Waste Facility. The expansion or enlargement of a commercial solid waste facility constitutes a new proposal for which a commercial solid waste siting license is required and for which a siting license fee must be paid. All commercial solid waste facilities not in operation on March 20, 1996 must submit a commercial solid waste license application and fee. ()

05. Commercial Solid Waste Siting License Fee Not Refundable. The commercial solid waste siting license fee, required by the Idaho Solid Waste Facilities Act and by these rules, shall not be refundable and may not be applied toward any subsequent application should the commercial solid waste siting license application be canceled, withdrawn or denied. ()

995. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.01 - RULES GOVERNING ELIGIBILITY FOR MEDICAID FOR FAMILIES AND CHILDREN
DOCKET NO. 16-0301-9801

NOTICE OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The amendments to the temporary rule are effective October 1, 1997 and July 1, 1998. These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section(s) 56-209(b), Idaho Code.

DESCRIPTIVE SUMMARY: The proposed rules have been amended to make typographical, transcriptional, and clerical corrections to the rules, and are being amended pursuant to Section 67-5227, Idaho Code.

Only the sections that have changes are printed in this bulletin. The original text of the proposed rules was published in the May 6, 1998, Idaho Administrative Bulletin, Volume 98-5, pages 140 through 147.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Patti Campbell, Bureau Chief, at (208) 334-5819.

DATED this 5th day of August, 1998.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Legal Services Division
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-5548 fax

IDAPA 16
TITLE 03
Chapter 01

RULES GOVERNING ELIGIBILITY FOR MEDICAID FOR FAMILIES AND CHILDREN

**There are substantive changes
from the proposed rule text.**

**Only those sections that have changed from the
original proposed text are printed in this
Bulletin following this notice.**

**The complete original text was published in the
Idaho Administrative Bulletin, Volume 98-5, May 6, 1998,
pages 140 through 147.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature
for final adoption.**

TEXT OF DOCKET NO. 16-0301-9801

005. ABBREVIATIONS.

Abbreviations applicable to IDAPA 16.03.01 are listed in Subsections 005.01 through 005.33. (7-1-98)

01. AFDC. Aid to Families with Dependent Children, the cash assistance program for families and children in effect through June 30, 1997. (7-1-98)
02. AG. Office of the Attorney General, Health and Welfare Division. (7-1-98)
03. AIM. The Department's Advanced Information Management system for Medicaid. (7-1-98)
04. ASVI. Alien Status Verification Index. (7-1-98)
05. BCSS. Bureau of Child Support Services. (7-1-98)
06. CHIP. Child Health Insurance Program. (10-1-97)T
07. DHW. Department of Health and Welfare. (7-1-98)
08. DOL. Department of Labor. (10-1-97)T
09. DVR. Department of Vocational Rehabilitation. (7-1-98)
10. EE. Eligibility Examiner. (7-1-98)
11. EITC. Earned Income Tax Credit. (7-1-98)
12. EPICS. The DHW Eligibility Programs Integrated Computer System. (7-1-98)
13. EPSDT. Early and Periodic Screening, Diagnosis, and Treatment. (7-1-98)
14. FmHA. The Farmer's Home Administration of the U.S. Department of Agriculture. (7-1-98)
15. FPG. Federal Poverty Guideline. (7-1-98)
16. HUD. The U.S. Department of Housing and Urban Development. (7-1-98)
17. ICF/MR. Intermediate Care Facility/Mentally Retarded. (7-1-98)
18. ICSES. The Idaho Child Support Enforcement System. (7-1-98)
19. IEVS. Income and Eligibility Verification System. (7-1-98)
20. INA. Immigration and Naturalization Act. (7-1-98)

- | | | |
|-----|--|-------------------------------|
| 21. | IRS. Internal Revenue Service. | (7-1-98) |
| 22. | MA. Medicaid (Medical Assistance). | (7-1-98) |
| 23. | PRWORA. Personal Responsibility Work Opportunity Reconciliation Act of 1996. | (7-1-98) |
| 24. | PWE. Principal Wage Earned. | (7-1-98) (7-1-98)T |
| 25. | RSDI. Retirement, Survivors, and Disability Insurance. | (7-1-98) |
| 26. | SAVE. Systematic Alien Verification for Entitlement. | (7-1-98) |
| 27. | SRS. Self Reliance Specialist. | (7-1-98) |
| 28. | SSA. Social Security Administration. | (7-1-98) |
| 29. | SSI. Supplemental Security Income. | (7-1-98) |
| 30. | SSN. Social Security Number. | (7-1-98) |
| 31. | TAFI. Temporary Assistance for Families in Idaho. | (7-1-98) |
| 32. | TPL. Third Party Liability | (7-1-98) |
| 33. | UIB. Unemployment Insurance Benefits. | (7-1-98) |
| 34. | VA. Veterans Administration. | (7-1-98) |
| 35. | VRS. Vocational Rehabilitation Services, Department of Education. | (7-1-98) |

(BREAK IN CONTINUITY OF SECTIONS)

505. CHILD HEALTH INSURANCE PROGRAM (CHIP).

The 1997 Balanced Budget Reconciliation Act provides medical coverage for low income children. The children must meet the conditions in Subsections 505.01 through 505.07: (10-1-97)T

- | | | |
|-----|---|------------|
| 01. | Under Age Nineteen (19). The child must be under the age of nineteen (19). | (10-1-97)T |
| 02. | No Health Insurance. The child must not have creditable health insurance coverage. | (10-1-97)T |
| 03. | No Medicaid Eligibility. The child must not be eligible for other Medicaid programs. | (10-1-97)T |
| 04. | Income Limit October 1, 1997 through June 30, 1998. For the period October 1, 1997 through June 30, 1998 family income must not exceed one hundred and sixty percent (160%) of the Federal Poverty Guidelines for the household size. | (10-1-97)T |
| 05. | Income Limit July 1, 1998 and After. For the period beginning July 1, 1998 and after, the family income must not exceed and one hundred fifty percent (150%) of the Federal Poverty Guidelines for the household size. | (10-1-97)T |
| 06. | Intent to Qualify. A family must not remove a child from a creditable health insurance plan with the intent to qualify. | (10-1-97)T |
| 07. | <u>Cost Prohibitive. A family must purchase creditable health insurance if affordable and available.</u> | |

The SRS/Examiner will determine (prudent person) if insurance is cost prohibitive.

(10-1-97)T

078. Other Eligibility Criteria. All other eligibility criteria as defined for poverty level, low income children. (10-1-97)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO

DOCKET NO. 16-0304-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-202(b) and 39-106(l), Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the May 6, 1998 Idaho Administrative Bulletin, Volume 98-5, pages 148 through 173.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Patti Campbell at (208) 334-5819.

DATED this 5th day of August, 1998.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Legal Services Division
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-5548 fax

IDAPA 16
TITLE 03
Chapter 04

RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-5, May 6, 1998,
pages 148 through 173.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE
DOCKET NO. 16-0309-9809

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective August 5, 1998 and September 1, 1998.

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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 1998.

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

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance of the proposed rules:

- 1) Adds clarification to definition of prosthetic devices that it does not include computerized communication devices.
- 2) Adds a definition of speech and language services to the definition section of the Medical Assistance Rules. This was identified as a need because of confusion of what is covered in Idaho under speech and language services.
- 3) Adds existing Medicaid reimbursable services to the options of health related services that school districts can bill Medicaid for when such services are identified on the student's Individualized Education Program plan. The need for these changes were identified through the Medicaid reform process, Office of Performance Evaluation recommendations and clarification in the Individuals with Disabilities Education Act regarding the obligation of Medicaid to work with school districts to assure that student's received health related services necessary for them to receive an appropriate education.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code, and are necessary in order to comply with deadlines in amendments to governing law or federal programs and to confer a benefit.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Lorraine Hutton at, (208) 364-1835.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 26, 1998.

DATED this 5th day of August, 1998.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 334-5548 fax

TEXT OF DOCKET NO. 16-0309-9809

003. DEFINITIONS.

For the purposes of these rules, the following terms will be used, as defined below: (11-10-81)

01. Abortion. The medical procedure necessary for the termination of pregnancy endangering the life of the woman, or the result of rape or incest, or determined to be medically necessary in order to save the health of the woman. This Subsection is effective retroactively from October 1, 1993. (2-17-94)

02. Access Unit (ACCESS). Access to Care Coordination, Evaluation, Services and Supports. A regional multidisciplinary, transdivisional unit that has the responsibility of determining eligibility, authorizing services, and assuring quality for services and supports for individuals with developmental disabilities. (7-1-95)

03. Ambulatory Surgical Center (ASC). Any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization, and which is certified by the U.S. Department of Health and Human Services as an ASC. (7-1-97)

04. Bill. The itemized cost of all services provided to one (1) recipient on a single claim form. (11-10-81)

05. Bureau. The Bureau of Medicaid Policy and Reimbursement within the Division of Medicaid, Idaho Department of Health and Welfare, which has the responsibility for administration of the Medical Assistance Program for the state of Idaho. (7-1-97)

06. Bureau of Systems and Operations. A Bureau of the Division of Medicaid charged with the responsibility of investigation and seeking prosecution of cases involving Medicaid fraud. (7-1-97)

07. Buy-In Coverage. The amount the State pays for Part B of Title C XVIII on behalf of the A/R.3 (11-10-81)

08. Category I Sanctions. Less severe administrative sanctions, which can be employed concurrently, which neither require notification nor are subject to appeal unless specifically allowed. (11-10-81)

09. Category II Sanctions. Severe administrative sanctions which are appealable as provided for in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (7-1-97)

10. Central Office. The administrative headquarters for the Idaho Department of Health and Welfare which are located in the State Office Building (State Towers), 450 West State Street, Boise, Idaho 83720. (11-10-81)

11. Certified Registered Nurse Anesthetist (CRNA). A Registered Nurse qualified by advanced training in an accredited program in the specialty of nurse anesthesia to manage the care of the patient during the administration of anesthesia in selected surgical situations. (7-1-97)

12. Claim. An itemized bill for services rendered to one (1) recipient by a provider submitted on any of the following Department claim forms: (11-10-81)

a. DHW PH 3-80, "Physician Invoice" or such other claim form as may be prescribed by the Department; or (11-10-81)

b. DHW 03-80, "Title XIX Pharmacy Claim"; or (11-10-81)

c. DHW-AD78, "Adjustment Request"; or (11-10-81)

d. DHW OP REV 4-80, "Hospital Out-patient"; or (11-10-81)

- e. DHW IP 3-80, "Hospital In-patient"; or (11-10-81)
- f. DHW 0137, "Attending Dentist's Statement"; or (11-10-81)
- g. DHW NH 3-80, "Nursing Home Statement"; or (11-10-81)
- h. HW-0034 "Consent Form" for sterilization procedures. (11-10-81)
13. Collateral Contacts. Contacts made with a parent, guardian, or other individual having a primary relationship to the patient by an appropriately qualified treatment professional. The contact must be ordered by a physician, contained in the treatment plan, directed at the medical treatment of the patient, and documented in the progress notes or continuous service record. (10-6-88)
14. Community Living Home. A licensed ICF/MR facility of eight (8) beds or less that has converted to a group home to provide residential habilitation services to developmentally disabled waiver recipients. Room and board is not included in the reimbursement rate. (7-1-95)
15. Contraception. The provision of drugs or devices to prevent pregnancy. (1-16-80)
16. Department. The state of Idaho Department of Health and Welfare (DHW). (11-10-81)
17. Director. The Director of the Idaho Department of Health and Welfare. (11-10-81)
18. Durable Medical Equipment (DME). Equipment other than prosthetics or orthotics which can withstand repeated use by one or more individual, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, is appropriate for use in the home, and is reasonable and necessary for the treatment of an illness or injury for a MA recipient. (11-1-86)
19. Educational Services. Services which are provided in buildings, rooms or areas designated or used as a school or as educational facilities; which are provided during the specific hours and time periods in which the educational instruction takes place in the normal school day and period of time for these students; and which are included in the individual educational plan for the recipient or required by federal and state educational statutes or regulations; are not "related services" as listed in Sections 119 and 120 of these rules; and such services are provided to school age individuals as defined in Section 33-201, Idaho Code. ~~(12-31-91)~~ (8-5-98)T
20. Eligibility Manuals. IDAPA 16.03.01, "Rules Governing Eligibility for Medicaid for Families and Children," and IDAPA 16.03.05, "Rules Governing Eligibility for the Aged, Blind and Disabled". (7-1-97)
21. Emergency. Any situation arising in the medical condition of a patient, which, after applying the prevailing medical standards of judgement and practice within the community requires immediate medical intervention. All obstetrical deliveries are considered emergencies. (10-29-92)
22. Endangerment of Life. A condition where, in the opinion of two (2) licensed physicians, a pregnant woman may die or suffer severe and long lasting physical health damage if the fetus is carried to term. (1-16-80)
23. Health Authority. An authorized official of any of the seven (7) Idaho District Health Departments or their satellite centers. (1-16-80)
24. Home Health Services. Services ordered by a physician and performed by a licensed nurse, registered physical therapist, or home health aide as defined in IDAPA 16.03.07, Subsection 002.11, "Rules for Proprietary Home Health Agencies". (7-1-97)
25. In-patient Hospital Services. Services that are ordinarily furnished in a hospital for the care and treatment of an in-patient under the direction of a physician or dentist except for those services provided in mental hospitals. (11-10-81)
26. In-State Care. Medical services provided within the Idaho border or in counties bordering Idaho are

considered to be in-state, excluding long term care. (2-5-93)

27. Inspection of Care Team (IOCT). An interdisciplinary team which provides inspection of care in intermediate care facilities for the mentally retarded approved by the Department as providers of care for eligible medical assistance recipients. Such a team is composed of: (7-1-94)

a. At least one (1) registered nurse; and (7-1-94)

b. One (1) qualified mental retardation professional; and when required, one (1) of the following: (7-1-94)

i. A consultant physician; or (7-1-94)

ii. A consultant social worker; or (7-1-94)

iii. When appropriate, other health and human services personnel responsible to the Department as employees or consultants. (7-1-94)

28. Interested Physician. (11-10-81)

a. A physician who performs a Medicaid funded abortion for a fee; or (11-10-81)

b. A physician who is related by blood or marriage to another physician performing a Medicaid funded abortion. (11-10-81)

29. Intermediate Care Facility Services. Those services furnished in an intermediate care facility as defined in 42 CFR 440.150, but excluding services provided in a Christian Science Sanatoria. (11-10-81)

30. Law Enforcement Authority. An agency recognized by the state of Idaho in enforcement of established state and federal statutes. (11-10-81)

31. Legend Drug. A drug that requires by federal regulation or state rule, the order of a licensed medical practitioner before dispensing or administration to the patient. (11-10-81)

32. Licensed Psychologist. An individual who is licensed to practice psychology under Chapter 23, Title 54, Idaho Code. (10-6-88)

33. Licensed, Qualified Professionals. Individuals licensed, registered, or certified by national certification standards in their respective discipline, or otherwise qualified within the state of Idaho. (11-10-81)

34. Lock-in Program. An administrative sanction, required of recipients found to have misused the services provided by the Medical Assistance Program, requiring the recipient to select one (1) provider in the identified area(s) of misuse to serve as the primary provider. (11-10-81)

35. Medical Care Treatment Plan. The problem list, clinical diagnosis, and treatment plan of care administered by or under the direct supervision of a physician. (11-10-81)

36. Medical Necessity. A service is medically necessary if: (7-1-98)

a. It is reasonably calculated to prevent, diagnose, or treat conditions in the client that endanger life, cause pain, or cause functionally significant deformity or malfunction; and (7-1-98)

b. There is no other equally effective course of treatment available or suitable for the client requesting the service which is more conservative or substantially less costly. (7-1-98)

c. Medical services shall be of a quality that meets professionally recognized standards of health care and shall be substantiated by records including evidence of such medical necessity and quality. Those records shall be

made available to the Department upon request.

(7-1-98)

37. Medical Supplies. Items excluding drugs and biologicals and equipment furnished incident to a physician's professional services commonly furnished in a physician's office or items ordered by a physician for the treatment of a specific medical condition. These items are generally not useful to an individual in the absence of an illness and are consumable, nonreusable, disposable, and generally have no salvage value. Surgical dressings, ace bandages, splints and casts, and other devices used for reduction of fractures or dislocations are considered supplies. (11-1-86)

38. Morbid Obesity. The condition of a person who exceeds ideal weight by more than one hundred (100) pounds and who has significant medical complications directly related to weight gain. (7-1-97)

39. Non-legend Drug. Any drug the distribution of which is not subject to the ordering, dispensing, or administering by a licensed medical practitioner. (11-10-81)

40. Nurse Midwife. A registered nurse (RN) who is currently licensed to practice in Idaho, who meets applicable standards as found in the Idaho Nurse Practice Act, Rules and Minimum Standards promulgated by the Idaho State Board of Nursing, and who meets one of the following provisions: (11-10-81)

a. Is currently certified as a Nurse Midwife by the American College of Nurse Midwives; or (11-10-81)

b. Has satisfactorily completed a formal educational program of at least one (1) academic year that: (11-10-81)

i. Prepares a RN to furnish gynecological and obstetrical care to women during pregnancy, delivery and postpartum, and care to normal newborns; (11-10-81)

ii. Upon completion, qualifies a RN to take the certification examination offered by the American College of Nurse Midwives; (11-10-81)

iii. Includes at least four (4) months, in the aggregate, of classroom instruction and a component of supervised clinical practice; and (11-10-81)

iv. Awards a degree, diploma, or certificate to persons who successfully complete the program. (11-10-81)

41. Nurse Practitioner. A registered nurse (RN) who is currently licensed to practice in this State, who meets applicable standards as found in the Idaho Nurse Practice Act, Rules and Minimum Standards promulgated by the Idaho State Board of Nursing, and who meets one (1) of the following provisions: (11-10-81)

a. Is currently certified as a Primary Care Nurse Practitioner by the American Nurses Association or by the National Board of Pediatric Nurse Practitioners and Associates, or by the Nurses Association of the American College of Obstetricians and Gynecologists; or (11-10-81)

b. Has satisfactorily completed a formal one (1) year academic year educational program that: (11-10-81)

i. Prepares a RN to perform an expanded role in the delivery of primary care; (11-10-81)

ii. Includes at least four (4) months, in the aggregate, of classroom instruction and a component of supervised clinical practice; and (11-10-81)

iii. Awards a degree, diploma, or certificate to persons who successfully complete the program. (11-10-81)

42. Nursing Facility (NF). An institution, or distinct part of an institution, which is primarily engaged

in providing skilled nursing care and related services for residents. The residents must require medical or nursing care, or rehabilitation services for injuries, disabilities, or sickness. An institution must provide, on a regular basis, health-related care and services to individuals; who because of their mental or physical condition require care and services above the level of room, board, and supervision; which are made available to them only through institutional facilities, not primarily for care and treatment of mental diseases. The institution is licensed in the state of Idaho pursuant to Section 39-1301, Idaho Code and is certified as a nursing facility pursuant to 42 CFR 405.1120 through 405.1136. (7-1-94)

43. Orthotic. Pertaining to or promoting the straightening of a deformed or distorted part. (10-1-91)
44. Orthotic and Prosthetic Professional. An individual certified or registered by the American Board for Certification in Orthotics and/or Prosthetics. (10-1-91)
45. Otologist. A licensed physician who specializes in the diagnosis and treatment of hearing disorders and diseases of the ear. (11-10-81)
46. Out-patient Hospital Services. Preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to a patient not in need of hospital bed accommodation. (11-10-81)
47. Out-of-state Care. Medical service that is not provided in Idaho or bordering counties is considered out-of-state. Bordering counties outside Idaho are considered out-of-state for the purpose of authorizing long term care. (7-1-97)
48. Oxygen-Related Equipment. Equipment which is utilized or acquired for the routine administration of oxygen in the home. This includes oxygen tanks, regulators, humidification nebulizers, oxygen concentrators, and related equipment. Equipment which is used solely for the administration of medication into the lungs is excluded from this definition. (11-1-86)
49. Patient. The person undergoing treatment or receiving services from a provider. (11-10-81)
50. Physician. A person possessing a Doctorate of Medicine degree or a Doctor of Osteopathy degree and licensed to practice medicine by a state or United States territory. (10-1-91)
51. Physician's Assistant. A person who is licensed by the Idaho Board of Medicine and who meets at least one (1) of the following provisions: (7-1-97)
- a. Is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or (11-10-81)
 - b. Has satisfactorily completed a program for preparing physician's assistants that: (11-10-81)
 - i. Was at least one (1) academic year in length; and (11-10-81)
 - ii. Consisted of supervised clinical practice and at least four (4) months, in the aggregate, of classroom instruction directed toward preparing students to deliver health care; and (11-10-81)
 - iii. Was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation. (11-10-81)
52. Plan of Care. A written description of medical, remedial and/or rehabilitative services to be provided to a recipient, developed by or under the direction and written approval of a physician. Medications, services and treatments are identified specifically as to amount, type and duration of service. (10-6-88)
53. Premium or Subscription Charge. The per capita amount paid by the Department for each eligible MA recipient enrolled under a contract for the provisions of medical and rehabilitative care and services whether or not such a recipient receives care and services during the contract period. (11-10-81)

54. Property. The homestead and all personal and real property in which the recipient has a legal interest. (11-10-81)
55. Prosthetic Device. Replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts profession within the scope of his practice as defined by state law to: (10-1-91)
- a. Artificially replace a missing portion of the body; or (10-1-91)
 - b. Prevent or correct physical deformities or malfunctions; or (10-1-91)
 - c. Support a weak or deformed portion of the body. (10-1-91)
 - d. Computerized communication devices are not covered under the definition of a prosthetic device. (8-5-98)T
56. Provider. Any individual, organization or business entity furnishing medical goods or services in compliance with this chapter and who has applied for and received a provider number, pursuant to Section 020, and who has entered into a written provider agreement, pursuant to Section 040. (7-1-97)
57. Provider Agreement. An agreement between the provider and the Department, entered into pursuant to Section 040. (12-31-91)
58. Provider Reimbursement Manual. IDAPA 16.03.10, "Rules Governing Provider Reimbursement in Idaho". (7-1-97)
59. Psychology Assistant. An individual who practices psychology under the supervision of a licensed psychologist when required under Chapter 23, Title 54, Idaho Code, and IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners". (7-1-94)
60. Recipient. An individual who is receiving Medical Assistance. (11-10-81)
61. Recreational Therapy (Services). Those activities or services that are generally perceived as recreation such as, but not limited to, fishing, hunting, camping, attendance or participation in sporting events or practices, attendance at concerts, fairs or rodeos, skiing, sightseeing, boating, bowling, swimming, training for Special Olympics, and special day parties (birthday, Christmas, etc.). (10-6-88)
62. Regional Nurse Reviewer (RNR). A registered nurse who reviews and makes determinations on applications for entitlement to and continued participation in Title XIX long term care for the Department. (7-1-94)
63. Social Security Act. 42 USC 101 et seq., authorizing, in part, federal grants to the states for medical assistance to low-income persons meeting certain criteria. (11-10-81)
64. Specialized Family Home. Living situation where a maximum of two (2) waiver recipients who do not require a skilled nursing service live with a provider family of residential habilitation services. (7-1-95)
65. Speech/Language Pathology and Audiology Services. Diagnostic, screening, preventative, or corrective services provided by or under the direction of a speech pathologist or audiologist, for which a patient is referred by a physician or other practitioner of the healing arts within the scope of his or her practice under state law. The cost of equipment needed by the practitioner to provide an evaluation or therapy is included in the therapy reimbursement rate. Speech, hearing and language services do not include equipment needed by the patient such as communication devices or environmental controls. (8-5-98)T
656. Subluxation. A partial or incomplete dislocation of the spine. (11-10-81)
667. Supervision. Procedural guidance by a qualified person and initial direction and periodic inspection

of the actual act, at the site of service delivery. (6-21-90)

678. Title XVIII. That program established by the 1965 Social Security Act authorizing funding for the Medicare Program for the aged, blind, and disabled. The term is interchangeable with "Medicare". (11-10-81)

689. Title XIX. That program established by the 1965 Social Security Act authorizing the Medical Assistance Program, commonly referred to as "Medicaid", which is jointly financed by the federal and state governments and administered by the states. The term is interchangeable with "Medicaid". (11-10-81)

6970. Third Party. Includes a person, institution, corporation, public or private agency that is liable to pay all or part of the medical cost of injury, disease, or disability of a recipient of medical assistance. (11-10-81)

701. Transportation. The physical movement of a recipient to and from a medical appointment or service by the recipient, another person, taxi or common carrier. (10-6-88)

742. Utilization Control (UC). A program of prepayment screening and annual review by at least one (1) Regional Nurse Reviewer to determine the appropriateness of medical entitlement and the need for continued medical entitlement of applicants/recipients to Title XIX benefits in a NF. (7-1-94)

723. Utilization Control Team (UCT). A team of Regional Nurse Reviewers which conducts on-site reviews of the care and services in the NFs approved by the Department as providers of care for eligible medical assistance recipients. (7-1-94)

734. Vocational Services. Services or programs which are directly related to the preparation of individuals for paid or unpaid employment. The test of the vocational nature of the service is whether the services are provided with the expectation that the recipient would be able to participate in a sheltered workshop or in the general work force within one (1) year. (10-6-88)

(BREAK IN CONTINUITY OF SECTIONS)

119. ~~REHABILITATIVE SERVICES--~~ HEALTH RELATED SERVICES PROVIDED BY SCHOOL DISTRICTS.

The Department will pay for covered rehabilitative and health related services pursuant to ~~42 CFR 440.130 (d)~~ IDAPA 16.03.09, "Rules Governing Medical Assistance," including medical or remedial services provided by school districts or other cooperative service agency (as defined in Section 33-317, Idaho Code) which have entered into a provider agreement with the Department. ~~Educational services, other than those "related services" found in 34 CFR 300.16, are the responsibility of the public schools and are not eligible for Medicaid payments.~~ (10-22-93)(9-1-98)T

01. Recipient Eligibility. To be eligible for medical assistance reimbursement for covered services, a student shall: (10-22-93)

a. Be identified as having an educational disability pursuant to IDAPA 08, ~~Title 02, Chapter 03, "Rules Governing Thoroughness,"~~ Subsection 100.08.b., Department of Education standards for the education of disabled students; and (10-22-93)(9-1-98)T

b. Have an current Individualized Educational Program (IEP) plan which indicates the need for one (1) or more medically necessary health related services; and (10-22-93)(9-1-98)T

c. Be less than twenty-two (22) years of age; and (10-22-93)

d. Be eligible for Medicaid and the service for which the school district is seeking reimbursement; and (10-22-93)(9-1-98)T

e. Be served by a school district that is an enrolled medical assistance provider pursuant to these rules.

- (10-22-93)
02. Evaluation and Diagnostic Services. (10-22-93)
- a. Evaluations completed shall: (10-22-93)
- i. Be recommended or referred by a physician or other practitioner of the healing arts who is licensed and approved by the state of Idaho to make such recommendations or referrals; and ~~(10-22-93)~~(9-1-98)T
- ii. Be conducted by qualified professionals for the respective discipline as defined in Subsections 119.05.a. through 119.05.d.; and ~~(10-22-93)~~(9-1-98)T
- iii. Be directed toward a diagnosis and recommendations for services; and ~~(10-22-93)~~(9-1-98)T
- iv. Identify accurate, current and relevant student strengths, needs, and interests; and ~~(10-22-93)~~
- iv. Recommend interventions to address each need. (10-22-93)
- b. ~~All initial evaluations must be completed within thirty (30) days of the date parental consent is obtained. Subsequent (e.g. annual) evaluations do not require new parent consent, but only written notice to the parent(s). If the initial evaluation is not completed within this time frame the student's record must contain client-based documentation justifying the delay.~~ ~~(10-22-93)~~
03. ~~Payable Reimbursable Services.~~ Schools may bill for the following health related services provided to eligible students ~~when provided under the recommendation of a physician:~~ ~~(10-22-93)~~(9-1-98)T
- a. ~~Speech evaluation, individual and group therapy~~ Annual IEP plan development; ~~(10-22-93)~~(9-1-98)T
- b. ~~Audiology evaluation, individual and group therapy;~~ Collateral contact. Consultation or treatment direction about the student to a significant other in the student's life. ~~(10-22-93)~~(9-1-98)T
- c. ~~Physical/occupational therapy evaluations, individual and group therapy~~ Developmental therapy evaluation and treatment. Assessment, treatment and instruction of the student in the acquisition of developmental milestones and activities of daily living skills that the student has not gained at the normal developmental stages in his or her life, or is not likely to develop without training or therapy beyond age appropriate learning situations; ~~(10-22-93)~~(9-1-98)T
- d. ~~Psychological evaluations, individual and group therapy~~ Early Periodic Screening, Diagnosis, and Treatment (EPSDT) services. Services include age appropriate health history and health screening services; ~~(10-22-93)~~(9-1-98)T
- e. ~~Social history and evaluations~~ Medical equipment and supplies. Includes medical equipment and supplies that are covered under the Idaho Medicaid program; and ~~(10-22-93)~~(9-1-98)T
- f. ~~Annual IEP plan development~~ Nursing services. Includes skilled nursing services that must be provided by a licensed nurse. ~~(10-22-93)~~(9-1-98)T
- g. Occupational therapy evaluation and treatment. Does not include components of occupational therapy that deals with vocational assessment, training or vocational rehabilitation. (9-1-98)T
- h. Personal Care Services. School based personal care services include medically oriented tasks having to do with the student's physical or functional requirements such as basis personal care and grooming; assistance with bladder or bowel requirements; assistance with eating (including feeding); or other tasks delegated by a Registered Nurse. (9-1-98)T
- i. Physical therapy evaluation and treatment. (9-1-98)T

- j. Psychological evaluation and therapy. (9-1-98)T
 - k. Psychosocial rehabilitation evaluation and treatment. Includes assistance in gaining and utilizing skills necessary to participate in school such as training in behavior control, social skills, communication skills, appropriate interpersonal behavior, symptom management, and coping skills. (9-1-98)T
 - l. Speech/Audiological evaluation and treatment. (9-1-98)T
 - m. Social history and evaluation. (9-1-98)T
 - n. Transportation. Includes reimbursement for mileage as well as the cost of an attendant when medically necessary for the health and safety of the student. (9-1-98)T
04. Excluded Services. The following services are excluded from Medicaid payments to school based programs: (10-22-93)
- a. Vocational services; and (10-22-93)
 - b. Educational services (other than health related services) or education-based costs normally incurred to operate a school and provide an education; and ~~(10-22-93)~~(9-1-98)T
 - c. Recreational services. (10-22-93)
05. Provider Staff Qualifications. Medicaid will only reimburse for services provided by qualified staff. The following are the minimum qualifications for providers of covered services: (10-22-93)
- a. ~~Speech evaluation and therapy: A person qualified to conduct speech/language evaluation and therapy who possesses a certificate of clinical competency in speech language pathology or who will be eligible for certification within one (1) year of employment. Certification shall be from the American Speech Language and Hearing Association (ASHA). Annual IEP plan development. Must include the professionals who completed the evaluations and recommendations for IEP services. May only be billed when the IEP includes reimbursable health related services.~~ ~~(10-22-93)~~(9-1-98)T
 - b. ~~Audiology evaluation and therapy: A person qualified to conduct hearing evaluation and therapy, who possesses a certificate of clinical competency in audiology or who will be eligible for certification within one (1) year of employment. Certification shall be from the American Speech, Language and Hearing Association (ASHA). Collateral contact. Must be provided by the appropriate professional for whom the consultation or treatment direction is needed.~~ ~~(10-22-93)~~(9-1-98)T
 - c. ~~Physical/occupational therapy evaluation and therapy: Developmental therapy evaluation and treatment. Must be provided by or under the direction of a developmental specialist as defined in IDAPA 16.04.11, "Rules and Minimum Standards for Developmental Disabilities Centers".~~ ~~(10-22-93)~~(9-1-98)T
 - i. ~~Physical therapy: A person qualified to conduct physical therapy evaluations and therapy, who is registered to practice in Idaho.~~ ~~(10-22-93)~~
 - ii. ~~Occupational therapy: A person qualified to conduct occupational therapy evaluations and therapy, who is certified by the American Occupational Therapy Certification Board and licensed to practice in Idaho.~~ ~~(10-22-93)~~
 - d. EPSDT Screens. May be provided by a physician, physician extender, or EPSDT RN screener. (9-1-98)T
 - e. Medical equipment and supplies. May be provided by providers with a DME provider agreement with the Department. (9-1-98)T

- f. Nursing services. Must be provided by a RN or LPN licensed to practice in Idaho. (9-1-98)T
- g. Occupational therapy evaluation and treatment. Must be provided by or under the supervision of an individual qualified and registered to practice in Idaho. (9-1-98)T
- h. Personal Care Services. Must be provided by a certified nurses aide (CNA), licensed RN or licensed LPN. When services are provided by a CNA, the CNA must be supervised by a RN. (9-1-98)T
- i. Physical therapy evaluation and treatment. Must be provided by an individual qualified and registered to practice in Idaho. (9-1-98)T
- ~~ej.~~ Psychological therapy evaluation and therapy treatment. A person who is qualified to provide psychological evaluation and therapy, who is licensed to practice (or is an approved service extender) in Idaho in one of the following disciplines: Must be provided by: (40-22-93)(9-1-98)T
- i. Psychiatrist, M.D.; or A licensed psychiatrist; (40-22-93)(9-1-98)T
- ii. Physician, M.D.; or Licensed physician; (40-22-93)(9-1-98)T
- iii. Psychologist, Ph.D., Ed.D, M.A./M.S.; or Licensed psychologist; (40-22-93)(9-1-98)T
- iv. Social Worker; or Psychologist extender registered with the Board of Occupational Licenses; (40-22-93)(9-1-98)T
- v. Registered Nurse. Certified psychiatric nurse; (40-22-93)(9-1-98)T
- vi. Certified school psychologist; (9-1-98)T
- vii. Licensed professional counselor with a private practice license; or (9-1-98)T
- viii. Licensed certified social worker. (9-1-98)T
- k. Psychosocial rehabilitation. Must be provided by: (9-1-98)T
- i. A licensed psychiatrist; (9-1-98)T
- ii. Licensed physician; (9-1-98)T
- iii. Licensed psychologist; (9-1-98)T
- iv. Psychologist extender registered with the Board of Occupational Licenses; (9-1-98)T
- v. Certified psychiatric nurse; (9-1-98)T
- vi. Certified school psychologist; (9-1-98)T
- vii. Licensed professional counselor with a private practice license; or (9-1-98)T
- viii. Licensed certified social worker. (9-1-98)T
- l. Speech/Audiological therapy evaluation and treatment. Must be provided by or under the direction of a speech pathologist or audiologist who possesses a certificate of clinical competence from the American Speech and Hearing Association; or have completed the educational requirements and work experience necessary for the certificate or have completed the academic program and is acquiring supervised work experience to qualify for the certificate. (9-1-98)T
- em. Social history and evaluation. Must be provided by A a person who is licensed and qualified to

provide social work in the state of Idaho; a registered nurse; psychologist; or M.D. (10-22-93)(9-1-98)T

n. Transportation. Must be provided by a individual who has a current Idaho driver's license and be covered under a vehicle liability insurance policy. (9-1-98)T

06. Paraprofessionals. Paraprofessionals, such as aides or therapy technicians, may be used by the school to provide ~~related services (except psychotherapy)~~ developmental therapy; occupational therapy; physical therapy; and speech therapy if they are under the supervision of the appropriate professional. The services provided by paraprofessionals must be within the scope of practice of an aide or therapy technician as defined by the scope of practice of the therapy professional. The portions of the treatment plan which can be delegated to the paraprofessional, ~~as well as amount and scope of the supervision by the professional~~ must be identified in the IEP. (10-22-93)(9-1-98)T

a. Paraprofessionals shall not conduct student evaluations or establish the IEP goals. (10-22-93)

b. The professional must have assessed the competence of the paraprofessional (aide) to perform assigned tasks. (10-22-93)

c. The paraprofessional, on a monthly basis, shall be given orientation and training on the program and procedures to be followed. (10-22-93)

d. The professional must reevaluate the student and adjust the treatment plan as their individual practice dictates. (10-22-93)

e. Any changes in the student's condition not consistent with planned progress or treatment goals necessitates a documented reevaluation by the professional before further treatment is carried out. (10-22-93)

f. If the paraprofessional works independently there shall be a review conducted by the appropriate professional at least once per month. This review will include the dated initials of the professional conducting the review. (10-22-93)

g. In addition to the above, if a paraprofessional is utilized to assist in the provision of actual physical therapy they may do so only when the following conditions are met: (10-22-93)

i. Student reevaluation must be performed and documented by the supervising PT every five (5) visits or once a week if treatment is performed more than once per day. (10-22-93)

ii. The number of PTAs utilized in any practice or site, shall not exceed twice in number the full time equivalent licensed PTs. (10-22-93)

07. Payment for Services. Payment for school based related services must be in accordance with rates established by the Department. (10-22-93)

~~a. Payment will not be made for services if the state match portion is not in the individual school districts account.~~ (10-22-93)

~~b. Providers of services must accept as payment in full the Department's payment for such services and must not bill Medicaid recipient's for any portion of any charges.~~ (10-22-93)

ea. Third party payment resources, not to include other school resources, such as private insurance, must be exhausted before the Department is billed for services. Proof of billing other third party payers is required. (10-22-93)

eb. A contracted provider of the school program may not submit a separate claim to Medicaid as the performing provider for services provided under the school based program and codes. (10-22-93)

ec. Payment for school based related services will not be provided to students who are inpatients in

nursing homes or hospitals. (10-22-93)

fd. Failure to provide services for which reimbursement has been received or to comply with these rules will be cause for recoupment of the Federal share of payments for services, sanctions, or both. (10-22-93)

ge. The provider will grant the Department access to all information required to review compliance with these rules. (10-22-93)

08. Record Requirements. In addition to the evaluations and maintenance of the Individualized Educational Plan ~~Program~~ (IEP) plan, the following documentation must be maintained by the provider: (10-22-93)(9-1-98)T

- a. Name of student; and (10-22-93)
- b. Name and title of the person providing the service; and (10-22-93)
- c. Date, time, and duration of service; and (10-22-93)
- d. Place of service; and (10-22-93)
- e. Activity record describing the service provided and the student's response to the service; and (10-22-93)
- f. Documented review of progress toward each service plan goal at least every one hundred twenty (120) days; and (10-22-93)
- g. Documentation of qualifications of providers. (10-22-93)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES
DOCKET NO. 16-0601-9801

NOTICE OF RESCISSION OF TEMPORARY RULEMAKING

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has rescinded the rulemaking previously initiated under this docket. The action is authorized pursuant to Section(s) 39-105 (l), 39-106 (l)a, 56-202 (b), 56-203 (b), 56-204A, and 16-2432, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons to rescind temporary rulemaking:

This docket is being rescinded and the changes are being incorporated into the re-write of the entire chapter under Docket No. 16-0601-9802.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this action, contact Anna Sever, at (208) 344-5920.

DATED this 5th day of August, 1998.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 334-5548 fax

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES
DOCKET NO. 16-0601-9801
NOTICE OF VACATION OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has vacated the rulemaking previously initiated under this docket. The action is authorized pursuant to Section(s) 39-105 (1), 39-106 (1)a, 56-202 (b), 56-203 (b), 56-204A, and 16-2432, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons for the vacation:

This docket is being vacated and the changes are being incorporated into the re-write of the entire chapter under Docket No. 16-0601-9802.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this vacation, contact Anna Sever, at (208) 344-5920.

DATED this 5th day of August, 1998.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 334-5548 fax

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.01 - RULES GOVERNING SOCIAL SERVICES

DOCKET NO. 16-0601-9601

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 16-1624, 16-1822, 16-1827, 16-2001, 16-2102, 39-105, 39-106, 39-7501, 56-202, 56-203B, 56-204, 56-204A, 56-803, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 1998.

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

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance of the proposed rule:

This chapter of rules is being repealed in its entirety. It is being re-written in its entirety under Docket No. 16-0601-9802, Rules Governing Family and Children's Services.

In January 1996, this rule was adopted as a temporary rule with an effective date of November 16, 1995. The temporary rule was published in the Idaho Administrative Bulletin, Volume 96-1, January 3, 1996, page 279. With this publication, the Department is initiating proposed rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact Anna Sever at (208) 334-5920.

Anyone can submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before August 26, 1998.

DATED this 5th day of August, 1998.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Legal Services Division
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-5548 fax

**IDAPA 16
TITLE 06
Chapter 01**

RULES GOVERNING SOCIAL SERVICES

Pursuant to Section 67-5221(1) this docket is being published as a Proposed Rule.

**This docket has been previously published as a Temporary Rule.
The temporary effective date is November 16, 1995.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 96-1, January 3, 1996, page 279.**

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES
DOCKET NO. 16-0601-9602

NOTICE OF RESCISSION OF TEMPORARY RULEMAKING

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has rescinded the rulemaking previously initiated under this docket. The action is authorized pursuant to Section(s) 16-1624, 16-1822, 16-1827, 16-2001, 16-2102, 39-105, 39-106, 39-7501, 56-202, 56-203B, 56-204, 56-204A, 56-803, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons to rescind the temporary docket:

This docket is being rescinded and the changes are being incorporated into the re-write of the entire chapter under Docket No. 16-0601-9802.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this action, contact Anna Sever at (208) 334-5920.

DATED this 5th day of August, 1998.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 334-5548 fax

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES
DOCKET NO. 16-0601-9701
NOTICE OF RESCISSION OF TEMPORARY RULEMAKING

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has rescinded the rulemaking previously initiated under this docket. The action is authorized pursuant to Section(s) 39-105 (l), 39-106 (l)a, 56-202 (b), 56-203 (b), 56-204A, and 16-2432, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons to rescind temporary rulemaking:

This docket is being rescinded and the changes are being incorporated into the re-write of the entire chapter under Docket No. 16-0601-9802.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this action, contact Anna Sever, at (208) 344-5920.

DATED this 5th day of August, 1998.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 334-5548 fax

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES

DOCKET NO. 16-0601-9802

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 1998.

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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 16-1624, 16-1513, 16-2001, 16-2433, 39-105(1), 39-106(l)(a), 56-202(b), 56-203(b), 56-204(a), and 56-204A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

- **August 12, 1998, at 7:00 p.m., in the Ameritel Inn,
Tablerock Room, 7965 West Emerald St., Boise, Idaho.**

- **August 20, 1998, at 7:00 p.m., in the Holiday Inn Express,
2209 E. Sherman, Coeur d'Alene, Idaho.**

- **August 25, 1998, at 7:00 p.m., in the Little Tree Inn,
Teton Room, 888 N. Holmes, Idaho Falls, Idaho.**

The hearing site(s) will be accessible to persons with disabilities. Request for accommodations must be made no later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The entire chapter is being repealed under docket number 16-0601-9601, and is rewritten under this docket, including changes to be consistent with the requirements of the Adoption and Safe Families Act PL 105-89 and 1998 changes to the Child Protection Act. Changes to original text include those presented under Docket No. 16-0601-9801.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with deadlines in amendments to governing law or federal programs.

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

Fees were originally set over five years ago, and market rate for these services has increased. Fees are being increased to be more in line with those charged by the private sector.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Anna Sever at (208) 334-5920.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 26, 1998.

DATED this 5th day of August, 1998.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 334-5548 fax

TEXT OF DOCKET NO. 16-0601-9802

IDAPA 16
TITLE 06
Chapter 01

16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES

000. LEGAL AUTHORITY.

Pursuant to Sections 16-1624, 16-2001, 16-2402, 39-105(1), 39-106(1)(a), 56-202(b), 56-203b, 56-204(a) and 56-204A, Idaho Code, the Idaho Legislature has delegated to the Department 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. These services include but are not limited to provisions for child protection services, termination of parental rights, foster care, adoption services, children's mental health services, institutional and group care, services for unwed parents, and payments for foster care and day care. In addition, pursuant to Sections 39-105(1), 39-119, 56-803, 16-1822, and 16-1827, the Idaho Legislature has delegated to the Board of Health and Welfare the responsibility to establish and enforce rules governing licensing, fees for services, and adoption of "hard-to-place" children. Authority to establish and enforce rules governing and implementing the Interstate Compact on Placement of Children and Interstate Compact on Adoption and Medical Assistance is vested in the Compact Administrators, pursuant to Sections 16-2102, Article VII, and 39-7501, Idaho Code, respectively. (7-1-98)T

001. TITLE AND SCOPE.

01. Title. These rules are to be cited in full as Idaho Department of Health and Welfare Rules, IDAPA 16.06.01, "Rules Governing Family and Children's Services". (7-1-98)T

02. Scope. These rules are established to govern the statewide provision of: (7-1-98)T

a. Family services associated with child protection, behavioral and emotional disorders, substance abuse, alternate care and adoptions; (7-1-98)T

b. As resources are available, services aimed at preventing child protective, and severe behavioral and emotional problems from impinging upon families and communities; and (7-1-98)T

c. Family services to support the education, training and employment programs being provided for public assistance and Food Stamp recipients. (7-1-98)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(1609b)(IV), Idaho Code, this agency 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 document is available for public inspection and copying at cost in the main office of this agency. (7-1-98)T

003. ADMINISTRATIVE APPEALS.

Appeals shall be governed by the Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (7-1-98)T

004. CONFIDENTIALITY OF RECORDS.

Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Rules Governing the Protection and Disclosure of Department Records". (7-1-98)T

005. MANDATORY CRIMINAL HISTORY CHECKS.

The following persons shall participate in a criminal history check in accordance with Idaho Department of Health

and Welfare Rules, IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks": All current Department employees, applicants, transfers, reinstated former employees, student interns, promotes, contract employees, qualified individuals, volunteers, and others assigned to programs that involve direct contact with children. Programs within the Department that involve direct contact with children include, but are not limited to, the following: State Hospital South, Adolescent Program; all regionally operated day treatment programming staffed by personnel of the Family and Children's Services Programs and/or Mental Health Programs and Child Development Center Programs and others; and all other programs that include provision of services to children as an alternative to parental care for all or any portion of the day. "Others assigned" specifically refers to employees of the Department of Education or local school districts assigned to regional day treatment programming or institutional settings.

(7-1-98)T

006. -- 009. (RESERVED).

010. DEFINITIONS AND ABBREVIATIONS.

For the purposes of the rules contained in Idaho Department of Health and Welfare Rules, IDAPA 16.06.01, "Rules Governing Family and Children's Services," the following terms and abbreviations are used as defined herein:

(7-1-98)T

01. AFDC (Aid to Families with Dependent Children). Federal/state-supported income maintenance program for persons with limited income and assets who are determined to be eligible by the Department's local offices. When used with regard to eligibility for social services, this term includes those who would have been eligible for AFDC and those persons whose needs are taken into account when determining their eligibility.

(7-1-98)T

02. AFDC-FC (Aid to Families with Dependent Children-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.

(7-1-98)T

03. A/R. Applicant for or recipient of services.

(7-1-98)T

04. Adoption Assistance. Funds provided to adoptive parents of children who have special needs and/or could not be adopted without financial or medical assistance.

(7-1-98)T

05. Adoption Services. Protective service through which children are provided with permanent homes, under new legal parentage, including transfer of the mutual rights and responsibilities that prevail in the birth parent-child relationship.

(7-1-98)T

06. Alternate Care. Temporary living arrangements, when necessary for a child to leave his own home, through a variety of foster care, respite care, residential treatment and institutional resources, in accordance with the protections established in public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980" as amended, the Child Protective Act, Section 16-1601 et seq., Idaho Code, and the Indian Child Welfare Act.

(7-1-98)T

07. Board. The Idaho State Board of Health and Welfare.

(7-1-98)T

08. Case Management. A change oriented service to families that assures and coordinates the provision of family risk assessment, case planning, treatment and other services, protection, advocacy, review and reassessment, documentation and timely closure of a case.

(7-1-98)T

09. Case Plan. See "Family Plan".

(7-1-98)T

10. Central Office. The state level administrative office of the Department of Health and Welfare located in Boise, Idaho.

(7-1-98)T

11. Child Mental Health. All children under eighteen (18) shall be served who:

(7-1-98)T

a. Are seriously emotionally disturbed or gravely impaired due to a serious mental illness; and

(7-1-98)T

- b. Present a significant risk of harm to themselves and/or significant risk of harm to others; and (7-1-98)T
- c. Because of their mental illness are at risk for out-of-home placements or are currently in out-of-home placement and lack adequate resources to participate in their community non-public system of care. (7-1-98)T
- d. Seriously emotionally disturbed children who are involuntarily committed to the Department for out-of-home placement shall be served without regard to income. (7-1-98)T
12. Child Mental Health Services. Services provided in response to the needs of seriously emotionally disturbed children and their families. These services are provided in accordance with the provisions of Section 16-2402 et seq., Idaho Code, the "Children's Mental Health Services Act". (7-1-98)T
13. Child Protection. All children under eighteen (18) who have been harmed or threatened with harm by a person responsible for their health or welfare, including runaways who are harmed or threatened with harm by virtue of their status, 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 shall be served without regard to income. Developmentally disabled or seriously emotionally disturbed children who are committed to the Department for out-of-home placement shall be served without regard to income. (7-1-98)T
14. Child Protective Services. Services provided in response to potential, alleged or actual abuse, abandonment or neglect 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". (7-1-98)T
15. Compact Administrator. The individual designated to coordinate interstate transfers of persons requiring special services in accordance with the provisions of Section 16-21-1 et seq., Idaho Code; "Interstate Compact on the Placement of Children," Section 16-1901 et seq., Idaho Code; or the "Interstate Compact on Mental Health," Section 66-1201 et seq., Idaho Code; or the "Interstate Compact on Adoption and Medical Assistance," Section 39-7501 et seq., Idaho Code. (7-1-98)T
16. Concurrent Planning. Planning which addresses a child's need for a permanent family by working toward family reunification while developing an alternative plan that will provide permanency for the child through adoption, guardianship, placement with a relative or other permanent placement. (7-1-98)T
17. DHW Regions. Seven (7) geographically defined regions which serve as administrative units for the delivery of social services through local Department local offices. (7-1-98)T
18. Day Care 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. (7-1-98)T
19. Day Treatment Services. Intensive nonresidential services that include an integrated set of educational, clinical, social, vocational and family interventions provided on a regularly scheduled, typically daily, basis. (7-1-98)T
20. Department. The Idaho Department of Health and Welfare. (7-1-98)T
21. Director. The Director of the Department of Health and Welfare or designee. (7-1-98)T
22. Emergency Assistance To Families. Social services, crisis or crisis avoidance payments and placement services authorized by FACS social workers for Emergency Assistance eligible families to meet emergency need. (7-1-98)T
23. Extended Family Member. 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. (7-1-98)T

24. FFP. Federal Financial Participation. (7-1-98)T
25. Family. Related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (7-1-98)T
26. Family and Children's Services (FACS). Those programs and services directed to families and children, administered by the Department and provided in accordance with these rules. (7-1-98)T
27. 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/or safety issues that threaten family integrity, unity or the ability to care for their members. (7-1-98)T
28. Family Case Record. Compilation of all documents relating to a family's case. (7-1-98)T
29. Family Centered Services. An approach to the delivery of social services that focuses on families rather than individuals. Services are based on assessment of the entire family and a negotiated family plan designed to strengthen and maintain the family, while ensuring the protection, well being and permanency of children. (7-1-98)T
30. Family 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 and/or leaders should be consulted early in the plan development. (7-1-98)T
31. Family Services Worker. Any of the direct service personnel, including social workers, psychologists, counselors and family therapists, working in regional Family and Children's Services Programs. For purposes of pre-placement home studies, adoption home studies, reports to the court under the Termination and Adoption Acts, and Placement Supervision Reports, "family services workers" also include licensed counselors or psychologists, or individuals who have at least bachelor's degrees in social work, marriage and family therapy, or other social sciences. (7-1-98)T
32. Field Office. A Department of Health and Welfare service delivery site. (7-1-98)T
33. Goal. A statement of the long term outcome or plan for the child and family. (7-1-98)T
34. 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. (7-1-98)T
35. Indian Child. Any unmarried person who is under the age of eighteen (18) who is: (7-1-98)T
- a. A member of an Indian tribe, or (7-1-98)T
- b. Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. (7-1-98)T
36. Indian Child Welfare Act (ICWA). The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (7-1-98)T
37. Indian Child's Tribe. (7-1-98)T
- a. The Indian tribe in which an Indian child is a member or eligible for membership, or (7-1-98)T
- 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. (7-1-98)T
38. 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). (7-1-98)T

39. Information and Referral Services. A service which enables individuals to gain access to human services through providing accurate, current information on community and Department resources. While information and referral is not a separate service of the Department it is provided as a component of most social service programs. Information and referral services will be provided without regard to income. (7-1-98)T

40. Interethnic Placement Act of 1996 (IEPA). IEPA prohibits delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent, or the child involved. (7-1-98)T

41. Kinship Care. Alternative care that is provided by a relative by blood or marriage. (7-1-98)T

42. Licensed. Facilities or programs being licensed in accordance with the provisions of Idaho Department of Health and Welfare Rules IDAPA 16.06.02, "Rules and Standards for Child Care Licensing". (7-1-98)T

43. Licensing. See Idaho Department of Health and Welfare Rules, IDAPA 16.06.02, "Rules and Standards for Child Care Licensing," Section 100. (7-1-98)T

44. Medicaid. See "Title XIX," defined in Subsection 004.38. (7-1-98)T

45. Medicare. See "Title XVIII," defined in Subsection 004.39. (7-1-98)T

46. Most in Need of Mental Health Services. A child under eighteen (18) years of age who is gravely impaired as evidenced by imminent risk of harm to self or others or are at risk of out-of-home placement due to a serious emotional disturbance and lack resources to obtain services through the non-public community treatment system. (7-1-98)T

47. 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. (7-1-98)T

48. Needs Assessment. First step in the planning process which results in systematic documentation of existing conditions in the family and the desired outcomes for the family taking into consideration the number of individuals or families who are receiving services and the number who remain unserved. (7-1-98)T

49. Objective. Statement of measured and specific progress toward a goal to be achieved during a stated period of time. (7-1-98)T

50. 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. (7-1-98)T

51. 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. (7-1-98)T

52. P.L. 96-272. Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980". Section 422 requires states to implement a case review system to protect children in alternate care under the supervision of the state. (7-1-98)T

53. P.L. 105-89. Public Law 105-89, the federal "Adoptions and Safe Families Act of 1997", amends the case review and case plan requirements of P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (7-1-98)T

54. Planning. An orderly rational process which results in identification of needs and formulation of

timely strategies to fulfill such needs, within resource constraints. (7-1-98)T

55. Prevention. Programs, services and activities aimed at preventing child protective and severe behavioral and emotional problems. Prevention services are developed and provided by the Department in coordination with other statewide and community organizations as resources are available. (7-1-98)T

56. Protective Services. To provide assistance in response to potential, actual or alleged neglect, abuse or exploitation of children. (7-1-98)T

57. Purchase of Services. Provision of services to clients by local agencies or individuals who contract with DHW. (7-1-98)T

58. Qualified Expert Witness--ICWA. A person who is most likely to be a qualified expert witness in the placement of an Indian child is: (7-1-98)T

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; (7-1-98)T

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; (7-1-98)T

c. A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community; or (7-1-98)T

d. An individual regarded as being a qualified expert who is referred by the Indian child's tribe, the Department's ICWA Specialist, or the Bureau of Indian Affairs. (7-1-98)T

59. Reservation. Indian country as defined in 18 U.S.C. Section 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. Such term includes but is not limited to the Kootenai Reservation, the Coeur d'Alene Reservation, the Nez Perce Reservation, the Duck Valley Reservation, and the Shoshone-Bannock Reservation. (7-1-98)T

60. Risk Assessment. Direct contact of a family services worker with a family to objectively determine if safety issues, risk issues or immediate service needs exist, which require further Family and Children's Services response. (7-1-98)T

61. 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. (7-1-98)T

62. Self-Reliance Services. Supportive social services provided to individuals and their families to increase their ability to obtain and retain employment. (7-1-98)T

63. Serious Emotional Disturbance (SED). An emotional or behavioral disorder or a neuropsychiatric condition which results in a serious disability, which requires sustained treatment interventions and causes the child's functioning to be impaired in thought, perception, affect and/or behavior. A disorder shall be considered to be a serious disability if it causes substantial impairment in functioning in family, school and/or community. A substance abuse disorder does not, by itself, constitute a serious emotional disturbance, although it may co-exist with serious emotional disturbance. (7-1-98)T

64. Sheltered Workshop Services. Work activities and extended sheltered employment services for adults age eighteen (18) and over who are developmentally disabled as defined by the Idaho Developmental Disabilities Services and Facilities Act. Sheltered workshop services are established to assist individuals in acquiring skills which promote opportunities for independent daily living and/or employment. Activities include therapeutic

and prevocational activities, skills for self-care and management of daily living and recreational and work skills training. (7-1-98)T

65. Social Service Block Grant. The social service block grant funds are federal funds provided to states to assist in the development of comprehensive social service programs to help those with special needs to achieve and maintain a greater degree of economic self support and self reliance, to prevent neglect, abuse, or exploitation of children and adults who are unable to protect their own interests, to prevent or reduce inappropriate institutional care, and to secure referral or admission for institutional care when other forms of care are not appropriate. (7-1-98)T

66. TAFI. Temporary Assistance to Families in Idaho. (7-1-98)T

67. Target Population. Group of persons, residing within a defined geographical area, who are identified as being at risk for an adverse social or health condition or combination of conditions and whom the program is designed to serve. (7-1-98)T

68. Title IV-A. Title under the Social Security Act which provides public assistance to families with dependent children and is commonly identified as Aid to Families with Dependent Children (AFDC), repealed in 1997 except for eligibility requirements for Title IV-E. (7-1-98)T

69. Title IV-B. Title under the Social Security Act which provides Child Welfare Services. This categorical service program is aimed at improving the general welfare of children regardless of income. (7-1-98)T

70. Title IV-E. Title under the Social Security Act which provides funding for foster care maintenance (formerly provided for under Title IV-A of the Social Security Act) and adoption assistance payments for certain eligible children. (7-1-98)T

71. Title XVIII (Medicare). Title of the Social Security Act which provides funding for medical services for persons over age sixty-five (65). (7-1-98)T

72. Title XIX (Medicaid). Title under the Social Security Act which provides "Grants to States for Medical Assistance Programs". (7-1-98)T

73. Title XXI. (Children's Health Insurance Program). Title under the Social Security Act which provides access to health care for uninsured children under the age of nineteen (19). (7-1-98)T

74. Tribal Court. A court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (7-1-98)T

75. Unmarried Parents' Services. Unmarried parents' services are aimed at achieving or maintaining self-reliance or self-support for unmarried parents. These services include counseling for all unmarried parents who need such service in relation to their plans for their children and arranging for and/or paying for prenatal and confinement care for the well-being of the parent and infant. (7-1-98)T

011. -- 019. (RESERVED).

020. GENERAL REQUIREMENTS APPLICABLE TO ALL FAMILY AND CHILDREN'S SERVICES PROGRAMS.

01. Information, Referral and Screening. All residents of the state of Idaho, regardless of the duration of their residency shall be entitled to receive, upon referral or request: (7-1-98)T

a. Accurate and current information about services to children and families provided through the Department. (7-1-98)T

b. Referral to other appropriate public or private services available in the community; and (7-1-98)T

c. A screening to determine service needs and safety issues that can be addressed through Family and Children's Services. (7-1-98)T

02. Initiating Family and Children's Services. Family and children's 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 shall 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. (7-1-98)T

03. Individual Authorized to Request Voluntary Services. Requests for voluntary services shall be made by a family member or by an authorized representative, or by someone acting on behalf of an incompetent or incapacitated person. (7-1-98)T

04. Record of Request for Services. The date of referral or request for services shall be documented in the records of the field office. (7-1-98)T

05. Information to be Provided to Family. Upon referral or application for services, the family services worker shall inform the family that: (7-1-98)T

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; (7-1-98)T

b. Fees may be charged for certain services, and that the parent has financial responsibility for the child in care; (7-1-98)T

c. They have the right to pursue an administrative appeal of any decision of Family and Children's Services relating to them, including but not limited to 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. (7-1-98)T

021. ASSESSMENT OF NEED.

Upon referral for protective, children's mental health or other legally-mandated services, or upon voluntary request for services, assessment of need shall be determined by the Department or by contractors based upon the following: (7-1-98)T

01. Risk Assessment. A risk assessment shall be conducted to determine the safety of the child, the family, and the community. (7-1-98)T

02. Family Assessment. If the referral is for legally-mandated services or if the risk assessment indicates a need, a family assessment shall be conducted. (7-1-98)T

03. Other Evaluations. When a family assessment indicates a need, other professional diagnostic evaluations of the family or individual involved shall be arranged. (7-1-98)T

022. -- 029. (RESERVED).

030. FAMILY SERVICES PROVIDED.

The services and treatment provided by Family and Children's Services shall be based upon regional needs and resources, and include at least the following elements: (7-1-98)T

01. Crisis Response. Family and Children's Services shall respond, on a twenty-four (24) hour per day seven (7) day per week basis, to family crises associated with child protective and severe emotional disturbances in children. (7-1-98)T

02. Case Management. Family services shall include case management to assure and coordinate family assessment, case planning, treatment and other services, protection of children, permanency planning, advocacy, review and reassessment, documentation and timely closure of cases. (7-1-98)T

03. Multi-disciplinary Family Services. Family services shall be multi-disciplinary and shall be oriented toward resolution of issues associated with child protection, children's mental health, substance abuse and adoptive situations; training and employment issues; including parenting skills and severe behavioral and emotional disorders. (7-1-98)T

04. Community Based. Family services shall be aimed at bringing the child and family to a level of functioning that demonstrates a safe environment and an ability to provide a safe environment acceptable in the community and make maximum use of normal environments such as the home, school, other home-like settings, and other community services and resources. (7-1-98)T

05. Preventative Services. Services provided to families where a child is at risk of out of home placement due to a serious emotional disturbance or risk of child abuse and neglect. (7-1-98)T

031. -- 039. (RESERVED).

040. FAMILY SERVICES PRACTICE.

Through social work and the use of other appropriate and available resources, the Department provides services for children and families with the goal of preventing or eliminating the need to remove children from their homes; providing for children's safe return home as soon as possible; providing mental health treatment services needed by the child and family; and promoting the stability and security of Indian tribes and families by compliance with the Indian Child Welfare Act. (7-1-98)T

01. Service Capacity Management. The Department shall manage service capacity within each region of the state to ensure that family service workers respond within a reasonable period of time to referrals, requests for services and ongoing family case needs. (7-1-98)T

02. Permanency Planning. Permanency is the primary goal of family services in all cases by: (7-1-98)T

a. Establishing a plan for programs, services and activities that move toward the goal of permanency for family members within a reasonable amount of time as identified in the family plan, consistent with the child's development and sense of time; (7-1-98)T

b. Identifying temporary and permanent living arrangements for children who are unable to remain in their own homes; (7-1-98)T

c. Providing counseling to children, families and alternate care providers toward the goal of family reunification or toward other permanent arrangements for the children when family reunification is not feasible within a reasonable amount of time; (7-1-98)T

d. Providing services and assistance to facilitate independent living when that is the goal of the permanency plan for a child; and (7-1-98)T

e. Providing services, including case management, so that children with serious emotional disturbances can remain within their home, family, school, community and receive treatment in the least restrictive and most appropriate setting possible. (7-1-98)T

03. Family Plan Development. The family plan shall be completed within thirty (30) days of the date the case was opened. (7-1-98)T

a. Families shall be involved in identification of issues, planning their own service and treatment goals, objectives and processes. The family plan and any changes to it shall be signed and dated by the family, or the reason for their refusal to sign shall be documented in the plan. (7-1-98)T

b. The duration and frequency of services shall be determined based on the needs of the family and individuals involved and shall be identified in the family plan. (7-1-98)T

c. All parties shall receive a copy of the family plan and all parties, including the parents and the child if, of appropriate age, shall sign a statement indicating they have read and understood the plan. (7-1-98)T

d. At least every six (6) months or when significant changes in the family's circumstances warrant, the assigned family services worker shall reassess the need for continued services and update the family plan based on the changing needs of the family or individual family members. (7-1-98)T

e. Administrative or judicial review shall be held at least every six (6) months for each child placed under the Child Protective Act or other out of home placement including placements made under the Children's Mental Health Services Act and for children in guardianship of the Department and who are placed in adoptive homes, from the date guardianship is granted until a final court order of adoption is issued and placed in the family plan. (7-1-98)T

f. Planning for closure shall begin at the time the family plan is developed and the ending date for services shall be projected. (7-1-98)T

041. NOTICE REQUIRED FOR ICWA.

Wherever these rules require notice to the parent or custodian and tribe of an Indian child, notice shall also be provided to the Secretary of the Interior by certified mail with return receipt requested to Department of the Interior, Bureau of Indian Services, Division of Social Services, Code 450, Mail Stop 310-SIB, 1849 C Street, N.W., Washington, D.C. 20240. In addition, pursuant to 25 CFR Section 23.11, copies of such notices shall be sent by certified mail with return receipt requested to the Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice of the proceeding shall be given to the Secretary, who shall provide notice to the parent or Indian custodian and tribe. (7-1-98)T

042. -- 049. (RESERVED).

050. SERVICES TO BE PROVIDED.

The role of the family services worker is to assure that the following services are provided and documented in the case record: (7-1-98)T

01. Reasonable Efforts. Services offered or provided to the family intended to prevent removal of the child from the family, to reunify a child with their family, or prevent a seriously emotionally disturbed child from having to move to a more restrictive setting, or to obtain another permanent placement. At all times the health and safety of the child shall be the primary concern. Reasonable efforts are not required in those situations where a court has determined that they were not required. (7-1-98)T

02. Active Efforts. For an Indian child, a description of the active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; that these efforts have proved unsuccessful; and that based on qualified expert information, continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. (7-1-98)T

03. ICWA Preferences. If appropriate, application of the placement preference for placement in accordance with the Indian Child Welfare Act, or a detailed explanation of good cause for not applying the preferences. (7-1-98)T

04. Least Restrictive Setting. Placement in the least restrictive setting and in close proximity to the parents or if not, justification that the placement is in the best interest of the child; or, for an Indian child, placement in the least restrictive setting that most approximates a family and is within reasonable proximity to the child's home taking into account any special needs of the child. (7-1-98)T

05. Legal Requirements. Compliance with all the requirements of the court at the time of the judicial determination; and in the case of an Indian child, notice of the pending proceeding to the parent or Indian custodian and the Indian child's tribe, including notice of their right to intervene; the right to twenty (20) days' additional time to prepare for the proceeding; the right to appointment of counsel if the parent or Indian custodian is indigent; the right to examine all documents filed with the court upon which placement may be based; and the right to withdraw consent

to a voluntary foster placement. (7-1-98)T

06. Analysis of Cause for Placement. An analysis of the circumstances that necessitated the placement and improvements required for the child's return home. (7-1-98)T

07. Planning for Foster Care. Formulation of the Department's plan for assuring that the child receives necessary care while in the foster home or treatment setting, including services to the foster parents. (7-1-98)T

08. Date for Permanent Placement. Determination of the anticipated date the child will return to his or her parents or to an alternate permanent placement. (7-1-98)T

09. Consideration of Long-Term Foster Care. Use of long-term care shall be utilized only when circumstances will not allow the child with special needs to return home, to be placed with a relative or in a legal guardianship, or be placed with an adoptive family, after reasonable efforts to replace the child with the parents or another family or an adoptive family. There must be active agreement of the caretaker and child. Such agreement shall be in writing and signed by the foster parent(s), child, designated Department staff and where appropriate, the child's family. (7-1-98)T

10. Visitation for Birth Parents. Arrangements for visitation arrangements provided to the birth parents. (7-1-98)T

11. Notification of Change in Placement. Written notification to the birth parents within seven (7) days of a change of placement of the foster child if a child is relocated to another foster care setting, or similar notice to the parent or Indian custodian of an Indian child, and the Indian child's tribe, which includes the information described in Subsection 423.02.b.i. (7-1-98)T

12. Notification of Change in Visitation. Written notification that birth parents shall be notified in writing if there is to be a change in their visitation schedule with their child in foster care. (7-1-98)T

13. Notification of Right to Participate and Appeal. A written statement that birth parents shall be notified in writing of their right to discuss any changes and the opportunity to appeal if they disagree with changes in placement or visitation. (7-1-98)T

14. ICWA Placement Preferences. Compliance with the foster care placement preferences of the Indian Child Welfare Act. (7-1-98)T

15. Compliance with requirements of the Multiethnic Placement Act and Interethnic Placement Act. (7-1-98)T

051. -- 059. (RESERVED).

060. FAMILY CASE RECORDS.

The Department shall maintain a family case record on every family that is provided services, which shall provide complete, accurate written documentation of activities as follows: (7-1-98)T

01. Services Provided. Identification of a child as Indian and appropriate ICWA notices; services requested or offered and subsequent disposition including referrals for services outside the Department. (7-1-98)T

02. Assessment. Reports from the Assessment of Need for Services. (7-1-98)T

03. Family Plans. Plans made with the family including measurable and objective goals and objectives; time frames for meeting goals and objectives; revisions to goals, objectives and time frames, and the projected ending date for service. The purpose of the plan shall be to facilitate the safe return of the child to his or her own home as expeditiously as possible or to make goals and objectives regarding other permanent arrangements for the child if such return is not feasible. If the risk assessment or family assessment indicates a poor prognosis for reunification, a concurrent plan will be made with the family. (7-1-98)T

04. Record of Hearing. Dates and results of any court actions, administrative reviews, administrative hearings or other significant actions involving the family. (7-1-98)T

05. Closure of Plan. Reasons for terminating services, based upon: (7-1-98)T

a. Attainment of goals; (7-1-98)T

b. Services are no longer desired by the family, except when they are legally mandated; (7-1-98)T

c. Services are no longer legally mandated; (7-1-98)T

d. Services are no longer beneficial or appropriate for the family; or (7-1-98)T

e. Service capacity has been exceeded. (7-1-98)T

06. Other Requirements. All entries in the family case record shall be legible, specify the date the service was provided, and shall be signed and dated by the worker providing services at the time the entry is made. (7-1-98)T

07. Storage of Records. All family case records shall 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, except complete family case records involving adoptive placements shall be forwarded to the Department's central adoption unit. Case records involving Indian children shall be available at any time at the request of an Indian child's tribe or the Secretary of the Interior. The confidentiality of family case records is to be maintained in accordance with the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Rules Governing the Protection and Disclosure of Department Records". (7-1-98)T

061. -- 069. (RESERVED).

070. STANDARDS FOR SAFEGUARDING INFORMATION CONCERNING APPLICANTS AND RECIPIENTS OF SERVICES.

Protection and disclosure of Department records is governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Rules Governing the Protection and Disclosure of Department Records". (7-1-98)T

071. -- 099. (RESERVED).

100. EMERGENCY ASSISTANCE TO FAMILIES.

A family is eligible for Emergency Assistance in Idaho if a licensed social worker within the Department of Health and Welfare, Family and Children's Services receives a report or referral indicating an emergency condition and determines an emergency exists. (7-1-98)T

101. EMERGENCY ASSISTANCE REQUIREMENTS.

01. Application. An application is completed by a parent. If both parents are absent, refuse to cooperate in supporting the child or are unwilling to apply on behalf of the child, another adult relative or the Family and Children's Services social worker may complete the application on behalf of the child. (7-1-98)T

02. Eligible Child. The family contains a child under the age of eighteen (18). (7-1-98)T

03. Necessity for Assistance. The Family and Children's Services social worker has determined that the family has an emergency condition and the family is unable to meet that need. (7-1-98)T

04. Parent's Refusal to Cooperate with TAFI Requirements, a Personal Responsibility Contract or Parent's Ineligibility for TAFI Due to Use of Lifetime TAFI Benefits. The emergency condition did not arise because the parents failed to cooperate with TAFI requirements, a Personal Responsibility Contract, or are ineligible for TAFI because their lifetime benefit has been met. (7-1-98)T

102. EMERGENCY CONDITIONS.

A family meets the requirements for emergency conditions in the following circumstances: (7-1-98)T

01. Report of Abuse or Neglect. A family is considered to have an emergency condition if there are reports of risk factors for child abuse or neglect and as a result the child is at risk of out of home placement; or (7-1-98)T

02. Unmet Service Need. A family is considered to have an emergency condition if there are unmet service needs that may lead to child abuse or neglect and as a result the child is at risk of out of home placement; or (7-1-98)T

03. Child's Mental Health. A family is considered to have an emergency condition if the child is at risk for out home placement due to the child's mental health. (7-1-98)T

103. -- 109. (RESERVED).

110. EMERGENCY SERVICES.

As determined appropriate and necessary by Family and Children's Services personnel if services are not available through the family, extended family, friends, or other community resources, services may be provided to families in need and may include: information and referral, case management, court-related activities, intensive in-home services, day treatment, counseling, youth/family companion services, non-residential substance abuse treatment, community-based assessment, respite care, shelter care, and other community-based services provided to meet needs attributable to the emergency or crisis situation and to avoid out-of-home placement or expedite family reunification for the child at risk. (7-1-98)T

01. Emergency Payments. Money payments, payments in kind, or other payments such as vendor payments which are made on behalf of the eligible family for the purchase of goods and services not available through other community resources to meet needs attributable to the emergency or crisis situation. (7-1-98)T

02. Placement Services. Shelter care, foster family care, or residential group care for children separated from their parents, including food, clothing, and supervision unless the child has such assistance provided under Title IV-E. Needed medical care is also included unless the child is eligible for such care under Medicaid. (7-1-98)T

111. AUTHORIZATION AND DURATION OF SERVICES AND ASSISTANCE.

Emergency services and assistance are limited to a maximum duration of ninety (90) days or less as necessary to alleviate the emergency condition, and an application and plan must be completed within the first thirty (30) days of the Department's determination of the necessity for assistance. (7-1-98)T

112. PROGRAM ADMINISTRATION.

In addition to the assistance and services described in this section, the Department shall engage in activities incidental to and necessary for the proper and efficient administration of the emergency assistance program. Family and Children's Services personnel shall complete the application/planning process including receiving reports and referrals indicating emergency conditions, completing risk assessments, stabilizing families, court-related activities, developing family plans and authorizing services, as well as completing documentation, payment and reporting processes, staff and provider training and other related administrative activities. (7-1-98)T

113. -- 149. (RESERVED).

150. CHILD PROTECTION SERVICES.

Sections 56-204A, 56-204B, 16-1601, 16-1623 and 16-2001, Idaho Code, make the Department an official child protection agency of state government with a duty to intervene in situations of child neglect, abuse, or abandonment. The Department is the state agency to which a citizen shall report circumstances of harm or threatened harm of children, with a right to expect appropriate action. They authorize and direct the Department to undertake activities to eliminate the causes of such neglect, abuse or abandonment, and they enable the Department to invoke the authority of the courts in those situations where other efforts have failed. 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. (7-1-98)T

151. REPORTING ABUSE, ABANDONMENT OR NEGLECT.

Professionals and other persons identified in Section 16-1619, Idaho Code, have a responsibility to report abuse, abandonment or neglect and are provided protection for reporters. (7-1-98)T

01. Ministers. Duly ordained ministers of religion are exempt from reporting of child abuse and neglect if: (7-1-98)T

a. The church qualifies as tax-exempt under 26. U.S.C. 501(c)(3); (7-1-98)T

b. The confession or confidential communication was made directly to the duly ordained minister of religion; and (7-1-98)T

c. The confession was made in the manner and context which 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. (7-1-98)T

02. Health and Welfare Employees. All Department of Health and Welfare personnel are responsible for recognizing and immediately reporting to Family and Children's Services or to law enforcement any concern regarding abuse, abandonment or neglect of a child or children. Failure to report as required by Section 16-1619(b), Idaho Code, is a misdemeanor. (7-1-98)T

152. REPORTING SYSTEM.

Each region of the Department shall maintain 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 shall 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. (7-1-98)T

153. ASSIGNING REPORTS FOR RISK ASSESSMENT.

The Department shall assign all reports of possible abuse, abandonment and neglect of children received from agencies, institutions or professional personnel for risk assessment. Other reports shall be assigned for risk assessment, unless the field office has knowledge or information that discredits the report beyond a reasonable doubt. (7-1-98)T

154. RESPONSE PRIORITIES.

The Department shall 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 shall be documented in the family's case file with a description of action taken, which shall be reviewed and signed by the Child Protective Supervisor. (7-1-98)T

01. Priority I. The Department shall 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 shall 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. (7-1-98)T

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 shall be notified within twenty-four (24) hours. The child shall 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 which involve issues of abuse or neglect. (7-1-98)T

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 parents will be interviewed for substantiation of the facts, and to assure that there is no parental abuse or neglect. A family services worker shall 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. (7-1-98)T

04. Notification to Referent. The Department of Health and Welfare, Family and Children's Services, shall notify the reporting individual of the receipt of the referral within five (5) days. (7-1-98)T

155. SUPERVISORY REVIEW - CERTAIN PRIORITY I AND II CASES.

In all Priority I and II cases where the alleged victim of neglect, abuse or abandonment is through the age of six (6), review by supervisory or team of all case documentation and other facts shall be conducted within forty-eight (48) hours of initiation of the risk assessment. Such review shall be documented in the file with the signature of the supervisor or team leader, time and date, whether additional risk related issues will be pursued and by whom, and any planning for initiation of services. (7-1-98)T

156. REPORTS INVOLVING INDIAN CHILDREN.

Possible abuse, abandonment, or neglect of a child who is known or suspected to be Indian shall be reported to appropriate tribal authorities immediately. If the reported incident occurs off a reservation, the department shall perform the investigation. The department shall also investigate incidents reported on a reservation if requested to do so by appropriate authorities of the tribe. A record of any response shall be maintained in the case record and written documentation shall be provided to the appropriate tribal authorities. (7-1-98)T

157. REPORTS INVOLVING MILITARY FAMILIES.

Reports of possible child abuse, abandonment or neglect involving a military family shall 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, abandonment or neglect of a child on a military reservation falls under federal jurisdiction. (7-1-98)T

158. COMMUNITY RESOURCES.

The Department shall provide information and referral to community resources or may offer preventative services to the family. (7-1-98)T

159. -- 169. (RESERVED).

170. RISK ASSESSMENT OF REPORTS.

The Department's risk assessment shall be conducted in a standardized format of risk assessment and shall utilize multi-disciplinary team protocols. (7-1-98)T

171. ASSESSMENT.

The assessment shall include contact with the child or children involved and the immediate family and a records check for history with respect to child protection issues. (7-1-98)T

01. Interview of a Child. The interview of a child concerning a child protection report shall be conducted: (7-1-98)T

a. In a manner that protects all children involved from undergoing any unnecessary traumatic experience, including but not limited to multiple interviews; (7-1-98)T

b. By a professional with specialized training in using techniques that consider the natural communication modes and developmental stages of children; and (7-1-98)T

c. In a neutral, non-threatening environment, such as a specially equipped interview room, if available. (7-1-98)T

02. Interview of Family. Interview of the child's immediate family is mandatory in every case and may require the participation of law enforcement. The family services worker conducting the interview shall: (7-1-98)T

- a. Immediately notify the parents being interviewed of the purpose and nature of the assessment. At the initial contact with family, the name and work phone numbers of the case worker and his/her supervisor shall be given to ensure the family has a contact for questions and concerns that may arise following the visit; (7-1-98)T
 - b. Determine if the family is of Indian heritage for the purposes of ICWA; (7-1-98)T
 - c. Interview siblings who are identified as being at risk; and (7-1-98)T
 - d. Not divulge the name of the person making the report during the course of the assessment. (7-1-98)T
03. Collateral Interviews. Any assessment of an abuse or neglect report shall include at least one (1) collateral interview with a person who is familiar with the circumstances of the child or children involved. Collateral interviews shall be conducted with discretion and preferably with the parents' permission. (7-1-98)T
04. Role of Law Enforcement. Section 16-1625, Idaho Code, specifies that the Department may enlist the cooperation of peace officers for phases of the risk assessment for which they have the expertise and responsibility and consistent with the relevant multidisciplinary team protocol. Such areas include, but are not limited to: (7-1-98)T
- a. Interviewing the alleged perpetrator; (7-1-98)T
 - b. Removing the alleged perpetrator from the child's home in accordance with Section 39-6301, Idaho Code, the "Domestic Violence Act"; and (7-1-98)T
 - c. Taking a child into custody in accordance with Section 16-1612, Idaho Code, where a child is endangered and prompt removal from his or her surroundings is necessary to prevent serious physical or mental injury. (7-1-98)T
05. Notification of Referent. Upon completion of the risk assessment, the referent shall be notified. (7-1-98)T

172. DISPOSITION OF REPORTS.

Within five (5) days after completion of risk assessments, the Department shall determine whether the reports are valid or not valid. The validity of reports shall be determined using the following definitions, with consideration given to the age of the child, extenuating circumstances, prior history, parental attitude toward discipline, and severity of abuse or neglect: (7-1-98)T

01. Valid. Child abuse and neglect reports are confirmed by one (1) or more of the following: witnessed by a worker, determined or evaluated by a court, a confession, or are substantiated through the presence of significant evidence that establishes a clear factual foundation for the determination of "valid". (7-1-98)T
02. Verifiable. Child abuse and neglect reports are confirmed by one (1) or more of the following: (7-1-98)T
 - a. Witnessed by a worker; (7-1-98)T
 - b. Determined or evaluated by a court; (7-1-98)T
 - c. A confession; or (7-1-98)T
 - d. Are substantiated through the presence of significant evidence, but where circumstances demonstrated that such incidents are not likely to reoccur. (7-1-98)T
03. Indicated. Child abuse and neglect reports are indicated when the allegations cannot be confirmed or refuted; however, the worker has a reasonable belief the abuse or neglect occurred. (7-1-98)T
04. Unable to Determine. A determination of child abuse and neglect cannot be made and the worker

has no firm belief that abuse or neglect occurred. This category includes reports relating to families the worker is unable to locate. (7-1-98)T

05. Invalid. Child abuse and neglect reports that are clearly unfounded, erroneous or otherwise incorrect. The worker is reasonably sure that the abuse or neglect did not occur. (7-1-98)T

173. VALID REPORTS.

For reports determined to be "valid", the appropriate information shall be entered into the Department's Central Registry for the reporting of child abuse, abandonment and neglect, and the alleged perpetrator so advised in writing. Notification will include how the individual can appeal to have his disposition status changed. (7-1-98)T

174. ALL OTHER REPORTS.

If it is determined through the risk assessment that reports are "not valid", the families shall be advised. (7-1-98)T

01. Request for Statement. Upon the individual's request, the field office shall issue written statements indicating that: (7-1-98)T

a. The Department has not obtained sufficient information to warrant further assessment of or action on that specific report; and (7-1-98)T

b. The Department shall fulfill its legal responsibility to investigate and take appropriate action on any further reports that elaborate on the previous allegations or relate new allegations. (7-1-98)T

02. Removal of Identifying Information. Upon written request of the individual, the Department may remove identifying information relevant to that individual regarding an invalid report from the Department's data base. (7-1-98)T

175. -- 199. (RESERVED).

200. COURT-ORDERED CHILD PROTECTION RISK 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 shall order that an investigation/risk assessment be conducted by the Department of Health and Welfare. Court orders for preliminary child protective risk assessment and for any subsequent assessment the court may deem necessary shall be served on the supervisor for child protection services in the field office in which the court has geographical jurisdiction. The child protection supervisor shall immediately initiate the risk assessment and consult with the court promptly if there are any obstacles proceeding its completion. Immediately upon completing the report, the Department shall make a written report to the court. See Section 230. (7-1-98)T

201. CHILD PROTECTIVE ACT PETITION.

If any incidence of child abuse, neglect of abandonment is substantiated through the risk assessment 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 shall request the prosecuting attorney to file a Child Protective Act petition. (7-1-98)T

202. COOPERATION WITH LAW ENFORCEMENT.

The Department shall cooperate with law enforcement personnel in their handling of criminal investigations and the filing of criminal proceedings. (7-1-98)T

203. -- 229. (RESERVED).

230. CHILD CUSTODY INVESTIGATIONS FOR DISTRICT COURT.

Where no other community resources are available and when ordered by district courts, the Department shall, for a fee, conduct risk 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. Before the family services worker sends the report to the court, it must be reviewed and approved by the supervisor. (7-1-98)T

01. Requests from Private Attorney. If a parent's attorney requests a risk assessment and report of findings regarding the fitness of a parent, the attorney shall 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. (7-1-98)T

02. Conduct of the Assessment. In conducting the assessment, the family services worker shall 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 shall 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. (7-1-98)T

03. Report to Court. The family services worker shall provide a report only to the Magistrate judge who ordered the assessment, and shall use the Department's format for the assessment of need. The report shall describe what was observed about the home conditions and the care of the child(ren). (7-1-98)T

04. Department Clients. If the family is or has been a client of the Department, disclosure of information shall comply with Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Rules Governing the Disclosure and Protection of Department Records". (7-1-98)T

05. Fee. The Department shall bill the court a fee for the child custody assessment and report at the rate of thirty-five dollars (\$35) per hour. (7-1-98)T

231. -- 239. (RESERVED).

240. ADMINISTRATIVE REVIEW.

Unless a judicial review occurs at the end of a six (6) month period in a Child Protective Act placement or other out of home placement including placements under the Children's Mental Health Services Act, placements of children where the Department is their guardian, the Department shall conduct an individual family case review to assure compliance with all applicable state and federal laws, and to ensure good social and clinical practice. (7-1-98)T

01. Notice of Administrative Review. The administrative review shall include: (7-1-98)T

a. Advance written notice to all parties, including foster parents, preadoptive parents and relatives providing care of a child and an Indian child's tribe if appropriate; (7-1-98)T

b. Action being considered; (7-1-98)T

c. The right to be represented by the individual of their choice. (7-1-98)T

02. Procedure in Administrative Review. The parties shall be given the opportunity for face-to-face discussion including attending, asking questions and making statements. (7-1-98)T

03. Members of Administrative Review Panel. The administrative review team shall include a Department employee who is not in the direct line of supervision in the delivery of services to the child or parents 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 administrative review panel shall be chosen by the regional director and receive instructions from the program manager to enable them to understand the review process and their roles as participants. (7-1-98)T

04. Issues Considered in Administrative Review. The review panel shall: (7-1-98)T

a. Review the extent to which all parties have followed through with the family plan, their progress toward alleviating the circumstances necessitating the placement and the extent to which the goals described in the plan have been achieved. (7-1-98)T

b. Review compliance with the Indian Child Welfare Act, if appropriate; (7-1-98)T

c. Make a determination of the continuing necessity for and appropriateness of the child's placement;
and (7-1-98)T

d. A target date by which the child may safely be returned home or placed for adoption, legal guardianship or other permanent placement. (7-1-98)T

05. Recommendations and Conclusions of Administrative Review Panel. Following the review, written conclusions and recommendations shall be provided to all participants, subject to Department safeguards for confidentiality. The decision shall also provide appeal rights. (7-1-98)T

241. CITIZEN REVIEW PANELS.

The Department shall have Citizen Review Panels in each region to review child protection cases. (7-1-98)T

242. -- 399. (RESERVED).

400. AUTHORITY FOR ALTERNATE CARE SERVICES.

Upon approval of the Regional Family and Children's Services Manager or designee, the Department may provide or purchase alternative care under the following conditions: (7-1-98)T

01. Department Custody. When the child is in the legal custody or guardianship of the Department; or (7-1-98)T

02. Voluntary Agreement. Upon agreement with the parents when circumstances interfere with their provision of proper care or they are no longer able to maintain a child with serious emotional disturbance in their home and they can benefit from social work and treatment services. A family plan must be developed between the Department and the family, and shall include the terms for reimbursement of cost with any necessary justification for deviation from Child Support guidelines. A contract between the Department and the service provider, if applicable, must also be in effect. (7-1-98)T

401. CONSIDERATIONS FOR PLACEMENT IN ALTERNATIVE CARE.

The Department shall 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 shall 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 shall 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. 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 shall make reasonable attempts to inform immediate family members of the way to become a placement resource. Alternate care placement shall in all cases include consideration of: (7-1-98)T

01. Family Assessment. The family assessment conducted in accordance with the provisions of Section 022. (7-1-98)T

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. (7-1-98)T

03. Family Involvement. The involvement of the family in planning and selecting the placement. The Department shall 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. (7-1-98)T

04. ICWA. All requirements of the Indian Child Welfare Act. (7-1-98)T

05. MEPA. All requirements of the Multiethnic Placement Act. (7-1-98)T

06. IEPA. All requirements of the Interethnic Placement Act and prohibitions against states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (7-1-98)T

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 or Indian custodian is likely to result in serious emotional or physical damage to the child. Foster care placement shall be in the least restrictive setting that most approximates a family and in which any special needs may be met. In the absence of good cause to the contrary, a preference shall be given to placement with: (7-1-98)T

01. Extended Family. A member of the Indian child's extended family; (7-1-98)T
02. Foster Home Approved by Tribe. A foster home licensed, approved, or specified by the Indian child's tribe; (7-1-98)T
03. Licensed Indian Foster Home. An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (7-1-98)T
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. (7-1-98)T

403. INVOLUNTARY PLACEMENT UNDER THE CHILDREN'S MENTAL HEALTH SERVICES ACT.

When a seriously emotionally disturbed child presents a significant danger to himself or herself and/or to others and the child's parent will not consent to a voluntary placement of the child, the child can be placed involuntarily through a court order. Involuntary Treatment Orders are limited to one hundred twenty (120) days and can be changed to a voluntary placement upon the request of the consenting parent(s). At the end of one hundred twenty (120) days, a judicial redetermination is required to extend the involuntary treatment order for an additional set period of time. (7-1-98)T

404. OUT-OF-STATE PLACEMENTS (INTERSTATE COMPACTS).

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 shall 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 shall 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" and Section 66-1201 et seq., Idaho Code, the "Interstate Compact on Mental Health". Placements shall be in compliance with all state and federal laws. (7-1-98)T

405. ALTERNATE CARE CASE MANAGEMENT.

Case management shall continue while the child is in alternate care and shall ensure the following: (7-1-98)T

01. Preparation for Placement. Preparing a child for placement in alternate care shall be the joint responsibility of the child's family, the child (when appropriate), the family services worker and the alternate care provider. (7-1-98)T
02. Information for Provider. The Department and the family shall inform the alternate care provider of their roles and responsibilities in meeting the needs of the child including: (7-1-98)T
 - 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; (7-1-98)T
 - b. The name of the child's doctor; (7-1-98)T
 - c. The child's current functioning and behaviors; (7-1-98)T

- d. The child's history and past experiences; (7-1-98)T
- e. The child's cultural and racial identity; (7-1-98)T
- f. Any educational, developmental, or special needs of the child; (7-1-98)T
- g. The child's interest and talents; (7-1-98)T
- h. The child's attachment to current caretakers; (7-1-98)T
- i. The individualized and unique needs of the child; (7-1-98)T
- j. Procedures to follow in case of emergency; and (7-1-98)T
- k. Any additional information, that may be required by the terms of the contract with the alternate care provider. (7-1-98)T

03. Parental Responsibilities. Parents shall sign a Departmental form of consent for medical care and keep the family services worker advised of where they can be reached in case of an emergency. Any refusal to give medical consent shall be documented in the family case record. (7-1-98)T

04. Financial Arrangements. The family services worker shall assure that the alternate care provider understands the financial and payment arrangements and that necessary Department forms are completed and submitted. (7-1-98)T

05. Contact with Child. The family, the family services worker, the alternate care provider and the child, if of appropriate developmental age, shall establish a schedule for frequent and regular visits to the child by the family and by the family services worker or designee. (7-1-98)T

a. Face-to-face contact in the alternate care setting with the child by the family services worker must occur at least monthly or more frequently for the observable needs of the child. (7-1-98)T

b. The Department shall have strategies in place to detect abuse or neglect of children in alternate care. (7-1-98)T

c. Regular contact with children placed in intensive treatment facilities, in or out-of-state, shall occur in accordance with Idaho Department of Health and Welfare policy on "Placement in Intensive Treatment Facilities". (7-1-98)T

d. Frequent and regular contact between the child and parents and other family members shall 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. (7-1-98)T

06. Discharge Planning. Planning for discharge from alternate care into family services that follow alternate care shall be developed with all concerned parties. Discharge planning shall be initiated at the time of placement and completed prior to the child's return home or to the community. (7-1-98)T

07. Transition Planning. Planning for discharge from alternate care into a permanent placement shall be developed with all concerned parties. Discharge planning shall be initiated at the time of placement and completed prior to the child's return home or to the community. (7-1-98)T

08. Financial and Support Services. As part of the discharge planning, Departmental resources shall be coordinated to expedite access to Department financial and medical assistance and community support services. (7-1-98)T

406. -- 419. (RESERVED).

420. ALTERNATE CARE - CASEY FAMILY PROGRAM, BOISE DIVISION.

Children may be referred to the Casey Family Program, Boise Division for placement when it is determined that reunification of the birth family is not anticipated to be possible. Once the child has been accepted into the Casey Family Program, Boise Division, the Program will provide direct case management services pursuant to a contract with the Division of Family and Community Services with final responsibility for decision-making continuing to rest with the Department. Children placed with the Casey Family Program shall continue to be eligible for all Department programs, and regional and Casey Family staff shall combine resources to the extent possible to serve these children in the most effective manner. (7-1-98)T

421. ALTERNATE CARE - FAMILY PRESERVATION SERVICES.

Referral may be made of families who may benefit from intensive family preservation services to individual contractors of the Department who provide these services. Some of these contracted services may include brief respite care. (7-1-98)T

422. ALTERNATE CARE - PLACEMENT OF UNWED MOTHERS AT BOOTH MEMORIAL HOME.

Referrals may be made to Booth Memorial Home for both outpatient and residential services for unwed pregnant women under the age of twenty-one (21), whose determined needs for outpatient or alternate care placement cannot be met by less restrictive means. (7-1-98)T

01. Referral Criteria. For referral to this program, the mother must: (7-1-98)T
 - a. Be unmarried; (7-1-98)T
 - b. Have a high-risk pregnancy; (7-1-98)T
 - c. Be under the age of eighteen (18) at the time of referral for residential services, and up to the age of twenty-one (21) for outpatient referrals, as long as such outpatient clients are enrolled in the educational component of the program; (7-1-98)T
 - d. Be a resident of the state of Idaho; (7-1-98)T
 - e. Lack other community resources that would meet her needs in the most home-like environment; (7-1-98)T
 - f. Be willing to enroll in the educational program provided by Booth if the mother has not completed high school or a GED. (7-1-98)T
02. Exclusions from Referral. Individuals not appropriate for referral to Booth include: (7-1-98)T
 - a. Those who are a danger to self or others; (7-1-98)T
 - b. Those who could be better served by other levels of care, such as foster care or local board and room care; or (7-1-98)T
 - c. Those whose problems are of such levels that they need the structure of an institutional placement. (7-1-98)T

423. ALTERNATE CARE PLANNING.

Alternate care planning is mandated by the provisions of Sections 471(a)(15) and 475, P.L.96-272. (7-1-98)T

01. Alternate Care Plan Required. Each child receiving alternate care under the supervision of the state shall have a written alternate care plan. (7-1-98)T
 - a. The purpose of plan shall be to facilitate the safe return of the child to his or her own home as expeditiously as possible or to make other permanent arrangements for the child if such return is not feasible.

- (7-1-98)T
- b. The alternate care plan shall be included in the family plan required by Section 060. (7-1-98)T
02. Development of the Alternate Care Plan. The alternate care plan shall be developed within thirty (30) days after a decision has been made to place a child in alternate care. (7-1-98)T
- a. The parents and the child, to the extent possible, shall be involved in planning, selecting, and arranging the alternate care placement and any subsequent changes in placement. (7-1-98)T
- b. The plan shall include documentation that the parents have been provided written notification of: (7-1-98)T
- i. Visitation arrangements made with the alternate care provider, including any changes in their visitation schedule; (7-1-98)T
- ii. Any change of placement immediately, and at the latest within seven (7) days, when the child is relocated to another alternate care or institutional setting; and (7-1-98)T
- iii. Their right to discuss any changes and to seek recourse, in accordance with the provisions of Section 040, if they disagree with any changes in visitation or other alternate care arrangements. (7-1-98)T
- c. All parties involved in the alternate care plan, including the alternate care provider, parents and the child if of appropriate developmental age: (7-1-98)T
- i. Will be required to sign a statement indicating that they have read and understood the alternate care plan; and (7-1-98)T
- ii. Will receive a copy of the alternate care plan. (7-1-98)T

424. REQUIREMENTS FOR THE ALTERNATE CARE PLAN (SECTION 422 COMPLIANCE).

Section 422 of P.L. 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980," requires states to implement a case review system to protect children who are in alternate care under the supervision of the state. The system must meet certain requirements for the contents of the alternate care plan, for periodic case review and for dispositional hearings. (7-1-98)T

01. Contents. The alternate care plan shall include the following requirements of P.L. 96-272, P.L. 101-239 and P.L. 105-89): (7-1-98)T
- a. A description of the type of home or institution in which the child is to be placed; (7-1-98)T
- b. A discussion of the appropriateness of the placement; (7-1-98)T
- c. A statement of how the plan is designed to achieve placement in the least restrictive (most family-like) and most appropriate setting available, consistent with the best interest and special needs of the child; (7-1-98)T
- d. A statement of how the plan is designed to achieve placement in close proximity to the parents' home, consistent with the best interest and special needs of the child; (7-1-98)T
- e. Discussion of how the family and the Department plan to carry out the judicial determination made (court order) with respect to the child in accordance with Section 472(a)(1), P.L. 96-272. The Department shall 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; (7-1-98)T
- f. A plan for assuring that the child receives proper care; (7-1-98)T

g. A plan for assuring that identified services are provided to the child and family to improve the conditions in the parents' home, to recommend to the court the safe return of the child to that home or to arrange for other permanent placement for the child. In the case of a child with a serious emotional disturbance, the plan will identify services and behavior required for the child to return to living at home. All case plans shall include specific time frames of obtaining the family's measurable outcomes and defined frequency of communication, review and reassessment of risk; (7-1-98)T

h. Documentation, when applicable, of compelling reasons for not pursuing termination of parental rights for those children who have been in care fifteen (15) of the last twenty-two (22) months since the date of the adjudication or sixty (60) days after the original placement, whichever comes first. (7-1-98)T

i. Documentation of the actions taken to recruit and process a family placement for those children for whom the plan is adoption or placement in another permanent home. Documentation must include the specific recruitment efforts utilized. (7-1-98)T

j. A plan for assuring that identified services are provided to the child and foster parents to address the needs of the child while in foster care; (7-1-98)T

k. If the child is over fifteen and a half (15 1/2) years of age, a description of the services, including educational goals, living skills training, employment preparation and preparation for self-reliance, that are being provided to enable the child to transition to independence. (7-1-98)T

l. A discussion of the appropriateness of the services provided to the child under the plan; and (7-1-98)T

m. To the extent available and accessible, current health and education records, including: (7-1-98)T

i. The names and addresses of the child's health and educational providers; (7-1-98)T

ii. The child's grade level performance; (7-1-98)T

iii. The child's school record; (7-1-98)T

iv. Assurances that the child's alternate care arrangements take into account proximity to the school in which the child is enrolled at the time the alternate care plan is developed; (7-1-98)T

v. A record of the child's immunizations; (7-1-98)T

vi. The child's known medical problems including any emotional and/or behavioral disturbances and plans to remediate these problems; (7-1-98)T

vii. Any other pertinent health and education information, including current medications, concerning the child. (7-1-98)T

n. A statement explaining why the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a state different from the state in which such home is located, and why such placement is in the best interests of the child; (7-1-98)T

o. A plan for assuring that if a child has been placed in foster care outside the state in which the home of the parents of the child is located, periodically but not less frequently than every twelve (12) months, a caseworker on the staff of the state agency of the state in which the home of the parents of the child is located, or of the state in which the child has been placed, visit such child in such home or institution and submit a report on such visit to the state agency of the state in which the home of the parents of the child is located. (7-1-98)T

02. Periodic Review. By the provision of Section 475(5)(b), P.L. 96-272, the status of each child placed in alternate care must be reviewed periodically, but no less frequently than every six (6) months from the date of the original alternate care placement and every six (6) months thereafter until the child has been in placement for

eighteen (18) months (see Subsection 424.03.c.), by either a court or an administrative review. The periodic reviews shall meet the following six (6) requirements: (7-1-98)T

a. The periodic reviews have determined the continuing necessity for an appropriateness of the placement. (7-1-98)T

b. The periodic reviews have determined the extent of compliance with the alternate care plan. (7-1-98)T

c. The periodic reviews have determined the extent of progress which has been made toward alleviating or mitigating the causes necessitating the placement. (7-1-98)T

d. The periodic reviews have projected a likely date by which the child may safely return to his or her own home or be placed for adoption or in other permanent placements including kinship care and legal guardianship. (7-1-98)T

e. The periodic reviews are open to the participation of the parents, foster parents, preadoptive parents and relatives providing care of a child and the children involved. (7-1-98)T

f. The periodic reviews are conducted by a panel of appropriate persons, at least one (1) of whom is not responsible for the case management of, or delivery of, services to either the child or the parents who are the subject of the review. (7-1-98)T

03. Permanency Hearings. By the provisions of Section 475(5)(b), P.L. 96-272, every child in alternate care under state supervision must be afforded a permanency hearing. (7-1-98)T

a. Permanency hearings shall meet the following three (3) requirements: (7-1-98)T

i. Procedural safeguards were applied with respect to parental rights pertaining to the removal of the child from the home of his or her parents; (7-1-98)T

ii. Procedural safeguards were applied with respect to parental rights pertaining to a change in the child's placement; and (7-1-98)T

iii. Procedural safeguards were applied with respect to parental rights pertaining to any determination affecting visitation rights. (7-1-98)T

b. Procedural safeguards shall assure fundamental fairness to the family including the following: (7-1-98)T

i. Opportunity for a hearing prior to any change of disposition or of the status quo; (7-1-98)T

ii. Adequate notice of such hearings, with time to prepare and right to be present; (7-1-98)T

iii. Their right to know the allegations against them and to confront those allegations; and (7-1-98)T

iv. Their right to have legal counsel appointed if requested and eligible. (7-1-98)T

c. Permanency planning hearings shall be held no later than twelve (12) months after the date of the original alternate care placement and no later than every twelve (12) months thereafter. Some hearings, not dispositional hearings, are required more frequently according to the following guidelines: (7-1-98)T

i. Hearings are required each time any child is moved to a more restrictive alternate care setting; (7-1-98)T

ii. Every twelve (12) months for any child in the care of the Department under Section 16-1610, Idaho Code, the "Child Protective Act," a renewal of custody hearing is needed. This hearing shall meet permanency

planning hearing requirements if the judge makes, and the resulting court order contains, required findings; or (7-1-98)T

iii. Hearings are required in accordance with Section 16-2010(c), Idaho Code, at least each twelve (12) months from the date guardianship was granted, until a final court order of adoption is issued and placed in the adoptive family's case record. (7-1-98)T

d. The administrative or judicial hearing for permanency planning disposition must include, at a minimum: (7-1-98)T

i. Written notice to all parties, including foster and pre-adoptive parents, at least two (2) weeks in advance specifying: (7-1-98)T

(1) The date, time, and place of the review; (7-1-98)T

(2) Action to be taken; (7-1-98)T

(3) Opportunity for face-to-face discussion including attending, asking questions, and making statements; (7-1-98)T

(4) Opportunity for recourse in the form of a petition for review by the magistrate division of the District Court or, more generally, by the request for a review hearing in underlying court action under the appropriate Act. (7-1-98)T

ii. Determination of: (7-1-98)T

(1) Continuing necessity for, and appropriateness of, the child's placement; and (7-1-98)T

(2) The permanency plan for the child that includes whether, and if applicable when, the child will be returned to their parents, the state will file a petition for termination of parental rights and place the child for adoption, or referred for legal guardianship or, in cases where compelling reasons exist that it would not be in the best interest of the child to terminate parental rights, placed in another permanent living arrangement. (7-1-98)T

e. The twelve (12) month permanency planning dispositional hearing may be held by the court having jurisdiction in the underlying case if that is the preference of the court. If the court does not wish to conduct this hearing, it may be held administratively by a hearing officer appointed by the regional director. (7-1-98)T

i. The hearing officer shall not be an employee of the Division of Family and Community Services or a regional Family and Children's Services Program. (7-1-98)T

ii. The hearing officer shall be certified as having completed the training program provided by the Deputy Attorney General assigned to the region or the Division that will enable him to understand the review process and his role as participant and hearing officer. This requirement of certification does not include hearing officers with legal background or judges, although both are encouraged to attend training sessions. (7-1-98)T

f. A written record of the administrative or judicial hearing shall be maintained: (7-1-98)T

i. Indicating the time, date, and place of the review and all the participants; (7-1-98)T

ii. Stating the recommendations and conclusions and the reasons therefore; (7-1-98)T

iii. Filed in the family's case record and with the court; and (7-1-98)T

iv. Provided to all participants, subject to the safeguards regarding confidentiality in accordance with the provisions of IDAPA 16.05.01, "Rules Governing the Protection and Disclosure of Department Records". (7-1-98)T

425. -- 434. (RESERVED).

435. DETERMINATION OF ELIGIBILITY FOR ADC-FC.

The family services workers shall initiate an application to ensure that eligibility for ADC-FC is made, or that the child is clearly ineligible because of family resources. The worker shall maintain documentation of the eligibility determination or ineligibility in the case record of the child, and arrangements for parental support. (7-1-98)T

436. 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 or children. Upon consideration of any alternate care for a child: (7-1-98)T

01. Notice of Parental Responsibility. The Department shall provide the parents written notification of their responsibility to contribute toward the cost of their child's support, treatment and care, including but not limited to clothing, medical, incidental and educational costs. (7-1-98)T

02. Financial Arrangements with the Parents. When children are placed in alternate care pursuant to court order or voluntary agreement, the parents shall be expected to reimburse the Department for the costs of care. (7-1-98)T

a. The amount of support shall be based on the parent's income, the costs of care for the child and any unique circumstances affecting the parent's ability to pay. (7-1-98)T

b. Every family shall be expected to contribute to the cost of their child's care, but no family shall be asked to pay more than the actual cost of care, including clothing, medical, incidental and educational costs. The cost of room and board shall be paid by the parents to the Department, and the Department shall in turn pay the foster parents. (7-1-98)T

437. SUPPORT AGREEMENT FOR VOLUNTARY PLACEMENTS.

If the placement is voluntary, the parents shall sign an agreement that specifies the amount of support to be paid, when it is to be paid the payee and the address to which it is to be paid. (7-1-98)T

438. SUPPORT IN COURT-ORDERED PLACEMENT.

In the case of a court-ordered placement, if no support agreement has been reached with the parents prior to the custody or commitment hearing, the Department's report to the Court shall indicate the necessity to hold a support hearing. (7-1-98)T

439. INSURANCE COVERAGE.

The parents shall inform the Department of all insurance policies covering the child, including names of carriers, and policy or subscriber numbers. If medical, health and/or dental insurance coverage is available for the child, the parents shall acquire and maintain such insurance. (7-1-98)T

440. REFERRAL TO CHILD SUPPORT SERVICES.

The family shall be referred to the State Child Support Agency for support payment arrangements. (7-1-98)T

01. Assignment of Child Support. The Department through the Bureau of Child Support Services shall 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 shall request to be named payee for all funds for placements extending over thirty (30) days. (7-1-98)T

02. Collection of Child Support. The Department shall take action to collect any child support ordered in a divorce decree. (7-1-98)T

441. -- 499. (RESERVED).

500. HEALTH AND DENTAL CARE FOR CHILDREN IN ALTERNATE CARE.

Every child placed in alternate care shall receive a medical card each month. Those children eligible for Medicaid

will receive a medical card. (7-1-98)T

551. EPSDT SCREENING.

Children in alternate care shall receive the Early Periodic Screening, Diagnosis and Treatment (EPSDT) services allowable under Medicaid. Those children already receiving Medicaid at the time of placement shall be screened within thirty (30) days after placement. Children not receiving Medicaid at the time of placement shall receive a screening within thirty (30) days from the date Medicaid eligibility is established. (7-1-98)T

552. MEDICAL EMERGENCIES.

In case of serious illness, the alternate care provider shall notify the child's doctor and the Department immediately. The parents 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. (7-1-98)T

553. DENTAL CARE.

Every child age two (2) who is placed in alternate care shall 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. (7-1-98)T

01. Costs Paid by Medicaid. If dental care not included in the state medical assistance program is recommended, a request for payment shall be submitted to the state Medicaid dental consultant. (7-1-98)T

02. Emergencies. For children in shelter care, emergency dental services shall be provided for and paid for by the Department, if there are no other financial resources available. (7-1-98)T

554. COSTS OF PRESCRIPTION DRUGS.

The Department shall purchase prescribed drugs, at the Medicaid rate, for a child in alternate care through participating pharmacists, in excess of the Medicaid monthly maximum. (7-1-98)T

555. -- 559. (RESERVED).

560. INCOME, BENEFITS AND SAVINGS OF CHILDREN IN FOSTER CARE.

Family services workers shall identify and, if necessary, apply on behalf of the child for income or benefits from (one (1) or) every available sources including Social Security, veterans' benefits, tribal benefits, or estates of deceased parents. The address of the payee shall be Management Services, P. O. Box 83720 Boise, ID 83720. (7-1-98)T

561. ACCOUNTING AND REPORTING.

Child Support Services shall account for the receipt of funds and develop reports showing how much money has been received and how it has been utilized. (7-1-98)T

562. FORWARDING OF BENEFITS.

If the Department is receiving benefits and the child is returned to the home of the parents or relatives for a trial visit, Child Support Services shall be notified by memo from a family services worker giving the name and address of the person to whom these benefits shall be forwarded. (7-1-98)T

01. Return to Alternate Care. If the child returns to alternate care, the Department shall be notified immediately of the correct payee. (7-1-98)T

02. Review After Six (6) Months. If an alternative care placement continues for a period of six (6) months, a careful review must be initiated to determine if a change of payee must be accomplished. (7-1-98)T

563. PERIODIC REVIEW OF BENEFITS FROM BUREAU OF INDIAN AFFAIRS (BIA).

Field offices must contact the Bureau of Indian Affairs and review periodically benefits that may be available to children in foster care. (7-1-98)T

564. -- 569. (RESERVED).

570. DRIVERS' LICENSES FOR CHILDREN IN ALTERNATE CARE.

Foster parents shall be discouraged to sign for a foster child's driver's license. Insurance purchased by the Department does not provide coverage. No departmental employee shall sign for any foster child's driver's license or permit without written authorization from the Regional Director. Any Department employee signing for a child's driver's license or permit without the Regional Director's approval assumes full personal responsibility and liability for any damages that may be assessed against the child and shall not be covered by the Department's insurance. (7-1-98)T

01. Payment by Department. The Department shall make payments for driver's training, licenses and permits for children in the Department's guardianship when provided for in the family case plan for older teens for whom emancipation is the goal. (7-1-98)T

02. Payment by Parents. The parents of children in foster care must authorize drivers' training, provide payment and sign for drivers' licenses. (7-1-98)T

571. -- 579. (RESERVED).

580. LICENSURE.

All private homes and facilities providing care for children pursuant to these rules shall be licensed in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16.06.02, "Rules and Standards for Child Care Licensing," unless foster care placement of an Indian child is made by the court with a foster home licensed, approved or specified by the Indian child's tribe, or an institution for children approved by an Indian tribe or operated by an Indian organization. (7-1-98)T

581. FACILITIES OPERATED BY THE STATE.

Facilities operated by the State and providing care for children pursuant to these rules shall meet the standards for child care licensure. (7-1-98)T

582. -- 599. (RESERVED).

600. 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. (7-1-98)T

601. PAYMENT TO FAMILY FOSTER CARE PROVIDERS.

Monthly payments for care provided by foster care families are:

Family Foster Care Payments - TABLE 601			
Ages	0-5	6-12	13-18
Monthly Room and Board	\$228	\$250	\$358

(7-1-98)T

01. Gifts. An additional thirty dollars (\$30) for Christmas gifts and twenty dollars (\$20) for birthday gifts shall be paid in the appropriate months. (7-1-98)T

02. Clothing. Costs for clothing shall 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. (7-1-98)T

03. School Fees. School fees due upon enrollment shall be paid, based upon the Department's determination of the child's needs. (7-1-98)T

602. SPECIALIZED FOSTER CARE.

For those children who require additional care above room, board, shelter, daily supervision, school supplies,

personal incidentals, the Department may pay the foster care provider an additional amount for specialized foster care above the basic foster care rate. Payment will be made as follows: (7-1-98)T

01. Lowest Level of Need for Specialized Care. Ninety dollars (\$90) per month for children requiring a mild degree of specialized care for documented conditions including but not limited to: (7-1-98)T

- a. Chronic medical problems; (7-1-98)T
- b. Frequent, time-consuming transportation needs; (7-1-98)T
- c. Behaviors requiring extra supervision and control; or (7-1-98)T
- d. Need for preparation for independent living. (7-1-98)T

02. Moderate Level of Need for Specialized Care. One hundred fifty dollars (\$150) per month for children requiring a moderate degree of specialized care for documented conditions including but not limited to: (7-1-98)T

- a. Ongoing major medical problems; (7-1-98)T
- b. Behaviors that require immediate action or control; or (7-1-98)T
- c. Alcohol or drug abuse. (7-1-98)T

03. Highest Level of Need for Specialized Care. Two hundred forty dollars (\$240) per month for children requiring an extraordinary degree of specialized care for documented conditions including but not limited to: (7-1-98)T

- a. Serious emotional disturbance; (7-1-98)T
- b. Severe developmental disability; or (7-1-98)T
- c. Severe physical disability such as quadriplegia. (7-1-98)T

04. Reportable Income. Specialized care payments for more than ten (10) qualified foster children received during any calendar year must be reported as income to the Internal Revenue Service. (7-1-98)T

603. -- 609. (RESERVED).

610. PROFESSIONAL FOSTER CARE.

Placement in professional foster care for children who require professional care for clinically diagnosed emotional, behavioral and/or physical problems shall be based upon the documented needs of each child, including the inability of less restrictive settings to meet the child's needs and a determination that the child would require a more restrictive setting if professional foster care were not available. (7-1-98)T

01. Qualifications. At least one (1) parent shall possess a master's or higher degree in a human service field or a bachelor's degree with three (3) years of experience in a human service delivery setting or be otherwise licensed or certified to provide specialized social and medical care to children, and neither parent shall be a Department employee. (7-1-98)T

02. Payment. Payment shall be made through a professional services contract with the Department for a basic rate and cost for social services total of one thousand dollars (\$1,000) per month per child. (7-1-98)T

03. Treatment Plan. The professional foster parents shall implement a treatment plan, developed in conjunction with the child's family services worker, for each child in their care. (7-1-98)T

611. 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. (7-1-98)T

01. Referral - Group Foster Care. Referral of a child to a group foster care facility shall be authorized by the Family and Children's Services Manager or designee. (7-1-98)T

02. Placement. Placement shall be based on the documented service needs of each child and the ability of the group care provider to meet those needs. (7-1-98)T

03. Payment - Group Foster Care. Payment shall be pursuant to contract authorized by the regional director or division administrator, based on the needs of the children being placed and the services to be provided. (7-1-98)T

612. -- 619. (RESERVED).

620. INTENSIVE TREATMENT FACILITIES.

Children with serious emotional and/or behavior disturbance may be placed in individualized day treatment or residential care. (7-1-98)T

01. Referral - Intensive Treatment. Referral of a child to an intensive treatment facility shall be authorized by the regional director or designee. (7-1-98)T

02. Payment - Intensive Care. When care is purchased by private providers, payment shall be made pursuant to a contract authorized by the regional director or division administrator, 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 shall be arranged in cooperation with Department fiscal officers. (7-1-98)T

621. -- 629. (RESERVED).

630. FOSTER CARE MAINTENANCE PAYMENTS.

Foster care maintenance payments shall be made only on behalf of an eligible child who is in a licensed family foster home of an individual, in an approved relative's home, in a public or private child care institution, in a home licensed, approved or specified by the 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, to a public or private child placement of child care agency. For Title IV-E purposes, payments for foster care maintenance, whether at regular or specialized rates, are limited to the following: (7-1-98)T

01. Maintenance of Child. The cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, personal incidentals, liability insurance for the child, and reasonable travel to the child's home for visitation. (7-1-98)T

02. Administrative Costs. Reasonable costs of administration and operation of an institution necessarily required to provide the maintenance of the child. (7-1-98)T

03. Exclusions. No Title IV-E reimbursement is available for children placed in detention facilities, forestry camps, training schools or any other facility operated primarily for the detention of delinquent children. (7-1-98)T

631. -- 639. (RESERVED).

640. PAYMENT IN THE HOME OF A RELATIVE.

A child living with a relative may be eligible for a TAFI grant and/or Title XIX benefits. This will be considered first. No additional room and board payment or foster care payment may be made if the child is receiving TAFI. A foster care payment may be made if the relative is not legally responsible for the support of the child and the child is in the legal custody of the Department. (7-1-98)T

641. CHILDREN'S MENTAL HEALTH SERVICES.

01. Services Provided. Section 16-2402, Idaho Code, designates the Department as the lead agency in establishing and coordinating community supports, services, and treatment for children with serious emotional disturbances and their families. The goals of services are safety of the child and family and individualized treatment in the least restrictive and most normalized setting possible for the child. Successful outcome indicators include, but are not limited to: (7-1-98)T

- a. The child is living in his or own home community; (7-1-98)T
- b. The child's primary relationships and social identity is with positive peers; (7-1-98)T
- c. The child attends and participates in his or her school regularly; (7-1-98)T
- d. The child's life is free of critical incidents which endanger him or her and/or others; and (7-1-98)T
- e. The child has no involvement with the juvenile corrections system. (7-1-98)T

02. Use of Public Funds and Benefits. Public funds and benefits will be used to provide services for children with serious emotional disturbances and their families who are most in need of services. Services should be planned and implemented to maximize the support of the family's ability to provide adequate safety and well-being for the child at home. If the child cannot receive adequate services within the family home, community resources shall be provided to minimize the need for institutional or other residential placement. Services shall be individually planned with the family to meet the unique needs of each child and family. Services shall be provided without requiring that parents relinquish custody of their child. (7-1-98)T

642. SERVICES TO BE PROVIDED.

In addition to those services cited in Sections 040 and 050, the Department provides and/or financially supports a continuum of services for seriously emotionally disturbed children and their families.

(7-1-98)T

01. Family and Community-Based Services. Services include, but are necessarily limited to therapeutic support services such as screening, intake, risk assessment, comprehensive assessment/evaluation, crisis and emergency intervention, psychiatric, individual, group and family therapy, family preservation, companions, day treatment, crisis respite care, therapeutic foster care, case management, and psychosocial rehabilitation services, both group and individual. (7-1-98)T

02. Out-of-Home Residential Services. Services which include, but are necessarily limited to: therapeutic group home, residential treatment, State hospital and psychiatric hospitalization. (7-1-98)T

03. Transition Services. Planning with youths and their families as the youths approach age eighteen (18) ensure that the youths with a serious emotional disturbance will receive services, as adults, that they need and for which they are eligible. (7-1-98)T

04. Community Education and Outreach. These activities assure that citizens in each community are aware of what issues affect children's mental health as well as what children's mental health services are available within the community, both publicly and privately funded. (7-1-98)T

643. CHARGES TO PARENTS.

Parents of children with serious emotional disturbances who are receiving services from the Department's Family and Children's Services program, are responsible for paying for services provided to their child and to their family. The amount charged for each service shall be in accordance with the parents' ability to pay as determined by a sliding fee scale. In addition, liable third-party sources including, but not limited to, private insurance and Medicaid must be included in determining the ability to pay for services that the parent and child are receiving. When a child is placed in alternate care, parents are responsible for costs associated with the care of their child or children. The family will be referred to Child Support Services for determination of fees associated with out-of-home-care and for payment arrangements according to Sections 436 through 440. (7-1-98)T

644. FEE DETERMINATION FOR SERVICES OTHER THAN ALTERNATE CARE.

Parent(s) or guardians must complete a voluntary application for service and complete a "Fee Determination Form" prior to the delivery of services. The fee determination process includes the following features: (7-1-98)T

- 01. Ability to Pay. Charges are based upon the number of dependents and family income. (7-1-98)T
 - a. An ability to pay determination will be made at the time of the voluntary request for services or as soon as possible. (7-1-98)T
 - b. Redetermination of ability to pay will be made at least annually or upon request of the parents or at any time changes occur in family size, income or allowable deductions. (7-1-98)T
 - c. In determining the family's ability to pay for services, the Department shall deduct annualized amounts for: (7-1-98)T
 - i. Court-ordered obligations; (7-1-98)T
 - ii. Dependent support; (7-1-98)T
 - iii. Child care payments necessary for parental employment; (7-1-98)T
 - iv. Medical expenses; (7-1-98)T
 - v. Transportation; (7-1-98)T
 - vi. Extraordinary rehabilitative expenses; and (7-1-98)T
 - vii. State and federal tax payments, including FICA taxes. (7-1-98)T
 - d. Information regarding third-party payors and other resources including Medicaid or private insurance must be identified and developed in order to fully determine the parents' ability to pay and to maximize reimbursement for the cost of services provided. (7-1-98)T
 - e. It is the responsibility of the parent(s) to obtain and provide information not available at the time of the initial financial interview whenever that information becomes available. (7-1-98)T
- 02. Time of Payment. Normally charges for services will be due upon delivery of the service unless other arrangements are made, such as for monthly billing. (7-1-98)T
- 03. Charges. An amount will be charged based on family size, resources, income, assets and allowable deductions, exclusive of third-party liable sources, but in no case will the amount charged exceed the cost of the services. (7-1-98)T
- 04. Sliding Fee Scale. Fees will be charged on a sliding scale and based on the current Poverty Guidelines published in the Federal Register. Incomes below the five percent (5%) level are not to be charged. The fee schedule will be available in the regional offices of Family and Children's Services. (7-1-98)T
- 05. Established Fee. The maximum hourly fees or flat fees charged for children's mental health services are shown in the following Table:

Table 644. Hourly Charges for Children's Mental Health Services		
		Hourly Charge
a.	Psychosocial Rehabilitation Services	

Table 644. Hourly Charges for Children's Mental Health Services		
i.	Individual Psychosocial Rehabilitation	\$74
ii.	Group Psychosocial Rehabilitation	\$18
iii.	Rehabilitative Evaluation	\$74
iv.	Task Plan Development	\$74
v.	Community Crisis Support	\$74
vi.	Psychopharmacological Management	\$32
vii.	Psychological Test	\$63
viii.	Medical Report (new)	\$63
ix.	Medical Report (past record)	\$63
x.	Consultation/Collateral	\$63
xi.	Crisis Intervention (at Emergency Room)	\$74
xii.	Diagnostic Interview/Screening	\$63
b.	Psychotherapy	
i.	Individual	\$63 \$83*
ii.	Group Psychotherapy	\$24
iii.	Family Psychotherapy	\$63 \$77*
*M.D. rate		

(7-1-98)T

645. ACCESS TO SERVICES.

The Department will prioritize services to seriously emotionally disturbed children and their families. Services may be accessed through a voluntary application for services or through involuntary legal proceedings. When regional service capacity is reached, every effort will be made to obtain alternative services for the child and family. Their names will also be placed on a waiting list for Department services. (7-1-98)T

01. Response. The Department will respond to the following situations: (7-1-98)T

a. The Department will respond on a twenty four (24) hours a day, seven (7) days a week basis to reports of emergency conditions in which a child is considered to be in immediate danger involving a life-threatening situation. This would include dangerousness or risk of physical harm due to a mental illness and/or grave impairment. (7-1-98)T

b. The Department will also respond to reports of situations involving danger, but less than immediate harm. This would include situations in which parents refuse to seek services for a child with serious emotional disturbance and this neglect poses health hazards to the child that may result in physical injury or extreme emotional impairment. (7-1-98)T

02. Access Beyond Immediate Danger. In order to access publicly funded children's mental health services beyond the emergency conditions cited above, a child must be seriously emotionally disturbed, as defined in these rules. (7-1-98)T

03. Local Resources and Plan Development. Children with serious emotional disturbances and their families may have access to local resources and services which do not require placement outside their home into alternate care. A plan will be developed between the Department, the parent(s), the child, if appropriate, and the

service provider. This plan will be specific, measurable and objective in the identification of the goal(s), relevant issues, objectives and outcomes. (7-1-98)T

04. Payment for Treatment. When parent(s) request Department payment for a child's treatment, a signed service agreement must be negotiated and signed by the parent(s). In addition, a referral will be made to Child Support Services to collect payment for the cost of out-of-home care. (7-1-98)T

646. -- 699. (RESERVED).

700. ADOPTION SERVICES POLICY.

Where reasonable efforts to reunite or preserve a family are unsuccessful, or where relinquishment is requested by the parents, the Department shall consider whether termination of parental rights is appropriate. The Department shall ensure that any child legally free for adoption is placed in an appropriate adoptive home, with a family that can support the racial, ethnic or cultural identity of the child, and to cope with any forms of discrimination the child may experience. (7-1-98)T

701. SERVICES TO BE PROVIDED IN ADOPTIONS.

In addition to the family services provided in accordance with these rules, the Department shall provide the following: (7-1-98)T

01. Response to Inquiries. Written or personal inquiries from prospective adoptive families shall be answered within two (2) weeks. (7-1-98)T

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. (7-1-98)T

03. Compliance with Multi-Ethnic Placement Act and Interethnic Placement Act. Selection of the most appropriate adoptive family consistent with the Multi-Ethnic Placement Act and Interethnic Placement Act, if the child is not an Indian. (7-1-98)T

04. (Pre-placement) Home Study. An adoptive home study to ensure selection of an appropriate adoptive home. (7-1-98)T

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 his birth parents and assisting the child with the transition into an adoptive home. (7-1-98)T

06. Technical Assistance. Assistance in completing the legal adoption, including compliance with the Indian Child Welfare Act. (7-1-98)T

07. Adoption Assistance. A determination of eligibility for adoption assistance shall be made for each child placed for adoption through the Department prior to the finalization of his adoption. Eligibility for adoption assistance is determined solely on the child's need. No means test shall be applied to the adoptive family's income or resources. Once eligibility is established, the Division shall 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. (7-1-98)T

08. Period of Support Supervision. Once a child is placed with an adoptive family, a period of support and supervision by the Department of at least six (6) months shall occur prior to the finalization of the adoption. This supervisory time shall be to assist the child and the adoptive parents in their adjustment to each other, to assure the adoptive family is knowledgeable regarding needed services in their community, and to educate the family regarding the child's eligibility for adoption assistance benefits. If the child has been a foster child placed with the family for a period of at least one (1) year, the family may submit a written request to the Family and Children's Services to waive the standard support period. (7-1-98)T

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. Children with adoption assistance 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 shall serve as a formal application for services in Idaho. Applications for Medicaid are made through Central Office. (7-1-98)T

702. -- 709. (RESERVED).

710. FAMILY HISTORY.

In order to plan successfully for the future of any child in the legal custody or guardianship of the Department, the Department needs to elicit as much information as possible about the child's family and history. This will involve obtaining all social, medical and genetic information available and interviewing the parents and any extended family for this purpose. If the family case plan proceeds to termination and adoption is considered a part of the total planning for the child, the following information shall be obtained with a copy submitted to Central Office: (7-1-98)T

01. Informational Forms. Informational background forms regarding the birth mother, birth father, and the child. (7-1-98)T
02. Hospital Records. Hospital birth records on child. (7-1-98)T
03. Evaluations/Assessments. Evaluations/Assessments previously completed on child. (7-1-98)T
04. Current Picture. Current picture of child. (7-1-98)T
05. Narrative Social History. Family and Child's Narrative Social History that addresses: (7-1-98)T
 - a. Family dynamics and history; (7-1-98)T
 - b. Child's current functioning and behaviors; (7-1-98)T
 - c. Interests, talents, abilities, strengths; (7-1-98)T
 - 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; (7-1-98)T
 - e. Life story, moves, reasons, key people; (7-1-98)T
 - f. Child's attachments to current caretakers, siblings and significant others; i.e., special friends, teachers, etc.; (7-1-98)T
 - g. Medical, developmental and educational needs; (7-1-98)T
 - h. Child's history, past experiences, and previous trauma; (7-1-98)T
 - i. Indian child's membership or eligibility for membership in tribe(s); (7-1-98)T
 - j. Membership or eligibility for membership in, and social and cultural contacts with, tribe(s) of parent(s), if any, including names and addresses of extended family and membership in tribe(s); (7-1-98)T
 - k. Indian child's contacts with tribe(s); (7-1-98)T
 - l. Individualized recommendations regarding each child's need for permanency; and (7-1-98)T
 - m. Reasons for requesting termination of parental rights. (7-1-98)T

711. APPROVAL PROCESS.

The social history is to be prepared in triplicate, with one (1) copy retained in the Field Office. The original and one

(1) copy, together with the certified birth certificate, picture and other pertinent documents are to be forwarded to the Division's Regional Family and Children's Services Program Manager or designee for approval. Any recommendation to the Family and Children's Services Program Manager regarding the termination of parental rights shall be based on the outcome of a team decision making process. One (1) copy of the history and all the supporting documents will be forwarded by the Family and Children's Services Program Manager to the State Adoption Program Specialist if termination procedures are authorized prior to the filing of the petition for termination of parental rights.

(7-1-98)T

712. DECISION ON PROPOSED TERMINATION.

The Department's Regional Family and Children's Services Program Manager or designee shall notify the Field Office in writing of the decision authorizing the proposed termination. If the Field Office is authorized to file a petition, a copy of all pleadings, reports to the court and related documents and the court order shall be placed in the child's permanent record.

(7-1-98)T

713. TERMINATION OF PARENT-CHILD RELATIONSHIP.

The severing of the parent and child relationship is of such vital importance that it requires a judicial determination separate and apart from other issues. No petition may be filed under the Termination Act by the Department without prior written authorization from the regional staff person delegated this authority. Once authorization is given, a copy of the approval shall be sent to the Central Office adoptions unit. Under the Act, the Magistrate's Division of the District Court has jurisdiction in proceedings to terminate the parent-child relationship involuntarily (upon due process without the consent of the parents), or voluntarily (with the consent of the parents). Conditions under which termination may be granted are set forth in Section 16-2005, Idaho Code.

(7-1-98)T

714. VOLUNTARY TERMINATION.

The Termination Act provides a method for the voluntary relinquishment of a child by the birth parent(s). The Act sets forth in Section 16-2005(f), Idaho Code, the manner and form of the consent. The Department becomes involved in voluntary terminations when a parent or parents request the Department to place their special needs child or children for adoption and when voluntary termination is a goal in the family case plan. Parents requesting placement of a potentially healthy unborn or healthy newborn child should be referred to the licensed private adoption agencies in Idaho.

(7-1-98)T

715. VOLUNTARY CONSENT.

In obtaining a parent's consent to terminate their parental rights through the Department the form: "Consent to Terminate Parental Rights and Waiver of Rights to Hearing must be signed before the Magistrate Judge. Once the parent's consent has been given before the court, a corresponding petition under the Termination Act must be filed by legal counsel representing the Department.

(7-1-98)T

716. VOLUNTARY TERMINATION OF PARENTAL RIGHTS TO AN INDIAN CHILD.

Consent to voluntary termination of parental rights by the parent or Indian custodian of an Indian child shall not be 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:

(7-1-98)T

01. Explanation of Consent. The terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian; and

(7-1-98)T

02. Interpretation if Necessary. The parent or Indian custodian fully understood the explanation in English or it was interpreted into a language the parent or Indian custodian understood.

(7-1-98)T

717. FILING OF PETITION FOR VOLUNTARY TERMINATION.

The petition for a voluntary termination of parental rights shall be filed by an authorized agency, by the guardian 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.

(7-1-98)T

718. REPORT TO COURT - VOLUNTARY TERMINATION.

If a voluntary consent to termination has been signed by the parents 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, pursuant to Section 16-2008(b), Idaho Code.

(7-1-98)T

719. INVESTIGATION.

An investigation of the allegations in the petition and a report recommending disposition of the petition under the Termination Act shall 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 not to repeat the allegations in the petition but to determine if they are verified based on all available sources, including the petitioner, birth parents and possibly the extended birth family of the child. The Report to the Court under the Termination 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 qualified individual, prior to adjudication and disposition. If the Department is the petitioner, the report shall accompany the petition. Reports submitted under the Termination Act based on the birth parents' voluntary consent shall include:

(7-1-98)T

01. Description of Investigation. The circumstances of the petition and the facts determined from the investigation; and

(7-1-98)T

02. Child-Related Factors. Child related factors, including:

(7-1-98)T

a. Child's current functioning and behaviors;

(7-1-98)T

b. Medical, educational and developmental needs of the child;

(7-1-98)T

c. Child's history and past experiences;

(7-1-98)T

d. Child's identity needs;

(7-1-98)T

e. Child's interests and talents;

(7-1-98)T

f. Child's attachments to current caretakers and any absent parent;

(7-1-98)T

g. Child's current living situation;

(7-1-98)T

h. Indian child's membership or eligibility for membership in tribe(s);

(7-1-98)T

i. Indian child's contacts with tribe(s);

(7-1-98)T

j. The present circumstances, history, condition and desire of the parent whose rights are being terminated regarding plans for the child;

(7-1-98)T

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

(7-1-98)T

l. A recommendation and reasons as to whether or not the termination of the parent and child relationship should be granted.

(7-1-98)T

720. 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 of Health and Welfare, Division of Family and Community Services, a report is required pursuant to Section 16-2008(b), Idaho Code. Reports submitted under the Termination Act based on an involuntary termination of parental rights shall include:

(7-1-98)T

01. Allegations. The allegations contained in the petition.

(7-1-98)T

02. Investigation. The process of the assessment and investigation.

(7-1-98)T

03. Family Circumstances. The present condition of the child and parents, especially the circumstances of the parent whose rights are being terminated and contact with the parents of a minor parent, unless lack of contact is explained. (7-1-98)T

04. Medical Information. The information forms regarding the child, birth mother, and birth father shall 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. (7-1-98)T

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 birth family. (7-1-98)T

06. Absent Parent. Reasonable efforts made by the petitioner to locate the absent parent and provision of notification to an unmarried father of the paternity registry requirement pursuant to Section 16-1513, Idaho Code. (7-1-98)T

07. Planning. Proposed plans for the child consistent with:

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 (7-1-98)T

b. The Multi Ethnic Placement Act and Interethnic Placement Act and regulations prohibiting states from delaying or denying cross-jurisdictional adoptive placements with an approved family which shall include individualized documentation regarding this child's needs in permanent placement. (7-1-98)T

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: (7-1-98)T

a. Notification of the pending proceedings by registered mail with return receipt requested, to the parent or Indian custodian and the Indian child's tribe, or to the Secretary of the Interior if their identity or location cannot be determined; (7-1-98)T

b. Notification of the right of the parent or Indian custodian, 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; (7-1-98)T

c. Notification that if the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel; (7-1-98)T

d. Evidence, including identity and qualifications of expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child; (7-1-98)T

e. Recommendation. A recommendation and the reasons therefor as to whether or not termination of the parent and child relationship is in the best interest of the child; and (7-1-98)T

f. Upon the court's written decision to terminate parental rights, two certified copies of the "Findings of Fact, Conclusions of Law and Decree" are to be placed in the child's permanent record. (7-1-98)T

721. -- 749. (RESERVED).

750. APPLICATION TO BE ADOPTIVE PARENTS.

Each field office shall be responsible for compiling the names and addresses of adoptive applicants, 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. (7-1-98)T

01. Interviews with Potential Applicants. Initial interviews with groups of applicants or with individual families shall be scheduled promptly and shall be used to explain Department policies and procedures regarding adoptive placement, the kinds of children available, and the nature of the home study. The overall purpose of these interviews is to provide prospective adoptive parents with sufficient educational information to enable them to determine whether they wish to make application for a child and to provide the Department with sufficient information to determine whether they appear to meet general characteristics necessary to successfully parent a special needs child(ren). (7-1-98)T

02. Screening of Adoptive Applicants. Screening of the adoptive applicants will assist the agency or family services worker in assessing, on an individualized basis, the prospective adoptive parent's suitability to care for a specific child, or general description of children through: (7-1-98)T

a. The family's ability to form relationships and to bond with a specific child, or general description of children; (7-1-98)T

b. The family's ability to help the child integrate into the family; (7-1-98)T

c. The family's ability to accept the child's background and help the child cope with his or her past; (7-1-98)T

d. The family's ability to accept the behavior and personality of a specific child or general description of children; (7-1-98)T

e. The family's ability to nurture and validate a child's particular cultural, racial, and ethnic background; and (7-1-98)T

f. The family's ability to meet the child's particular educational, developmental or psychological needs. (7-1-98)T

751. -- 759. (RESERVED).

760. PSYCHOLOGICAL EVALUATION.

A psychological evaluation by a psychologist or a psychiatrist can be required by the family services worker when either parent has received or is currently receiving treatment for psychological problems or mental illness or when the family services worker feels that there are emotional problems in the family that merit evaluation. (7-1-98)T

761. DENIAL OF APPLICATION.

Following an initial interview, applicants who do not appear to meet the eligibility requirements at the time of initial application may be denied a full home study. The family services worker shall advise the applicants as to why they were ineligible for a full home study. The family may file an application and receive a home study at a later date. (7-1-98)T

762. APPLICATION AND DATA COLLECTION.

Following the initial interview, the application, medical forms, list of items to be verified and other pertinent information needed to complete the adoptive home study shall be given to the potential adoptive parents. (7-1-98)T

01. Interviews. Family assessment interviews as well as individual interviews must be held with the potential adoptive parents. (7-1-98)T

02. Home Study of Applicant. A full home study must then be made to determine the ability of the applicants to meet the needs of children available for adoption, and to determine the kind of child for whom they would be most suitable. For an Indian child, the study shall also determine the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or maintains social and cultural ties. (7-1-98)T

03. Submission of Completed Home Study. Once the adoptive home study has been initiated, the completion of the home study shall occur within three (3) months. The original and one (1) copy of the completed

home study and all supporting documentation must be submitted to the State Adoption Program Specialist immediately upon approval of the supervisor. (7-1-98)T

763. APPLICANT RESPONSIBILITIES.

It shall be the responsibility of adoptive applicants to keep the field office informed of any changes of circumstances, or of any subsequent decision against adoption. Applicants are to maintain contact with the Department on an annual basis. In the absence of contact from the adoptive applicants, the Department shall initiate contact on an annual basis to confirm the currency and accuracy of information in the files and the status of the application. The contact shall be verified by a written annual update to the adoption home study. (7-1-98)T

764. PRE-PLACEMENT ADOPTIVE HOME STUDY.

Upon application by a potential adoptive family, the family services worker shall conduct the pre-placement adoptive home study and issue the verification of positive recommendation where appropriate. The home study shall be completed prior to placement of any child for adoption in that home. (7-1-98)T

765. -- 769. (RESERVED).

770. ADOPTIVE HOME STUDIES.

Pre-placement home studies for Department adoption and for independent, relative and step parent adoptions shall document the following: (7-1-98)T

01. Residence. References who can verify 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. (7-1-98)T

02. Verification of Ages of Adopting Parents. Legal verification that the person 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 a birth parent, shall be accomplished by: (7-1-98)T

a. Viewing a certified copy of the birth certificate filed with the Bureau of Vital Statistics; or (7-1-98)T

b. 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, passport, visa, alien identification cards or naturalization papers. (7-1-98)T

c. If verifying documentation is not available, the report shall indicate the date and place of birth and reason for lack of verification. (7-1-98)T

03. Medical Examination. A medical examination, with the medical report form signed and dated by the examining physician. (7-1-98)T

04. Photograph. A photograph of the adopting family. (7-1-98)T

771. -- 779. (RESERVED).

780. FACTORS TO BE CONSIDERED IN DETERMINING SUITABILITY OF ADOPTIVE PARENTS.

01. Indian Child. For an Indian child, absent good cause to the contrary, the following preferences for placement under the Indian Child Welfare Act shall be followed: (7-1-98)T

a. Extended family; (7-1-98)T

b. Other members of the child's tribe; or (7-1-98)T

c. Other Indian families. (7-1-98)T

02. Needs of Adoptive Child. The primary eligibility factor in the review of adoptive parent eligibility

is the applicant(s)' ability to protect and promote the best interests of a child to be placed in their home. (7-1-98)T

03. Availability of Potential Adoptive Families. 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. (7-1-98)T

781. -- 789. (RESERVED).

790. FOSTER PARENT ADOPTIONS.

If a child has been in a foster home for a length of one (1) year or longer, and the foster parents want to be considered as adoptive parents, the same procedure will be followed and the same requirements will apply as with other adoptive applicants, including compliance with the Indian Child Welfare Act, the Multi-Ethnic Placement Act of 1994 and the Interethnic Placement Act of 1996. (7-1-98)T

791. -- 799. (RESERVED).

800. PLACEMENT OF THE CHILD.

The field office shall provide full confidential background information and discuss the child's history fully with the adopting parents prior to the placement. The disclosure of background information shall be confirmed at the time of placement by a written statement from the family services worker to the adoptive family which they will be asked to acknowledge and sign. A copy of this statement shall be provided to the adoptive family and one (1) copy will be kept in the child's permanent record. The child's record shall be reviewed by the placing region's Program Manager or designee prior to being forwarded to the supervising family services worker. The child's case record must be complete and transferred to the supervising family services worker at the time of placement. (7-1-98)T

801. -- 829. (RESERVED).

830. FEES FOR ADOPTIONS THROUGH THE DEPARTMENT.

The application fee covers the costs of processing the adoptive application and does not guarantee that the 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 special needs children, purchase of service fees, recruitment costs and placement fees for private agencies serving children who have special needs. Families who are not able to pay the costs associated with the Pre-placement Home Study, Supervisory reports, or the Report to the Court, may apply to the Regional Family and Children's Services Program Manager for waiver of the fees. (7-1-98)T

831. FEE SCHEDULE - ADOPTIONS THROUGH DEPARTMENT.

TABLE 831	
Service	Fee
General Information/Adoption Inquiries	No Charge
Health and Welfare Application:	
Couple	\$50
Single Parent	\$25
Second Placement or Reapplication	\$25
Criminal History Check for each adult in the home	\$34
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

TABLE 831	
Placement Supervision Fee - Charged at the time of placement	\$300
Closed Adoption Home Study/Court Report Retrieval Fee	\$50
Report to the Court Under the Termination Act	\$40 per hour

(7-1-98)T

832. PLACEMENT SUPERVISION - TRANSFER FROM OTHER PUBLIC AGENCY.

If a couple moves to Idaho after a child has been placed with them by the public agency in their former state of residence, courtesy supervision shall be provided at no charge. (7-1-98)T

833. PLACEMENT SUPERVISION - TRANSFER FROM OUT OF STATE PRIVATE AGENCY.

If a couple moves to Idaho after a child has been placed with them by a private agency in their former state of residence, the sending state agency shall arrange through the Interstate Compact for the Placement of Children, services through one (1) of Idaho's private, licensed adoption agencies, or a qualified individual approved for termination and adoption services. (7-1-98)T

834. -- 849. (RESERVED).

850. INDEPENDENT, RELATIVE AND STEPPARENT ADOPTIONS.

Independent adoptive placements shall be handled in accordance with Section 16-1506, Idaho Code. Persons petitioning to adopt a child should have initially completed a pre-placement home study that includes a positive recommendation for adoption. Proceedings to adopt a child shall be commenced by the filing of a petition by the person or persons proposing to adopt the child. Within five (5) days of receiving a petition to adopt a minor child by a person unrelated to the child or not married to a birth parent of the child, the court shall serve a copy of the petition on the Director. The court may also request the Department to conduct an investigation in the case of a relative or step parent adoption. The pre-placement investigation home study and the adoption investigation report to the court shall be completed by licensed staff of the Department, licensed staff of a qualified child-placing children's adoption agency, or a qualified individual. (7-1-98)T

01. Adoptive Parent is Spouse of Birth Parent. Where the adoptive parent is married to the birth parent of the adoptive child, the Report to the Court under the Adoption Act shall be completed for the adoptive parent upon order of the court. (7-1-98)T

02. Exigent Circumstances. In exigent circumstances where the prospective adoptive parents are determined by the court to have been unable to complete the pre-placement study with a positive recommendation prior to the time the child is placed in the home, the child shall remain in the home unless the court determines that another placement is appropriate. When exigent circumstances exist, the pre-placement home study, combined with the adoption report under the Adoption Act, shall be initiated within five (5) days of placement. (7-1-98)T

03. Time Frame for Assessment. Once initiated, adoption studies/reports that meet the court's determination of exigent circumstances, shall be completed within sixty (60) days. (7-1-98)T

851. -- 859. (RESERVED).

860. PROCEDURES FOLLOWING THE ADOPTIVE PLACEMENT.

Following the placement there shall be a supervisory period of at least six (6) months before the initiation of legal adoption proceedings. The family services worker shall make scheduled monthly visits to the home 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 State Adoption Program Specialist, the Department shall request the adoptive parents to contact their attorney. The regional family services worker shall provide the attorney with the necessary documentation to file the petition for adoption. (7-1-98)T

861. PROGRESS REPORTS.

Progress reports shall be prepared regularly and shall be based on the family services worker's findings. (7-1-98)T

01. Initial and Subsequent Reports. The first progress report must be made within two (2) weeks after placement, and subsequent progress reports must be made at intervals not to exceed thirty (30) days. These reports shall include: (7-1-98)T

a. The family services worker's observation of the child and the prospective adopting parents, with emphasis on: (7-1-98)T

b. Special needs/circumstances of child(ren) at time of placement; (7-1-98)T

c. Services provided to child(ren) and family during report period; (7-1-98)T

d. Services to be provided to child(ren) and family; (7-1-98)T

e. General appearance and adjustment of child(ren) during report period (may include eating, sleep patterns, responsiveness, bonding); (7-1-98)T

f. School/day care/day treatment program adjustment; (7-1-98)T

g. Health/developmental progress, medical practitioner information; (7-1-98)T

h. Has the child(ren) been accepted for coverage on family's medical insurance? When can coverage begin? Will there be any limitations/exclusions?; (7-1-98)T

i. Family's adjustment to adoptive placement; (7-1-98)T

j. Whether respite care is a need for the family; (7-1-98)T

k. Changes in family situation or circumstances; (7-1-98)T

l. Areas of concern during report period as addressed by both child(ren) and adoptive parents; and (7-1-98)T

m. Date of next required six (6) month review or twelve (12) month permanency hearing; (7-1-98)T

02. Monthly Foster Care Payments - Pre-Adoptive Placement. During the period pending completion of adoption, the adoptive parents can be approved through the adoptive home study as licensed foster parents to cover on-going medical expenses and monthly foster care payments may be made for a special needs child until an adoption assistance payment is approved and the adoption finalized. (7-1-98)T

03. Adoptive Study Sufficient. An approved adoption study completed by the Department of Health and Welfare or a licensed children's adoption agency is sufficient to meet the requirements of a foster home license. (7-1-98)T

04. Final Progress Report. The final report shall include pertinent information about the readiness of the child and the family for completion of the adoption. The family's decision to apply for adoption assistance benefits for the child should be documented. The family's attorney who will be handling the finalization of the adoption should be identified. The family's health insurance carrier should be identified, along with the date the child's medical coverage will begin. An up-to-date medical report on the child must be obtained from the child's physician, so that the Department will have current information about the health of the child. Any problem in placement shall be brought to the attention of the Family and Children's Services Program Manager. (7-1-98)T

862. REPORT TO THE COURT - ADOPTION ACT.

When the family and the child who was placed for adoption in that home are ready to finalize the adoption, the family's attorney shall file a petition to adopt with the court. A copy of that petition shall be 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 qualified individual shall verify 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. (7-1-98)T

01. Registration and Acknowledgment. Upon receipt of the petition to adopt, the field office shall register it and acknowledge receipt to the court and to the petitioners or private adoption agency. If the licensed adoption agency or qualified individual which completed the pre-placement home study is not identified, that information should be obtained from the petitioner's attorney. The register shall 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. (7-1-98)T

02. Initial Interview. Upon receipt of the petition, the family services worker or qualified individual shall arrange an initial interview with the adopting family. (7-1-98)T

03. Time Frame for Investigation. If the family services worker or qualified individual is unable to complete the study within thirty (30) days, an extension of time shall be requested in writing of the court, stating the reasons for the request. If the family services worker suspects that the child is of Indian heritage and the child's tribe or the Secretary has not been notified, the family services worker shall inform the court and the independent agency of the need to comply with the Indian Child Welfare Act. (7-1-98)T

04. Medical Information. A copy of medical and genetic information compiled in the investigation shall be made available to the adopting family by the family services worker or qualified individual prior to the final order of adoption. (7-1-98)T

863. ADOPTION REPORT TO THE COURT.

The completed report to the court shall be filed with the adoptive family's pre-placement home study. The adoption report to the court shall contain the following: (7-1-98)T

01. Verification of Allegations. The family services worker shall review the documentary evidence presented by the petitioners to verify the allegations contained in the petition. The family services worker shall record the information and source in the report to the court, noting any discrepancies found. Such documentary evidence shall include but is not limited to, birth or death certificates from the Bureau of Vital Statistics, consents of both birth parents, termination decrees and divorce decrees, compliance with the Indian Child Welfare Act and/or the Interstate Compact on the Placement of Children. Where necessary documentation is not made available to the family services worker, this fact shall be recorded, including the reason. (7-1-98)T

02. 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; that an Indian child's parent or Indian custodian, and tribe have received notice of their right to intervene; and that consent has been secured for all persons from whom it is required, to make the child legally available for adoption. (7-1-98)T

03. Confidentiality of Information. The family services worker shall exercise caution in discussing identifying information and avoid revealing that information in the petition while attempting to secure the necessary facts for the study. (7-1-98)T

04. 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 shall record such alleged relationship and specify the documentary evidence the petitioners have of that relationship. (7-1-98)T

05. Needs of the Child. The study shall address the needs of the child in regards to the proposed adoption, including but not limited to: (7-1-98)T

a. The history of the child and the child's birth family; (7-1-98)T

b. The circumstances of the placement; and (7-1-98)T

c. The state of Idaho Social, Medical and Genetic History forms shall 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. (7-1-98)T

06. Appropriateness of the Adoptive Family. The study shall address the appropriateness of the family for the particular child or children who are the subject of the petition. (7-1-98)T

07. Evaluation and Recommendation. The family services worker shall provide a brief summary of data presented in prior sections and/or the pre-placement home study, supporting the recommendation regarding the adoption. (7-1-98)T

864. -- 869. (RESERVED).

870. REMOVAL OF A CHILD FROM AN ADOPTIVE HOME.

Despite careful assessment of the child and the family prior to placement, circumstances may arise which make it necessary to remove the child from the home prior to adoption. The child may manifest problems that 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 decision to remove a child from an adoptive home may result due to the request of the adoptive parents, or upon the decision of the Department as the legal guardian of the child. (7-1-98)T

01. Decision for Removal. The decision for removal may be made by the Department, the family or, in some cases, jointly. (7-1-98)T

02. Consultation. Consultation shall be requested promptly by the field office and a Department decision for removal against the parents' wishes must be approved and authorized in advance by the State Adoption Program Specialist. If a family services worker feels there is some question regarding an adoptive placement the family services worker is supervising, these questions must be discussed with the family services worker's supervisor and reported to the State Adoption Program Specialist. (7-1-98)T

03. Temporary Replacement After Disruption. When a disruption occurs and it becomes necessary to remove a child from an adoptive home, the field office where the child has been placed shall be 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 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. (7-1-98)T

871. PREFERENCES FOR TEMPORARY PLACEMENT - INDIAN CHILD.

Preferences for placement of an Indian child shall be observed in the temporary and permanent placement unless the child is being returned to the parent or Indian custodian from whose custody the child was originally removed. (7-1-98)T

872. -- 879. (RESERVED).

880. APPLICATIONS FOR SECOND PLACEMENT.

When adoptive applicants who are on the Department's waiting list receive a child, whether through the Department or as an independent placement, the study will be closed; and the applicants may reapply following the finalization of the previous adoptive placement if they so desire. (7-1-98)T

01. Reapplication Process. When an adoption has been previously successfully completed by the Department and the adoptive parents wish to reapply, they shall complete an adoption application and financial statement, and submit medical reports and four (4) references. (7-1-98)T

02. Update of Adoption Study. The prospective adoptive family shall assist in updating the original adoption study to include information concerning the acceptance and adjustment of the child previously placed in the home, a photograph of the family, including the child previously placed in the home, and their special request for second placement. (7-1-98)T

881. CLOSURE OF CASE.

The family services worker shall request from the adopting parents' 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. (7-1-98)T

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 shall be forwarded by the State Adoption Program Specialist to the Secretary of the Interior. (7-1-98)T

883. POST-LEGAL ADOPTION SERVICES.

Upon finalization of the adoption, the Department can offer post-legal adoption services upon request, including but not limited to, case management services, referrals for counseling or other supportive services. (7-1-98)T

884. OPENING SEALED RECORDS OF ADOPTIONS.

Pursuant to Section 16-1511, Idaho Code, upon the motion of petitioners, or upon its own motion the probate court will order that the record of its proceedings in any adoption proceeding must be sealed. When such order has been made and entered, the court must seal such record and thereafter the seal will not be broken except: (7-1-98)T

01. Motion of Petitioners. Upon the motion of petitioners or the person adopted. (7-1-98)T

02. Individual's Motion. Upon motion of an Indian individual who has reached the age of eighteen (18) and was the subject of an adoption, the court shall provide tribal affiliation, if any, of the individual's biological parents and other information necessary to protect any rights flowing from the individual's tribal relationship. (7-1-98)T

03. Other Request. 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 shall be made available. (7-1-98)T

04. Sealing Record. Such record can be sealed again. (7-1-98)T

885. -- 889. (RESERVED).

890. QUALIFIED INDIVIDUAL REQUIREMENTS.

Qualified individuals are family services workers as defined in these rules or others with related college degrees and professional experience, who have completed a minimum of twenty (20) hours of training in adoption services within the last four (4) years and who are certified by the Department. Certification will be for a period of four years. Individuals designated by the Indian child's tribe to perform these duties are not subject to these provisions. (7-1-98)T

01. Recertification. Qualified Individuals must apply for renewal of their certificate every four (4) years and provide documentation of twenty (20) hours of current adoption training during that period. (7-1-98)T

891. QUALIFIED INDIVIDUALS' CLIENT RELATIONSHIP.

Qualified individuals shall not assume a legal relationship with any child for whom they have been contracted to perform services. (7-1-98)T

892. MINIMUM STANDARDS FOR SERVICE.

Standards for home studies, court reports, and supervisory services must, at a minimum, meet the standards for adoption services provided through the Department. (7-1-98)T

893. RECORDS OF THE QUALIFIED INDIVIDUAL.

Records of the home studies, court reports, and supervisory reports provided by the qualified individual must be made available to the regional Family and Children's Services program manager or designee one (1) week prior to the required court filing date. The regional designee will be responsible for monitoring of quality of the services provided. (7-1-98)T

894. FEES CHARGED BY THE DEPARTMENT.

Monitoring fees shall accompany the submission of the report and be paid directly to the Department through the Family and Children's Services' regional office as follows:

Home study or Court Report	\$50.00
Supervision Report	\$30.00

(7-1-98)T

895. DEPARTMENT RESPONSIBILITY TO QUALIFIED INDIVIDUAL.

The regional Family and Children's Services designee will review the reports provided within a timely manner to insure filing of documentation by required court date by the qualified individual.

(7-1-98)T

896. -- 899. (RESERVED).

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 Service's, the Division shall respond with a determination of the child's eligibility within forty-five (45) days.

(7-1-98)T

01. Determination of Need for Assistance. The Bureau of Children's Services shall determine whether a child is a child with special needs or is currently being adopted by a relative of a specified degree. A child must be eligible for Aid to Families with Dependent Children (AFDC), Title IV-E Foster Care or Supplemental Security Income (SSI), and meet the 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).

(7-1-98)T

02. Factors Considered. The definition of special needs includes the following factors: (7-1-98)T

a. The child cannot or should not be returned to the home of the parents; and (7-1-98)T

b. The child has a physical, mental, emotional or medical disability, or is at risk of developing such disability based on known information regarding the birth family and child's history, or (7-1-98)T

c. The child's age makes it difficult to find an adoptive home; or (7-1-98)T

d. The child is a member of a sibling group that must not be placed apart; or (7-1-98)T

e. The child has established such close emotional ties with a foster family that replacement is likely to be as traumatic to the child as removal from a natural family; and (7-1-98)T

f. Except in cases of foster parent adoption, the child must have been listed with a state, regional or national adoption exchange. (7-1-98)T

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.

(7-1-98)T

902. -- 909. (RESERVED).

910. TYPES AND AMOUNTS OF ASSISTANCE.

The needs of the child and the family, including any other children in the family, shall be considered in determining the amount and type of support to be provided. Assistance may include the following: (7-1-98)T

01. Nonrecurring Adoption Reimbursement. Payment for certain one (1) time expenses necessary to finalize the adoption may be paid when a family adopts a special needs child. They are defined as reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of state or federal law. They may include mileage and lodging involved in visiting the child before placement occurs. These expenses cannot be reimbursed if they are paid for the adoptive parents by other sources such as an employer. Documentation of expenses must be submitted. Costs are reimbursable up to two thousand dollars (\$2,000) per child and are entered on the Adoption Assistance Program Agreement. Families applying for Nonrecurring Adoption Reimbursement separate from the regular Adoption Assistance program must finalize the child's adoption before an Idaho Court in order for the contract to be valid. (7-1-98)T

02. Monthly Maintenance Payment. Financial assistance in the form of a monthly payment may be established to assist the adoptive family in meeting the additional expense of the child's special needs. The amount of the payment must be negotiated with the family by the adoption worker and shall not exceed the family foster care maintenance payment or Personal Care Services reimbursements for the care of the child, if so eligible, that would have been paid if the child had been in a foster family home in Idaho. Benefits shall continue until the child reaches eighteen (18) years, based upon an annual determination of continuing need. (7-1-98)T

03. Title XIX - Medicaid Coverage. Any special needs child for whom there is in effect an adoption assistance agreement shall also be eligible for medical coverage under Medicaid. Medicaid provides secondary coverage after the family's health insurance and other resources have been exhausted. Coverage may begin while the family meets the child's yearly deductible under the family's health care policy. Coverage may include routine medical costs or may be limited to costs related to specific medical problems of the child, and may be made until the child reaches the age of eighteen (18), based upon an annual determination of continuing need. (7-1-98)T

911. ADOPTION ASSISTANCE PROGRAM AGREEMENT.

A written agreement shall be negotiated and fully executed between the Department and adopting family prior to the finalization of adoption and implementation of benefits. (7-1-98)T

01. Agreement Specifications. The agreement shall specify the type and amount of assistance to be provided; the date for annual renewal and earlier renewal at the family's request; that renewal depends on availability of funds; and that payments shall begin after the final order of adoption is received by the Department. (7-1-98)T

02. Suspension or Termination of Adoption Assistance. Adoption assistance may be suspended or terminated if the adoptive family fails to complete the annual recertification process, the adoptive parent(s) no longer have financial responsibility for the child, the child is no longer receiving any financial support from the parents, or the child has reached the age of eighteen (18) years. (7-1-98)T

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 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. (7-1-98)T

04. Continuation of Eligibility for Adoption Assistance. Any child who was previously deemed eligible for adoption assistance payments in an adoption finalized after November 1, 1997, and who is again available for adoption because of disruption and dissolution of their adoption or the death of their adoptive parents will continue to be eligible for adoption assistance in any subsequent adoption. (7-1-98)T

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. 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. The Division of Family and Community Services shall determine eligibility based on the eligibility factors determining a special needs child that were in effect at the time of the child's adoption. 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. The adoptive family may request a fair hearing for adoption assistance IV-E eligibility determination. The determinations to be made at this hearing are whether extenuating circumstances exist and/or whether the family was wrongly denied eligibility. 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. (7-1-98)T

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. (7-1-98)T

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. (7-1-98)T

923. -- 999. (RESERVED).

IDAPA 18 - DEPARTMENT OF INSURANCE
18.01.50 - ADOPTION OF 1994 UNIFORM FIRE CODE
DOCKET NO. 18-0150-9801
NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 1998.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule making. These rules are proposed pursuant to the authority vested in the Director of the Department of Insurance under Title 41, Chapter 2, Idaho Code and the State Fire Marshal under Section 41-254, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 1998.

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

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

The rule is being repealed in its entirety and will be replaced with a new rule adopting the 1997 Uniform Fire Code.

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

Protection of the public health, safety and welfare.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact Don McCoy, State Fire Marshal, at (208) 334-4370.

Anyone may submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and must be received on or before August 26, 1998.

Dated this 28th day of May, 1998.

Mary L. Hartung, Acting Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4202

THIS CHAPTER IS BEING REPEALED IN ITS ENTIRETY

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE
18.01.50 - ADOPTION OF 1997 UNIFORM FIRE CODE
DOCKET NO. 18-0150-9802
NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 1998.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule making. These rules are proposed pursuant to the authority vested in the Director of the Department of Insurance under Title 41, Chapter 2, Idaho Code, and the State Fire Marshal under Sections 41-253 and 41-254, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 1998.

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

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

Pursuant to Section 41-253, Idaho Code, the State Fire Marshal is adopting the 1997 version of the Uniform Fire Code, subject to certain amendments, and replacing the 1994 Uniform Fire Code.

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

Protection of the public health, safety and welfare.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact Don McCoy, State Fire Marshal, at (208) 334-4370.

Anyone may submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and must be received on or before August 26, 1998.

Dated this 28th day of May, 1998.

Mary L. Hartung, Acting Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720, Boise, ID 83720-0043
Telephone (208) 334-4202

TEXT OF DOCKET NO. 18-0150-9802

IDAPA 18
TITLE 01
Chapter 50

ADOPTION OF 1997 UNIFORM FIRE CODE

000. LEGAL AUTHORITY.

These rules are promulgated and adopted pursuant to the authority vested in the Director under Title 41, Chapter 2, Idaho Code. (7-1-98)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 18.01.50, Rules of the Idaho Department of Insurance, Title 01, Chapter 50, "Adoption of the 1997 Uniform Fire Code". (7-1-98)T

02. Scope. Pursuant to the authority provided by Section 41-253, Idaho Code, the Idaho Fire Marshal hereby adopts the 1997 edition of the Uniform Fire Code as published by the International Fire Code Institute in cooperation with the International Conference of Building Officials, Western Fire Chiefs Association and the International Association of Fire Chiefs, with the following revisions, additions, deletions and appendixes. (7-1-98)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(16)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of the chapter, or the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and each regional or district office of this agency. (7-1-98)T

003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". (7-1-98)T

004. -- 009. (RESERVED).

010. NEW CONSTRUCTION AND ALTERATIONS, SECTION 103.3.2.1. UNIFORM FIRE CODE.

Approval as a result of plan reviews shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Plans reviews presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the jurisdiction shall not be valid. (7-1-98)T

011. RECORD RETENTION, SECTION 104.3.2. UNIFORM FIRE CODE.

The fire department shall retain for not less than five (5) years a record of each investigation made showing the cause, the findings and disposition of each investigation. (7-1-98)T

012. -- 015. (RESERVED).

016. PERMIT REQUIRED, SECTION 105.8. UNIFORM FIRE CODE.

A permit, if required by the local jurisdiction, shall be obtained from the designated official prior to engaging in activities requiring a permit within the local jurisdiction. (7-1-98)T

017. -- 019. (RESERVED).

020. DEFINITION OF CHIEF, SECTION 204. UNIFORM FIRE CODE.

Chief is the chief of the fire department serving the jurisdiction, the chief's authorized representative, or as appropriate the Idaho State Fire Marshal. (7-1-98)T

021. INSPECTION AND TESTING, SECTION 1001.5.2. UNIFORM FIRE CODE.

The chief is authorized to require periodic inspection and testing of fire sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems, portable fire extinguishers, smoke and heat ventilators, smoke removal systems and other fire protection or fire extinguishing systems or appliances. (7-1-98)T

01. Systems Shall Be Inspected And Tested As Follows: (7-1-98)T

a. Automatic fire extinguishing systems shall be inspected and tested at least annually, see the current edition of National Fire Protection Association Standard 25. (7-1-98)T

b. Fire alarm systems shall be inspected and tested at least annually, see the current edition of National Fire Protection Association Standard 72. (7-1-98)T

c. Standpipe systems shall be inspected and tested at least every five (5) years, see the current edition of National Fire Protection Association Standard 25. (7-1-98)T

02. Owner Of Property. An owner of a property or the authority having jurisdiction may establish a more stringent inspection and testing schedule. (7-1-98)T

03. Exceptions: (7-1-98)T

a. Automatic fire extinguishing equipment associated with commercial cooking operations when in compliance with Section 1006. (7-1-98)T

b. Systems in high rise buildings when in compliance with Section 1001.5.4. (7-1-98)T

04. Inspection And Test Results. All inspection and test reports shall be sent to the Chief by the contractor (person) doing the maintenance or inspection. Reports of inspections and tests shall be maintained on the premises and made available to the Chief when requested. (7-1-98)T

022. -- 025. (RESERVED).

026. INSTALLATION REQUIREMENTS, SECTION 1003.1.1. UNIFORM FIRE CODE.

Fire extinguishing systems shall be installed in accordance with the Uniform Fire Code and the current appropriate edition of the National Fire Protection Association Standards. (7-1-98)T

027. -- 030. (RESERVED).

031. STANDARDS, SECTION 1003.1.2. UNIFORM FIRE CODE.

Fire extinguishing systems shall comply with the Uniform Fire Code and the current appropriate edition of the National Fire Protection Association Standards. (7-1-98)T

032. -- 035. (RESERVED).

036. APPLICABILITY, SECTION 1007.1.1. UNIFORM FIRE CODE.

Fire Alarm systems shall be installed and maintained in accordance with the Uniform Fire Code and the current edition of National Fire Protection Association Standards 72. (7-1-98)T

037. DESIGN STANDARDS, SECTION 1007.3.1. UNIFORM FIRE CODE.

Fire Alarm systems, automatic fire detectors, emergency voice alarm communication systems and notification devices shall be designed, installed and maintained in accordance with the Uniform Fire Code and the current edition of National Fire Protection Association Standards 72. (7-1-98)T

01. Notification Devices. When fire alarm systems not required by the Uniform Fire Code are installed, the notification devices shall meet the minimum design and installation requirements for systems which are required by this code. Intent: (Non-required fire alarm systems shall provide the same level of occupant notification that required systems provide). (7-1-98)T

02. Partial Or Limited Detection Systems Are Allowed. If notification devices are provided, they must meet Subsection 037.01 above. (7-1-98)T

038. -- 040. (RESERVED).

041. FIREWORKS AND PYROTECHNIC SPECIAL EFFECTS MATERIAL ARTICLE 78, UNIFORM FIRE CODE.

Delete Sections 7801.3 through 7801.3.1.2, and Sections 7802.1 through 7802.4.3. (7-1-98)T

042. -- 045. (RESERVED).

046. UNDERGROUND TANKS OUT OF SERVICE FOR ONE YEAR, SECTION 7902.1.7.2.3. UNIFORM FIRE CODE.

Upon approval of the Chief underground tanks that comply with the performance standards for new or upgraded underground tanks set forth in Title 40 Section 280.20 or 280.21 of the Code of Federal Regulations may remain out of service indefinitely so long as they remain in compliance with the operation, maintenance and release detection requirements of the federal rule. (7-1-98)T

047. -- 050. (RESERVED).

051. TREATMENT SYSTEMS, SECTION 8003.3.1.3.5.1. UNIFORM FIRE CODE.

Upon approval of the Chief, emergency response kits recommended by the Chlorine Institute may be used for chlorine gas product leaks in lieu of the treatment system requirements of this section, as long as there are adequate responders immediately available, who are trained in their use and acceptable to the Chief. (7-1-98)T

052. -- 055. (RESERVED).

056. REFERENCES TO APPENDIX, UNIFORM FIRE CODE SECTION 101.8.

When this code references the appendix, the provisions of the appendix shall not apply unless specifically incorporated by reference. The following appendixes of the UFC are incorporated by reference: (7-1-98)T

01. Appendix II-A. Suppression And Control Of Hazardous Fire Areas. (7-1-98)T
02. Appendix II-C. Marinas. (7-1-98)T
03. Appendix II-F. Protected Above Ground Tanks For Motor Vehicle Fuel Dispensing Stations Outside Buildings. (7-1-98)T
04. Appendix II-J. Storage Of Flammable And Combustible Liquids In Tanks Located Within Below Grade Vaults. (7-1-98)T
05. Appendix III-A. Fire Flow Requirements For Buildings. (7-1-98)T
06. Appendix III-B. Fire Hydrant Locations And Distribution. (7-1-98)T
07. Appendix V-A. Nationally Recognized Standards Of Good Practice. (7-1-98)T
08. Appendix VI-A. Hazardous Materials Classifications. (7-1-98)T
09. Appendix VI-E. Reference Tables From The Uniform Building Code. (7-1-98)T

057. 1997 UNIFORM FIRE CODE.

The 1997 edition of the Uniform Fire Code, incorporated by reference, is adopted under Idaho Code, Section 67-5229. Copies of the 1997 Uniform Fire Code may be procured by writing the International Fire Code Institute, 5360 Workman Mill Road, Whittier, CA. 90601-2298. (7-1-98)T

058. COPIES.

Copies of the 1997 Uniform Fire Code are available for public inspection at the office of the State Fire Marshal, the State Law Library, and the State Legislative Council. (7-1-98)T

059. -- 999. (RESERVED).

IDAPA 22 - BOARD OF MEDICINE

22.01.01 - RULES OF THE BOARD OF MEDICINE FOR LICENSURE TO PRACTICE MEDICINE AND SURGERY AND OSTEOPATHIC MEDICINE AND SURGERY

DOCKET NO. 22-0101-9801

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 54-1806(2)(11) and Section 54-1806A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 20, 1998.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Amendments to 010 Definitions: purpose is to define "consultation" referred to by Idaho Code, Section 54-1804(1)(b) which provides an exemption for medical licensure in Idaho and is needed with the increase in the practice of telemedicine across state lines. For purposes of defining sexual contact, misconduct and exploitation of patients by physicians changes were made to the rule governing sexual contact.

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

Proposed fee increases are: Licensure by written examination and application fee from \$245 to \$300; Licensure by Endorsement fee from \$300 to \$400; Renewal of License to Practice Medicine (annual) fee from \$125 to \$150. Idaho Code, Section 54-1806(11), provides for reasonable fees through rules for administrative costs and costs incurred in enforcement of Chapter 18, Medical Practice Act. Increase in licensure and renewal fee needed to address the increase costs for disciplinary sanctions and enforcement, PLS hearings and anticipated costs for implementation and compliance to the Patient Freedom of Information Act effective 1/2000.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because proposed rule changes to define "consultation" was negotiated with representatives from the Idaho Medical Association and the Board of Medicine at the Association's request and proposed changes are acceptable to the Association. All Proposed rule changes (except for fee increase) was published in the Spring 1998 Newsletter and was sent to all licensees of the Board in May, 1998. To date the Board has not received requests for further changes to the proposed rule changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Darleene Thorsted at 334-2822.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 28, 1998.

DATED this 24th day of June, 1998.

Darleene Thorsted
Executive Director
Idaho State Board of Medicine
280 North 8th Street
PO Box 83720
Boise, ID 83720-0058
Phone: (208) 334-2822
Fax: (208) 334-2801

TEXT OF DOCKET NO. 22-0101-9801

010. DEFINITIONS.

01. Act. Title 54, Chapter 18, Idaho Code. (7-1-93)
02. Board. The Idaho State Board of Medicine. (7-1-93)
03. Acceptable School of Medicine. A medical school located within the United States or Canada and designated as an approved medical school by the Liaison Committee on Medical Education, or a school of osteopathy located within the United States and designated as an approved school of osteopathy by the American Osteopathic Association, or a medical school acceptable to the Board. (7-1-93)
04. License to Practice Medicine. A license to practice medicine and surgery, a license to practice osteopathic medicine and surgery and a license to practice osteopathic medicine. A license to practice osteopathic medicine is limited to those areas of medicine in which they were authorized to practice prior to the combining of the Board of Medicine and the Osteopathic Board. (7-1-93)
05. Applicant. Any person seeking a license to practice medicine from the Board. (7-1-93)
06. Original Certificate or Document. Unless otherwise specified, shall mean either the original document itself or a certified copy thereof. (7-1-93)
07. Consultation. For purposes of Idaho Code 54-1804(1)(b), "consultation" shall mean and include: ()
- a. An unlimited number of pap smears; ()
- b. Surgical pathology specimens and reports which do not exceed five (5) reports per month per physician; ()
- c. Radiology reports which do not exceed five (5) per month per physician; and ()
- d. Any second opinions or discussions occurring directly between an Idaho physician and another physician who is licensed in another State, which is not on a contractual basis and which occurs to confirm or assist the Idaho physician in the diagnosis and treatment plan for a patient located in Idaho. ()
- e. "Consultation" does not include situations in which an out-of-state physician has a contract to provide routine diagnostic or treatment services to patients located in Idaho. ()

(BREAK IN CONTINUITY OF SECTIONS)

052. LICENSURE BY WRITTEN EXAMINATION FOR GRADUATES OF MEDICAL SCHOOLS LOCATED OUTSIDE OF THE UNITED STATES AND CANADA.

01. Foreign Graduate. In addition to meeting the requirements of Section ~~02051~~, graduates of medical schools located outside of the United States and Canada must submit to the Board: (7-1-93)()
- a. An original certificate from the Educational Commission for Foreign Medical School Graduates or must submit documentation that the applicant has passed the examination either administered or recognized by the Educational Commission for Foreign Medical School Graduates; and IDAPA 22.01.01. (7-1-93)

b. Evidence directly from the foreign medical school which establishes to the satisfaction of the Board that the foreign medical school meets the standards for medical educational facilities set forth in Subsection 02-52.02; and (7-1-93)(____)

c. An Affidavit from the foreign medical school that to its knowledge no state of the United States has refused to license its graduates on the grounds that the school fails to meet reasonable standards for medical education facilities. (7-1-93)

d. A complete transcript from the medical school showing the courses taken and grades received. (7-1-93)

02. Requirements. A foreign medical school must meet and comply with the following requirements: (7-1-93)

a. The degree issued must be comparable to the degrees issued by medical schools located within the United States or Canada. (7-1-93)

b. If the foreign medical school issued its first M.D. degrees after 1975, the school must complete a standard questionnaire and a site visit or documented evidence of equivalent evaluation efforts acceptable to the Board is required. (7-1-93)

c. If the foreign medical school issued valid degrees prior to 1975, the Board, in its discretion may require completion of a standard questionnaire, a site visit, or both. (7-1-93)

d. A site visit of the school, when required, must be financed by the school. The visiting team shall consist of at least one (1) member of the Board; one (1) consultant, a clinical medical educator acceptable to the Board; one (1) consultant, a basic science educator acceptable to the Board; such administrative support personnel as deemed necessary. The school will be required to pay consultant fees and expenses. (7-1-93)

e. The Board may waive the site visit requirement if: (7-1-93)

i. A visiting team of the Federation of State Medical Boards has visited the campus and makes the results of its study available to the Board; or (7-1-93)

ii. Information assembled by a similarly or comparably constituted site visit team is available from another state licensing board; or (7-1-93)

iii. In the case of review for renewal of approval. (7-1-93)

f. The standard questionnaire will be the questionnaire of the Federation of State Medical Boards of the United States, Inc., covering legal authority to operate, ownership, history of operation, enrollment, programs, fees, educational program, administration, student characteristics, clinical teaching facilities, student affairs, faculty, finances, plant, library, basic sciences, graduate education, continuing education, research, and such other information as may be relevant. (7-1-93)

g. All schools approved by the Board will be subject to review of approval as deemed necessary by the Board, taking into consideration need and feasibility. (7-1-93)

h. The Board will review all available information in considering approval, including investigative reports by other states, national and international agencies, and may consider the comparative performance of graduates with those of other schools on standard examination. (7-1-93)

03. Postgraduate Training. The foreign medical school graduate must submit documentation that the applicant has satisfactorily completed three (3) years of postgraduate training in a program which is located in the United States or Canada, which is approved for such training by the Liaison Committee on Graduate Medical Education and which is conducted under the direction of an acceptable school of medicine; provided however, applicants who do not have an ECFMG certificate must also submit documentation that their three (3) years of

postgraduate training included at least one (1) academic year of supervised clinical training conducted under the direction of an acceptable school of medicine. (7-1-93)

04. ECFMG. The certificate from the Educational Commission for Foreign Medical School Graduates is not required if the applicant holds a license to practice medicine which was issued prior to 1958 in one (1) of the states of the United States and which was obtained by written examination. (7-1-93)

05. English Language. The foreign medical student applicant must be able to speak, write and read the English language. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

076. LICENSURE BY ENDORSEMENT.

01. Endorsement. A license to practice medicine may be granted by endorsement without written examination to an applicant (including an applicant who has graduated from a foreign medical school) who submits a completed written application to the Board on forms furnished by the Board, together with the necessary application fee. The application form shall be verified and in addition to the information required by ~~Subsection 0251-01~~ or Subsection 02452.02, as applicable, the following additional information shall be required: (7-1-93)(____)

- a. The employment history and practice location of the applicant; (7-1-93)
- b. Each state in which the applicant has applied for a license to practice medicine; (7-1-93)
- c. Each state wherein the applicant is licensed to practice medicine. (7-1-93)

02. Qualifications. The applicant must also have any one (1) of the following qualifications: (7-1-93)

a. The applicant is a diplomat of the National Board of Medical Examiners or the National Board of Examiners for Osteopathic Physicians and Surgeons; (7-1-93)

b. The applicant holds a valid, unrevoked, unsuspended license to practice medicine and surgery, or osteopathic medicine and surgery in a state, territory or district of the United States or Canada obtained after an equivalent written examination as required by ~~Subsection 02051.02~~; (7-1-93)(____)

c. The applicant has earned a D.O. degree issued after January 1, 1963, and holds a valid, unrevoked, unsuspended license to practice osteopathic medicine and surgery in an unlimited state, territory or district of the United States, which in the Board's opinion maintains standards equivalent to Idaho. The term "unlimited state" means a state where a composite examining board exists, where medical doctors and osteopaths take the same examination, and where a license to practice osteopathy includes authorization to practice unlimited medicine and surgery, these requirements being in effect at the time of licensure. (7-1-93)

03. Interview. Each applicant shall be personally interviewed by the Board or a designated committee of the Board. The interview shall include a review of the applicant's qualifications and professional credentials. (7-1-93)

04. Health Care Standards. In reviewing the application or conducting the applicant's interview, the Board shall determine whether the applicant possesses the requisite qualifications to provide the same standard of health care as provided by licensed physicians in this state. If the Board is unable to reach such a conclusion through the application and interview, it shall conduct further written or oral examination, or both, to establish such qualifications. (7-1-93)

a. If further written examination is required, the Board may require passage of Part 2 of the Federation Licensing Examination (FLEX) or the Specialty Purpose Examination (SPEX) prepared by the Federation of State

Medical Boards of the United States. (7-1-93)

- b. If further oral examination is required, the Board may utilize either of two (2) oral examinations: (7-1-93)
 - i. A test administered by a member of the Board testing responses to clinical situations, or (7-1-93)
 - ii. A test prepared by a physician practicing in the appropriate specialty, consisting of no less than twelve (12) questions selected to determine current clinical awareness. (7-1-93)
- c. The Board will require further written or oral examination when in its judgement the need is apparent, including but not limited to the following circumstances: (7-1-93)
 - i. Graduate of a foreign medical school not accredited by the Liaison Committee on Medical Education. (7-1-93)
 - ii. Applicant whose background investigation reveals evidence of impairment or competency deficit. (7-1-93)
 - iii. When the applicant has not been in active practice for a period exceeding one (1) year, or when practice has been significantly interrupted. (7-1-93)
 - iv. When the applicant has not written a recognized examination intended to determine ability to practice medicine within a period of five (5) years preceding application, or (7-1-93)
 - v. When the applicant received initial licensure on the basis of an examination not listed in ~~Subsection 04051-01~~ of this policy. (7-1-93)(____)
 - vi. When there is any reason whatsoever to question the identity of the applicant. (7-1-93)
- d. Oral Examinations will be administered by at least two (2) physicians, licensed in Idaho, at least one (1) a member of the Board. (7-1-93)
- 05. Examination. Failure to Pass Examination: (7-1-93)
 - a. When an applicant fails to pass the oral examination, he may be offered an opportunity to take a current clinical written examination acceptable to the Board. (7-1-93)
 - b. When an applicant fails to achieve a passing score in the clinical written examination, he may be offered an opportunity to write the Federation Licensing Examination, whether or not he has previously written this examination. (7-1-93)
 - c. Each applicant who has failed a licensing examination, a current competency written examination, or the Board oral examination, will be required to appear for a personal interview with the Board at a regularly scheduled meeting. (7-1-93)

077. TEMPORARY LICENSE.

01. Application for Temporary Licensure. Any applicant eligible to be licensed without written examination pursuant to Section ~~0276~~, may apply for a temporary license to practice medicine; however, any applicant who has failed to receive a passing grade in any written examination before a state, territorial or district licensing agency or before the National Board of Medical Examiners or the National Board of Examiners for Osteopathic Physicians and Surgeons is not eligible to apply for or to receive a temporary license. (7-1-93)(____)

02. File Completed Application. All applicants for a temporary license shall file a completed written application in accordance with Section ~~0276~~ and shall file with the Board an application for a temporary license fee and regular license fee. The temporary license application shall require a showing by the applicant of the necessity

and need for such a license. (7-1-93)()

03. Board Member. The chairman or designated member of the Board shall review the application for a temporary license and the application required by Section 0276 and shall interview the applicant. If he is of the opinion that the applicant possesses qualifications and credentials for a permanent license without written examination, and the applicant for the temporary license has made a showing of circumstances requiring immediate action that cannot be delayed, he may approve issuance of a temporary license. The temporary license shall bear the word "temporary" and will show the date of issuance and the date of expiration. The temporary license expiration date may be extended by the Board upon a showing of good cause. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

100. FEES. -- TABLE.

01. Fixed Fees -- Table. Fees by the Board shall be fixed as follows:

Written Examination and Application Fee plus costs of the examination.	\$ 245 300
Licensure by Endorsement Fee	\$3400
Temporary License	\$100
Reinstatement License Fee plus total of renewal fees not paid by applicant	\$100
Inactive License Renewal Fee	\$ 75
Renewal of License to Practice Medicine Fee	\$ 125 50
Reactivation License Fee	\$100
Oral Examination Fee	\$100
Duplicate Wallet License	\$ 10
Duplicate Wall License	\$ 25

(7-1-93)()

02. Administrative Fees for Services Shall Be Billed on the Basis of Time and Cost. (7-1-93)

101. ADDITIONAL GROUNDS FOR SUSPENSION, REVOCATION OR DISCIPLINARY SANCTIONS.

01. Discipline. In addition to the statutory grounds for medical discipline set forth in Idaho Code, Section 54-1814, every person licensed to practice medicine or registered as an extern, intern, resident or physician's assistant is subject to discipline by the board upon any of the following grounds: (7-1-93)

02. Unethical Advertising. Advertising the practice of medicine in any unethical or unprofessional manner, includes but is not limited to: (7-1-93)

a. Using advertising or representations likely to deceive, defraud or harm the public. (7-1-93)

b. Making a false or misleading statement regarding his or her skill or the efficacy or value of the medicine, treatment or remedy prescribed by him or her at his or her direction in the treatment of any disease or other condition of the body or mind. (7-1-93)

03. Standard of Care. Providing health care which fails to meet the standard of health care provided by other qualified physicians in the same community or similar communities, includes but is not limited to: (7-1-93)

a. Being found mentally incompetent or insane by any court of competent jurisdiction. (7-1-93)

b. Engaging in practice or behavior that demonstrates a manifest incapacity or incompetence to practice medicine. (7-1-93)

c. Allowing another person or organization to use his or her license to practice medicine. (7-1-93)

d. Commission of any act of sexual contact, misconduct, exploitation or intercourse with a patient or former patient or related to the licensee's practice of medicine. (7-1-93)

i. Consent of the patient shall not be a defense. ()

ii. Section 101 does not apply to sexual contact between a medical care provider and the provider's spouse or a person in a domestic relationship who is also a patient. ()

iii. A former patient includes a patient for whom the physician has provided medical services or prescriptions within the last twelve (12) months. ()

iv. Sexual or romantic relationships with former patients beyond that period of time may also be a violation if the physician uses or exploits the trust, knowledge, emotions or influence derived from the prior professional relationship with the patient. ()

e. Prescribing, selling, administering, distributing or giving any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug to a family member or to himself or herself or to a spouse, child or stepchild. (7-1-93)()

f. Violating any state or federal law or regulation relating to controlled substances. (7-1-93)

g. Directly promoting surgical procedures or laboratory tests that are unnecessary and not medically indicated. (7-1-93)

h. Failure to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by his or her legally designated representative. (7-1-93)

04. Conduct. Engaging in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient, includes but is not limited to: (7-1-93)

a. Obtaining any fee by fraud, deceit or misrepresentation. (7-1-93)

b. Employing abusive billing practices. (7-1-93)

c. Failure to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by his or her legally designated representative. (7-1-93)

d. Commission of any act of sexual contact, misconduct, exploitation or intercourse with a patient or former patient or related to the licensee's practice of medicine. (7-1-93)

i. Consent of the patient shall not be a defense. ()

ii. Section 101 does not apply to sexual contact between a medical care provider and the provider's spouse or a person in a domestic relationship who is also a patient. ()

iii. A former patient includes a patient for whom the physician has provided medical services or

prescriptions within the last twelve (12) months. ()

iv. Sexual or romantic relationships with former patients beyond that period of time may also be a violation if the physician uses or exploits the trust, knowledge, emotions or influence derived from the prior professional relationship with the patient. ()

IDAPA 22 - STATE BOARD OF MEDICINE
22.01.03 - RULES FOR THE LICENSURE OF PHYSICIAN ASSISTANTS
DOCKET NO. 22-0103-9801

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective August 5, 1998.

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 regular rule-making procedures have been initiated. The action is authorized pursuant to Section 54-1806(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 20, 1998.

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

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

The temporary rules and proposed rules amend the requirements for physician assistant licensure, establishes the requirement for a Delegation of Services Agreement which defines the working relationship and delegation of duties between the supervising physician and physician assistant; and expands prescriptive authority for PAs to include all legend drugs and controlled substances, Schedule III-V in accordance with the PA's Delegation of Services Agreement.

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

Compliance with deadlines in amendments to governing law. Senate Bill 1448 amended the Medical Practice Act, effective July 1, 1998. Physician assistant registration was changed to licensure.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because rule changes were required for compliance due to amendments to governing law and proposed rule changes were approved by the Physician Assistant Advisory Committee to the Board of Medicine.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Darleene Thorsted at (208) 334-2822.

Anyone may submit written comments regarding this temporary and proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 28, 1998.

DATED this 24th day of June, 1998.

Darleene Thorsted
Executive Director
Idaho State Board of Medicine
280 North 8 th Street
PO Box 83720
Boise, ID 83720-0058
Phone: (208) 334-2822
Fax: (208) 334-2801

IDAPA 22
TITLE 01
Chapter 03

22.01.03 - RULES FOR THE ~~REGISTRATION~~ LICENSURE
OF PHYSICIAN'S ASSISTANTS

000. LEGAL AUTHORITY.

Pursuant to Idaho Code Section 54-1806(2), the Idaho State Board of Medicine is authorized to promulgate rules to govern activities of persons employed as physician's assistants by persons licensed to practice medicine and surgery or osteopathic medicine and surgery in Idaho. (7-1-93)(8-5-98)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 22.01.03, "Rules for the ~~Registration~~ Licensure of Physician's Assistants". (7-1-93)(8-5-98)T

02. Scope. Pursuant to Idaho Code Section 54-1807(2), physician's assistants must ~~register~~ be licensed with the Board prior to commencement of activities. (8-5-98)T

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS:

01. Board. The Idaho State Board of Medicine. (7-1-93)

02. Approved Program. A course of study for the education and training of physician's assistants which is approved by the Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs. (7-1-96)(8-5-98)T

03. Supervising Physician. A person ~~approved~~ registered by the Board who is licensed to practice medicine and surgery or osteopathic medicine and surgery in Idaho, ~~who co-signs the application for registration of a physician's assistant, and~~ who is responsible for the direction and supervision of the activities of the physician's assistant. (7-1-96)(8-5-98)T

04. ~~Substitute~~ Alternate Supervising Physician. A physician licensed to practice medicine and surgery or osteopathic medicine and surgery in Idaho who has been designated by the supervising physician and authorized by the Board to supervise the physician's assistant in the temporary absence of the supervising physician. (7-1-93)(8-5-98)T

05. Physician's Assistant. A person who is a graduate of an approved program and who is qualified by general education, training, experience and personal character, and who has been authorized by the Board, to render patient services under the direction of a supervising physician. (7-1-93)(8-5-98)T

06. ~~Protocol~~ Delegation of Services (DOS) Agreement. A written document mutually agreed upon and signed and dated by the physician's assistant and supervising physician that defines the working relationship and delegation of duties between the supervising physician and the physician assistant as specified by Board rule. The Board of Medicine may review the written protocols delegation of services agreement, job descriptions, policy statements, or other documents that define the responsibilities of the physician's assistant in the practice setting, and may require such changes as needed to achieve compliance with these rules, and to safeguard the public. (7-1-93)(8-5-98)T

(BREAK IN CONTINUITY OF SECTIONS)

020. APPLICATION.

01. ~~Registration~~ License Applications. All applications for ~~registration~~ licensure as physician's assistants shall be made to the Board on forms supplied by the Board. (7-1-93)(8-5-98)T

02. Reapplication. If more than two (2) years have elapsed since a physician's assistant has actively engaged in practice, reapplication to the Board as a new applicant is required. The Board may require evidence of an educational update and close supervision to assure safe and qualified performance. (7-1-93)(8-5-98)T

021. REQUIREMENTS FOR ~~REGISTRATION~~ LICENSURE.

01. Baccalaureate Degree. Applicants for ~~registration~~ licensure shall provide evidence of having received a college baccalaureate degree and completed an approved program as defined in Subsection 010.02. (7-1-93)(8-5-98)T

02. National Certifying Examination. Satisfactory completion and passage of the certifying examination for physician's assistants, administered by the National Commission of Certification of Physician Assistants or such other examinations, which may be written, oral or practical, as the Board may require; ~~and~~ (7-1-93)(8-5-98)T

a. A listing of the specific activities which will be performed by the applicant. (7-1-93)

b. The specific locations and facilities in which the physician's assistant will function; and (7-1-93)

e. ~~The methods to be used to insure responsible direction and control of the activities of the applicant. A copy of an agreement providing for a supervising physician registered pursuant to the rules of the Idaho State Board of Medicine, and a copy of an agreement providing for an alternate supervising physician in the absence of the supervising physician. Copies of the agreement shall be signed by both parties. The agreement shall provide for:~~ (7-1-93)

i. ~~Collaborative development and periodic review (at least annually) of written protocols providing for the laboratory and diagnostic studies, management of stable, chronically ill patients and prescription writing.~~ (7-1-93)

ii. ~~An on-site visit at least monthly.~~ (7-1-93)

iii. ~~Regularly scheduled conferences between the supervising physician and the physician's assistant.~~ (7-1-93)

iv. ~~Periodic review of a representative sample of records and a periodic review of the medical services being provided by the physician's assistant. This review shall also include an evaluation of adherence to protocols.~~ (7-1-93)

v. ~~Availability of the supervising physician to the physician's assistant in person or by telephone.~~ (7-1-93)

03. Personal Interview. ~~Each applicant, together with his supervising physician, shall be personally interviewed by the Board as follows: The Board may at its discretion, require the applicant or the supervising physician or both to appear for a personal interview.~~ (7-1-93)(8-5-98)T

a. ~~If neither the applicant nor the supervising physicians have previously been interviewed by the~~

Board; or (7-1-96)

b. ~~If a registered physician's assistant makes application for supervision by a new supervising physician who has not previously been interviewed by the Board, only the supervising physician must be personally interviewed by the Board; or~~ (7-1-96)

e. ~~If a new applicant applies for registration with a supervising physician who has previously acted as a supervising physician, only the physician's assistant shall be personally interviewed by the Board.~~ (7-1-93)

04. ~~On-site Review. The Board, by and through its designated agents, is authorized and empowered to conduct on-site reviews of the activities of physician's assistants and the locations and facilities in which the physician's assistant practices on an annual basis, when there is any change in the practice locations or at such other times as the Board deems necessary. Completion of Form. If the applicant is to practice in Idaho, complete a form provided by the Board indicating:~~ (7-1-93)(8-5-98)T

a. The applicant has completed a delegation of services agreement signed by the physician assistant, supervising physician and alternate supervising physicians; and (8-5-98)T

b. The agreement is on file at the Idaho practice sites; or (8-5-98)T

c. Complete a form provided by the Board indicating the applicant is not practicing in Idaho and prior to practicing in Idaho, the applicant will meet the requirements of Subsections 021.04.a. and 021.04.b. (8-5-98)T

05. ~~Protocol Review. This will include a review of protocols and adherence to these protocols.~~ (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

026. REGISTRATION LICENSURE BY ENDORSEMENT.

~~Reciprocal registration licensure or registration licensure by endorsement is not permitted and applicants currently registered or licensed in other states must comply with the requirements set forth in Section 021 in order to be registered licensed in Idaho.~~ (7-1-93)(8-5-98)T

(BREAK IN CONTINUITY OF SECTIONS)

028. SCOPE OF PRACTICE.

01. ~~Physical Examination. A physicians's assistant may evaluate the physical and psychosocial health status through a comprehensive health history and physical examination. This may include the performance of pelvic examinations and pap smears; and~~ (7-1-93)(8-5-98)T

02. ~~Screening and Evaluating. Initiate appropriate laboratory or diagnostic studies, or both, to screen or evaluate the patient's health status and interpret reported information in accordance with protocols and knowledge of the laboratory or diagnostic studies, provided such laboratory or diagnostic studies are related to and consistent with the physician assistant's scope of practice.~~ (7-1-93)(8-5-98)T

03. ~~Minor Illness. Diagnose and manage minor illnesses or conditions.~~ (7-1-93)

04. ~~Manage Care. Manage the health care of the stable chronically ill patient in accordance with the medical regimen initiated by the supervising physician.~~ (7-1-93)

05. ~~Emergency Situations. Institute appropriate care which might be required to stabilize a patient's condition in an emergency or potentially life threatening situation until physician consultation can be obtained.~~

(7-1-93)

06. Surgery. The acts of surgery which may be performed by a physician's assistant are minor office surgical procedures such as punch biopsy, sebaceous cyst and ingrown toenail removal, cryotherapy for wart removal, etc.; assist in surgery with retraction, surgical wound exposure, and skin closure with direct personal supervision of the supervising physician; and the repair of lacerations, not involving nerve, tendon, or major vessel.

~~(7-1-96)~~(8-5-98)T

07. Casting. Manage the routine care of non-displaced fractures and sprains. (7-1-96)

08. Hospital Discharge Summary. May complete hospital discharge summaries and the discharge summary shall be co-signed by the supervising physician. (8-5-98)T

029. CONTINUING EDUCATION REQUIREMENTS.

01. Continuing Competence. A physician's assistant may be required by the Board at any time to demonstrate continuing competence in the performance of any of the tasks for which he has been previously approved. ~~(7-1-93)~~(8-5-98)T

02. Requirements for Renewal. Every other year, and prior to renewal of ~~registration~~ license for that year, physician's assistants will be required to present evidence, ~~on forms supplied by the Board,~~ of having received one hundred (100) hours of continuing medical education over a two-year period. The courses and credits shall be subject to approval of the Board. ~~(7-1-93)~~(8-5-98)T

030. PRACTICE STANDARDS.

01. Identification. The physician's assistant must at all times when on duty wear a placard or plate identifying himself as a physician's assistant. ~~(7-1-93)~~(8-5-98)T

02. Advertise. No physician's assistant may advertise or represent himself, either directly or indirectly, as a physician. ~~(7-1-93)~~(8-5-98)T

03. Unauthorized Procedures. A physician's assistant shall not write prescriptions or complete and issue prescription blanks previously signed by any physician; diagnose and manage major illnesses or conditions or manage the health care of unstable or acutely ill or injured patients unless those conditions are minor; or, act as or engage in the functions of a physician's assistant when the supervising physician is absent and other physician coverage is not available. ~~(7-1-93)~~(8-5-98)T

04. Delegation of Services Agreement. Each licensed physician assistant shall maintain a current copy of a Delegation of Services (DOS) Agreement between the physician assistant and each of his or her supervising physicians. This agreement shall not be sent to the Board, but must be maintained on file at each location in which the physician assistant is practicing. This agreement shall be made immediately available to the Board upon request and shall include: (8-5-98)T

a. A listing of the specific activities which will be performed by the physician assistant. (8-5-98)T

b. The specific locations and facilities in which the physician assistant will function; and (8-5-98)T

c. The methods to be used to insure responsible direction and control of the activities of the physician assistant which shall provide for: (8-5-98)T

i. An on-site visit at least monthly; (8-5-98)T

ii. Regularly scheduled conferences between the supervising physician and the physician assistant; (8-5-98)T

iii. Periodic review of a representative sample of records and a periodic review of the medical services

being provided by the physician assistant. This review shall also include an evaluation of adherence to the delegation of services agreement; (8-5-98)T

iv. Availability of the supervising physician to the physician assistant in person or by telephone and procedures for providing backup for the physician assistant in emergency situations; and (8-5-98)T

v. Procedures for addressing situations outside the scope of practice of the physician assistant. (8-5-98)T

d. The drug categories or specific legend drugs and controlled drugs, Schedule III through V that will be prescribed provided that the legend drugs and controlled drugs shall be consistent with the regular prescriptive practice of the supervising physician. (8-5-98)T

05. On-Site Review. The Board, by and through its designated agents, is authorized and empowered to conduct on-site reviews of the activities of physician assistants and the locations and facilities in which the physician assistant practices at such times as the Board deems necessary. (8-5-98)T

(BREAK IN CONTINUITY OF SECTIONS)

036. GRADUATE PHYSICIAN'S ASSISTANT.

01. Certification Examination. Any person who has graduated from an approved program and meets all requirements, but has not yet taken and passed the certification examination, may ~~register~~ be licensed with the Board as a graduate physician's assistant. Such ~~registration license shall~~ automatically be canceled ~~terminates~~ upon receipt of the certification examination score if the graduate physician's assistant fails to pass the certifying examination. (7-1-96)(8-5-98)T

02. Board Consideration. Registration as a graduate physician's assistant may also be considered by the Board when: (7-1-96)(8-5-98)T

a. All application requirements have been met as set forth in Subsection 021.01, except receipt of a baccalaureate degree; and (7-1-93)

b. A personal interview with the applicant ~~and or~~ the supervising physician or both may be required ~~and has been will~~ be conducted by a designated member of the Board. (7-1-93)(8-5-98)T

c. A plan shall be submitted and approved by the Board for the completion of the baccalaureate degree. (7-1-96)

03. No Prescribing Authority. Physician's assistants operating under a graduate physician's assistant ~~registration license~~ shall not be entitled to write any prescriptions and shall be required to have a weekly record review by their supervising physician. (4-2-93)(8-5-98)T

037. TERMINATION OF APPROVAL AND DISCIPLINARY PROCEEDINGS.

01. Discipline. Every person ~~registered~~ licensed as a physician's assistant is subject to discipline pursuant to the procedures and powers established by and set forth in Section 54-1806A, Idaho Code and the Administrative Procedures Act. (7-1-93)(8-5-98)T

02. Grounds for Discipline. In addition to the grounds for discipline set forth in Section 54-1814, Idaho Code, persons ~~registered~~ licensed as physician's assistants are subject to discipline upon the following grounds: (7-1-93)(8-5-98)T

a. The physician's assistant had held himself or herself out, or permitted another to represent him or

her to be a licensed physician; (7-1-93)(8-5-98)T

b. The physician's assistant had in fact performed otherwise than at the discretion and under the supervision of a physician licensed by the Board; (7-1-93)(8-5-98)T

c. The physician's assistant has performed a task or tasks beyond the scope of activities allowed by Section 028. (7-1-93)(8-5-98)T

d. The physician's assistant is a habitual or excessive user of intoxicants or drugs; (7-1-93)(8-5-98)T

e. The physician's assistant had demonstrated manifest incapacity to carry out the functions of a physician's assistant. (7-1-93)(8-5-98)T

f. The physician assistant has failed to complete or maintain a current copy of the Delegation of Services Agreement as specified by Subsection 030.04. (8-5-98)T

e. The physician assistant has failed to notify the Board of a change or addition of a supervising physician as specified by Subsection 037.03. (8-5-98)T

03. ~~Registration Cancellation. Upon termination of an employment relationship between a physician's assistant and his supervising physician, the Board shall be notified and the registration shall be automatically canceled if written notice of a new employment relationship, position description and protocols are not received and approved by the Board.~~ Notification of Change or Addition of Supervising Physician. A physician assistant upon changing supervising physicians or adding an additional supervising physician must notify the Board. Such notification shall include: (7-1-96)(8-5-98)T

a. The name, business address and telephone of the new or additional supervising physician(s); (8-5-98)T

b. The name, business address, and telephone number of the physician assistant; and (8-5-98)T

c. Comply with the requirements of Subsection 021.04. (8-5-98)T

(BREAK IN CONTINUITY OF SECTIONS)

041. PHYSICIAN'S ASSISTANT TRAINEE.

01. Training. Any person undergoing training as a physician's assistant must register with the Board as a trainee, and must comply with the rules as set forth herein. (7-1-93)(8-5-98)T

02. Approved Program. Notwithstanding any other provision of these rules, a trainee may perform patient services when such services are rendered within the scope of an approved program. (7-1-93)

042. PRESCRIPTION WRITING.

01. Approval and Authorization Required. A physician's assistant may issue written or oral write prescriptions for legend drugs and controlled drugs, Schedule III through V only in accordance with approval and authorization granted by the Board and in accordance with the current delegation of services agreement and shall be consistent with the regular prescriptive practice of the supervising physician. (7-1-93)(8-5-98)T

02. Application. A physician's assistant who wishes to apply for prescription writing authority shall submit an application for such purpose to the Board of Medicine. In addition to the information contained in the general application for physician's assistant approval, the application for prescription writing authority shall include the following information: (7-1-93)(8-5-98)T

a. Documentation of all pharmacology course content completed, the length and whether a passing grade was achieved (at least thirty (30) hours). (7-1-93)

b. A statement of the frequency with which the supervising physician will review prescriptions written. (7-1-93)

c. A signed statement from the supervising physician certifying that, in the opinion of the supervising physician, the physician's assistant is qualified to prescribe the drugs for which the physician's assistant is seeking approval and authorization. ~~(7-1-93)~~(8-5-98)T

d. ~~If the applicant has prescribed medications in another state prior to application for prescription writing authority, the following information will be submitted: The physician assistant to be authorized to prescribe Schedule III through V drugs shall be registered with the Federal Drug Enforcement Administration and the Idaho Board of Pharmacy.~~ (7-1-93)(8-5-98)T

i. ~~A listing of drugs previously prescribed and an estimate of the frequency with which the physician's assistant prescribed the drugs in Section 054 of these rules.~~ (7-1-93)

ii. ~~Statement of the length of time drugs were previously prescribed, and the length of time the applicant has practiced as a physician's assistant stating the site(s) and supervising physician(s).~~ (7-1-93)

03. Prescription Forms. Prescription forms used by the physician's assistant must be printed with the name, address, and telephone number of the physician's assistant and of the supervising physician. ~~(7-1-93)~~(8-5-98)T

04. Record Keeping. The physician's assistant shall maintain accurate records, accounting for all prescriptions written and medication delivered. ~~(7-1-93)~~(8-5-98)T

043. DELIVERY OF MEDICATION.

01. Pre-Dispensed Medication. The physician's assistant may legally provide a patient with more than one (1) dose of a medication at sites or at times when a pharmacist is not available. The pre-dispensed medications shall be for an emergency period to be determined on the basis of individual circumstances, but the emergency period will extend only until a prescription can be obtained from a pharmacy. ~~(7-1-93)~~(8-5-98)T

02. Consultant Pharmacist. The physician's assistant shall have a consultant pharmacist responsible for providing the physician's assistant with pre-dispensed medication in accordance with federal and state statutes for packaging, labelling, and storage. ~~(7-1-93)~~(8-5-98)T

03. Limitation of Items. The pre-dispensed medication shall be limited to only those categories of drug identified in the ~~formulary~~ delegation of services agreement, except a physician's assistant may provide other necessary emergency medication to the patient as directed by a physician. ~~(7-1-93)~~(8-5-98)T

04. Exception from Emergency Period. Physician's assistant in agencies, clinics or both, providing family planning, communicable disease and chronic disease services under government contract or grant may provide pre-dispensed medication for these specific services and shall be exempt from the emergency period. Agencies, clinics or both, in remote sites without pharmacies shall be exempt from the emergency period, providing that they must submit an application and obtain formal approval from the Board of Medicine. ~~(7-1-93)~~(8-5-98)T

(BREAK IN CONTINUITY OF SECTIONS)

051. FEES.

01. ~~Registration~~ Licensure Fee. The fee for ~~registering~~ licensure with the Board shall ~~not be less than~~

eighty dollars (\$80) for a physician's assistant, and not less than ten dollars (\$10) for registration as the physician's assistant trainee. (7-1-93)(8-5-98)T

02. Annual Renewal. Registration License shall be renewed annually on July 1 of every year. The Board shall collect a fee of not less than thirty dollars (\$30) for each renewal of registration a license. (7-1-93)(8-5-98)T

03. Registration License Cancellation. Failure to ~~reregister~~ renew a license and pay the annual ~~registration renewal~~ fee shall cause the registration license to be canceled. However, registration a license can be renewed up to two (2) years following cancellation by payment of past renewal fees, plus a penalty fee of not less than twenty-five dollars (\$25). After two (2) years it will be necessary to file an original application for registration licensure with payment of the appropriate fee. (7-1-93)(8-5-98)T

(BREAK IN CONTINUITY OF SECTIONS)

053. WRITTEN PROTOCOLS DELEGATION OF SERVICES AGREEMENT.

Within one hundred and twenty (120) days of the effective date of these rules, all currently approved licensed physician's assistants shall have a written protocols delegation of services agreement as specified in IDAPA 22.01.03, "Rules for the Registration Licensure of Physician's Assistants," Subsection 0430.064. (7-1-93)(8-5-98)T

054. FORMULARY.

~~Pursuant to protocols, a physician's assistant may write prescriptions only for medications from the following categories of legend drugs. Protocols should specify any limitations on the number of dosages that may be prescribed, any requirements for consultation prior to prescription writing, and any requirements for periodic review by the supervising physician during the course of treatment with the medication. No controlled substances may be prescribed.~~ (7-1-93)

- 01. ~~Categories of Legend Drugs;~~ (7-1-96)
- a. ~~Antihistamines, decongestants, expectorants, and antitussives;~~ (7-1-93)
- b. ~~Antibacterials, antibiotics (Probenecid when prescribed for treatment of gonorrhea in conjunction with penicillin sulfonamides);~~ (7-1-93)
- e. ~~Nonnarcotic analgesics and muscle relaxants;~~ (7-1-93)
- d. ~~Topical steroid preparations;~~ (7-1-93)
- e. ~~Antipruritics;~~ (7-1-93)
- f. ~~Topical eye, ear, nose, and throat preparations, excluding ophthalmic steroids;~~ (7-1-93)
- g. ~~Antinauseants and antidiarrheals;~~ (7-1-93)
- h. ~~Contraceptive agents and devices;~~ (7-1-93)
- i. ~~Dietary supplements, i.e., iron, vitamins, including fluorides;~~ (7-1-93)
- j. ~~Antifungals, anthelmintics, scabicides, and pediculicides;~~ (7-1-93)
- k. ~~Topical and local anesthetics;~~ (7-1-93)
- l. ~~Immunizations and vaccines (Biologicals);~~ (7-1-93)

- m. Antiviral agents; (7-1-93)
 - n. Diuretics; (7-1-93)
 - o. Smoking cessation agents; (7-1-93)
 - p. Gastrointestinal agents, anti-flatulants; (7-1-93)
 - q. Nonsteroidal anti-inflammatory agents; (7-1-93)
 - r. Bronchial dilators, antihypertensives, antispasmodics; (7-1-93)
 - s. Hormonal therapy; (7-1-93)
 - t. Antidiabetics, antiarthritics, antigout, antilipids; (7-1-93)
 - u. Antianginal preparations; (7-1-93)
 - v. Anticonvulsants; (7-1-93)
 - w. Chemotherapeutics; (7-1-93)
 - x. Antidepressants; (7-1-93)
 - y. Anti-anxiety agents—limited to Buspirone; (7-1-96)
 - z. Migraine preparations; (7-1-96)
 - aa. Short-term prescriptions of corticosteroids limited to prescriptions for fourteen (14) days or less. (7-1-96)
02. Refills. A physician's assistant may order refills for other drugs originally prescribed by the supervising physician for patients with stable chronic illness. (7-1-96)
- 0554. -- 999. (RESERVED).**

APPENDIX A
GUIDELINES FOR PROTOCOLS

~~Revised Physician's Assistant Rules specify that protocols mutually agreed upon and signed and dated by the physician's assistant and the physician, and specified in the scope of practice of physician's assistants, shall be developed and available for review for: laboratory and diagnostic studies, excluding major or acute illness, management of the stable chronically ill patient, and prescription writing (Rule IDAPA 22.01.03, "Rules for the Registration of Physician's Assistants," Subsection 010.06).~~

LABORATORY AND DIAGNOSTIC STUDIES

~~Identify the laboratory and diagnostic studies that may be:~~

- ~~1. Ordered and interpreted independently.~~
- ~~2. Ordered and interpreted following consultation.~~
- ~~3. Laboratory tests relating to major or acute illness.~~

MANAGEMENT OF HEALTH CARE OF THE STABLE CHRONICALLY ILL PATIENT

~~Identify chronic disease problems that may be:~~

- ~~1. Managed independently by the Physician's Assistant.~~
- ~~2. Managed after consultation.~~

PRESCRIPTION WRITING

~~Identify the categories of drugs on the formulary that:~~

- ~~1. Will not be prescribed.~~
- ~~2. Require consultation prior to prescription writing.~~
- ~~3. Require any limitations in the number of dosages that may be prescribed.~~
- ~~4. Require periodic review by the supervising physician during the course of treatment.~~
- ~~5. Prescription writing authority is limited to the specified authorization in the authorized scope of practice.~~

~~The protocols should be reviewed periodically (at least annually). Rule IDAPA 22.01.03, "Rules for the Registration of Physician's Assistants," Subsection 021.02.e.i.~~

~~Records should indicate adherence to the protocols.~~

IDAPA 22 - BOARD OF MEDICINE
22.01.04 - RULES FOR THE REGISTRATION OF SUPERVISING PHYSICIANS
DOCKET NO. 22-0104-9801

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective August 5, 1998.

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 regular rule-making procedures have been initiated. The action is authorized pursuant to Sections 54-1807(1)(2) and 54-1814(17), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 20, 1998.

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

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

Passage of House Bill 662 provides for the licensure of advanced practice nurses and for supervision by physicians licensed in Idaho and registered by the Board of Medicine as Supervising Physicians which requires rule changes to incorporate the certified nurse-midwife and clinical nurse specialist in the current rules for supervising physicians.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadlines in amendments to governing law Idaho Code, Section 54-1814(17) of the Medical Practice Act provided for supervising physicians for certified nurse-midwives and clinical nurse specialists, effective July 1, 1998.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because rule changes were required for compliance with deadlines in amendments to governing law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Darleene Thorsted at 334-2822.

Anyone may submit written comments regarding this temporary and proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 28, 1998.

DATED this 24th day of June, 1998.

Darleene Thorsted
Executive Director
Idaho State Board of Medicine
280 North 8th Street
PO Box 83720
Boise, ID 83720-0058
Phone: (208) 334-2822
Fax: (208) 334-2801

TEXT OF DOCKET NO. 22-0104-9801

000. LEGAL AUTHORITY.

Pursuant to Sections 54-1807(1)(2), and ~~Section~~ 54-1814(17), Idaho Code, the Idaho State Board of Medicine is authorized to promulgate rules to govern the activities of physicians and osteopathic physicians licensed in Idaho, who supervise the practice of physician's assistants, nurse practitioners, certified nurse-midwives, clinical nurse specialists, interns, externs and residents. (7-1-93)(8-5-98)T

(BREAK IN CONTINUITY OF SECTIONS)

~~002. -- 009.~~ (RESERVED): ADMINISTRATIVE APPEALS.

~~This chapter does not provide for appeal of the administrative requirements for agencies.~~ (8-5-98)T

~~003. -- 009.~~ (RESERVED).

010. DEFINITIONS.

01. Board. The Idaho State Board of Medicine. (7-1-93)

02. Physician's Assistant. Any person duly ~~registered~~ licensed with the Board as a physician's assistant pursuant to the applicable Idaho statutes and the applicable rules promulgated by the Board. (7-1-93)(8-5-98)T

03. ~~Nurse Practitioner~~ Advanced Practice Professional Nurse. Any person duly licensed as a nurse practitioner, certified nurse-midwife, or clinical nurse specialist pursuant to the applicable Idaho statutes and the applicable rules ~~jointly~~ promulgated by the ~~Board and the~~ Idaho State Board of Nursing. (7-1-93)(8-5-98)T

04. Supervising Physician. Any person who is duly licensed to practice medicine in Idaho, and who has responsibility for the medical acts of a physician's assistant, ~~or~~ nurse practitioner, certified nurse-midwife, or clinical nurse specialist. "Supervising physician" also includes an alternate or substitute supervising physician. (7-1-93)(8-5-98)T

(BREAK IN CONTINUITY OF SECTIONS)

020. DUTIES OF SUPERVISING PHYSICIANS.

01. Responsibilities. The supervising physician shall be responsible for the medical acts of physician's assistants, ~~and~~ nurse practitioners, certified nurse-midwives, and clinical nurse specialists and for the supervision of such acts which shall include: (7-1-93)(8-5-98)T

a. An on-site visit at least monthly to personally observe the quality of care provided; and (8-5-98)T

b. A periodic review of a representative sample of medical records to evaluate the medical services that are provided. (8-5-98)T

~~02. Written Protocols. The Supervising Physician, in collaboration with the supervised nurse practitioner or physician's assistant, shall be responsible for the creation of written protocols for the management of stable chronic illnesses and the prescribing of medications. Such protocols shall be within the scope of practice of the nurse practitioner or physician's assistant. (7-1-93)~~

~~03. Adherence to Protocols. The supervising physician shall, on at least a monthly basis, conduct an on-site visit and personally observe the quality of care provided and the adherence to protocols. However if exceptional circumstances exist in an individual case, the supervising physician can apply to the Board for a waiver or modification of this requirement. There shall be an annual review and update of protocols. (7-1-93)~~

042. Patient Complaints. The supervising physician shall report to either the Board of Medicine or the Board of Nursing any and all patient complaints received against the physician's assistant, ~~or~~ nurse practitioner, certified nurse-midwife, or clinical nurse specialist which relate to the quality and nature of medical care.
(7-1-93)(8-5-98)T

053. Pre-signed Prescriptions. The supervising physician shall not utilize or authorize the physician's assistant, ~~or~~ nurse practitioner, certified nurse-midwife, or clinical nurse specialist to use any pre-signed prescription.
(7-1-93)(8-5-98)T

064. Supervisory Responsibility. The responsibilities and duties of a supervising physician may not be transferred to a professional corporation or partnership, nor may they be assigned to another physician without Board approval.
(7-1-93)

075. Available Supervision. ~~Except as set forth in the individual protocols of each physician's assistant or nurse practitioner,~~ The supervising physician must always be available either in person or by telephone to supervise, direct and counsel the nurse practitioner, or physician's assistant, certified nurse-midwife, or clinical nurse specialist.
(7-1-93)(8-5-98)T

086. Disclosure. It shall be the responsibility of each supervising physician to insure that each patient who receives the services of a physician's assistant, ~~or~~ nurse practitioner, certified nurse-midwife, or clinical nurse specialist 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 advised the patient of the education and training of the person rendering medical services.
(7-1-93)(8-5-98)T

021. --029. (RESERVED): ON-SITE REVIEW.
The Board, by and through its designated agents, is authorized and empowered to conduct on-site reviews of the activities of the supervising physicians at the locations and facilities in which the physician assistant, nurse practitioner, certified nurse-midwife, or clinical nurse specialist practices at such times as the Board deems necessary.
(8-5-98)T

022. -- 029. (RESERVED).

030. REGISTRATION BY SUPERVISING PHYSICIANS.

01. Registration and Renewal. Each supervising physician must register with the Board and such registration shall be renewed annually.
(7-1-93)

02. Notification. The supervising physician must notify the Board of any change in the status of any physician's assistant, ~~or~~ nurse practitioner, certified nurse-midwife, or clinical nurse specialist for whom he is responsible, including, but not limited to, changes in location, duties, responsibilities, or supervision, or termination of employment.
(7-1-93)(8-5-98)T

03. Agreed Protocols. ~~Prior to the initial registration and on all renewals, all supervising physicians shall provide the Board with a copy of a detailed agreement from the physician's assistant or nurse practitioner which establishes the specific protocol of the physician's assistant or nurse practitioner and the supervising physician shall be responsible for determining that the protocol does not authorize duties and responsibilities beyond those allowed by the applicable rules.~~
(7-1-93)

IDAPA 22 - STATE BOARD OF MEDICINE
22.01.05 - RULES FOR THE REGISTRATION OF PHYSICAL THERAPISTS
AND PHYSICAL THERAPIST ASSISTANTS

DOCKET NO. 22-0105-9801

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 54-2209, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 20, 1998.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

The proposed rule changes remove the 45 day waiting period required for permanent registration by examination and removes the provisions for temporary registration that are no longer needed because the 45 day waiting period has been removed.

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

The fee for initial registration of physical therapists increases from the current fee of \$80 to \$120, the fee for physical therapist assistant registration is \$80 and the annual renewal fee is \$45, and the reinstatement fee is \$35. These fees are necessary to meet increased administrative and enforcement costs and to meet anticipated costs for implementation and compliance to the Patient Freedom of Information Act effective 1/2000. Statutory authority for setting fees is Idaho Code, Section 54-2212.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because Physical Therapists Act was amended during 1998 Legislative Session to update the statute relating to physical therapy examinations for permanent registration from a paper-pencil examination to computer based testing. Rule change is technical to address changes in registration by examination.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Darleene Thorsted at (208) 334-2822.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 28, 1998.

DATED this 24th of June, 1998.

Darleene Thorsted
Executive Director
Idaho State Board of Medicine
280 North 8th. Street
PO Box 83720
Boise, ID 83720-0058
Phone: (208) 334-2822
Fax: (208) 334-2801

TEXT OF DOCKET NO. 22-0105-9801

021. GENERAL QUALIFICATIONS FOR REGISTRATION.

01. Conduct. An applicant must be of good moral character. The Board may refuse registration if it finds that the applicant has engaged in conduct prohibited by Section 54-2213, Idaho Code; provided that the Board shall take into consideration the rehabilitation of the applicant and other mitigating circumstances. (7-1-93)

02. Application. Each applicant shall submit a completed written application to the Board on forms ~~prescribed~~ provided by the Board ~~no less than forty five (45) days prior to the next examination date;~~ together with application and examination fees. The application shall be verified under oath and shall require the following information: (7-1-93)()

a. The educational background of the applicant; (7-1-93)

b. Evidence of ~~enrollment~~ graduation from ~~in~~ an approved physical therapy curriculum; or an approved physical therapist assistant's curriculum; (7-1-93)()

c. The disclosure of any criminal conviction or charges against the applicant other than minor traffic offenses; (7-1-93)

d. The current mental and physical condition of the applicant together with disclosure of any previous serious physical or mental illness; (7-1-93)

e. The disclosure of any disciplinary action against the applicant by any professional regulatory agency; (7-1-93)

f. The disclosure of the denial of registration or licensure by any state or district regulatory body; (7-1-93)

g. ~~Not less than three (3)~~ Two (2) references from persons having personal knowledge of the applicant's ~~moral character;~~ (7-1-93)()

h. An unmounted photograph of the applicant, three inches by three inches (3" x 3"), taken not more than one (1) year prior to the date of application; and (7-1-93)

i. Such other information as the Board deems necessary to identify and evaluate the applicant's credentials. (7-1-93)

03. Evidence of Graduation. Each applicant shall present evidence of graduation from an approved physical therapy curriculum or an approved physical therapist assistant curriculum and pass an examination conducted by the Board or be entitled to registration by endorsement. (7-1-93)

a. The written examination required by the Board for physical therapist and physical therapist assistant's registration is the examination or an examination otherwise determined by the Board to be an acceptable examination. The minimum passing grade shall be a passing score as determined by formal action of the Board. (7-1-93)

b. An applicant for registration by examination who has failed to pass the examination on three (3) separate occasions will be denied eligibility to reapply, except that his or her application may be considered on an individual basis if he or she submits proof of additional approved training. (7-1-93)

04. Interview. Each applicant shall be personally interviewed by the Board, the Committee or a person designated by the Board or the Committee. The interview shall include a review of the applicant's qualifications and professional credentials. The interview may be waived if waiver would not jeopardize public health, safety and

welfare. (7-1-93)

05. Application Expiration. An application upon which the applicant takes no further action will be held for no longer than one (1) year, unless for good cause, the Board elects to approve extension. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

023. -- ~~02930.~~ (RESERVED).

030. TEMPORARY REGISTRATION.

~~01. Temporary Registration. A temporary registration shall not be approved unless a complete application has been filed with the Board and the applicant has been personally interviewed by the Board, the Committee, or a person designated by the Board or the Committee. (7-1-93)~~

~~02. Application. The complete application must be on file with the Board and in the hands of the person designated to conduct the personal interview no less than twenty-four (24) hours prior to the interview. (7-1-93)~~

~~03. Personal Interview. After a personal interview with the applicant, the designated representative of the Board may approve the issuance of a temporary registration. (7-1-93)~~

~~04. Effective Date. Temporary registration shall be effective to a specified date normally the next scheduled meeting of the Committee, unless for good cause, the Board or the Committee elects to approve an extension. (7-1-93)~~

(BREAK IN CONTINUITY OF SECTIONS)

042. FEES.

01. Fee Table.

a. The fee for physical therapists registration shall be ~~no more than eighty one hundred twenty~~ dollars (\$8120) and the annual renewal fee shall be sixty-five dollars (\$65). (7-1-93)()

b. The fee for ~~temporary registration~~ physical therapist assistant shall be ~~no more than seventy eighty~~ dollars (\$780) and the annual renewal fee shall be forty-five dollars (\$45). (7-1-93)()

c. The examination fee shall equal the cost of the test plus an administration fee of ~~no more than forty~~ dollars (\$40). (7-1-93)()

d. The ~~annual renewal~~ reinstatement fee shall be ~~no more than seventy thirty-five~~ dollars (\$7035). (7-1-93)()

e. The ~~reinstatement~~ fee shall be ~~no more than fifty~~ dollars (\$50). (7-1-93)

02. Application Fees and Refunds. Necessary fees shall accompany applications. Fees shall not be refundable. (7-1-93)

03. Extraordinary Expenses. In those situations where the processing of an application requires extraordinary expenses, the Board may charge the applicant with reasonable fees to cover all or part of the extraordinary expenses. (7-1-93)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.18.01 - RULES OF THE REAL ESTATE APPRAISER BOARD
DOCKET NO. 24-1801-9801

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective May 21, 1998.

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 regular rule-making procedures have been initiated. The action is authorized pursuant to Section 54-4106, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 1998.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Delete three (3) rules which will be effective July 1, 1998 wherein an applicant for licensure/certification must have a College Degree or Associated College Degree or its equivalent to obtain a license.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Confer a benefit to licensees by decreasing the education requirement for licensure/certification.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dee Ann Randall, (208) 334-3233.

Anyone may submit written comments regarding this temporary and proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 26, 1998.

DATED this 19th day of June, 1998.

Dee Ann Randall
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

TEXT OF DOCKET NO. 24-1801-9801

010. DEFINITIONS (Rule 10).

The definitions numbered one through twelve (1-12), appearing at Section 54-4104 of the Idaho Code are incorporated herein by reference as if set forth in full. (7-1-93)

01. Advisory Committee. A committee of state certified or licensed real estate appraisers appointed by the board to provide technical assistance relating to real estate appraisal standards and real estate appraiser experience, education and examination requirements that are appropriate for each classification of state certified or licensed real estate appraiser. (7-1-93)

02. Appraisal Foundation. The Appraisal Foundation means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois. (7-1-97)

03. Appraiser Qualifications Board. Appraiser Qualifications Board of the Appraisal Foundation establishes the qualifications criteria for licensing, certification and recertification of appraisers. (7-1-97)

04. Appraisal Standards Board. The Appraisal Standards Board of the Appraisal Foundation develops, publishes, interprets and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services. (7-1-97)

~~05. Associate College Degree. A degree awarded by a college or university which has been accredited by the Council on Post-Secondary Accreditation or an accrediting body approved by the United States Department of Education. The associate degree must be based upon a minimum two year (2) program. (7-1-93)~~

065. Bureau. The Bureau of Occupational Licenses, Department of Self-Governing Agencies as established by Section 67-2601, Idaho Code. (7-1-93)

076. Chief. The Bureau Chief of the Bureau of Occupational Licenses as established by Section 67-2602, Idaho Code. (7-1-93)

087. Classroom Hour. Fifty (50) minutes out of each sixty (60) minute hour. (7-1-93)

~~09. College Degree. A degree awarded by a college or university which has been accredited by the Council on Post-Secondary Accreditation or an accrediting body approved by the United States Department of Education. The college degree must be based upon a minimum four year (4) program. (7-1-93)~~

408. Field Real Estate Appraisal Experience. Personal inspections of real property, assembly and analysis of relevant facts, and, by the use of reason and the exercise of judgement, formation of objective opinions as to the market or other value of such properties or interests therein and preparation of written appraisal reports or other memoranda showing data, reasoning, and conclusion. Professional responsibility for the valuation function is essential. (7-1-93)

~~409. FIRREA. Title XI, Financial Institutions Reform, Recovery and Enforcement Act of 1989 was designed to ensure that more reliable appraisals are rendered in connection with federally related transactions. (7-1-93)~~

120. Nationally Recognized Appraisal Organization. An appraisal organization which is a member of The Appraisal Foundation. (7-1-93)

131. Real Estate. In addition to the previous definition in Section 54-4104(7), Idaho Code will also mean an identified parcel or tract of land, including improvements, if any. (7-1-93)

142. Real Property. In addition to the previous definition in Section 54-4104(8), Idaho Code will also mean one or more defined interests, benefits, or rights inherent in the ownership of real estate. (7-1-93)

153. Residential Unit. Real estate with a current highest and best use of a residential nature. (7-1-93)

164. Specialized Appraisal Services. Services which include situations in which an appraiser is employed or retained to provide appraisal services that do not fall within the defined term "appraisal assignments". Specialized appraisal services relate to the employer's or client's individual needs or investment objectives and commonly include specialized marketing and financing studies as well as analysis, opinions, and conclusions rendered in connection with activities such as real estate brokerage, mortgage banking, and real estate counseling, including real estate tax counseling. (7-1-97)

175. Uniform Standards of Professional Appraisal Practice. Those uniform standards adopted by the Appraisal Foundation's Appraisal Standards Board. These standards may be altered, amended, interpreted, supplemented, or repealed by the Appraisal Standards Board (ASB) from time to time. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

300. LICENSED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (Rule 300).

The state licensed residential real estate appraiser classification applies to the appraisal of residential real property consisting of one (1) to four (4) noncomplex residential units having a transaction value less than one million dollars (\$1,000,000) and complex one (1) to four (4) residential units having a transaction value less than two hundred fifty thousand dollars (\$250,000). Applicants must meet the following examination, education, and experience requirements in addition to complying with Section 299. Subsequent to being licensed, an individual must meet the continuing education requirement. (7-1-97)

01. Education. (7-1-97)

~~a-~~ As a prerequisite to taking the examination for licensure as an Idaho Licensed Real Estate Appraiser, an applicant shall present evidence satisfactory to the board that he has successfully completed not less than ninety (90) classroom hours of courses in subjects related specifically to real estate appraisal approved by the board. Each applicant must have successfully completed not less than seventy (70) classroom hours of study related to those topics outlined under Subsection 299.02.e., the basic principles of real estate appraising. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the Uniform Standards of Professional Appraisal Practice, and Code of Ethics will be credited to the classroom hour requirement. (7-1-97)

~~b-~~ After July 1, 1998, an applicant shall present evidence satisfactory to the board that he has an Associate College Degree, or its equivalent to be determined by the Board, in addition to the other required prerequisites in Sections 299 and 300. Classroom hours of successfully completed courses specifically in subjects related to real estate appraisal may be included in the hours required for the associate degree or college degree. (7-1-97)

02. Experience. Prerequisite to sit for the examination: Equivalent of two (2) years appraisal experience (see Subsection 299.03.b.). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (7-1-97)

a. Of the required two thousand (2,000) hours, the applicant must accumulate a minimum of one thousand five hundred (1,500) hours from field real estate appraisal experience. The balance of five hundred (500) hours may include non field experience, refer to Subsection 299.03.c. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

350. CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (Rule 350).

The State Certified Residential Real Estate Appraiser classification applies to the appraisal of residential properties of four (4) or less units without regard to transaction value or complexity. Applicants must meet the following examination, education, and experience requirements in addition to complying with Section 299. Subsequent to being certified an individual must meet the continuing education requirement. (7-1-97)

01. Education. (7-1-97)

~~a-~~ As a prerequisite to taking the examination for certification as an Idaho Certified Residential Real Estate Appraiser, an applicant shall present evidence satisfactory to the board that he has successfully completed not less than one hundred twenty (120) classroom hours of courses in subjects related to real estate appraisal approved by the board. Each applicant must have successfully completed not less than ninety (90) classroom hours of study related

to those topics outlined under Subsection 299.02.e., the basic principles of real estate appraising and thirty (30) classroom hours of advanced residential or non-residential specialized courses relating to the topics specified at Subsection 299.02.e. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the Uniform Standards of Professional Appraisal Practice, and Code of Ethics; will be credited to the classroom hour requirement. (7-1-97)

~~b. After July 1, 1998, an applicant shall present evidence satisfactory to the board that he has an Associate College Degree, or its equivalent to be determined by the Board, in addition to the other required prerequisites in Sections 299 and 350. Classroom hours of courses successfully completed in subjects specifically related to real estate appraisal may be included in the hours required for the associate degree or college degree. (7-1-97)~~

02. Experience. Prerequisite to sit for the examination: Equivalent of three (3) years appraisal experience (see Subsection 299.03.b.). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (7-1-97)

a. Of the required three thousand (3,000) hours, the applicant must accumulate a minimum of twenty-five hundred (2,500) hours from residential field real estate appraisal experience. The balance of five hundred (500) hours may include non field experience, refer to Subsection 299.03.c. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

400. CERTIFIED GENERAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 400).

The State Certified General Real Estate Appraiser classification applies to the appraisal of all types of real property. Applicants must meet the following examination, education, and experience requirements in addition to complying with Section 299. Subsequent to being certified, an individual must meet the continuing education requirement. (7-1-97)

01. Education. (7-1-97)

~~a. As a prerequisite to taking the examination for certification as an Idaho State Certified General Real Estate Appraiser, an applicant shall present evidence satisfactory to the board that he/she has successfully completed not less than one hundred eighty (180) classroom hours of courses in subjects related specifically to real estate appraisal approved by the board. Each applicant must have successfully completed not less than one hundred sixty (160) classroom hours of study related to those topics outlined under Subsection 299.02.e. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the Uniform Standards of Professional Appraisal Practice, and Code of Ethics; and one hundred (100) classroom hours of advanced non residential specialized courses relating to the topics specified at Subsection 299.02.e. (7-1-97)~~

~~b. After July 1, 1998, an applicant shall present evidence satisfactory to the board that he has a college degree, or its equivalent to be determined by the Board, in addition to the other required prerequisites in Sections 299 and 400. Classroom hours of courses successfully completed in subjects specifically related to real estate appraisal may be included in the hours required for the College Degree. (7-1-97)~~

02. Experience. Prerequisite to sit for the examination. Equivalent of three (3) years appraisal experience (See Subsection 299.03.b.). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (7-1-97)

a. Of the three thousand (3,000) hours required, the applicant must accumulate a minimum of two thousand (2,000) hours from nonresidential field real estate appraisal experience. The balance of one thousand (1,000) hours may be solely residential experience or can include up to five hundred (500) hours of nonfield experience as outlined in Subsection 299.03.c. (7-1-97)

IDAPA 27 - IDAHO BOARD OF PHARMACY
27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY

DOCKET NO. 27-0101-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1717, Idaho Code.

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

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the May 6, 1998, Idaho Administrative Bulletin, Volume 98-5, pages 198 through 201.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Richard Markuson at (208) 334-2356.

DATED this 8th day of June, 1998.

Richard K. Markuson, Director
Idaho Board of Pharmacy
280 N. 8th St., Ste. 204
Boise, ID 83702

IDAPA 27
TITLE 01
Chapter 01

RULES OF THE IDAHO BOARD OF PHARMACY

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-5, May 6, 1998,
pages 198 through 201.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

**31.00.00 - ADMINISTRATIVE RULES ISSUED BY
THE IDAHO PUBLIC UTILITIES COMMISSION**

DOCKET NO. 31-0000-9801

**NOTICE OF FEDERAL ACTION AFFECTING ADDRESS CHANGE
IN P.U.C. ADMINISTRATIVE RULES**

AUTHORITY: In compliance with Section 67-5228, Idaho Code, notice is hereby given of the Idaho Public Utilities Commission's amending of its mailing address contained in its administrative rules.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of this exemption from regular rulemaking procedures:

In 1994 the United States Postal Service and the Idaho Department of Administration assigned new mailing addresses for state agencies located in Boise. This action generally compelled agencies to change their mailing addresses contained in administrative rules. Since 1995, the Idaho Public Utilities Commission has amended its mailing address when it proposed other amendments to its administrative rules. Consequently, some administrative rules have been amended with the corrected mailing address while other rules have not been corrected. Currently, the Commission's old mailing address is contained in twenty-three (23) rules scattered in sixteen (16) different chapters.

Given the mandatory and non-discretionary nature of the change in mailing address, the Commission, with the approval of the Rules Coordinator, is amending its mailing address in the twenty-three (23) rules to conform to the Postal Service directive. The Commission's mailing address in its administrative rules is amended to read: "the Idaho Public Utilities Commission, ~~Statehouse~~ PO Box 83720, Boise, Idaho 83720-~~60074~~ . . ." This clerical correction is made in the following rules:

31.01.01.002 (Rules of Procedure);
31.01.01.012 (Rules of Procedure);
31.02.01.002 (Public Records Act Rules);
31.11.01.002 (Safety and Accident Reporting Rules);
31.11.01.302.01 (Safety and Accident Reporting Rules);
31.12.01.002 (System of Accounts for Public Utilities);
31.21.01.002 (Customer Relations Rules for Gas, Electric and Water Public Utilities);
31.21.01.003.01.a. (Customer Relations Rules for Gas, Electric and Water Public Utilities);
31.21.01.003.02.a. (Customer Relations Rules for Gas, Electric and Water Public Utilities);
31.21.02.002 (Information to Customers of Gas, Electric and Water Public Utilities);
31.26.01.002 (Master-Metering Rules for Electric Utilities);
31.31.01.002 (Gas Service Rules);
31.36.01.002 (Policies and Presumptions for Small Water Companies);
31.41.01.002 (Telephone Customer Relations Rules);
31.41.01.003.01.a. (Telephone Customer Relations Rules);
31.41.01.003.02.a. (Telephone Customer Relations Rules);
31.41.02.002 (Information to Customers of Telephone Companies);
31.42.01.002 (Title 62 Telephone Corporation Rules);
31.46.01.002 (Rules for Idaho Universal Service Fund);
31.46.02.002 (Telecommunication Relay Services (TRS) Rules);
31.51.01.002 (Operator Services and Pay Telephone Rules);
31.51.02.002 (Automatic Dialing and Announcement Devices (ADAAD) Rules);
31.61.01.008.03 (The Motor Carrier Rules);
31.71.01.002 (Railroad Clearance Rules).

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning these amendments, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

WRITTEN COMMENTS: Given the non-substantive and mandatory nature of these amendments, the Commission is not accepting written comments on the correction to its mailing address.

DATED at Boise, Idaho this 24th day of June 1998.

Myrna J. Walters
Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
FAX: (208) 334-3762

Street Address:
472 W. Washington Street
Boise, ID 83702-5983

IDAPA 31 - PUBLIC UTILITIES COMMISSION
31.41.01 - TELEPHONE CUSTOMER RELATIONS RULES
DOCKET NO. 31-4101-9801
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given of the Idaho Public Utilities Commission's proposed rulemaking. This action is authorized pursuant to the Commission's legal authority under the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code and the Telecommunications Act of 1988, Chapter 6, Title 62, Idaho Code and the specific authority of Sections 61-302, 61-502, 61-507, 62-605, 62-615, 62-616 and 62-622, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be scheduled only if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, no later than August 19, 1998.

The hearing site will be accessible to persons with disabilities. Request for accommodations must be made no later than five (5) days prior to the hearing, to the Commission's address set out below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rules: The proposed changes fall into four principal categories: changes to address concerns about "cramming" (invalid or unclear charges for services other than local exchange services), "slamming" (unauthorized switching of customers' exchange carriers), held orders, and certain "housekeeping" changes to reflect its current mailing address, correct typos and stray words, insure consistency, and other non-substantive changes.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.0811, negotiated rulemaking was not conducted.

ASSISTANCE ON TECHNICAL QUESTION, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Cheri C. Copsey, Deputy Attorney General at (208) 334-0314 or Beverly Barker, Consumer Assistance at (208) 334-0302.

Anyone may submit written comments regarding these proposed rules. All written comments and data concerning the proposed rules must be delivered to the Commission Secretary at the address identified above or must be postmarked on or before August 26, 1998. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 18th day of June, 1998.

Myrna J. Walters
Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
FAX: (208) 334-3762

Street Address for Express Mail:
472 West Washington Street
Boise, ID 83702-5983

TEXT OF DOCKET NO. 31-4101-9801

005. DEFINITIONS (Rule 5).

The following definitions are used in this title and chapter:

(7-1-93)

01. Applicant. Unless restricted by definition within a rule or a group of rules to a particular class of service, "applicant" means any potential customer who applies for a service from a telephone company. "Applicant"

does not include unemancipated minors. Telephone companies may decline to recognize unemancipated minors as applicants and may require an adult or emancipated minor to join an unemancipated minor as an applicant.

(7-1-93)()

02. Customer. Unless restricted by definition within a rule or a group of rules to a particular class of service, "customer" means any person who meets the terms outlined in Subsections 005.02.a. through 005.02.ed. below. If the person receiving service is not the same person as the one assuming responsibility for payment of service, the latter is the customer for purposes of selecting service(s), cancelling services(s), receiving refunds, etc.

(7-1-93)()

- a. Has applied for; (7-1-93)
- b. Has been accepted; and (7-1-93)
- c. Is currently: (7-1-93)
 - i. Receiving service from a telephone company; or (7-1-93)
 - ii. Assuming responsibility for payment of service provided to another or others. (7-1-93)

d. Any person whose service has been temporarily disconnected for non-payment shall continue to be a "customer" for the purposes of these rules until such time as service is permanently disconnected. ()

03. Good Credit. "Good credit" means payment by a customer for the most recent twelve (12) consecutive month period of all undisputed bills due the telephone company before temporary or permanent termination of service. (7-1-93)

04. Local Exchange Company (LEC). "Local exchange company" (LEC) is telephone company providing local exchange service. "Local exchange company" includes "incumbent telephone corporations," as defined in Section 62-603(6), Idaho Code, and telephone corporations granted a Certificate of Public Convenience and Necessity by the Commission to compete with incumbent telephone corporations. (7-1-93)()

05. Local Exchange Service. "Local exchange service" means the provision of access lines to residential and small business customers with the associated transmission of two-way interactive switched voice communications within a "local exchange calling area" ~~(including but not limited to connection charges, mileage charges, etc.), together with services offered by the local exchange company (e.g., call waiting, call forwarding) in conjunction with basic local exchange services~~ as defined in Sections 62-603(1) and (7), Idaho Code. (1-1-95)()

06. MTS Company or Interexchange Carrier. "MTS company" or "interexchange carrier" means a telephone company providing MTS service. (7-1-93)

07. Message Telecommunications Service (MTS). "MTS" (commonly known as "long-distance service") means the transmission of two-way interactive switched voice communication between local exchange areas for which charges are made on a per-unit basis as defined in Section 62-603(68), Idaho Code, and wide area telecommunications service (WATS) or its equivalent. (7-1-93)()

08. Operator and Directory Assistance Services. Operator and directory assistance services are telephone services that include (but are not limited to) intercept, call completion and assistance, and directory assistance services, whether local, MTS, or both. (7-1-93)

09. Other Services. "Other services" mean all services except local exchange and MTS services provided, billed, or collected by a telephone company. (1-1-95)

10. Residential Telephone Service. "Residential telephone service" means telecommunication service furnished and maintained at a dwelling primarily for personal or domestic purposes and not for business, professional or institutional purposes, i.e., service provided to residential customers as defined in Section 62-603(79), Idaho Code.

(7-1-93)()

11. Small Business Telephone Service. "Small business telephone service" means telecommunication service furnished to a business or institutional entity, whether an individual, partnership, corporation, association or other business or institutional form, for occupational, professional, or institutional purposes, to customers who do not subscribe to more than five (5) local access lines within a building, i.e., service provided to small business customers as defined in Section 62-603(~~§11~~), Idaho Code. (7-1-93)()

12. Telephone Company. Unless further restricted by definition within a rule or a group of rules, "telephone company" means any entity subject to this Commission's regulation as a provider of telecommunication services (either local exchange or MTS/WATS) under the Public Utilities Law (Idaho Code, Title 61, Chapters 1-7) or subject to this Commission's authority under the Telecommunications Act of 1988, as amended, (Title 62, Chapter 6, Idaho Code), except mutual, non-profit or cooperative telephone corporations. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

102. OTHER DEPOSIT STANDARDS PROHIBITED--RESIDENTIAL CUSTOMERS OF LECS (Rule 102).

A local exchange company shall not require a deposit or other guarantee as a condition of new or continued residential telephone service based upon residential ownership or location, income level, source of income, employment tenure, nature of occupation, ~~commercial credit records~~, race, creed, sex, age, national origin, marital status, number of dependents, or any other criterion not authorized by these rules. Rules governing deposits shall be applied uniformly. If an applicant for service or a customer, either residential or small business, selects or changes a MTS company and arranges to be billed directly by that MTS company, rather than through the LEC, no deposit may be collected by the LEC for MTS services provided by the MTS company. (7-1-93)()

103. GUARANTEE IN LIEU OF DEPOSIT--RESIDENTIAL CUSTOMERS OF LECS (Rule 103).

01. Guarantor. The local exchange company must inform residential customers that it will accept written guarantees of payments ~~in lieu of a deposit required by these rules.~~ The a local exchange company shall accept a the written guarantee of payment for a residential account from another residential customer of the local exchange company. An acceptable guarantor must have good credit. (7-1-93)()

02. Guarantee Form. The guarantee form used by each local exchange company must be filed with and approved by this Commission. The guarantee form must state: (7-1-93)

a. The terms of the guarantee, the maximum amount guaranteed, and that the telephone company shall not hold the guarantor liable for sums in excess of that amount; (7-1-93)

b. That the maximum amount guaranteed shall not exceed the amount of the deposit that would have been charged the applicant; and (7-1-93)

c. That the guarantor shall be released from the guarantor's obligation when the customer whose account is guaranteed would be eligible for a return of the customer's deposit if one had been made. (7-1-93)

03. Period of Guarantee. The minimum guarantee period is thirty (30) days. The guarantee shall remain in full force and effect until five (5) days after the local exchange company's receipt of the guarantor's notice of cancellation of the guarantee agreement. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

202. DUE DATE OF BILLS--DELINQUENT BILLS (Rule 202).

~~01. Ordinary Due Date.~~ The telephone company may require that bills for service be paid within a specified time after the billing date. Except in cases covered by Rule 305, the minimum specified time after the billing date is fifteen (15) days (or twelve (12) days after mailing or delivery, if bills are mailed or delivered more than three (3) days after the billing date). Upon the expiration of this time without payment, the bill may be considered delinquent. (7-1-93)()

~~02. Hardship Exemption.~~ When a residential customer certifies to a telephone company in writing that payment by the ordinary due date of Rule 202.01 creates a hardship due to the particular date when the customer normally receives funds, the due date shall be extended up to an additional fifteen (15) days or the customer shall be billed in a cycle that corresponds to the customer's receipt of funds (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

205. CUSTOMERS WITH GOOD CREDIT-FINAL BILLS BILLING PROHIBITED (Rule 205).

~~When a customer with good credit voluntarily terminates service with the local exchange company, the final bill shall contain or be accompanied by a statement that the customer had good credit with the local exchange company upon the date the statement was issued. When an applicant for service presents such a statement to a local exchange company (whether from one regulated by this Commission or otherwise), the statement constitutes evidence of good credit in the application for service. However, presentation of such a statement will not require the local exchange company to consider the applicant to have good credit solely on the basis of that statement. Telephone companies are prohibited from billing for unanswered or unaccepted telephone calls, telephone calls placed to a toll-free number, or telephone service or other service(s) or merchandise not ordered or otherwise authorized by the customer of record. Any charges for these services that appear on a customer's bill shall be removed from the customer's bill no later than two (2) billing cycles following notice to the telephone company.~~ (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

~~207. --299. (RESERVED) BILLING FOR OTHER SERVICES (Rule 207).~~

~~Telephone company bills for other services shall contain the mailing address(es) or toll-free telephone number(s) available to customers for answering inquiries and resolving complaints about the services billed, sufficient information to readily identify the service provider, the services rendered, the associated specific charges for which the bill is tendered and a statement that local exchange service may not be disconnected due to nonpayment of charges related to these services.~~ ()

208. NOTICE CONCERNING APPLICATION OF PAYMENTS AND DISCONNECTION (Rule 208).

~~All bills shall contain a notice that partial payments will be applied toward local exchange service charges first, unless the customer requests otherwise, and that additional payments will be allocated among the remaining providers based upon the ratio of the undisputed amount due each service provider to the undisputed total amount billed. Such payments shall be applied first to the oldest undisputed balance. All bills shall also contain notice that local exchange service may not be disconnected due to nonpayment of charges related to other non-local exchange services, including MTS services.~~ ()

~~209. -- 299. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

300. FURTHER DEFINITIONS (Rule 300):

As used in Rules 301 through 314:

(7-1-93)

01. Applicant. "Applicant" does not include unemancipated minors. Telephone companies may decline to recognize unemancipated minors as applicants and may require an adult or emancipated minor to join an unemancipated minor as an applicant.

(7-1-93)

02. IntraLATA MTS. "IntraLATA MTS" means MTS wholly within (a) one of the Local Access and Transport Areas (LATAs) established for Bell operating companies by federal antitrust decree or (b) the local marketing area for the GTE operating companies established by federal antitrust decree. The three areas in Idaho for intraLATA MTS are (approximately) southern Idaho (historically served by Mountain Bell, now known as U S WEST Communications, and directly connected independent telephone companies), the lower Clearwater drainage (historically served by Pacific Northwest Bell, now known as U S WEST Communications, and directly connected independent telephone companies), and northern Idaho (historically served by General Telephone of the Northwest, now known as GTE Northwest and directly connected independent telephone companies).

(1-1-95)

300. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

304. REQUIREMENTS FOR NOTICE BEFORE TERMINATION OF LOCAL EXCHANGE--ORDINARY CIRCUMSTANCES (Rule 304).

01. Seven-Day Notice. If the telephone company intends to terminate local exchange service under Rule 302, it must send to the customer written notice of termination mailed at least seven (7) calendar days before the proposed date of termination. This written notice must contain the information required by Rule 306. This seven-day notice does not apply under the conditions described in Rule 304.04.

(1-1-95)

02. Twenty-Four (24) Hour Notice. At least twenty-four (24) hours before actual termination, the telephone company must diligently attempt to contact the customer affected to apprise the customer of the proposed action and steps to take to avoid or delay termination. This oral notice must contain the same information required by Rule 306. The twenty-four (24) hour notice does not apply under the conditions described in Subsection 304.04.

(7-1-93)()

03. Additional Notice. If local exchange service is not terminated within seven (7) calendar days after the proposed termination date and the matter is not the subject of a pending complaint before this Commission, or other arrangements have not been made with the customer, the telephone company shall again make a diligent effort to contact the customer to advise the customer of the proposed action. If the telephone company has not terminated service within twenty-eight (28) days of mailing a written notice of termination, the telephone company must again issue a written notice under Subsection 304.01 if it still intends to terminate service. Actual termination is prohibited until a minimum of twenty-four (24) hours after notice or the diligent attempt to notify.

(1-1-95)

04. Failure to Pay--Payment with Dishonored Check. The requirement of seven (7) days' written notice does not apply when if the customer has been provided with a seven (7) day notice within the past twenty-eight (28) days, and:

(7-1-93)()

a. The customer does not make an initial payment according to a payment arrangement or makes the initial payment a payment in accordance with a dishonored check an agreed to payment arrangement; or

(7-1-93)()

b. The customer avoids termination that would otherwise take place by tendering tenders payment with a dishonored check. In either case the telephone company must make a diligent effort to contact the customer to apprise the customer of the proposed action, and actual termination is prohibited until a minimum of twenty-four (24) hours after notice or the diligent attempt to notify. Further twenty-four (24) hour notices need not be given if the

~~customer has been provided with a twenty-four (24) hour notice in the past seven (7) days. (7-1-93)()~~

(BREAK IN CONTINUITY OF SECTIONS)

306. CONTENTS OF NOTICE OF INTENT TO TERMINATE LOCAL EXCHANGE SERVICE (Rule 306).

The written or oral notice of intent to terminate local exchange service required by Rule 304 must state: (1-5-95)

01. ~~The Reasons.~~ The reason(s), citing these rules, why service will be terminated and the proposed date of termination. (7-1-93)()

02. ~~Actions.~~ Actions the customer may take to avoid termination. (7-1-93)

03. ~~Medical Certificate of Serious Illness or Medical Emergency.~~ That a certificate notifying the local exchange company of a serious illness or medical emergency in the household may delay termination under Rule 308. (1-5-95)()

04. ~~Filing of Complaint May Be Filed.~~ That an informal or formal complaint concerning termination may be filed with the telephone company or the Commission, and that service will not be terminated on grounds relating to the dispute between the customer and telephone company before resolution of the complaint (the Commission's address and telephone number must be given to the customer). ~~and~~ (7-1-93)()

05. ~~Telephone Company Willing to Make Payment Arrangements.~~ That the telephone company is willing to make payment arrangements (in a written notice this statement must be in bold print). (7-1-93)()

06. Partial Payments. ~~That for purposes of disconnection, partial payments will be applied toward local exchange service charges first, unless the customer requests otherwise, and that additional payments will be allocated among the remaining providers based upon a ratio of the undisputed amount due each service provider to the undisputed total amount billed, and that charges for services other than local exchange services cannot be used as a basis for disconnection.~~ ()

07. Disputed Charges. ~~That failure to pay any amount that is in bona fide dispute cannot be used as a basis for disconnection.~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

310. INSUFFICIENT GROUNDS FOR TERMINATION OF LOCAL EXCHANGE SERVICE (Rule 310).

No customer shall be given notice of termination of local exchange services nor shall the customer's local exchange service be terminated if: (1-1-95)

01. ~~Less Than Fifty Dollars (\$50) or Less Than Two (2) Months.~~ The customer's unpaid bill cited as grounds for termination is less than fifty (\$50) dollars ~~or less than two (2) months' charges for local exchange service, whichever is less.~~ (1-1-95)()

02. ~~Telephone Service to Any Other Customer or Former Customer.~~ The unpaid bill cited as grounds for termination is for telephone service to any other customer or former customer (unless that customer has a legal obligation to pay the other bill) or for any other class of service. (1-1-95)

03. ~~Results from the Purchase of MTS and Other Services.~~ The unpaid bill cited as grounds for termination of service results from the purchase of MTS and other services, including but not limited to: (1-1-95)

a. ~~Directory advertising;~~ (1-1-95)

- b. Information services, operator services or other services not provided by local exchange companies; (1-1-95)
- c. Leased or purchased customer premises equipment or other merchandise; or (1-1-95)
- d. Inside wire maintenance. (See Rule 313). (1-1-95)

~~04. Failure to Pay a Written Guarantee. The reason for termination is the customer's failure to pay a written guarantee as provided in Rule 103. (1-1-95)~~

054. Other Person Has an Unpaid Balance for Service. The customer lives at a residence where another person lives and the other person has an unpaid balance for service, except when the customer has a legal obligation to pay the other persons's bill. (1-1-95)

(BREAK IN CONTINUITY OF SECTIONS)

312. PAYMENT ARRANGEMENTS (Rule 312).

01. Arrangements Allowed. When a customer cannot pay a bill in full, the telephone company may continue to serve the customer if the customer and the telephone company agree on a reasonable portion of the outstanding bill to be paid immediately, and the manner in which the balance of the outstanding bill will be paid. (7-1-93)

02. Reasonableness. In deciding on the reasonableness of a particular agreement, the telephone company will take into account the customer's ability to pay, the size of the unpaid balance, the customer's payment history and length of service, and the amount of time and reasons why the debt is outstanding. (7-1-93)

03. Application of Payment. Payments are to be applied to the undisputed balance owed by the customer for local exchange services first, unless the customer designates otherwise. A customer may designate how a payment insufficient to pay the total balance due shall be applied. In the absence of instructions from the customer, a partial payment to a customer instruction, in those instances where a payment is sufficient to pay the total balance owed by the customer for local exchange company service, the remaining partial payment shall be allocated among the providers other services based upon the ratio of the undisputed amount due each service provider to the undisputed total amount billed. Such payments shall be applied first to the oldest undisputed balances. (1-1-95)()

04. Notice of Allocation Procedures. The telephone company shall notify customers of its procedures for allocating partial payments in its annual summary of these rules given pursuant to ~~Rule Subsection~~ 602.01 and in its written seven-day notice sent pursuant to ~~Rule Subsection~~ 304.01. In discussing or negotiating payment arrangements, the local exchange company shall advise the customer what amount of payment the customer ~~shall~~ must allocate to local exchange service or to MTS service or other services in order to prevent the termination of or restriction of access to those services. If the telephone company successfully contacts the customer pursuant to the requirements of ~~Rule Subsection~~ 304.02, the company shall likewise advise the customer of the amounts that the customer must allocate to local exchange service and/or MTS services or other services to avoid termination of those services. (1-1-95)()

05. Second Arrangement. If a customer fails to make the payment agreed upon by the date that it is due, the telephone company may, but is not obligated to, enter into a second arrangement. (1-1-95)

06. When Arrangement Not Binding. No payment arrangement binds a customer if it requires the customer to forego any right provided for in these rules. (1-1-95)

313. LOCAL EXCHANGE SERVICE NOT DENIED OR TERMINATED FOR BILLS FOR MTS OR OTHER SERVICES (Rule 313).

01. ~~Local Exchange Services Can Be Provided and MTS or Other Services Simultaneously denied or Terminated. In exchanges where local exchange services can be provided and MTS or other services simultaneously denied or terminated, Denial or Termination of Local Exchange Service.~~ No telephone company may deny or terminate local exchange service to any customer on the ground that the customer has not paid for MTS or other services. (1-1-95)(____)

02. ~~Request an Exemption.~~ Any LEC unable to provide local exchange services while denying or terminating MTS or other services may request an exemption from the Commission on an exchange by exchange basis by fully documenting the technical reasons for its inability to comply. (1-1-95)(____)

314. DENIAL, RESTRICTION, ~~AND~~ MODIFICATION, OR TERMINATION OF MTS OR OTHER SERVICES (Rule 314).

01. Compliance. Telephone companies providing MTS or other services must comply with Rules 301, 303, Subsections 311.03 and 311.04, and Rule 312 in connection with denial, restriction, modification, or termination of those services. Telephone companies providing MTS or other services must provide reasonable notice before terminating or restricting access to such services, except as provided by Rule 303. Telephone companies providing MTS must provide reasonable notice before modifying a customer's existing service. Nothing in this rule abrogates customers' rights under those telephone companies' tariffs or filings, written agreements with customer, or obligations otherwise imposed by statutory or common law. (1-1-95)(____)

02. ~~Result of Customer's Failure to Pay.~~ A customer's failure to pay for undisputed MTS charges billed by the local exchange company may result in loss of 0+ or 0- and 1+ dialing access to MTS services until such time as the customer pays the undisputed charges and applicable reconnection charges, if any. (1-1-95)(____)

03. Loss of Services. Customer failure to pay undisputed charges for other services may result in loss of those services. (1-1-95)

(BREAK IN CONTINUITY OF SECTIONS)

401. COMPLAINT TO TELEPHONE COMPANY (Rule 401).

01. Subject Matter. A customer or applicant for service may complain to the telephone company about any deposit or guarantee required as a condition of service, billing, termination of service, quality or availability of service, or any other matter regarding telephone company services, policies or practices for local exchange service, MTS, operator and directory assistance services, or other services. The customer or applicant may request a conference with the telephone company, but this provision does not affect any statute of limitation that might otherwise apply. Complaints to the telephone company may be made orally or in writing. A complaint is considered filed when received by the telephone company. In making a complaint or request for conference, the customer or applicant shall state the customer's or applicant's name, service address, telephone number and the general nature of the complaint. (7-1-93)

02. Obligations for Billing Disputes. A local exchange company that bills and collects for other entities is responsible for ~~either~~ addressing complaints for all services and merchandise billed ~~or~~ and for providing the customer with the mailing address(es) or toll-free telephone numbers so the customer may contact the supplier of services or merchandise billed. If the customer informs the LEC that another company's charge is disputed, the LEC must stop any payment allocations to the disputed charge. The disputed charge must be permanently removed from the LEC's bill no later than two billing cycles following the billing cycle during which the complaint is registered unless the customer agrees to pay the disputed bill prior to that time. (1-1-95)(____)

03. Conference. Upon receiving a complaint or a request for conference, the telephone company shall

promptly, thoroughly and completely investigate the complaint, confer with the customer or applicant when requested, and notify the customer or applicant of the results of its investigation and make a good faith attempt to resolve the complaint. The oral or written notification shall advise the customer or applicant that the customer or applicant may request the Commission to review the telephone company's proposed disposition of the complain.

(7-1-93)

04. Service Maintained. The telephone company shall not terminate service based upon the subject matter of the complaint while investigating the complaint or making a good-faith attempt to resolve the complaint.

(7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

404. RESPONSES TO INFORMAL COMPLAINTS (Rule 404).

Within ten (10) business days of receiving notification from the Commission that an informal complaint involving the company has been filed with the Commission, telephone companies must either respond orally or in writing to the Commission.

()

404~~5~~. -- 500. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

503. REPAIR SERVICE STANDARDS (Rule 503).

01. Restoration of Service. When a telephone company providing local exchange service pursuant to Title 61, Idaho Code, is informed by a customer of a service outage as described in ~~Rule~~ Subsection 501.02, the telephone company must:

(7-1-93)()

a. Restore service within sixteen (16) hours after the report of the outage if the customer notifies the telephone company that the service outage creates an emergency for the customer; or

(7-1-93)

b. Restore service within twenty-four (24) hours after the report of the outage if no emergency exists, except that outages reported between noon on Saturday and 6:00 p.m. on the following Sunday must be restored within forty-eight (48) hours or by 6:00 p.m. on the following Monday, which ever is sooner. If the telephone company does not restore service within the times required by this subsection the telephone company must credit the customer's account for an amount equal to the monthly rate for one (1) month of basic local exchange service.

(7-1-93)

02. Extenuating Circumstances. Following disruption of telephone service caused by natural disaster or other causes not within the telephone company's control and affecting large groups of customers, or in conditions where the personal safety of ~~an employee repair technician~~ would be jeopardized, the telephone company is not required to provide the credit referred to in Subsection 503.01 as long as it uses reasonable judgment and diligence to restore service, giving due regard for the needs of various customers and the requirements of the telecommunications service priority (TSP) program ordered in FCC Docket 88-341 (47 C.F.R. Part 64 Appendix A). When a customer causes the customer's own service outage or does not make a reasonable effort to arrange a repair visit within the service ~~restoral~~ restoration deadline, or when the telephone company determines that the outage is attributable to the customer's own equipment or inside wire, the telephone company is not required to provide to that customer the credit referred to in Subsection 503.01.

(7-1-93)()

03. Compliance Standard. Each month ~~At~~ least ninety percent (90%) of out-of-service trouble reports shall be cleared in accordance with Subsections 503.01 and 503.02. The telephone company shall keep a monthly service record as described in Subsection 502.01 and shall notify the Commission whenever the record indicates the ninety percent (90%) level has not been met for a period of three (3) consecutive months.

(7-1-93)()

504. LOCAL EXCHANGE SERVICE INSTALLATION STANDARDS (Rule 504).

01. Response to Customer or Applicant Service Orders. Unless the applicant or customer requests a later installation time, each telephone company providing local exchange service, shall complete the installation of local exchange service within five (5) business days after receipt of an application or customer request when all pertinent tariff requirements have been met by the applicant or customer. In those instances where an applicant or customer orders service more than five (5) business days prior to customer's requested due date, such installation shall be made on the requested date. If the telephone company does not provide service within the times required by this subsection, the local exchange company must credit the customer's account for an amount equal to the service installation charge plus the rate for one (1) month of basic local exchange service. Dating from the customer's assigned or requested due date, for each subsequent thirty (30) day period that the telephone company does not provide service, the customer shall receive an additional credit equal to the monthly rate for one (1) month of basic local exchange service. ()

02. Notification of Delay. If service cannot be completed within five (5) business days after receipt of the application, or if the date requested cannot be met, the telephone company shall promptly notify the applicant or customer of such delay, the reason for the delay, and the estimated date when service will be provided. ()

03. Extenuating Circumstances. If the delay in providing local exchange service is caused by natural disaster or causes not within the telephone company's control or by conditions where the personal safety of the company employees would be jeopardized, the telephone company is not required to provide credit referred to in Subsection 504.01. A "cause not within the telephone company's control" includes delays directly related to providing service to a previously unserved area that require construction of additional plant or lines to accommodate that service. ()

04. Compliance Standard. Each month at least ninety percent (90%) of all orders for local exchange service for residential and small business customers must be completed in accordance with Subsection 504.01. The telephone company shall keep a monthly service record and shall notify the Commission whenever the record indicates the ninety percent (90%) level has not been met for a period of three (3) consecutive months. ()

5045. -- 600. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

603. CHARGES FOR CHANGING PRIMARY INTEREXCHANGE (MTS) COMPANY ACCESS TO EMERGENCY SERVICES (Rule 603).

~~If a customer objects to a charge for changing the customer's primary (1+) interexchange (MTS) company or contends that the customer did not authorize a change in primary interexchange company, the local exchange company must at the customer's request restore the service of the original primary interexchange company and remove any charges for changing interexchange companies unless the interexchange company can show that the customer authorized the change in writing and was informed of the charge for the change in writing. In counties where consolidated emergency communications systems, as defined by Section 31-4802, Idaho Code, are established, the local exchange company shall provide access to those services to all its customers. (7-1-93)()~~

(BREAK IN CONTINUITY OF SECTIONS)

606. VERIFICATION OF CUSTOMER REQUEST FOR CHANGE IN CUSTOMER'S TELEPHONE COMPANY (Rule 606).

It is the responsibility of the telephone company requesting a change in a customer's telephone company to verify that the customer authorized the change. Verification must first be confirmed in accordance with one (1) of the following: ()

01. Written Authorization. The soliciting telephone company has obtained the customer's written authorization; or ()

02. Electronic Authorization. The soliciting telephone company has obtained the customer's electronic authorization, placed from the telephone number(s) on which the telephone company is to be changed, to submit the order that confirms the information described in Subsection 606.01 to confirm the authorization; or ()

03. Oral Authorization. An appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the customer's oral authorization to submit the telephone company change order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number); or ()

04. Information Package. Within three (3) business days of the customer's request to change telephone companies, the soliciting telephone company must send each new customer an information package by first class mail containing at least the information prescribed in Section 607. ()

607. CONFIRMATION PACKAGE INFORMATION (Rule 607).

If the telephone company mails an information package to the customer to verify a customer's request to change telephone companies, the package must contain the following: ()

01. Confirming an Order. A statement that the information package is being sent to confirm that a telemarketing order to change the customer's previous telephone company was placed by the customer within the previous week. ()

02. Current Telephone Company. The name of the customer's current telephone company. ()

03. Soliciting Telephone Company. The name of the newly requested soliciting telephone company. ()

04. Terms, Conditions or Charges. A description of any terms, conditions, or charges that will be incurred. ()

05. Person Ordering the Change. The name of the person ordering the change. ()

06. Name, Address, and Telephone Number. The name, address, and telephone number of both the customer and the soliciting telephone company. ()

07. Postpaid Postcard. A postpaid postcard that the customer can use to deny, cancel or confirm a service order. ()

08. Failure to Return Postcard. A clear statement that if the customer does not return the postcard the customer's telephone company will be switched within fourteen (14) days after the date the information package was mailed to (name of soliciting telephone company). ()

09. Fourteen Day Waiting Period. The soliciting telephone company requesting the change must wait fourteen (14) days after the form is mailed to the customer before submitting its change order to the customer's current telephone company. If the customer cancels the order during the waiting period, the soliciting telephone company shall not submit the customer's order to the customer's current telephone company. ()

608. CUSTOMER NOTICE OF CHANGE OF TELEPHONE COMPANY (Rule 608).

The telephone company initiating the change of telephone company shall give notice to the customer that the customer's telephone company has been changed. The notice shall: ()

01. Customer May Change Telephone Company. Clearly and conspicuously advise the customer that the customer may change back to the previous telephone company or select a new telephone company by calling the previous telephone company or the customer's preferred telephone company. ()

02. Toll-Free Telephone Number. Provide the customer with a toll-free number to call for further information. ()

03. Time Frame for Notification. Be sent on or before fifteen (15) days after the customer enters into the telecommunications service agreement, or on or before the day the telephone company first bills the customer under the agreement, whichever is later. ()

04. Separate Document. Be a separate document sent for the sole purpose of advising the customer of the change. ()

609. CUSTOMER RIGHT TO SELECT DIFFERENT TELEPHONE COMPANY (Rule 609).

A customer may select a different telephone company within three (3) days after receiving the notice described in Section 608 and may not be charged a cancellation charge or disconnect fee unless: ()

01. More Than Five Telephone Lines. The customer has more than five (5) telephone lines. ()

02. Written Agreement. Has entered into a written agreement which specifies such charges and fees. ()

03. Telephone Company Verified the Change. The telephone company verified the change in accordance with Section 606. ()

610. REMOVING CHARGES FOR IMPROPERLY CHANGING A CUSTOMER'S TELEPHONE COMPANY (Rule 610).

If a customer objects to a charge for changing the customer's telephone company, or contends that the customer did not authorize a change in the telephone company, the customer's original service provider must be reinstated upon customer request. Any charges for changing telephone companies shall be waived, credited or refunded to the customer unless the telephone company requesting the change can verify the customer authorized the change and was informed of the charge for the change in accordance with Sections 606 through 609. ()

60611. -- 999. (RESERVED).

IDAPA 32 - PUBLIC WORKS CONTRACTORS STATE LICENSES BOARD
32.01.01 - RULES OF THE PUBLIC WORKS CONTRACTORS LICENSE BOARD

DOCKET NO. 32-0101-9801

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Sections 54-1907 and 67-5220 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 1998.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

The changes in Rule 003, 102, 301, and 309 and otherwise throughout the proposed rules, change the term "Registrar" to "Executive Director" to more clearly reflect the duties of that position. Rule 003 also clarifies that the Board designates the legal counsel, creates a definition for "supplier," and exempts suppliers from licensing. The changes to Rule 100 states the correct address of the Board. The changes to Rule 101 reflect the changes to Board meeting dates mandated by the 1998 Idaho legislature. The new rules 103 through 124 are the former rules from Chapter 32.01.02, "General Rules," which is being repealed. The change in Rule 200 clarifies the procedures for an upgrade application. The changes in Rule 201 include technical changes in terms and in print case, and provide for a construction manager initial examination and licensing fee, a license renewal fee, and an inactive license fee as mandated by the 1998 Idaho legislature. The changes in Rule 202 eliminate specialty construction as a separate class, changes the term "liquidity" to "working capital," provides for indemnification to the Board if the applicant's financial resources do not meet the minimum requirements, and increase the financial guideline amounts for Class AAA, AA, A and B licenses and reduce the financial guideline amounts for Class C and D licenses. The change in Rule 203 clarifies that the total bid cost includes the aggregate total of all bids of the subcontractors. The changes in Rule 204 clarify that license numbers of specialty categories licensed by the state must be on the application and a copy of the license must accompany the application. Rule 302 has been repealed. The changes in Rule 307 clarify the grammar of the rule only. The changes in Rule 501 include a technical change, includes limited liability partnerships and limited liability companies as applicants and makes the clarification that all members of a joint venture must be licensed at the time of the bid. Rules 504 and 607 have been repealed. The change in Rule 608 eliminates the requirement that the licensee must physically return a license in order for it to be changed. The change in Rules 700, 701 and 703 recognize and incorporate the Administrative Procedure Act and the Attorney General's Model Rules of Practice and Procedure in the disciplinary process. The changes in Rule 800 includes a technical removal of an unnecessary word and the repeal of subsections which are either unnecessary or are in conflict with the Administrative Procedure Act and with other rules.

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

The changes in Rule 201 provide fees for a construction manager initial examination and licensing fee of \$200, license renewal fee of \$200 and inactive licenses fee of \$50, as mandated by Section 54-4510, Idaho Code, as enacted by the 1998 Idaho legislature in HB811.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the rules were drafted in conjunction with the Public Works Task Force consisting of two Board members, two Board staff persons and four persons from the Associated General Contractors.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nancy Michael, Registrar at (208) 327-7326.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 26, 1998.

DATED this 17th day of June, 1998.

Nancy Michael, Registrar
Public Works Contractors License Board
355 N. Orchard, Suite 107
Boise, Idaho 83720-0073
(208) 327-7326

TEXT OF DOCKET NO. 32-0101-9801

003. DEFINITIONS.

- As used in these rules. (7-1-93)
01. Applicant. Shall mean any person who has filed an application with the Board. (7-1-93)
02. Licensee. Shall mean any individual proprietor, copartnership, limited liability partnership, limited liability company, corporation, joint venture or other business organization who holds a current, unrevoked license. (7-1-93)()
03. Petitioner. Shall mean: (7-1-93)
- a. Any licensee who has filed with the Board a written request for the change or addition to the types of construction for which he is licensed; (7-1-93)
- b. Any applicant or licensee requesting a rehearing in any proceeding; (7-1-93)
- c. Any interested person requesting the promulgation, amendment or repeal of a rule, or; (7-1-93)
- d. Any interested person requesting a declaratory ruling on the applicability of the License Act or of any rule or order of the Board. (7-1-93)
04. Staff. Shall mean ~~Registrar~~ Executive Director or other members of the staff as appropriate who may appear and participate in any proceedings before the Board. (7-1-93)()
05. Hearing Officer. Shall mean that person designated by the Chairman of the Board to conduct or assist in any proceeding before the Board. (7-1-93)
06. Legal Counsel. For the Board shall be as designated by the ~~office of the Attorney General, state of Idaho~~ Board. (7-1-93)()
07. Supplier. Persons who only supply goods or equipment to a construction project and do not perform any other construction contracting duties. Suppliers shall be exempt from licensure. ()
08. Executive Director. Shall refer to and shall mean the same as the Registrar. ()

(BREAK IN CONTINUITY OF SECTIONS)

100. PLACE OF BUSINESS.

The principal place of business of the Board shall be ~~4409~~ 355 Main Street N. Orchard, Suite 480107, PO Box 83720, Statehouse Mail, Boise, ID 83720-~~700073~~, telephone (208) 327-7326, fax (208) 327-7377, office hours 8:00 a.m. to 5:00 p.m. (7-1-93)()

101. MEETINGS.

01. ~~Regular Meetings. The Board shall hold not less than four (4) regular meetings each year on a day not later than the fifteenth day of the month in each of the months of January, April, July and October. Meetings are held on the first Monday of each month unless it is a holiday.~~ (7-1-93)

02. ~~Special Meetings. Special meetings or regular meetings in other months may be held at such times as the Board may determine, subject to the call of two (2) members of the Board.~~ (7-1-93)

03. ~~Quorum. Quorum at any meetings shall be constituted by three (3) members of the Board.~~ (7-1-93)

04. ~~Notice of regular and Special Meetings. The Registrar Executive Director shall give due notice of any regular or special meeting to each member of the Board.~~ (7-1-93)()

102. COMMUNICATION.

All written communications, forms and documents concerning any matter covered by the Act or these rules shall be addressed to the ~~Registrar~~ Executive Director of the Board (not to members of the Board or staff). All communications are deemed officially received only when delivered to the principal office of the Board. (7-1-93)()

103. ~~199.~~ (RESERVED) PETITIONS.

Petitions may be filed by application. An applicant or licensee seeking a rehearing of the decision and order of the Board on any application, or in any disciplinary proceeding, must file a written petition. ()

104. FORM AND CONTENT.

01. Form. The form, including the heading, the name of the petitioner and the purpose of the petition shall be in the manner prescribed in these rules. ()

02. Paragraph 1. Shall state the petitioner's interest in the matter. ()

03. Paragraph 2. Shall state the petitioner's request in brief, precise and specific terms, including references to any pertinent statutes or rules. ()

04. Paragraph 3. Shall contain the statements of fact to support the petitioner's request. Briefs and supporting documents may accompany petitions. ()

05. Dated and Signed. The petition shall be dated and signed by the petitioner. ()

06. Filed. The petition shall be filed with the Board. The Board shall acknowledge the petition by First Class Mail with the notice of hearing or the decision of the Board in the matter. ()

105. REVIEW.

Petitions will be reviewed, heard and decided at regular monthly meetings of the Board. ()

106. SPECIAL PROVISIONS GOVERNING PETITIONS FOR EXTENSION OF TIME.

01. Filed. A written petition for an extension of time shall be filed by the last working day of the month the license expires. The petition shall state briefly and concisely the reason(s) for the extension of time. The petition shall request an extension be granted for a specified number of days not to exceed sixty (60) days. Petitions for more than sixty (60) days will not be honored. ()

02. Accompaniments. The petition shall be accompanied by the proper license fees and filed with the Board not later than the last day of the licensing period. A petition filed without the fees or filed after the license has expired will not be honored. ()

03. Approval. Approval of a petition for an extension of time shall authorize operation as a contractor until actual issuance of such renewal license for the ensuing licensing period, provided the application for renewal is filed with the Board within the extended time specified. ()

04. Failure to File. Should the licensee fail to file his application for renewal on or before the last day of the extended time specified in the notice, his license shall lapse and expire on that day. ()

107. SPECIAL PROVISIONS COVERED IN A PETITION TO CHANGE OR ADD TYPES OF CONSTRUCTION.

The petition to change or add types of construction shall be supported by evidence or work history, performance, experience, equipment and financial responsibility, as deemed necessary in the circumstances. ()

108. RECORDS.

The Board shall maintain in its offices in Boise, Idaho, an indexed record of all applications, licenses issued, licenses renewed and all revocations, cancellations, and suspensions of licenses. ()

109. COPIES.

The Board shall furnish a certified copy of any license issued upon receipt of the sum of fifty cents (\$.50). ()

110. DIRECTORY - LISTS.

The Board shall publish a directory of the names and addresses of contractors licensed pursuant to Title 54, Chapter 19, Idaho Code. ()

01. Furnish Lists. The Board may furnish lists to such public works and building departments, public officials or public bodies, architects and professional engineers, and other persons interested in or allied with the building and construction industry in this or any other state as deemed advisable, and at such intervals as deemed necessary, whenever funds therefor are available. ()

02. Request for Copies. Copies of the list may be furnished by the Board upon request to any firm or individual upon payment of a reasonable fee fixed by the Board. ()

111. POCKET CARDS.

The Board may issue pocket cards to licensees that may serve as satisfactory evidence of the possession of a license and current renewal. ()

112. STATEMENT FOR PUBLIC WORKS PROJECTS.

The Board shall promote and encourage the publication of a statement regarding licensing requirements in the advertised specifications for public works projects. ()

113. POSTED NOTICES.

The Board shall promote and encourage the posting of notices regarding licensing requirements in conspicuous places in public offices and buildings. ()

114. PUBLICATION.

The Board shall, upon request and periodically, as needed, publish and distribute statements and placards regarding licensing requirements to public officials, architects, engineers and other interested persons. ()

115. BID PROPOSALS.

The Board shall promote and encourage the use of provisions requiring the posting of license certificate numbers on bid proposal forms for public works projects. ()

116. NAMING SUBCONTRACTORS.

The Board shall promote and encourage the use of provisions requiring the posting of license certificate numbers in

those instances where subcontractors and specialty contractors are required to be named in the bid proposal form for public works projects. ()

117. REVIEW.

The Board may review the basis for a contested case at any regular or special meeting. ()

118. ANSWER.

An answer to a citation and complaint shall be filed within ten (10) days after the citation is served. Answers shall be reviewed at regular or special meetings of the Board. ()

119. NOTICE OF HEARING.

In any contested case where a hearing is set, due notice of the date, time and place shall be served on the applicant or licensee by Certified Mail, and such other interested persons, including complainants, by First Class Mail. ()

120. FINANCIAL STATEMENTS.

The Board may, at its discretion, require that the financial reports furnished by the applicant be prepared by an accountant. All financial information submitted by an applicant shall be considered confidential and exempt from public inspection. ()

121. APPRAISALS.

The Board may, in its discretion, require the appraisal of any real or chattel property reported by an applicant or licensee. Such appraisals shall be conducted by a disinterested person or firm established and qualified to perform such services. ()

122. REFERENCES.

The Board may, in its discretion, require an applicant for an original or renewal license to furnish such personal, business, character, financial or other written references as the Board may deem necessary and advisable in determining the applicant's qualifications. ()

123. ORAL COMPLAINTS.

An oral complaint alleging a violation of the License Act shall be reduced to writing, verified, and filed with the Board in the form and manner provided in these rules. ()

124. DETERMINING COVERAGE.

The Board shall make its own determinations as to whether contractors, builders, subcontractors, specialty contractors, or material men are covered by Title 54, Chapter 14, Idaho Code, even though such determinations may differ from those of the owner, other interested persons or agencies. The Board may make its own determinations as to whether a specific type of work or project shall be regarded as "public works construction" within the meaning of the License Act, even though such determinations may differ from those of the owner, other interested persons or agencies. ()

125. -- 199. (RESERVED).

200. CLASSES.

01. Class. "Class" of any license shall be as designated and defined in Section 54-1904, Idaho Code as amended. (7-1-93)

02. Limit of One (1) License. A licensee will be permitted to hold only one (1) class of license at any given time. (7-1-93)

03. Filing ~~Original Upgrade~~ Application. A licensee in one class who desires a license of another class shall prepare and file an ~~original upgrade~~ application, ~~current financial statement~~ and pay the fee for such other class. (7-1-93)()

04. Voiding Old License. When a licensee of one class has been issued a license of another class, the previous license shall be null and void. (7-1-93)

201. FEES.

01. Fees. Fees for each class of license shall be as designated and defined in Sections 54-1904, and 54-4510, Idaho Code. (7-1-93)()

02. Payment of Fees. Fees shall be payable to "Treasurer, State of Idaho". (7-1-93)

03. Application Filed with ~~Payment~~ Fees. Fees shall accompany the application for a license. An application filed without the proper fees shall be deemed incomplete. (7-1-93)()

04. Nonrefundable Fees. Fees accompanying ~~ORIGINAL~~ original applications and fees accompanying ~~RENEWAL~~ renewal applications are for the administration and enforcement of the Act and shall not be refunded to the applicant pursuant to Sections 54-1911 and 54-1912, Idaho Code respectively. (7-1-93)()

05. Construction Manager Licensing Fees. ()

a. The fee for initial examination and licensing shall be two hundred dollars (\$200). ()

b. The fee for license renewal shall be two hundred dollars (\$200). ()

c. The fee for an inactive license shall be fifty dollars (\$50). ()

d. The fee for license reinstatement shall be two hundred dollars (\$200). ()

e. The fee for administering the examination shall be the standard fee established for taking that examination. ()

f. The fee for issuing and for reinstating a certificate of authority shall be one hundred dollars (\$100). ()

202. GUIDELINES.

The financial guidelines for obtaining and maintaining a license under this Act shall be as follows: (7-1-93)

01. Heavy, Highway, Building, and Specialty Construction Class AAA License. An applicant requesting a Class AAA license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of ~~approximately three six~~ hundred thousand dollars (~~\$3600,000~~) with ~~sixty two hundred~~ thousand dollars (~~\$6200,000~~) liquidity in working capital. (7-1-93)()

~~02. Specialty Construction Class AAA License. An applicant requesting a Class AAA license in Specialty Construction only, shall have a net worth of approximately one hundred fifty thousand dollars (\$150,000) with thirty thousand dollars (\$30,000) liquidity. (7-1-93)~~

~~03. Heavy, Highway, Building, and Specialty Construction Class AA License. An applicant requesting a Class AA license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of approximately two four hundred fifty thousand dollars (\$20450,000) with forty one hundred fifty thousand dollars (\$4150,000) liquidity in working capital. (7-1-93)()~~

~~04. Specialty Construction Class AA License. An applicant requesting a Class AA license in Specialty Construction only, shall have a net worth of approximately one hundred thousand dollars (\$100,000) with twenty thousand dollars (\$20,000) liquidity. (7-1-93)~~

05. Heavy, Highway, Building, and Specialty Construction Class A License. An applicant requesting a Class A license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of ~~approximately one three~~ hundred fifty thousand dollars (~~\$1300,000~~) with ~~thirty one hundred~~ thousand dollars (~~\$3100,000~~) liquidity in working capital. (7-1-93)()

~~06. Specialty Construction Class A License. An applicant requesting a Class A Specialty Construction only, shall have a net worth of approximately seventy five thousand dollars (\$75,000) with fifteen thousand dollars (\$15,000) liquidity. (7-1-93)~~

074. Heavy, Highway, Building, and Specialty Construction Class B License. An applicant requesting a Class B license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of approximately one hundred fifty thousand dollars (\$150,000) with twenty five thousand dollars (\$25,000) liquidity in working capital. (7-1-93)()

~~08. Specialty Construction Class B License. An applicant requesting a Class B license in Specialty Construction only, shall have a net worth of approximately fifty thousand dollars (\$50,000) with ten thousand dollars (\$10,000) liquidity. (7-1-93)~~

095. Heavy, Highway, Building, and Specialty Construction Class C License. An applicant requesting a Class C license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of approximately fifty twenty five thousand dollars (\$5025,000) with ten seven thousand five hundred dollars (\$107,0500) liquidity in working capital. (7-1-93)()

~~10. Specialty Construction Class C License. An applicant requesting a Class C license in Specialty Construction only, shall have a net worth of approximately twenty five thousand dollars (\$25,000) with five thousand dollars (\$5,000) liquidity. (7-1-93)~~

~~106. Heavy, Highway, Building, and Specialty Construction Class D License. An applicant requesting a Class D license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of approximately twenty ten thousand dollars (\$210,000) with four three thousand dollars (\$43,000) liquidity in working capital. (7-1-93)()~~

~~12. Specialty Construction Class D License. An applicant requesting a Class D license in Specialty Construction only, shall have a net worth of approximately ten thousand dollars (\$10,000) with two thousand dollars (\$2,000) liquidity. (7-1-93)~~

07. Indemnification. If the applicant's financial resources do not meet the Board requirements, an applicant may seek to indemnify its net worth and working capital by using a third party's assets to meet the minimum requirements for licensure. This must be done prior to licensure in writing in a form and manner approved by the Board. ()

203. RIGHTS GRANTED UNDER LICENSES.

01. Rights. Rights granted to licensees shall be as designated and defined in Section 54-1904, Idaho Code, and as provided in these rules. (7-1-93)

02. Estimated Cost. The estimated cost and bid limit for each class of license shall be as defined in Section 54-1904, Idaho Code. (7-1-93)

03. Total Bid Cost. The total of any single bid on a given public works project, or the aggregate total of any split bids, or the aggregate total of any base bid and any alternate bid items, or the aggregate total of any separate bid by a licensee of any class, except Class AAA, shall not exceed the estimated cost or bid limit of the class of license held by the licensee. The aggregate total of bids shall include all bids of the subcontractors. Subcontractors bids shall not be considered a separate bid for the purposes of computing the bid on a given public works project. (7-1-93)()

04. Two (2) or More Licensees. Two (2) or more licensees of the same class or of different classes shall not be permitted to combine the estimated cost or bid limit of their licenses to submit a bid in excess of the license held by either licensee. (7-1-93)

204. TYPES OF CONSTRUCTION.

The types of construction for which licenses are issued shall be as defined and designated in Section 54-1901, Idaho

Code, and as provided in these rules. (7-1-93)

01. Public Works Construction. A license of any class may be issued for one (1) or more types of public works construction. (7-1-93)

02. Type 4. A license for Type 4, Specialty Construction, shall list one (1) or more specialty ~~CATEGORIES~~ categories to which the licensee is restricted. These categories include, but shall not be limited to, the following: Acoustical-Drywall, Air Conditioning & Warm-Air Heating, Blasting, Bridges & Structures, Building Cleaning & Maintenance, Chimney Repair, Clearing, Communications & Alarm Systems, Concrete, Craning & Erection, Crushing, Demolition, Drilling, Electrical (the application must include a State License Number), ~~No.~~, Elevators/Lifts/Hoists, Excavation & Grading, Fencing, Fire Sprinkler Systems (the application must include a State License Number), Flooring, Floor Coverings/Carpeting, Glass & Glazing, Hauling, Institutional Equipment, Insulation, Landscaping/Seeding/Mulching, Lath & Plaster, Masonry, Guard Rails & Safety Barriers, Millwork & Fixtures, Ornamental Metals, Painting & Decorating, Paving, Pesticide Spraying (the application must include a State License Number), ~~No.~~, Refrigeration, Roofing & Siding, Sand Blasting, Sheet Metal, Signing, Sprinklers/ Irrigation Systems, Steel Fabrication/Erection/Installation, Tile/Terrazzo, Traffic Marking & Striping, Utilities, Waterproofing/Caulking, Well Drilling (the application must include a State License Number), Boiler, Hot-Water Heating & Steam Fitting, Other. (7-1-93)()

03. Scope and Coverage. The Board will determine the scope and coverage of each type and category based on what is commonly accepted and practiced by reasonable men engaged in the construction industry. (7-1-93)

04. Type 4 License Holder. The holder of a license for Type 4, Specialty Construction shall be entitled to bid a public works project as a prime contractor or as a subcontractor, if more than fifty percent (50%) of the work to be performed by him on such project is covered by a category or categories listed on the license held by the licensee. (7-1-93)

05. ~~Written Petition. A licensee who desires to extend the scope of the types or categories for which he is licensed shall file with the Board a written petition for same in the manner provided in these rules. The Board will review such petitions at regular meetings.~~ Copies of State Licenses. The applicant must submit a copy of any license for any specialty issued by other state agencies. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

301. SCREENING - NOTICE.

The Registrar Executive Director and staff will receive and screen each application for completeness, clarity, etc. If an application is incomplete, notice of same will be mailed to the applicant by First Class Mail. The notice will specify the incomplete items to be completed. If necessary, the application form will be returned to the sender for completion. (7-1-93)()

302. NOTICE OF REVIEW (RESERVED).

~~When an application is deemed complete in all respects, a notice acknowledging and setting the date, time and place for its review by the Board will be sent to the applicant by First Class Mail. The application will be retained on file awaiting the date set for review. The Registrar may send notice of the pending application to references designated by the applicant or to other interested persons.~~ (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

307. HEARING - DENIED APPLICATIONS.

~~If, a~~ After reviewing the answer, any additional information, data, documents or references furnished by the applicant or other interested persons, and the testimony of the applicant or other persons, ~~if a personal appearance is made, and reconsidering the application,~~ the Board ~~deems it proper to~~ may deny the application, and a decision to that effect will

be drawn and served on the applicant by Certified Mail.

(7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

309. ACCEPTANCE OF DECISION.

In any notice, hearing or decision, the Board may, in its discretion, deem it proper to deny any application for any class and/or type(s) and approve the application for another class and/or types(s) and serve notice of same on the applicant. If the applicant accepts in writing such other class and/or types(s) the ~~Registrar~~ Executive Director shall issue a License Certificate effective on the date applicant's written acceptance is filed with the Board without further hearing or action in the matter by the Board.

(7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

501. CHANGED BUSINESS ORGANIZATION.

A licensee who undergoes a change in business organization or structure (such as a change from an individual proprietor to a copartnership, corporation, limited liability partnership, limited liability company, joint venture or other combination thereof) must file an ~~ORIGINAL~~ application on behalf of such successor organization within sixty (60) days after such change occurs. The Board may authorize the continuous operation of the licensee as a contractor during the interim period until the application of the successor organization is reviewed; provided written notice of such change is filed with the Board within thirty (30) days after such change occurs. A change in ownership requires that an original application be filed. All members of a joint venture must be licensed at the time of bidding.

(7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

~~504. REPORT OF CHANGES.~~

~~Licensees shall report to the Board all changes of management and key personnel, name style or address recorded under the Act within thirty (30) days after the changes are made.~~

~~(7-1-93)~~

5054. -- 599. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

607. ~~REPORT CHANGES (RESERVED).~~

~~Licensee shall report all change in personnel, name style, business organization or address within thirty (30) days after the changes are made.~~

~~(7-1-93)~~

608. CHANGES IN LICENSE CERTIFICATE.

When any change in the license certificate has been approved by the Board, ~~the licensee shall upon due notice return the license certificate to the Board promptly for the recording of such changes~~ a new license certificate shall be issued.

(7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

700. PROCEEDINGS FOR DISCIPLINARY ~~PROCEEDINGS~~ ACTIONS.

The procedure for the handling of complaints filed pursuant to Section 54-1914, Idaho Code, and for the proceedings for the suspension or revocation of a license shall be as provided in IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," the Administrative Procedure Act, as found in Chapter 67, Title 52, Idaho Code, and Sections 54-1915 through Section 54-1919, Idaho Code, as amended and as supplemented by these rules.

(7-1-93)(____)

701. FORMS.

The complaint, citation, answer, notice of hearing, decision and order of the Board and other related documents shall be filed in the form and manner prescribed in these rules, in IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," and the Administrative Procedure Act.

(7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

703. HEARINGS.

The general procedure for hearings before the Board shall be as prescribed in these rules and Title 67, Chapter 52, Idaho Code.

(7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

800. HEARING PROCEDURE.

In order to expedite hearings and to assist persons appearing before the Public Works Contractors ~~State~~ License Board, the Board has adopted the following general procedure:

(7-1-93)(____)

01. Hearings. Hearings before the Board are conducted in an informal and summary manner. (7-1-93)
02. Counsel. Interested persons appearing before the Board may be represented by counsel. (7-1-93)
03. Notice. Reasonable notice of any hearing will be furnished to any interested persons. (7-1-93)
04. Notes. Any interested persons may request, in writing, five (5) days before any scheduled hearing in a contested case that the oral proceedings thereof be taken in the form of stenographic notes to be transcribed at his own expense. (7-1-93)
05. ~~Read Documents. At the time and place set for the hearing, the hearing officer or counsel appointed by the Board shall read any application, complaint, citation, notice, answer, petition or other documents filed with the Board pertinent to the purpose of the hearing.~~ (7-1-93)
06. Stipulations. If the parties can agree upon any facts, issues or questions to be presented to the Board, appropriate stipulations may be made. (7-1-93)
07. ~~Evidence. The hearing officer or other interested party may present any oral or documentary evidence that is relevant and material to the purpose of the hearing. Documentary evidence may be examined by any interested party. Witnesses may be called and sworn if testimony under oath is deemed necessary by the Board. Witnesses may be cross-examined by any party to obtain a full and true disclosure of the facts. The admissibility of any evidence shall be determined by the Chairman. Objections to any evidence may be made by any party and will be noted for the record. In ruling on the admissibility of evidence, the Chairman may rely upon the type that is commonly relied upon by reasonable prudent men in the conduct of their affairs. Repetitious testimony may be limited by the Chairman.~~ (7-1-93)
08. Continuance. In the event a hearing cannot be completed within the time allotted, the Board may, in its discretion, continue same to a subsequent meeting as it deems necessary for proper consideration of the purpose

for the hearing.

(7-1-93)

097. Procedure. The Board reserves the right to amend, modify or repeal all or any part of the above procedure or to dispense with any part thereof, at any hearing before the Board, as it may deem necessary in the circumstances.

(7-1-93)

IDAPA 32 - PUBLIC WORKS CONTRACTORS STATE LICENSE BOARD

32.01.02 - GENERAL RULES

DOCKET NO. 32-0102-9801

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Sections 54-1907 and 67-5220 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 1998.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

IDAPA 32.01.02, "General Rules," of the Public Works Contractors State Licenses Board, are being repealed. The text of this chapter is being incorporated into IDAPA 32.01.01. These changes were made in Docket No. 32-0101-9801 that is published in this Bulletin preceding this docket.

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

This rule-making imposes no fees or charges.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nancy Michael, Registrar at (208) 327-7326.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 26, 1998.

DATED this 17th day of June, 1998.

Nancy Michael, Registrar
Public Works Contractors License Board
355 N. Orchard, Suite 107
Boise, Idaho 83720-0073
(208) 327-7326

THIS CHAPTER IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 35 - STATE TAX COMMISSION
35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0102-9801
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 1998.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 022 - Drop Shipments - Nonsubstantive change to clarify examples used in the rule as it relates to Section 63-3619, Idaho Code.

Rule 024 - Rental or Leases of Tangible Personal Property - Amend the rule to correct a cross reference to a Sales Tax Rule 026 that has been repealed, Section 63-3612, Idaho Code.

Rule 033 - Sales of Newspapers and Magazines - Amend the rule to allow newspapers to use either the actual sales price or 117% of cost, whichever is less for vending machine sales, Sections 63-3619 and 63-3612, Idaho Code.

Rule 036 - Signs and Billboards - Amend the rule to correct a typographical error and to add a statement that sign painters are required to pay sales tax on purchases of materials applied permanently and directly on buildings per Sections 63-3619 and 63-3609, Idaho Code.

Rule 052 - Sale of Tangible Personal Property Relating to Funeral Services - Amend the rule to delete the statement that all incidental purchases by funeral directors are taxable which contradicts Section 63-3622U, Idaho Code. Also nonsubstantive changes to clarify the rule.

Rule 077 - Exemption for Research and Development at INEL - Amend the rule to reflect 1998 legislation amending Section 63-3622BB, Idaho Code, (HB 522) recognizing the change to the name of the Idaho National Engineering and Environmental Laboratory.

Rule 100 - Prescriptions - Amend the rule to include sales of dental prostheses and orthodontic appliances with the sales tax exemption pursuant to Section 63-3622N, Idaho Code, to implement 1998 legislation (HB 618).

Rule 114 - Records Required, Food Stamps, and WIC Checks - Amend the rule to define accounting procedures for the use of the Electronic Benefits Transfer Cards being implemented by the state and federal programs, Sections 63-3619, 63-3622EE, and 63-3622FF, Idaho Code.

Rule 118 - Responsibility for Payment of Sales Taxes Due from Corporations - Amend the rule to include partnerships and limited liability companies and their officers as being responsible for sales tax payments Section 63-3627, Idaho Code, to implement 1998 legislation (HB 523).

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

No fees have been imposed or increased as a result of this rule-making.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact James Husted, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 26, 1998.

DATED this 24th day of June, 1998.

James Husted, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530
FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0102-9801

022. DROP SHIPMENTS (Rule 022).

01. In General. Drop shipments refer to shipments made by a seller to someone other than its purchaser. For example, ~~Company A a Manufacturer manufactures produces~~ Product X. ~~Company B The Retailer~~ is a distributor of Product X. ~~Company C The Customer~~, which does business only in Idaho, is the ultimate purchaser and consumer of Product X. ~~Company C The Customer~~ places a purchase order with ~~Company B the Retailer~~. ~~Company B The Retailer~~, having no inventory in stock, places a purchase order with the ~~Manufacturer, Company A~~. ~~Company B The Retailer~~ directs ~~Company A the Manufacturer~~ to ship the product directly to ~~Company C the Customer~~ in Idaho. ~~Company A The Manufacturer~~, however, bills ~~Company B the Retailer~~ for the product and receives payment from ~~Company B the Retailer~~. ~~Company B The Retailer~~ bills and receives payment from ~~Company C the Customer~~. The nature and use of Product X is not within any of the specified exemptions contained in the Idaho Sales Tax Act. ~~Company A The Manufacturer~~ holds an Idaho seller's permit. (7-1-93)()

02. Privity of Contract. The Idaho sales tax is imposed upon sales transactions. Since there is not privity of contract between ~~Company A the Manufacturer~~ and ~~Company C the Customer~~, ~~Company A the Manufacturer~~ will not be required to collect and remit sales tax on the purchase by ~~Company C the Customer~~. (7-1-93)()

03. Sales Tax Responsibilities of ~~Company A the Manufacturer~~. ~~Company A The Manufacturer~~ can have sales tax responsibilities as to the sales transaction between itself and ~~Company B the Retailer~~. (7-1-93)()

a. If ~~Company B the Retailer~~ holds an Idaho seller's permit, it will be necessary for ~~Company B the Retailer~~ to provide ~~Company A the Manufacturer~~ with a resale certificate evidencing its intentions to resell Product X. If ~~Company B the Retailer~~ does not provide the resale certificate, then ~~Company A the Manufacturer~~ must charge Idaho sales tax on the sale of tangible personal property sold to ~~Company B the Retailer~~ and delivered in Idaho. If ~~Company B the Retailer~~ provides a resale certificate, ~~Company B the Retailer~~ must then charge ~~Company C the Customer~~ Idaho sales tax and remit the tax to the Idaho State Tax Commission together with a proper return. (7-1-93)()

b. If ~~Company B the Retailer~~ does not hold an Idaho seller's permit, a resale certificate from ~~Company B the Retailer~~ to ~~Company A the Manufacturer~~ is unnecessary. If ~~Company B the Retailer~~ has no nexus with the state of Idaho, it can accrue no sales tax liability and the sale between ~~Company A the Manufacturer~~ and ~~Company B the Retailer~~ is not subject to the jurisdiction of the Idaho State Tax Commission. ~~Company A The Manufacturer~~ must obtain evidence of this fact in the form of a letter from ~~Company B the Retailer~~ stating that they have no nexus in

Idaho or by any other clear and convincing evidence. ~~Company C~~ The Customer's use or consumption of Product X within Idaho will cause it to accrue a use tax liability. It will be required to file a use tax return and remit the use tax on the purchase of Product X. (7-1-93)(____)

04. Resale Certificate. If either ~~Company A~~ the Manufacturer or ~~Company B~~ the Retailer is engaged in interstate commerce, the resale certificate which ~~Company B~~ the Retailer provides to ~~Company A~~ the Manufacturer may be in the form prescribed for uniform exemption certificates by the Multi-state Tax Commission if the rules set forth in ~~ISTC~~ Rule 071 of these rules are met. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

024. RENTALS OR LEASES OF TANGIBLE PERSONAL PROPERTY (Rule 024).

01. In General. The lease or rental of tangible personal property, including licensed motor vehicles, is a sale. (7-1-93)

02. Bare Equipment Rental. A bare equipment rental, that is, a rental of equipment without operator, is a taxable sale. The owner of the equipment is a retailer and must get a seller's permit and collect and remit sales taxes. The equipment owner must collect sales tax on each rental payment and remit the tax to the State Tax Commission just like any other retailer. The tax applies whether the equipment is rented by the hour, day, week, month, or on a mileage, or any other basis. The equipment owner who mainly rents bare equipment may buy the equipment without paying tax to the vendor by giving him a resale certificate. See ~~ISTC~~ Rule 071 of these rules. If the owner uses the equipment for his own benefit or in his own business operations, he must pay use tax based on a reasonable rental value for the period during which he used his own equipment. (7-1-93)(____)

03. Fully Operated Equipment Rentals. (7-1-93)

a. A fully operated equipment rental, equipment with operator, is a service rather than a retail sale of tangible personal property. No sales tax is due on a fully operated equipment rental. (7-1-93)

b. A fully operated equipment rental is an agreement in which the owner or supplier of the equipment or property supplies it along with operators who are his own employees, and the property supplied is of no value to the customer without the owner's employees. (7-1-93)

c. The owner or supplier of the equipment or property used in a fully operated equipment rental is the consumer of the equipment or property, and is subject to sales or use tax when he buys or uses the equipment in Idaho. Special rules apply to transient equipment used for short periods in Idaho. See ~~ISTC~~ Rule 073 of these rules. (7-1-93)(____)

d. If the equipment or property has value to the customer without the owner's or supplier's employees, then the lease or rental of the equipment or property is a distinct transaction. It is subject to sales or use tax and its price must be stated separately from the price of the service provided by the employees of the owner or supplier. (7-1-93)

e. Example: A crane rental company provides a mobile crane to a contractor, along with an operator. The contractor may not use the crane without the rental company's employee, so the leasing company is not required to charge sales tax on the lease of the crane. (7-1-93)

f. Example: Pick-Up Industries provides a three (3) cubic yard trash container to a customer. Pick-Up also provides trash hauling service to empty the container. Since the container is used to store trash between collections, its transfer to a customer is a lease subject to sales tax. (7-1-93)

04. Mixed Use of Rental Equipment. (7-1-93)

a. If the equipment owner primarily rents bare equipment but sometimes supplies equipment with an operator, he is the consumer of the equipment while it is used by his employees to perform his service contract. Accordingly, he must pay use tax on the reasonable rental value of the equipment for that period of time unless he paid tax when he bought the equipment. (7-1-93)

b. If the equipment owner primarily rents fully operated equipment but sometimes rents bare equipment, he must charge and remit Idaho sales tax on the rental of the bare equipment. The tax applies even though the equipment owner's purchase of the property was also subject to sales or use tax. In this case, the owner purchased the equipment for a purpose other than the resale or re-rental of that property in the regular course of business. (7-1-93)

05. **Operator Required to Be Paid by Customer.** In some cases, an equipment owner supplies equipment along with an operator but a union contract or a state or federal law requires the customer to pay the operator. If all other indications of an employee-employer relationship, such as the right to hire and fire, immediate direction and control, etc., remain with the equipment owner, the owner is viewed as supplying a service and no sales tax applies to the service fee. However, the fact that the transaction is a fully operated equipment rental must be clearly stated on the face of the invoice or other billing document. The State Tax Commission may, whenever it deems appropriate, examine the facts on a case-by-case basis to determine if a true employer-employee relationship exists between the equipment owner and the operator. (7-1-93)()

06. **Maintenance of Rental Equipment.** If the owner who rents bare equipment is responsible for the maintenance of the equipment, he may buy the necessary repair parts and equipment tax exempt by providing his vendor with a resale certificate. The owner who rents fully operated equipment may not buy the equipment or repair parts tax exempt. (7-1-93)

07. **Rentals to Exempt Entities.** The rental or lease of equipment invoiced directly to an entity exempt from sales tax, such as the state of Idaho or one of its political subdivisions, is not subject to sales tax. However, if the rental or lease is to an individual or organization performing a contract for, or working for an exempt entity, the rental is taxable. (7-1-93)

08. **Exempt Equipment Rentals.** Equipment which would have been exempt from tax if purchased is also tax exempt if leased or rented. To claim this exemption, the renter must furnish the owner with a properly completed and signed exemption certificate. See ISTC Rule 075 of these rules. (7-1-93)()

09. **Rental Payments Applied to Future Sales.** Rentals to be applied toward a future sale or purchase are taxable. (7-1-93)

10. **Personal Property Tax.** Separately stated personal property tax must be included in the rental price subject to tax. For example, some industries rent or lease tangible personal property for a certain monthly, or other period, rental charge, plus a separately stated amount determined by the owner-lessor's personal property tax liability on the equipment. Even though the amount of property tax is separately stated from the basic rental charge, it must be included in the total rental price subject to tax. (7-1-93)

11. **Out-of-State Rental/Lease.** Rental or lease payments on equipment used outside Idaho are not subject to Idaho sales tax. Rental or lease payments on equipment used in Idaho are taxable. If the equipment is delivered in Idaho, even though it will be used outside the state, then the rental or lease payment for the first month, or other period, is subject to Idaho tax. (7-1-93)

12. **Lease-Purchase and Lease With Option to Purchase.** (7-1-93)

a. Lease-purchase agreements include transfers which are called leases by the parties but are really installment, conditional, or similar sales. Where ownership passes to the transferee at the end of the stated terms of the lease contract with no additional consideration from the transferee, or where the additional consideration does not represent the fair market value of the property, the transaction is a sale and tax on the entire sales price is collected on the date the property is delivered. (7-1-93)

b. Lease with option to purchase agreements include transfers in which the personal property owner,

lessor, transfers possession, dominion, control or use of the property to another for consideration over a stated term and the owner, lessor, keeps the property at the end of the term unless the lessee exercises an option to buy the property. The owner/lessor must collect sales tax from the lessee at the time the rental is charged. If the lessee exercises the option to buy, the lessor/owner must collect sales tax from the lessee/buyer on the full remaining purchase price, the residual, when the option is exercised. (7-1-93)

- 13. Cross-References. (7-1-93)
 - a. See ~~ISTC~~ Rule 049 of these rules on warranties and service agreements. (~~7-1-93~~)()
 - b. See ~~ISTC~~ Rule 106 of these rules on motor vehicles. (~~7-1-93~~)()
 - c. See ~~ISTC~~ Rule 037 of these rules on aircraft and flying services. (~~7-1-93~~)()
 - d. See ~~ISTC~~ Rule 038 of these rules on flying clubs. (~~7-1-93~~)()
 - e. See ~~ISTC~~ Rule 025 of these rules on real property rental. (~~7-1-93~~)()
 - f. ~~See ISTC Rule 026 on safe harbor leases.~~ (~~7-1-93~~)
 - g. See ~~ISTC~~ Rule 044 of these rules on trade-in for rental or lease property. (~~7-1-93~~)()
 - h. See ~~ISTC~~ Rule 073 of these rules on transient equipment. (~~7-1-93~~)()

(BREAK IN CONTINUITY OF SECTIONS)

033. SALES OF NEWSPAPERS AND MAGAZINES (Rule 033).

01. Subscriptions. Subscriptions to newspapers and magazines are sales of tangible personal property. The sale will be taxed if the single copy price of each newspaper or magazine purchased by the subscriber exceeds eleven cents (\$0.11). The single copy price shall be computed on an annual basis regardless of whether the subscription is paid weekly, monthly or on some other periodic basis. (7-1-93)

02. Single Copy Price. The single copy price shall be computed according to the following formula. (Published subscription price) x (Number of subscription periods in one (1) year) / (Number of issues a subscriber receives in one (1) year) = Single Copy Price. If the single copy price as computed exceeds eleven cents (\$0.11), the subscription is taxable. If the single copy price is eleven cents (\$0.11) or less, the subscription price is not taxable. (7-1-93)

03. Computation of Tax. If the subscription price is taxable, the tax shall be computed on the subscription price according to the schedule contained in Section 63-3619, Idaho Code. (7-1-93)

04. Subscription Price. As used in this rule, the terms published subscription price and subscription price mean the total amount charged for purchase and delivery of the newspaper and magazine, except that separately stated postage ~~or delivery charges qualifying for exclusion under ISTC Rule 061~~ shall be excluded from the subscription price subject to tax. It is acceptable business practice for publishers to establish a price for their newspapers as separate weekday-only and Sunday-only issues. The provisions of this rule will be in effect in such cases. When the price is posted as a combined weekday-Sunday price, sales tax will be charged on the combined subscription price. (~~7-1-93~~)()

05. Individual Sales. Individual or separate sales of newspapers or magazines, except as provided in subsection 06 of this rule for a single price of eleven cents (\$0.11) or less are not taxable. Individual or separate sales of newspapers or magazines for a single price exceeding eleven cents (\$0.11) are subject to tax according to the schedule provided in Section 63-3619, Idaho Code. Separate or individual sales of newspapers or magazines together

with retail sales or other tangible personal property subject to tax shall be taxable if the total sales price of all taxable property included in the sale exceeds eleven cents (\$0.11). (7-1-93)

06. Vending Machine Sales. Sales of newspapers or magazines through a vending machine are governed by the provisions of Section 63-3613, Idaho Code, and ~~ISTC~~ Rule 058 of these rules, except when the cost of the newspaper is greater than the sales price, tax will be computed on the retail sales price. (7-1-93)()

07. Independent Retailer Sales. The sale of newspapers by a publisher to an independent retailer will be tax exempt only if the retailer provides the publisher with a properly executed resale certificate. See ~~ISTC~~ Rule 071 of these rules. The incidence of sales tax then falls upon the independent retailer who must have a registered seller's permit number and will be responsible for collecting, accounting for and remitting the sales tax on all newspapers thus purchased and resold. (7-1-93)()

08. Carriers Less than Sixteen (16) Years Old. If the carrier is less than sixteen (16) years old, the publisher or other seller's permit holder from whom he or she obtains the newspapers will be responsible for the collection of sales tax and remitting such taxes to the State Tax Commission. (7-1-93)

09. Product Consumed by the Publisher. Eight-tenths of one percent (0.8%) of net press run of newspapers or magazines, will be taxed as product consumed by the publisher. Any percentage figure below eight-tenths of one percent (0.8%) must be supported by accepted accounting methods generally used in the publishing industry. The value of the newspapers used shall be set at the retail price charged the consumer. Example: (Eight tenths of one percent (0.8%) of Daily Net Press Run) x (Single Copy Retail Price) x (Tax Rate) / Daily Net Press Run = Tax Per Copy. (7-1-93)

10. Single Unit Price and Net Press Run. For purposes of the computation in Subsection 033.09 of this rule single copy price shall be the amount computed by the formula in Subsection 033.02 of this rule. Net press run shall mean all readable, usable copies, including editorial copies, tearsheets, and archival copies, and not including spoiled runs or printing waste. (7-1-93)

11. Free Distribution Publications. Those free distribution publications, such as shoppers or flyers which, because they achieve no retail value as defined in this rule and meet the exemption laws due to a ten percent (10%) editorial content, will not be subject to sales tax. (7-1-93)

12. Cross-Reference. (7-1-93)

a. ~~See ISTC Rule 058 of these rules, Sales Through Vending Machines.~~ (7-1-93)()

b. ~~ISTC Rule 061, Transportation and Freight Charges.~~ (7-1-93)

c. ~~See ISTC Rule 071 of these rules, Resale Certificates-Purchases for Resale.~~ (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

036. SIGNS AND BILLBOARDS (Rule 036).

01. Signs and Billboards as Custom Made Articles. The fabrication, manufacturing, lettering, etc., of advertising or informational signs of whatever description, including, but not limited to, neon signs, display lettering on trucks, display cards, show cards, etc., are considered made-to-order goods or custom made articles and as such are subject to Idaho sales tax based upon the total sales price of the completed sign to the user. The sales price shall include material and labor. (7-1-93)

02. Rental of Signs. The rental of signs is subject to sales tax and a sales tax will be collected and remitted to the state upon the date on which rental payments are due and owing the lessor. The tax will be measured by the gross rental receipts. A lease-purchase agreement which is in fact a sale, will be treated as a sale and tax

collected on the entire sales price at the date upon which the contract is executed. (7-1-93)()

~~03. Custom Painting Directly on Real Property. Custom painting of displays or graphics directly on walls or windows of a building is not taxable. (7-1-93)~~

~~04.3. Material that Becomes Part of a Sign. Persons who sell signs may buy materials which become a part of the product without paying tax if they give the seller the documentation required by ISTC Rule 071 of these rules. (7-1-93)()~~

04. Custom Painting Directly on Real Property. A sale of custom painting of displays, graphics or signs directly on walls or windows of a building is not considered to be a retail sale of tangible personal property and is not taxable. The sign painter must pay sales or use tax on purchases of materials used to paint these custom displays, graphics or signs. ()

05. Billboards. ()

a. Billboards which are also referred to as twenty-four (24) sheet posters and painted billboards, are not in the same category as signs covered in this rule. The rental of a billboard is not a rental of tangible personal property under the Idaho Sales Tax Act. (7-1-93)()

~~06b. Billboard Material. Material used in the construction, erection, painting, and maintenance of a billboard or painting of signs on walls or windows of a building is subject to sales or use tax. (7-1-93)()~~

(BREAK IN CONTINUITY OF SECTIONS)

052. SALE OF TANGIBLE PERSONAL PROPERTY RELATING TO FUNERAL SERVICES (Rule 052).

01. In General. The sale ~~or use~~ of tangible personal property relating to funeral services by a licensed funeral establishment is exempt from tax. (7-1-93)()

02. Sales by Licensed Funeral Directors. The exemption applies only when, at the time of sale, the seller is a person holding a valid funeral director's license issued pursuant to the authority of Title 54, Chapter 11, Idaho Code. A sale made by any seller not so licensed is not exempt under this provision. For example, a casket sold by a licensed funeral director as part of a funeral service is exempt. The funeral director's purchase of the casket is a purchase for resale and, therefore, excluded from the tax. The purchase of a memorial marker is not an integral part of the funeral service. Accordingly, it is not included within the exemption for tangible personal property related to a funeral service. The purchase of a memorial marker, therefore, is a taxable transaction regardless of whether it is sold by a licensed funeral director or by another. Sales of tombstones and grave markers, which are embedded in the sod or set on foundations, are subject to tax. The retail selling price includes the charge for cutting, shaping, polishing and lettering. (7-1-93)

03. Purchases by Licensed Funeral Directors. The exemption does not include the sales to and purchases by funeral directors of equipment and supplies used and consumed by ~~the~~ funeral directors in the course of providing funeral services. ~~This includes the funeral director's purchase of supplies which are consumed as an incidental part of the funeral service, such as guest books or flowers which are not separately itemized on the funeral director's statement of charges. Also taxable is~~ the funeral director's purchase of equipment and supplies used for embalming and preparing bodies for burial and all other tangible personal property used or consumed by the funeral director in the course of his business operations to which title does not pass from the funeral director is taxable. (7-1-93)()

04. Caskets, Vaults, and Burial Receptacles. Caskets, vaults and burial receptacles are exempt when sold by a licensed funeral director as a part of funeral services, even though they may be improvements to real property. The funeral director is not a person engaged in improving real property within the meaning of Section 63-3609(a), Idaho Code; and, therefore, his purchase of these items is not subject to tax. However, the construction of a

building for use as a mausoleum is an improvement to real property and the sale or use of the materials for the construction of the mausoleum creates a taxable incident and shall be generally taxed in the same manner as other persons improving real property. See ~~ISTC~~ Rule 012 of these rules. (7-1-93)()

05. Use Tax. When licensed funeral directors purchase equipment and supplies from suppliers who do not collect and remit Idaho sales tax, the funeral directors will be required to report and remit use tax on their taxable purchases. (7-1-93)

06. Documenting Purchases for Resale. Funeral directors purchasing tangible personal property for resale will be required to document the purchase for resale by providing their seller with a resale certificate. See ~~ISTC~~ Rule 071 of these rules. The purchase by the funeral director of such items as caskets and special clothing is a purchase for resale, even though the sale of the same property by the funeral director is exempt. (7-1-93)()

07. Seller's Permit Required. A funeral director must apply for and maintain a valid seller's permit. The seller's permit number and sales tax returns shall be used to report use tax on those items which are subject to use tax. The funeral director should also report sales tax on the isolated retail sales of tangible personal property which may be made but which are not related to the providing of any funeral service. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

077. EXEMPTION FOR RESEARCH AND DEVELOPMENT AT INEEL (Rule 077).

01. In General. The purchase of certain tangible personal property used in connection with certain activities at the Idaho National Engineering and Environmental Laboratory is exempt from sales and use tax. To qualify for this exemption, the property must be tangible personal property primarily or directly used or consumed in research, development, experimental and testing activities, exclusively financed by the United States Government. (7-1-97)()

02. Qualifying Activity. Research, development, experimental, and testing activity means any activity of an original investigation, for the advancement of scientific knowledge in a field of laboratory science, engineering or technology and does not have an actual commercial application. (7-1-93)

03. Real Property. The exemption does not apply to real property or to tangible personal property which will become improvements or fixtures to real property. See ~~Idaho Sales Tax Administrative~~ Rules 012 and 067 of these rules. (7-1-97)()

04. Incidental Use of Property. This exemption does not extend to the incidental use of any tangible personal property which fails to meet the test of primary or direct use or consumption. (7-1-97)

a. Areas of support which are considered incidental include: communications equipment; office equipment and supplies; janitorial equipment and supplies; training equipment and supplies; dosimetry or radiation monitoring equipment which lacks the capability of giving an immediate indication and would not result in an immediate evacuation of personnel or shutdown of equipment; subscriptions or technical manuals which provide technology not primarily used or directly connected to the research activity; and hot and cold laundry operations. (7-1-93)

b. Materials of common support which are considered incidental include: clothing for weather protection or of a reusable nature; hand tools which are not subject to contamination at the time of initial use; protective coverings which are protection from other than radiation or are of a reusable nature; and all safety equipment and supplies which do not protect from direct radiation exposure. (7-1-93)

05. Property Directly Used or Consumed. Tangible personal property primarily or directly used or consumed in a research and development activity to perform quality assurance on research equipment is tax exempt. Items of a general support nature, such as coveralls, are taxable. (7-1-93)

06. Parts for Equipment. The use of tangible personal property which becomes a component part of research equipment being calibrated within a calibration lab is tax exempt; whereas, the use of parts and equipment in calibrating or for the repair of other maintenance equipment is taxable. (7-1-97)

07. Radioactive Waste. The initial containment or storage of radioactive waste is an exempt use. Any further processing or transporting of such waste not relating to a research and development activity is a taxable use. (7-1-97)

08. Motor Vehicles. The purchase of any motor vehicle licensed or required to be licensed by the laws of this state is taxable. (7-1-97)

09. Agreements with Contractors. The State Tax Commission may enter into agreements with contractors engaged in research at the INEEL prescribing methods by which the contractor or contractors may accrue use tax based on the accounting procedures required by the U.S. Department of Energy. (7-1-97)()

(BREAK IN CONTINUITY OF SECTIONS)

100. PRESCRIPTIONS (Rule 100).

01. In General. ~~The~~ Sales tax does not apply to sales of drugs, oxygen, orthopedic appliances, orthodontic appliances, dental prostheses including crowns, bridges, inlays, overlays, prosthetic devices, durable medical equipment, and certain other medical equipment and supplies specifically named in Section 63-3622N, Idaho Code, when: (7-1-93)()

a. Purchased by a practitioner to be administered or distributed to his patients if such practitioner is licensed by the state under Title 54, Idaho Code, to administer or distribute such items, or when; (7-1-93)

b. Purchased by or on behalf of an individual under a prescription or work order issued by a practitioner who is licensed by the state under Title 54, Idaho Code, to prescribe such items. (7-1-93)

c. Example: A physician issues a prescription for a wheelchair to a nursing home patient. The nursing home delivers the prescription to a wheelchair retailer and purchases the wheelchair on behalf of the patient. No tax applies. (7-1-93)

d. Example: A nursing home purchases wheelchairs for general use in its facility. Since the wheelchairs are not purchased under prescription for a specific patient, sales tax applies. (7-1-93)

02. Seller Must Document Exempt Sale. The seller must keep the written prescription or work order on file to document the exemption. Sales made without a prescription or work order are subject to tax. The seller must be able to identify sales which are exempt under prescription from sales which are taxable. (7-1-93)

a. Refills of prescriptions on file with a seller are exempt from tax. (7-1-93)

b. Some drugs may be lawfully sold without a prescription. When sold over the counter without a prescription, the drugs are subject to sales tax. When sold under a prescription, the drugs are exempt from tax. (7-1-93)

03. Purchases by Practitioners. A practitioner, who is licensed under Title 54, Idaho Code, to administer or distribute a medical product listed in Section 63-3622N, Idaho Code, may purchase the item exempt from tax by issuing his supplier an exemption certificate required by Idaho Sales Tax Administrative Rule 075. Only the medical items named in Section 63-3622N, Idaho Code, which the practitioner is licensed to administer or distribute qualify for this exemption. (6-23-94)

04. Purchases by Nursing Homes and For Profit Hospitals. The Sales Tax Act does not provide a general exemption from tax for purchases made by nursing homes and similar facilities or by hospitals operated for profit. Tax must be paid on all purchases, with two (2) exceptions. The institution may purchase medical items exempted by Section 63-3622N, Idaho Code, if: (7-1-93)

a. The purchase is made on behalf of a patient under a prescription or work order from a practitioner licensed to prescribe such items; or (7-1-93)

b. The purchased items can only be administered by a practitioner licensed to administer such items. (7-1-93)

c. An exemption certificate must be completed and provided to the vendor of the exempted items. See ~~Idaho Sales Tax Administrative Rule 075 of these rules.~~ (6-23-94)()

05. Sale of Eyeglasses, Removable Contact Lenses, and Other Products by Optometrists, Oculists, and Ophthalmologists. The sale of eyeglasses, removable contact lenses and other related products, such as carrying cases, sunglasses, and cleaning solutions by optometrists, oculists, or ophthalmologists is subject to the sales tax, regardless of whether any of these items are prescribed or fitted to the eyes of the purchaser. (6-23-94)

a. Amounts charged for professional services in examining the patient and prescribing and dispensing the ophthalmic appliance are not subject to tax providing these services are not agreed to be performed as a part of the sale and are separately stated on the billing to the patient. (7-1-93)

b. Separately stated charges for professional services may not be used to reduce the stated sales price of the property below its actual cost. (7-1-93)

06. Dental and Orthodontic Appliances. The sale or purchase of dentures, partial plates, dental bridgework, orthodontic appliances, and related parts for such items by a dentist, denturist, orthodontist or other practitioner ~~to his patients~~ is not a taxable sale. ~~These items, even if separately listed on the invoice to the patient, are considered incidental to the professional services rendered to the patient by the practitioner.~~ (6-23-94)()

a. ~~The practitioner is the consumer of the dentures, partial plates, dental bridgework, orthodontic appliances, and related parts he provides to his patients and must pay tax when he purchases such appliances or parts.~~ (6-23-94)

b. ~~If the practitioner himself fabricates the dentures, partial plates, dental bridgework, or orthodontic appliance for his patient, he must pay tax on the materials he purchases that become a part of the item. He must also pay tax on any equipment or supplies used in the fabrication process.~~ (6-23-94)

07. Fillings. ~~The practitioner is the consumer of the material used to produce fillings he provides to his patients and must pay tax when he purchases such material.~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

114. RECORDS REQUIRED, FOOD STAMPS, ELECTRONIC BENEFITS TRANSFERS, AND WIC CHECKS (Rule 114).

01. In General. ~~Effective October 1, 1987,~~ The sale of food purchased with food stamps or with electronic benefits transfer cards issued under the fFederal fFood sStamp pProgram or, with food checks issued by the fFederal sSpecial sSupplemental fFood pProgram for wWomen, iInfants, and eChildren, WIC, is exempt from the Idaho sales tax. (7-1-93)()

02. Records Required. Retailers who accept food stamps, electronic benefits transfer cards, and WIC checks must maintain accurate records of exempt sales. (7-1-93)()

a. WIC eChecks. WIC checks must be separately stated on daily bank deposit records or the retailer must maintain verifiable records accounting for food purchased with WIC checks. Reporting of nontaxable WIC check sales on sales tax returns must reconcile to the daily deposit record. (7-1-93)()

b. Food sStamps. Retailers may deduct as nontaxable sales only the amount of the food actually purchased with food stamps. Retailers must keep separate record on bank deposits of food stamp coupons deposited. For reporting of nontaxable sales on sales tax returns, retailers may elect to either deduct the actual amount of food purchased with food stamps, by programming cash registers to separately account for the total of the sales of food purchased with food stamps, or by maintaining hand or machine posted records of actual sales, or deduct ninety-seven and five tenths percent (97.5%) of federal food stamps actually deposited by the retailer in lieu of actual sales amounts. (7-1-93)()

c. Electronic Benefits Transfer (EBT) Payments. Retailers may claim as nontaxable only the actual amount of eligible food sales through EBT under the Federal Food Stamp Program. Accounting for the actual EBT transfers shall be accomplished with and be verifiable through state supplied EBT sales and reporting devices or through other electronic devices approved for use by the Federal Food Stamp Program and the state. ()

(BREAK IN CONTINUITY OF SECTIONS)

118. RESPONSIBILITY FOR PAYMENT OF SALES TAXES DUE FROM CORPORATIONS, LIMITED LIABILITY COMPANIES AND PARTNERSHIPS (Rule 118).

01. Corporate Officers Duty to Pay Sales Tax. Individuals including corporate officers and employees with the duty to cause a corporation or a limited liability company to file a sales tax return or to pay sales tax when due, or any partnership member or employee with such duty, shall become liable for payment of the tax, penalty and interest due from the corporation or partnership if he shall fail to carry out his duty. Any such responsible individual shall have the defenses, remedies and recourse provided in Sections 63-3045, 63-3049, 63-3065 and 63-3074, Idaho Code, and shall be afforded notice and opportunity to be heard on the question of such liability. (7-1-93)()

02. Penalty for Failure to Collect. Any individual required to collect, account for and pay over any tax who willfully fails to carry out or execute his duty will be required to pay, in addition to the tax, penalty and interest, an additional amount equal to the total amount of tax involved. This penalty is in addition to all other penalties provided in Section 63-3634, Idaho Code. (7-1-93)

IDAPA 35 - STATE TAX COMMISSION
35.01.06 - RULES GOVERNING HOTEL/MOTEL ROOM AND CAMPGROUND
SALES TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0106-9801

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 1998.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 016 - Exemptions. - Amend rule to add a statement to clarify that rooms let for recreational purposes by a university may be subject to sales tax but not hotel/motel tax pursuant to Sections 67-4711 and 63-3612, Idaho Code.

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

No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact James Husted, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 26, 1998.

DATED this 24th day of June, 1998.

James Husted, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530
Fax (208) 334-7844

TEXT OF DOCKET NO. 35-0106-9801

016. EXEMPTIONS (Rule 016).

01. Exemptions. Except as otherwise provided in this rule, all charges for room occupancy which are exempt from Idaho sales tax are also exempt from the room sales tax. (7-1-93)

02. Exempt Entities. Rooms or campground spaces furnished to governmental entities, educational institutions, or hospitals are exempt from the taxes if and only if the charge for the room or campground space occupancy is billed directly to and paid directly by the governmental entity, educational institution, or hospital.

(7-1-93)

a. "Governmental entity" includes the federal government and any of its instrumentalities, the state of Idaho and any of its agencies or any city, county or taxing district of the state of Idaho. Governmental entity does not include states other than Idaho or their political subdivisions.

(7-1-96)

b. "Educational institution" means any nonprofit colleges, universities, primary, and secondary schools in which systematic instruction in the usual branches of learning is given. The exemption does not include educational institutions that operate for profit or schools primarily teaching special accomplishments, such as business or cosmetology.

(7-1-96)

c. "Hospital" means a nonprofit institution licensed as a hospital by any state. This exemption does not include hospitals that operate for profit, nursing homes, or similar institutions.

(7-1-96)

d. "Billed directly to" means a contractual agreement between the facility operator and the governmental entity, educational institution, or hospital whereby the charge for the room or campground space is directed to and is the responsibility of the governmental agency or institution. "Billed directly to" also includes credit card charges billed to an account opened by an exempt agency, educational institution, or hospital.

(7-1-96)

e. "Paid directly by" means a remittance tendered directly by the governmental entity, educational institution, or hospital to the facility operator. It does not include a payment by the governmental entity or institution to an employee or agent for reimbursement of expenses incurred during business travel. However, "paid directly by" does include payments made by an exempt entity to a financial institution for credit card charges made on a charge account in the name of the exempt entity with a credit card issued to the entity itself and not to any individual or employee.

(7-1-96)

f. Credit cards issued to employees of governmental agencies are NOT considered to be billed directly to and paid directly by the governmental entity when the employee is responsible for making payment to the credit card company.

(7-1-93)

03. Continuous Occupancy Exemptions.

(7-1-93)

a. Continuous occupancy means maintaining residency for a continuous period of time by the same individual or individuals. The continuous occupancy exemption does not apply when a room or campground space is furnished to a business enterprise that rotates numerous employees as occupants of the room or space with no one (1) employee remaining continuously for the minimum number of days required to meet the continuous stay requirements.

(7-1-93)

b. Continuous Occupancy--Hotels and Motels. When continuous residency is maintained in a hotel or motel by the same individual or individuals for a period of thirty-one (31) days or more, the room charges are exempt from the taxes. When residency is maintained continuously for a period of less than thirty-one (31) days, the room charges are subject to the state sales tax, the statewide Travel and Convention tax, and, if the hotel or motel is located within the boundaries of the Greater Boise Auditorium District, the Greater Boise Auditorium District tax.

(7-1-96)

c. Continuous Occupancy--Campgrounds: When continuous residency is maintained by the same individual or individuals in a campground space for a period of thirty-one (31) or more days the rental of the space is exempt from the taxes governed by these rules. If continuous residency is maintained for less than thirty-one (31) days, the state sales tax and the Idaho Travel and Convention tax apply. Greater Boise Auditorium District tax does not apply to campground spaces. See Subsection 016.05 of this rule.

(7-1-96)

d. The continuous occupancy exemptions apply if, and only if, a lease or other documentation evidencing the period of the occupancy is maintained by the operator of the hotel, motel or campground. A guest registration card verifiable by a billing document is acceptable documentation.

(7-1-93)

04. Rooms Let for Purposes Other than Sleeping. The statewide Travel and Convention tax applies only to rooms let to an individual as a place to sleep. The tax does not apply to rooms let only for other purposes, such as for meetings. However, both the state sales tax and the Greater Boise Auditorium District tax apply to rooms let by a hotel or motel for purposes other than sleeping. Rooms supplied with beds shall be presumed to be let for the purpose of sleeping unless the contrary is established by the operator. ~~Neither the sales tax nor the Greater Boise Auditorium District tax apply to r~~Rooms, other than dormitory rooms, let by an educational institution for purposes other than sleeping, are not taxable as a sale of lodging; however, it is possible that renting such a room may be taxable as a fee for the privilege of using a facility for a recreational purpose. (7-1-93)(____)

05. Campgrounds Exempted. The Greater Boise Auditorium District tax does not apply to campground charges. The state sales tax and the travel and convention tax apply to the charge for campground spaces. Sales of spaces in campgrounds owned or operated by the state of Idaho, its agencies or political subdivisions are subject to the state sales tax but not the travel and convention tax. (7-1-96)

06. Foreign Diplomats. The United States Government grants immunity from state taxes to diplomats from certain foreign countries. The diplomat is issued a federal tax exemption card by the U.S. Department of State. The card bears a photo graph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Vendors must document an exempt charge to a foreign diplomat by: (7-1-93)

a. Retaining a photocopy of the front and back of the federal tax exemption card; or (7-1-93)

b. Recording for their permanent record the name of the bearer, the mission represented, the federal tax exemption number displayed on the card, the date of expiration, and the nature of the exemption granted to the diplomat. (7-1-93)

07. Direct Pay Authority. A taxpayer granted direct pay authority as provided by Idaho Sales and Use Tax Administrative Rule 112 may not use this authority for hotel/motel room or campground space charges. State sales tax, Travel and Convention tax, and, when applicable, Greater Boise Auditorium District tax must be charged by the hotel, motel, or campground and paid to the hotel, motel, or campground by the direct pay authority permittee. (7-1-96)

IDAPA 38 - DEPARTMENT OF ADMINISTRATION
38.04.04 - RULES GOVERNING CAPITOL MALL PARKING
DOCKET NO. 38-0404-9801

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These rules are effective July 1, 1998.

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 67-5708.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 1998.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making: The purpose of this proposed rule-making is to establish that there is no administrative appeal right under these rules.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(1), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: make a technical correction to make the rules consistent with Section 67-5708, Idaho Code, regarding administrative appeals.

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

NEGOTIATED RULEMAKING: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Joanna L. Guilfooy, Deputy Attorney General, Department of Administration, 334-3388.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 26, 1998

Dated this 23rd day of July, 1998.

Joanna L. Guilfooy
Deputy Attorney General
Department of Administration
650 W. State Street, Room 100
P.O. Box 83720
Boise, ID 83720-0003
Ph: (208) 334-3388
Fx: (208) 334-2307

TEXT OF DOCKET NO. 38-0404-9801

003. ADMINISTRATIVE APPEALS.

~~Administrative appeals of the procedures set forth in~~ This chapter shall be governed by IDAPA 38.01.01. "Other Contested Cases or Adversary Hearings Before the Department of Administration." does not provide for administrative appeals of the procedures set forth in this chapter. (7-1-98)(7-1-98)T

IDAPA 45 - HUMAN RIGHTS COMMISSION
45.01.01 - RULES OF THE IDAHO HUMAN RIGHTS COMMISSION
DOCKET NO. 45-0101-9801

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective on July 1, 1998.

AUTHORITY: In compliance with Sections 67-5221 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules and proposed regular rule-making procedures have been initiated. The action is authorized pursuant to Section 67-5906, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 1998.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Allows for administrative closure of cases by staff director and adds new rule to clarify legislation.

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

Compliance with deadlines in amendments to governing law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these rules, contact Daniel L. Steckel at (208) 334-2873.

Anyone may submit written comments regarding these rules. All written comments must be directed to the undersigned and must be delivered on or before August 26, 1998.

DATED this 29th day of June, 1998.

Daniel L. Steckel
Deputy Attorney General
Idaho Human Rights Commission
P.O. Box 83720
Boise, Idaho 83720-0040
Phone: (208) 334-2873
FAX: (208) 334-2664

TEXT OF DOCKET NO. 45-0101-9801

300. COMPLAINTS.

01. Who May File. A complaint may be filed by any of the following: (7-1-93)

a. Any person for himself/herself or also on behalf of himself/herself and other similarly situated individuals claiming to be aggrieved by an alleged unlawful discriminatory practice as defined in the Act; (7-1-97)

b. A Commissioner or Staff Director requesting the Commission to initiate a complaint, provided he/she has sufficient reason to believe that an unlawful discriminatory practice as defined in the Act has occurred or is occurring. Upon such request the Commission shall review the reasons provided by the initiating Commissioner or Staff Director and may initiate a complaint if satisfied that there is reason to believe that an unlawful discriminatory practice as defined in the Act has occurred or is occurring; (7-1-97)

c. Any person claiming that he/she has been discharged, expelled, or otherwise discriminated against by an employer, labor organization, or employment agency because he/she opposed practices forbidden under the Human Rights Act, or because he/she has filed a complaint, testified, assisted or participated in any manner in an investigation, hearing or other procedure before the Commission. (7-1-97)

02. Commission Assistance. Assistance in filing complaints shall be available to any Complainant by a Commissioner, the Staff Director, or staff member. The Commission reserves the right to refuse to accept a complaint for filing if, in the opinion of the Staff Director, there is no reason to suspect that illegal discrimination may have occurred, or if the action is barred by the terms of Subsection 300.06.a. (7-1-97)

03. Contents of Complaint. A complaint should contain the following: (7-1-93)

a. The full name, mailing address, and telephone number (if any) of the Complainant or Complainants; (7-1-93)

b. The full name, mailing address, and telephone number (if any and if known) of the Respondent or Respondents; (7-1-93)

c. A brief written statement sufficiently clear to identify the practices and to describe generally the action or practice alleged to be unlawful; (7-1-98)

d. The date or dates on which the alleged unlawful discriminatory practices occurred and, if the alleged unlawful practice is of a continuous nature, the dates between which said continuing practices are alleged to have occurred; (7-1-93)

e. A statement as to any other action which has been instituted in any other forum or agency based on the same grievance as is alleged in the complaint. (7-1-93)

04. Medical Documentation. Persons filing disability discrimination complaints may be required to furnish the Commission with opinions or records from duly licensed health professionals regarding (a) the nature of their disabilities, and (b) any limitations, including work restrictions, caused by the disability. Medical reports from the following sources will be accepted: physicians and osteopathic physicians, nurse practitioners, counselors, psychologists, occupational therapists, clinical social workers, dentists, audiologists, speech pathologists, podiatrists, optometrists, chiropractors, physical therapists, and substance abuse treatment providers, insofar as any opinion or evaluation within the scope of the relevant license applies to the individual's physical or mental impairment. Failure to provide medical reports within a reasonable period of time may be cause for dismissal of a complaint. (7-1-97)

05. Method of Filing. A complaint may be filed: by personal delivery, mail, or facsimile delivered to the Commission office in Boise. (7-1-97)

06. Time for Filing. The following time limitations apply to the filing of complaints with the Commission: (7-1-93)

a. A complaint must be filed within one (1) year after the alleged unlawful practice occurs. If the alleged unlawful practice is of a continuing nature, the date of the occurrence of said unlawful practice shall be deemed to be any date subsequent to the commencement of the unlawful practice up to and including the date on which the complaint shall have been filed if the alleged unlawful practice continues. (7-1-93)

b. Upon receipt of a complaint at the Commission's office, the date of such receipt shall be noted thereon. For purposes of compliance with Idaho Code 67-5908(4), the date of notation shall be the date of filing.

(7-1-93)

c. Notwithstanding any other provisions of these rules, a complaint shall be deemed to have met the timelines requirement of Subsection 300.06.a. when the Commission receives, in any manner described in Subsection 300.05.a., a written statement sufficiently precise to identify the practices and to describe generally the action or practice alleged to be unlawful. (7-1-97)

07. Complaints Deferred by E.E.O.C. Any complaint deferred to the Commission by the E.E.O.C. shall be treated, for purposes of filing requirements, according to the rules as stated above. (7-1-93)

08. Amended Complaints. A complaint may be amended, before the determination by the Commission and at the discretion of the Staff Director, to cure technical defects or omissions, or to clarify and/or amplify allegations by the Complainant. (7-1-97)

09. Supplemental Complaint. The Complainant may file a supplemental complaint setting forth actions which have allegedly occurred subsequent to the date of the original or amended complaint, and said supplemental complaint, if timely filed, will be considered together in the same proceeding with the original or amended complaint whenever practicable. (7-1-93)

10. Withdrawal of Complaint. Upon the request of the Complainant, on a form provided by the Staff Director stating the reasons for such request, a complaint, or any part thereof, may be withdrawn upon the written consent of the Staff Director. If a complaint is withdrawn pursuant to the provision of these Rules, the Staff Director shall close the case and notify the parties. (7-1-93)

11. Initial Actions. Upon the filing of a complaint, said complaint shall be docketed, assigned a complaint number, and assigned to the staff for settlement or investigation and conciliation. (7-1-93)

12. Service on Respondent. As promptly as possible, the Commission shall cause a copy of said complaint to be personally delivered, or sent by certified mail to the Respondent. (7-1-93)

13. Mediation. Upon the filing of a complaint, the Commission or its delegated staff member shall endeavor to resolve the matter by informal means. Such informal means may include, at the discretion of the Commission staff, the holding of a mediation conference at a time and place acceptable to all participants. If held, a mediation conference shall be for the purposes of clarifying the positions of the parties to the complaint and of exploring any bases for no-fault settlement. A mediation conference is not, and shall not be considered for any purposes to be, a contested case hearing under Idaho Code 67-5209. (7-1-97)

14. Settlement. If terms of settlement are agreed to by the parties at any time prior to a determination by the Commission as to the merits of the charge, said terms shall be reduced to writing in a Settlement Agreement. Upon the signing of a Settlement Agreement by all parties, the Staff Director will cause the case to be closed. (7-1-93)

15. Answers. The Respondent shall answer or otherwise respond to the complaint in writing within thirty (30) days of receiving it. A copy of said answer, including any attachments thereto, will be sent by the Commission staff to the Complainant. Upon application, the Commission may for good cause shown extend the time within which the answer may be filed. The answer shall be fully responsive to each allegation contained in the complaint. Any allegation in the complaint which is not denied or admitted in the answer shall be deemed admitted unless the Respondent shall state in the answer he/she is without knowledge or information sufficient to form a belief. If the Respondent fails to answer or otherwise respond to the complaint within thirty (30) days of receipt or such time as may be extended by the Commission, the Commission may act on the complaint based on the information provided by the Complainant. Upon application, the Commission may for good cause shown permit the Respondent to amend its answer to the complaint. Any amendments to the complaint, or any supplemental complaint, shall be served upon the Respondent as promptly as possible. Answers to amended or supplemental complaints, if necessary, shall be submitted within ten (10) working days. Time for submitting such answers may be extended by the Commission to thirty (30) days for good cause shown. (7-1-97)

16. Interrogatories. At any time after the filing of a complaint the Commission staff may issue to either

the Complainant or the Respondent interrogatories regarding any matter, not privileged, which is relevant to the subject matter involved. It is not ground for objection that the information sought will be inadmissible in court if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. (7-1-93)

17. Interrogatory Answers Returned. Answers to the interrogatories shall be returned to the Commission office within thirty (30) days from the date of service of said interrogatories. (7-1-93)

18. Extension. Upon application by a party, for good cause shown, the Staff Director may grant one (1) extension of time for filing answers to interrogatories, said extension not to exceed an additional fifteen (15) days. (7-1-93)

19. Orders. In the event that a party objects to certain interrogatories, and after an attempt has been made to resolve any difference between the Commission and the party, the Commission may issue an order compelling the party to answer the interrogatories. This order must be signed by at least two (2) Commissioners. An order issued under this rule shall be enforceable by application to the District Court. (7-1-93)

20. Narrative Statement. The Commission staff may, in specific cases, seek from a party a narrative statement of response in addition to or rather than answers to interrogatories. In such cases, the narrative statement should include all information which the party desires considered by the Commission, in determining whether to credit the allegations of the complaint. (7-1-93)

21. File Briefs. Any party to a complaint filed with the Commission may file briefs or other written memoranda setting out his or her position or interpretation of the law. (7-1-97)

22. Summary of Investigation. At the completion of the investigation, the staff member to whom the case is assigned shall prepare a report containing a summary of the investigation and submit it to the Staff Director to review. (7-1-93)

23. Administrative Closure. At any point during the handling of a particular case the ~~Commission, or a designated panel of at least three (3) Commissioners,~~ Staff Director may close the case for administrative reasons. Such reasons shall include, but are not limited to: (7-1-93)(7-1-98)T

- a. Failure of the Complainant to accept a full relief settlement offer; (7-1-93)
- b. Failure of the Complainant to cooperate with the Commission in the processing of the case, including failure to answer interrogatories or failure to provide medical information as requested; (7-1-93)
- c. Inability to locate the Complainant; (7-1-93)
- d. It appearing upon investigation that the case is not jurisdictional with the Commission; (7-1-93)
- e. The Complainant's filing of a suit in either state or federal court alleging the same unlawful practices as complained of to the Commission. (7-1-93)

24. Notification of Closure. The Staff Director shall notify the parties of such administrative closure, including the grounds therefor, as promptly as possible. (7-1-93)

25. Decision on the Merits. At the completion of the investigation and approval of the summary by the Staff Director, the Commission or a designated panel of at least three (3) Commissioners shall determine whether there is probable cause to believe that the Respondent has been or continues to be engaged in any unlawful discriminatory practices defined in the Act. (7-1-93)

26. No Probable Cause. If the Commission or designated panel finds no probable cause to credit the allegations of the complaint, a statement of no probable cause and order of dismissal will be issued for the Commission by the Staff Director. The summary of investigation, statement, and order shall be sent to Complainant and Respondent by certified mail, thereby closing the case. (7-1-97)

27. Probable Cause. If the Commission or designated panel finds probable cause to credit the allegations of the complaint, a statement of probable cause shall be issued. The summary of investigation and statement shall be sent to the Complainant and the Respondent by certified mail. (7-1-97)

28. Conciliation. If the Commission finds probable cause to credit the allegations of the complaint, the Commission staff shall endeavor through conference with the parties to redress and eliminate the possible unlawful discriminatory practice by conciliation. (7-1-93)

29. Conciliation Agreement. If the Commission staff shall succeed in endeavors to conciliate, a written Conciliation Agreement shall be prepared which shall set forth all measures to be taken by any party, and if appropriate, compliance provisions. The Conciliation Agreement shall be signed by the parties, and the Staff Director shall cause the case to be closed. (7-1-93)

30. Failure of Agreement. In the event of failure to reach terms of conciliation agreeable to all parties, the Staff Director shall so certify and assign the case to the Commission's legal counsel. The Commission, after review by its legal counsel, shall determine whether or not to pursue the case in the District Court. (7-1-93)

31. No Action. If the Commission determines not to pursue the case in District Court, the Staff Director shall so notify Complainant and Respondent, close the case, and advise Complainant of his or her right to pursue the case through a private cause of action. (7-1-93)

32. Action. If the Commission decides to pursue a case, it shall direct its legal counsel to file an action in District Court in the name of the Commission for the use of the person or persons alleging discrimination. (7-1-93)

33. Confidentiality of Records. In order to protect the interests of all parties in reaching successful settlements of discrimination charges without resorting to court action, the Commission and its employees will not reveal information about a case to nonparties except as may be necessary to conduct a full and fair investigation or to cooperate with other government law enforcement agencies. (7-1-93)

34. Federal Compliance. In the interest of consistency and to avoid confusion on the part of persons governed by both the State and Federal anti discrimination laws, the Commission will generally follow the interpretations of the Federal anti discrimination laws in examining the merits of a complaint filed with it under this Act. If a person files a complaint under Title 67, Chapter 59, Idaho Code, and Title 44, Chapter 17, Idaho Code, the Commission will attempt to avoid duplication in investigation and settlement efforts, whenever possible. (7-1-97)

35. Document Destruction. The Commission will retain closed investigatory files for three (3) years from the date of closure at which time these documents may be destroyed at the discretion of the Staff Director. (7-1-97)

36. Notice of Right to Sue. At the time of case closure the director will issue a notice of administrative dismissal notifying the complainant of his or her right to file a civil action in District Court. Any such suit must be filed within ninety (90) days of the date of this notice. (7-1-98)T

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