

# IDAHO ADMINISTRATIVE BULLETIN

## Table of Contents

August 2, 2000 -- Volume 00-8

TABLE OF CONTENTS .....	1
PREFACE .....	4
<b><u>THE OFFICE OF THE GOVERNOR</u></b>	
EXECUTIVE ORDER NO. 2000-07 .....	12
EXECUTIVE ORDER NO. 2000-08 .....	15
EXECUTIVE ORDER NO. 2000-09 .....	16
EXECUTIVE ORDER NO. 2000-10 .....	19
<b><u>IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE</u></b>	
<b>16.03.06 - RULES GOVERNING REFUGEE MEDICAL ASSISTANCE</b>	
Docket No. 16-0306-0001	
Notice Of Temporary And Proposed Rule .....	21
<b>16.03.08 - RULES GOVERNING TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO</b>	
Docket No. 16-0308-0002	
Notice Of Temporary And Proposed Rule .....	26
<b>16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE</b>	
Docket No. 16-0309-0005	
Notice Of Temporary And Proposed Rule .....	34
<b>16.04.11 - RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES</b>	
Docket No. 16-0411-9901	
Notice Of Pending Rule And Amendment To Temporary Rule .....	42
<b>16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES</b>	
Docket No. 16-0601-0001	
Notice Of Temporary And Proposed Rule .....	49
<b><u>IDAPA 22 - IDAHO STATE BOARD OF MEDICINE</u></b>	
<b>22.01.07 - RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF MEDICINE</b>	
Docket No. 22-0107-0001 (Repeal)	
Notice Of Temporary And Proposed Rule .....	110
Docket No. 22-0107-0002 (Rewrite)	
Notice Of Temporary And Proposed Rule .....	111
<b>22.01.14 - RULES RELATING TO COMPLAINT INVESTIGATION</b>	
Docket No. 22-0114-0001	
Notice Of Temporary And Proposed Rule .....	116

**IDAPA 29 - IDAHO POTATO COMMISSION**

**29.01.02 - RULES GOVERNING PAYMENT OF ADVERTISING TAX  
AND USAGE OF FEDERALLY REGISTERED TRADEMARKS**

Docket No. **29-0102-0001**

Notice Of Pending Rule And Amendment To Temporary Rule ..... 121

**IDAPA 44 - OFFICE OF THE ADMINISTRATIVE RULES COORDINATOR**

**44.01.01 - RULES OF THE ADMINISTRATIVE RULES COORDINATOR**

Docket No. **44-0101-0001**

Notice Of Proposed Rule..... 125

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

**58.01.00 - LEGISLATIVE CHANGES AFFECTING THE ADMINISTRATIVE RULES  
OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY**

Docket No. **58-0100-0002**

Notice Of Proposed Rule..... 131

**58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

Docket No. **58-0101-9903** (This Docket Was Originally Numbered **16-0101-9903**)

Notice Of Temporary And Proposed Rule ..... 149

Docket No. **58-0101-0001**

Notice Of Temporary And Proposed Rule ..... 157

Docket No. **58-0101-0002**

Notice Of Negotiated Rulemaking ..... 165

**58.01.23 - RULES OF ADMINISTRATIVE PROCEDURE  
BEFORE THE BOARD OF ENVIRONMENTAL QUALITY**

Docket No. **58-0123-0001**

Notice Of Proposed Rule..... 166

**IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO**

**59.01.06 - RETIREMENT RULES OF THE PUBLIC EMPLOYEE  
RETIREMENT SYSTEM OF IDAHO (PERSI)**

Docket No. **59-0106-0001**

Notice Of Temporary And Proposed Rule ..... 185

**SUBJECTS AFFECTED INDEX ..... 190**

**BULLETIN SUMMARY OF PROPOSED RULEMAKINGS ..... 200**

**CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES ..... 114**

**SUBJECT INDEX ..... 209**

# 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 rulemaking documents in Idaho. The Bulletin publishes the official text notice and full text of such actions.*

*State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of a rulemaking 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 rulemaking activities.*

## **CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN**

*The Bulletin is cited by year and issue number. For example, Bulletin 99-1 refers to the first Bulletin issued in calendar year 1999, Bulletin 00-1 refers to the first Bulletin issued in calendar year 2000, 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 1999 is cited as Volume 99-1, the December 1998 Bulletin is cited as Volume 98-12. The March 2000 Bulletin is cited as Volume 00-3.*

## **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 adopted and 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 Rulemaking**, printed in each Bulletin.*

## **TYPES OF RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN**

*The state of Idaho administrative rulemaking process comprises five distinct activities; Proposed, Negotiated, Temporary, Pending, and Final rulemaking. In the majority of cases, the process begins with proposed rulemaking and ends with final rulemaking. The following is a brief explanation of each type of administrative rule.*

### **NEGOTIATED RULE**

*Negotiated rulemaking is a process in which all interested parties and the agency seek a consensus on the content of the rule. Agencies are encouraged to proceed through this informal rulemaking whenever it is feasible to do so. Publication of the text in the Administrative Bulletin by the agency is optional. This process should lead the*

rulemaking to the temporary and/or proposed rule stage.

### **PROPOSED RULE**

*A proposed rulemaking is an action by an agency in which the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a notice of proposed rulemaking in the Bulletin. The notice of proposed rulemaking must include:*

- a) the specific statutory authority for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;*
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
- c) the text of the proposed rule prepared in legislative format;*
- d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
- e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;*
- f) the manner in which persons may request an opportunity for an oral presentation; and*
- g) the deadline for public (written) comments on the proposed rule.*

*As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date unless published in conjunction with a temporary rule docket. An agency may vacate a proposed rulemaking if it decides not to proceed further with the promulgation process.*

### **TEMPORARY RULE**

*Temporary rules may be adopted only when the governor finds that it is necessary for:*

- a) the protection of the public health, safety, or welfare; or*
- b) compliance with deadlines in amendments to governing law or federal programs; or*
- c) conferring a benefit.*

*If a rulemaking meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule.*

*A temporary rule expires at the conclusion of the next succeeding regular session of the legislature unless the rule is approved, amended, or modified by concurrent resolution or when the rule has been replaced by a final rule.*

*In cases where the text of the temporary rule is the same as that of the proposed rule, the rulemaking can be done concurrently as a temporary/proposed rule. State law requires that the text of a proposed or temporary rule be published in the Administrative Bulletin. Combining the rulemaking allows for a single publication of the text.*

*An agency may rescind a temporary rule that has been adopted and is in effect if the rule is being replaced by a new temporary rule or has been published concurrently with a proposed rulemaking that is being vacated.*

### **PENDING RULE**

*A pending rule is a rule that has been adopted by an agency under the regular rulemaking process and remains subject to legislative review before it becomes a final, enforceable rule.*

*When a pending rule is published in the Bulletin, the agency is required to include certain information in the Notice of Pending Rule. This includes:*

- a) the reasons for adopting the rule;*
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;*
- c) the date the pending rule will become final and effective; and*
- d) an identification of any portion of the rule imposing or increasing a fee or charge.*

*Agencies are required to republish the text of the rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the Section(s) that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the Notice of Pending Rule is published.*

### **FINAL RULE**

*A final rule is a rule that has been adopted by an agency under the regular rulemaking process and is in effect.*

*No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that the agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution will be adopted rejecting, amending, or modifying the rule or any part thereof. A Notice of Final Rule must be published in the Idaho Administrative Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule that has been reviewed by the legislature and has not been rejected, amended, or modified will become final with no further legislative action. No rule shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule which is final and effective may be applied retroactively, as provided in the rule.*

### **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.*

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## 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 83720-0306, telephone (208) 332-1820.

*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 Rulemaking Dockets*, are specific portions of the Bulletin and Administrative Code produced on demand.

*Internet Access* - The Administrative Code and Administrative Bulletin, as well as individual chapters and dockets, are available on the Internet at the following address:

<http://www.state.id.us/> - from Idaho Home Page select "Legislation" then "Administrative Rules" link.

**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) 332-1820.

## HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

Rulemaking documents produced by state agencies and published in the *Idaho Administrative Bulletin* are organized by a numbering 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 38.05.01.060.02.c.ii.**

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

"IDAPA 38." refers to the Idaho Department of Administration.

"05." refers to Title 05 which is the Department of Administration's Division of Purchasing.

"01." refers to Chapter 01 of Title 05, "Rules of the Division of Purchasing".

"060." refers to Major Section 060, "Content of the Invitation to Bid".

"02." refers to Subsection 060.02.

"c." refers to Subsection 060.02.c.

"ii." refers to Subsection 060.02.c.ii.

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## DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER". The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-9901). 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. 38-0501-9901"

"38-" denotes the agency's IDAPA number; in this case the Department of Administration.

"0501-" refers to the TITLE AND CHAPTER numbers of the agency rule being promulgated; in this case the Division of Purchasing (TITLE 05), "Rules of the Division of Purchasing" (Chapter 01).

"9901" denotes the year and sequential order of the docket submitted and published during the year; in this case the first rulemaking action of the chapter published in calendar year 1999.

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)"**

## INTERNAL AND EXTERNAL CITATIONS TO ADMINISTRATIVE RULES IN THE CODE AND BULLETIN

When making a citation to another Section or Subsection that is part of the same rule, a typical internal citation may appear as follows:

**"...as found in Section 201 of this rule." OR "...in accordance with Subsection 201.06.c. of this rule."**

It may also be cited to include the IDAPA, Title, and Chapter number also, as follows:

**"...in accordance with IDAPA 38.05.01.201."**

"38" denotes the IDAPA number of the agency.

"05" denotes the TITLE number of the agency rule.

"01" denotes the Chapter number of the agency rule.

"201" references the main Section number of the rule that is being cited.

Citations made within a rule to a different rule chapter (external citation) should also include the name of the Department and the name of the rule chapter being referenced, as well as the IDAPA, Title, and Chapter numbers. The following is a typical example of an external citation to another rule chapter:

**"...as outlined in the Rules of the Department of Administration, IDAPA 38.04.04, 'Rules Governing Capitol Mall Parking.'"**

## BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2000

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date
00-1	January, 2000	<b>*November 17, 1999</b>	January 5, 2000
00-2	February, 2000	December 22, 1999	February 2, 2000
00-3	March, 2000	January 19, 2000	March 1, 2000
00-4	April, 2000	February 23, 2000	April 5, 2000
00-5	May, 2000	March 22, 2000	May 3, 2000
00-6	June, 2000	April 19, 2000	June 7, 2000
00-7	July, 2000	May 24, 2000	July 5, 2000
00-8	August, 2000	June 21, 2000	August 2, 2000
00-9	September, 2000	July 19, 2000	September 6, 2000
00-10	October, 2000	<b>**August 22, 2000</b>	October 4, 2000
00-11	November, 2000	September 20, 2000	November 1, 2000
00-12	December, 2000	October 25, 2000	December 6, 2000

## BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2001

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date
01-1	January, 2001	<b>*November 15, 2000</b>	January 3, 2001
01-2	February, 2001	December 20, 2000	February 7, 2001
01-3	March, 2001	January 24, 2001	March 7, 2001
01-4	April, 2001	February 21, 2001	April 4, 2001
01-5	May, 2001	March 21, 2001	May 2, 2001
01-6	June, 2001	April 18, 2001	June 6, 2001
01-7	July, 2001	May 23, 2001	July 4, 2001
01-8	August, 2001	June 20, 2001	August 1, 2001
01-9	September, 2001	July 18, 2001	September 5, 2001
01-10	October, 2001	<b>**August 22, 2001</b>	October 3, 2001
01-11	November, 2001	September 19, 2001	November 7, 2001
01-12	December, 2001	October 24, 2001	December 5, 2001

*\*Last day to submit proposed rulemaking before moratorium begins and last day to submit pending rules to be reviewed by the legislature.*

*\*\*Last day to submit proposed rules in order to complete rulemaking for review by legislature.*

<b>INDEX OF STATE AGENCY IDAPA NUMBERS AND ADMINISTRATIVE CODE VOLUME NUMBERS</b>		
<b>IDAPA 01</b>	<b>ACCOUNTANCY</b> , Board of	<b>VOLUME 1</b>
<b>IDAPA 38</b>	<b>ADMINISTRATION</b> , Department of	<b>VOLUME 8</b>
<b>IDAPA 44</b>	<b>ADMINISTRATIVE RULES COORDINATOR</b> , Office of the	<b>VOLUME 8</b>
<b>IDAPA 02</b>	<b>AGRICULTURE</b> , Idaho Department of	<b>VOLUME 1</b>
<b>IDAPA 40</b>	<b>ARTS</b> , Idaho Commission on the	<b>VOLUME 8</b>
<b>IDAPA 03</b>	<b>ATHLETIC COMMISSION</b>	<b>VOLUME 1</b>
<b>IDAPA 04</b>	<b>ATTORNEY GENERAL</b> , Office of the	<b>VOLUME 1</b>
<b>IDAPA 53</b>	<b>BARLEY COMMISSION</b> , Idaho	<b>VOLUME 9</b>
<b>IDAPA 51</b>	<b>BEEF COUNCIL</b> , Idaho	<b>VOLUME 9</b>
<b>IDAPA 07</b>	<b>BUILDING SAFETY</b> , Division of Electrical Board Plumbing Board Building Code Advisory Board Public Works Contractors License Board	<b>VOLUME 1</b>
<b>IDAPA 43</b>	<b>CANOLA AND RAPESEED COMMISSION</b> , Idaho	<b>VOLUME 8</b>
<b>IDAPA 48</b>	<b>COMMERCE</b> , Idaho Department of	<b>VOLUME 8</b>
<b>IDAPA 06</b>	<b>CORRECTION</b> , Board of	<b>VOLUME 1</b>
<b>IDAPA 19</b>	<b>DENTISTRY</b> , Board of	<b>VOLUME 6</b>
<b>IDAPA 08</b>	<b>EDUCATION</b> , Board of	<b>VOLUME 2</b>
<b>IDAPA 10</b>	<b>ENGINEERS AND LAND SURVEYORS</b> , Board of Professional	<b>VOLUME 2</b>
<b>IDAPA 58</b>	<b>ENVIRONMENTAL QUALITY</b> , Department of	<b>VOLUME 9</b>
<b>IDAPA 12</b>	<b>FINANCE</b> , Department of	<b>VOLUME 2</b>
<b>IDAPA 13</b>	<b>FISH AND GAME</b> , Department of	<b>VOLUME 2</b>
<b>IDAPA 14</b>	<b>GEOLOGISTS</b> , Board of Registration of Professional	<b>VOLUME 2</b>
<b>IDAPA 15</b>	<b>GOVERNOR</b> , Office of the Idaho Commission on Aging Idaho Commission for the Blind Idaho Forest Products Commission Division of Human Resources and Personnel Commission Division of Veterans Services Idaho Liquor Dispensary Emergency Response Commission	<b>VOLUME 3</b>

<b>INDEX OF STATE AGENCY IDAPA NUMBERS AND ADMINISTRATIVE CODE VOLUME NUMBERS</b>		
<b>IDAPA 16</b>	<b>HEALTH AND WELFARE</b> , Department of	<b>VOLUMES 3, 4, &amp; 5</b>
<b>IDAPA 45</b>	<b>HUMAN RIGHTS COMMISSION</b>	<b>VOLUME 8</b>
<b>IDAPA 30</b>	<b>IDAHO STATE LIBRARY</b>	<b>VOLUME 7</b>
<b>IDAPA 11</b>	<b>IDAHO STATE POLICE</b> (Law Enforcement)	<b>VOLUME 2</b>
<b>IDAPA 17</b>	<b>INDUSTRIAL COMMISSION</b>	<b>VOLUME 5</b>
<b>IDAPA 18</b>	<b>INSURANCE</b> , Department of	<b>VOLUME 5</b>
<b>IDAPA 05</b>	<b>JUVENILE CORRECTIONS</b> , Department of	<b>VOLUME 1</b>
<b>IDAPA 09</b>	<b>LABOR</b> , Idaho Department of	<b>VOLUME 2</b>
<b>IDAPA 20</b>	<b>LANDS</b> , Department of	<b>VOLUME 6</b>
<b>IDAPA 52</b>	<b>LOTTERY COMMISSION</b> , Idaho State	<b>VOLUME 9</b>
<b>IDAPA 22</b>	<b>MEDICINE</b> , Board of	<b>VOLUME 6</b>
<b>IDAPA 23</b>	<b>NURSING</b> , Board of	<b>VOLUME 6</b>
<b>IDAPA 24</b>	<b>OCCUPATIONAL LICENSES</b> , Board of Board of Architectural Examiners Board of Barber Examiners Board of Chiropractic Physicians Board of Cosmetology Board of Environmental Health Specialist Examiners Board of Hearing Aid Dealers and Fitters Board of Landscape Architects Board of Morticians Board of Examiners of Nursing Home Administrators Board of Optometry Board of Podiatry Board of Psychologist Examiners Board of Social Work Examiners Idaho Counselor Board Board of Dentistry Board of Acupuncture Real Estate Appraiser Board Board of Residential Care Facility Administrators	<b>VOLUME 6</b>
<b>IDAPA 25</b>	<b>OUTFITTERS AND GUIDES LICENSING BOARD</b>	<b>VOLUME 6</b>
<b>IDAPA 50</b>	<b>PARDONS AND PAROLE</b> , Commission for	<b>VOLUME 9</b>
<b>IDAPA 26</b>	<b>PARKS AND RECREATION</b> , Department of	<b>VOLUME 6</b>
<b>IDAPA 59</b>	<b>PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO - PERSI</b>	<b>VOLUME 9</b>
<b>IDAPA 27</b>	<b>PHARMACY</b> , Board of	<b>VOLUME 6</b>

<b>INDEX OF STATE AGENCY IDAPA NUMBERS AND ADMINISTRATIVE CODE VOLUME NUMBERS</b>		
<b>IDAPA 29</b>	<b>POTATO COMMISSION, Idaho</b>	<b>VOLUME 7</b>
<b>IDAPA 31</b>	<b>PUBLIC UTILITIES COMMISSION</b>	<b>VOLUME 7</b>
<b>IDAPA 41</b>	<b>PUBLIC HEALTH DISTRICTS</b>	<b>VOLUME 8</b>
<b>IDAPA 33</b>	<b>REAL ESTATE COMMISSION</b>	<b>VOLUME 7</b>
<b>IDAPA 34</b>	<b>SECRETARY OF STATE, Office of the</b>	<b>VOLUME 7</b>
<b>IDAPA 49</b>	<b>SHORTHAND REPORTERS, Board of Certified</b>	<b>VOLUME 8</b>
<b>IDAPA 36</b>	<b>TAX APPEALS, Idaho Board of</b>	<b>VOLUME 7</b>
<b>IDAPA 35</b>	<b>TAX COMMISSION, State</b>	<b>VOLUME 7</b>
<b>IDAPA 39</b>	<b>TRANSPORTATION, Department of</b>	<b>VOLUME 8</b>
<b>IDAPA 54</b>	<b>TREASURER, Office of the State</b>	<b>VOLUME 9</b>
<b>IDAPA 46</b>	<b>VETERINARY MEDICAL EXAMINERS, Board of</b>	<b>VOLUME 8</b>
<b>IDAPA 55</b>	<b>VOCATIONAL AND TECHNICAL EDUCATION, Division of</b>	<b>VOLUME 9</b>
<b>IDAPA 47</b>	<b>VOCATIONAL REHABILITATION, Division of</b>	<b>VOLUME 8</b>
<b>IDAPA 37</b>	<b>WATER RESOURCES, Department of</b>	<b>VOLUME 8</b>
<b>IDAPA 42</b>	<b>WHEAT COMMISSION, Idaho</b>	<b>VOLUME 8</b>

# **THE OFFICE OF THE GOVERNOR**

EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE

## **EXECUTIVE ORDER NO. 2000-07**

### **IDAHO COMMISSION FOR NATIONAL AND COMMUNITY SERVICE, REPEALING AND REPLACING EXECUTIVE ORDER NO. 96-06**

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*WHEREAS, there is a compelling need for more civic participation to solve community and state problems and to address many unmet social, environmental, educational and public safety needs; and*

*WHEREAS, promoting the capability of Idaho's people, communities, and enterprises to work together is vital to the long-term prosperity of this state; and*

*WHEREAS, building and encouraging community collaborations and service is an integral part of the state's future well-being, and requires cooperative efforts by the public and private sectors; and*

*WHEREAS, the development of a National Service Program in Idaho requires an administrative vehicle conforming with federal guidelines as set forth in the National and Community Service Trust Act of 1993;*

*NOW, THEREFORE, I, DIRK KEMPTHORNE, 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:*

1. *The Idaho Commission for National and Community Service ("Commission") is hereby established to advise and assist in the development and implementation of a comprehensive, statewide plan for promoting volunteer involvement and citizen participation in Idaho, as well as to serve as the state's liaison to national, state and community organizations which support the intent of the National and Community Service Trust Act of 1993 ("the Act").*

2. *The Commission will be composed of no fewer than 15 and no more than 25 voting members to be appointed by the Governor in compliance with federal guidelines as described in the Act of 1993 and as detailed below:*

*a) The Commission's membership will include a representative of a community-based agency or organization in the state; the head of the State education agency or his or her designee; a representative of local government in the State; a representative of local labor organizations in the State; a representative of business; an individual between the ages of sixteen (16) and twenty-five (25), inclusive, who is a participant or supervisor of a service program for school-age youth or of a campus-based or national service program; a representative of a national service program; an individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth; and an individual with experience in promoting the involvement of older adults (age 55 and older) in service and volunteerism. The Corporation for National and Community Service ("Corporation") will designate one of its employees to serve as an ex officio member on the Commission. Other members may include: educators, including representatives from institutions of higher education and local education agencies; experts in the delivery of human, educational, environmental, or public safety services; representatives of Indian tribes; out-of-school youth or at-risk youth; and representatives of programs that are administered or receive assistance under the Domestic Volunteer Service Act.*

*b) Not more than twenty-five (25) percent of the Commission members may be employees of state government, though the Governor may appoint additional state agency representatives to sit on the Commission as non-voting ex officio members. Members may not vote on issues affecting organizations for which they have served as a staff person or as a volunteer at any time during the preceding twelve (12) months.*

*c) Not more than fifty (50) percent of the Commission plus one member may be from the same political party. To the maximum extent practicable, membership of the state Commission shall be diverse with respect to race, ethnicity, age, gender and disability characteristics. Members will serve for a term of three years.*

*One-third of the appointments to the first Commission will serve terms of one year; and one-third will serve terms of two years; one-third will serve terms of three years. Vacancies among the members shall be filled by an appointment by the Governor to serve for the remainder of the unexpired term.*

- d) The Commission will elect from among its members a chairperson.*
- e) The Governor will appoint one individual who is not a member of the Commission to serve at his pleasure as administrator of the Commission.*

3. *The Commission will have the following duties and responsibilities:*

- a) To develop a three-year comprehensive national and community service plan and establishment of state priorities;*
- b) To administer a competitive process to select national service programs to be included in any application to the Corporation for National and Community Service for funding;*
- c) To prepare an application to the Corporation to receive funding and/or educational awards for the programs designated in the Act;*
- d) To assist the State education agency in preparing the application for subtitle B school-based service learning programs;*
- e) To administer the grants awarded pursuant to the Act and to oversee and monitor the performance and progress of funded programs;*
- f) To implement, in conjunction with the Corporation, comprehensive, non-duplicative evaluation and monitoring systems;*
- g) To assist in the development of programs pursuant to the Act;*
- h) To develop mechanisms for recruitment and placement of people interested in participating in national service programs;*
- i) To assist in the provision of health and child care benefits to eligible program participants as specified by regulations pertaining to this Act;*
- j) To make recommendations to the Corporation with respect to priorities within the State for programs receiving assistance pursuant to the Act;*
- k) To coordinate with other state agencies that administer Federal financial assistance programs under the Community Service Block Grant Act (42 U.S.C. 9901 et seq.) or other appropriate Federal financial assistance programs;*
- l) To coordinate its functions with any division of the Corporation, that carries out volunteer service programs in the state; and*
- m) To provide technical assistance to agencies, corporations and other organizations seeking to develop, strengthen or expand their ability to meet critical needs of the community through service; and*
- n) To coordinate Idaho's Promise activities to ensure that Idaho's young people have access to the five fundamental resources identified by Ret. General Colin Powell and America's Promise: The Alliance for Youth. The resources include: a healthy start; safe places to go with structured activities, especially during non-school hours; ongoing relationships with caring adults, including parents and mentors; marketable skills through effective education and; opportunities to give back to the community through service; and*
- o) Other activities as necessary to further the development and implementation of programs which enhance national and community service.*

4. *The Idaho Department of Correction shall serve as the host agency for administration of the Commission, and, as is deemed appropriate by the Governor, additional support may be requested from the Departments of Employment, Education, Commerce, Health and Welfare, the Division of Vocational Education and the Office of the State Board of Education.*

5. *The Commission and its activities shall be funded from federal, state and other revenues appropriated to the Idaho Commission on National and Community Service. The Commission is authorized to accept funds and in-kind services from other state and private entities.*

6. *The Commission shall meet at least quarterly. Failure to attend at least seventy-five (75) percent of the meetings in any calendar year shall result in removal from the Commission. A quorum shall consist of a simple majority of voting members.*



*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 twenty-eighth day of June in the year of our Lord two-thousand and of the Independence of the United States of America the two hundred twenty-fourth and of the Statehood of Idaho the one hundred tenth.*

\_\_\_\_\_  
*DIRK KEMPTHORNE*  
GOVERNOR

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*PETE T. CENARRUSA*  
SECRETARY OF STATE

**THE OFFICE OF THE GOVERNOR  
EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2000-08**

**ESTABLISHMENT OF THE CAMPAIGN LEADERSHIP TEAM  
FOR THE STATE EMPLOYEES CHARITABLE GIVING CAMPAIGN  
REPEALING AND REPLACING EXECUTIVE ORDER NO. 96-14**

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*WHEREAS, state employees desire to help improve their communities; and*

*WHEREAS, state employees have always been very generous in contributing to help those most vulnerable;*  
*and*

*WHEREAS, the State of Idaho has an interest in establishing a single state employee charitable campaign which minimizes disruption in the workplace and administrative costs to Idaho's taxpayers and ensures the voluntary nature of employee participation; and*

*WHEREAS, a workplace campaign can build morale by providing an opportunity for employees to contribute positively to their communities as state employees; and*

*WHEREAS, state employees should have the ability to choose to give to any health and human service tax exempt 501(c)3 organization;*

*NOW, THEREFORE, I, DIRK KEMPTHORNE, 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 Governor shall appoint a Campaign Leadership Team including chair and co-chair made up of state employees to establish policy and govern the campaign.*

*The Governor shall ask each Department Head to appoint a Campaign Coordinator to provide leadership in planning and completing the state campaign for their department.*

*The Campaign Leadership Team will provide a report of the statewide results to the Governor.*

*This Executive Order repeals and replaces Executive Order 96-14.*



*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 fifteenth day of May in the year of our Lord two thousand and of the Independence of the United States of America the two hundred twenty-fourth and of the Statehood of Idaho the one hundred tenth.*

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**DIRK KEMPTHORNE  
GOVERNOR**

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**PETE T. CENARRUSA  
SECRETARY OF STATE**

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2000-09**

**IDAHO CODE OF FAIR EMPLOYMENT PRACTICES, REPLACING EXECUTIVE ORDER NO. 95-08**

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*WHEREAS, the United States through its Constitution, laws, executive orders, and regulations has declared that all persons are to be treated fairly and equally; and the State of Idaho is committed to fulfilling that federal mandate; and*

*WHEREAS, the Legislature of the State of Idaho by Title 44, Chapter 17, and Title 67, Chapter 59, of the Idaho Code has declared that employment discrimination based upon race, color, national origin, religion, disability, sex, or age is illegal; by Title 56, Chapter 7, that the disabled shall be free from employment discrimination in public service; and by Title 65, Chapter 5, that veterans are to be given preference by public employers; and*

*WHEREAS, every Idahoan should be provided the opportunity to fully develop and use his/her talents. When we allow race, color, religion, national origin, sex, age, and disability to prevent anyone from reaching full potential, we fail that person, our state, and our country. In accordance with the principles of fair employment practices, we must strive to recognize and advance the abilities and talents of all people, while denying no individual his/her rightful opportunities; and*

*WHEREAS, we must assume our citizen-granted role of leadership in the protection of freedom for all citizens; and we must serve in that leadership role as a model for government, business, industry, labor, and education in this regard;*

*NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, in that spirit and to that purpose, do hereby proclaim the following Idaho Code of Fair Employment Practices shall continue to be the governing policy throughout every department of the Executive Branch of Government of the State of Idaho.*

**ARTICLE I--Employment Policies of State Agencies**

*State employees shall be recruited, appointed, assigned, and promoted upon the basis of individual merit, in accordance with the principles of fair treatment and non-discrimination on the basis of race, color, sex, religion, national origin, age, or disability. Veterans are to be given preference in accordance with applicable state and federal laws and regulations.*

*All state departments, commissions, and boards are directed to review their present Human Resource policies and practices regarding recruitment, appointment, promotion, demotion, transfer, retention, discipline, separation, training, and compensation to assure compliance with this Executive Order. They shall regularly review present state and federal laws and regulations and seek to redress under-utilization, if any, of minorities, women, or individuals with disabilities, and qualified veterans within the state workforce.*

*The Division of Human Resources shall take positive steps to ensure that the entire examination process; oral, written, and ratings, shall be free from either conscious or inadvertent bias. State agencies shall give wide distribution of notice of employment opportunities so that all citizens may be fully advised of career opportunities in state government. Employment announcements issued by state agencies shall include a statement such as, "The State of Idaho is an Equal Opportunity Employer. In addition, preference may be given to veterans who qualify under state and federal laws and regulations".*

**ARTICLE II--State Action**

*All services of every state agency shall be performed without discrimination based on race, color, religion, national origin, sex, age, or disability. No state facility shall be used in furtherance of any discriminatory practice nor shall any state agency become a party to any agreement, arrangement, plan, contract, or subcontract which has the*

effect of sanctioning such practices.

ARTICLE III--State Financial Assistance

Race, color, religion, national origin, sex, age, or disability shall not be considered in state-administered or sponsored programs involving the distribution of funds to qualified recipients for benefits authorized by law; and state agencies shall not provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices.

ARTICLE IV--State Employment Services

All state agencies, including educational institutions, which provide employment referral or placement services to public or private employers, shall accept job orders and applications on a non-discriminatory basis. They shall refuse to fill any job order designed, either consciously or inadvertently, to exclude any person from employment because of race, color, religion, national origin, sex, age, or disability except where a bona fide occupational qualification has been established.

ARTICLE V--State Education, Counseling, and Training Program

All educational counseling and vocational guidance programs, employment and training programs, policy declarations and staff services of state agencies or those in which state agencies participate, shall be open to all qualified persons, without regard to race, color, religion, national origin, sex, age, or disability.

ARTICLE VI--Cooperation with Idaho Human Rights Commission

All state departments shall cooperate fully with the Idaho Human Rights Commission if state employees or applicants for state employment file complaints with the Commission. They shall also utilize the services of the Commission when needing technical advice regarding compliance with the equal employment opportunity provisions of Title 67, Chapter 59, Idaho Code. The Commission shall act as a referral agency for information or complaints concerning discrimination in certain protected classes not covered by Title 67, Chapter 59, Idaho Code.

ARTICLE VII--Enforcement by Appointing Authorities

The head of each state executive department shall be responsible for carrying out the policies of this Idaho Code of Fair Employment Practices and shall inform and educate all commission and board supervisory personnel regarding its intent and spirit. They shall establish clearly written directions to carry out this policy. Upon a showing of credible evidence to the appropriate appointing authority that any officer or employee of the state has violated any of the provisions of this Executive Order or any applicable state or federal law or regulation, the appointing authority shall take appropriate disciplinary action.

Every appointing authority shall be responsible for the development of a complaint procedure to be used by employees and recipients of state services who believe they have been subjected to harassment. This policy shall include at least the following: (1) a statement defining and forbidding harassment of any nature, (2) an investigative procedure designed to protect the confidentiality of participants wherever possible and to effect a timely and fair resolution of the allegation, and (3) a statement advising employees and service recipients of their rights to raise this issue with appropriate governmental agencies and the courts. The Idaho Human Rights Commission and the Division of Human Resources shall assist in the development of these policies.

ARTICLE VIII--Affirmative Action Plans

The agency charged with overseeing the review of the state's Equal Employment and Affirmative Action planning shall be the Division of Human Resources under the Executive Office of the Governor. The Division will consult with appointing authorities and report to the Governor on the State's fair employment practices, including EEO/AA efforts on an annual basis.

This Executive Order repeals and replaces Executive Order No.95-08.

*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 the 3rd day of May in the year of our Lord two thousand and of the Independence of the United States of America the two hundred twenty-fourth and of the Statehood of Idaho the one hundred-tenth.*

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*DIRK KEMPTHORNE*  
*GOVERNOR*

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*PETE T. CENARRUSA*  
*SECRETARY OF STATE*

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2000-10**

**CONTINUING PROVISIONS FOR STATE COOPERATION WITH THE FEDERAL INSURANCE  
ADMINISTRATION UNDER THE NATIONAL FLOOD INSURANCE ACT OF 1968, AS AMENDED,  
REPEALING AND REPLACING EXECUTIVE ORDER NO. 96-10**

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*WHEREAS, uneconomic uses of the state's floodplains have occurred and potential flood losses have increased despite substantial efforts to control floods; and*

*WHEREAS, national, state, and local studies of areas and property subject to flooding predict increases in flood damage potential and flood losses, despite continuing investment in flood protection structures; and*

*WHEREAS, the State of Idaho maintains programs for the construction of buildings, roads, and other facilities and annually acquires and disposes of lands in flood hazard areas, significantly influencing patterns of commercial, residential, and industrial development; and*

*WHEREAS, the availability of flood insurance under the National Flood Insurance Program, as provided by the National Flood Insurance Act of 1968, as amended, is dependent upon state coordination of federal, state, and local activities to manage floodplains, mudslide (i.e., mudflow) areas, and flood-related erosion areas in the state; and*

*WHEREAS, the Department of Water Resources is the state agency responsible for assisting with local regulations necessary for flood insurance provided by the National Flood Insurance Act of 1968 and regulations set forth in 44 CFR §60.25; and*

*WHEREAS, the Federal Insurance Administration has promulgated and adopted rules and regulations governing eligibility of state and local communities to participate in the National Flood Insurance Program, which participation depends on state coordination of federal, state, and local activities to manage floodplains, mudslide (i.e. mudflow) areas, and flood-related erosion areas in the state;*

*NOW, THEREFORE, I, DIRK KEMPTHORNE, 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:*

- 1. The Department of Water Resources is hereby designated to assist in the implementation of 44 CFR §60.25, Rules and Regulations of the Federal Insurance Administration and will encourage a broad and unified effort to prevent uneconomic use and development of the state's floodplains and, in particular, to lessen the risk of flood losses in connection with state lands and installation and state-financed or supported improvement, specifically as follows:*
- 2. Under the leadership and direction of the Department of Administration, all state agencies directly responsible for the construction of buildings, structures, roads, or other facilities shall preclude the uneconomic, hazardous, or unnecessary use of floodplains in connection with such facilities; in the event of construction in the floodplain, management criteria set forth in 44 CFR §60.3, 60.4, and 60.5 of the National Flood Insurance Regulations shall apply; flood-proofing measures shall be applied to existing facilities in order to reduce flood damage potential;*
- 3. All state agencies responsible for the administration of grant or loan programs involving the construction of building, structures, roads, or other facilities shall evaluate flood hazards in connection with such facilities and, in order to minimize the exposure of facilities to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief, shall preclude the uneconomic, hazardous, or unnecessary use of floodplains in such connection;*

4. *All state agencies responsible for the disposal of lands or properties shall evaluate flood hazards in connection with lands or properties proposed for disposal to other public instrumentalities or private interests and, in order to minimize future state expenditures for flood protection and flood disaster relief, shall notify those instrumentalities and private interests that such hazards exist;*
5. *All state agencies responsible for programs which affect land use planning, including state permit programs, shall take flood hazards into account when evaluating plans and shall encourage land use appropriate to the degree of hazard involved; and*
6. *In evaluating flood hazard potential, all state agencies shall coordinate their work with the Department of Water Resources to assure that the most up-to-date data and/or methods of analysis are utilized.*
7. *As may be permitted by law, the head of each state agency shall issue appropriate rules and regulations to govern the carrying out of the provisions of Section 1 of this order by his agency to be coordinated with the Department of Administration.*



*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 3rd day of May in the year of our Lord two thousand and of the Independence of the United States of America the two hundred twenty-fourth and of the Statehood of Idaho the one hundred-tenth.*

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*DIRK KEMPTHORNE*  
*GOVERNOR*

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*PETE T. CENARRUSA*  
*SECRETARY OF STATE*

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.06 - RULES GOVERNING REFUGEE MEDICAL ASSISTANCE**  
**DOCKET NO. 16-0306-0001**  
**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2000.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b); 39-106(1), 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 16, 2000.

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 temporary and proposed rule:

Changes to this chapter of rule are the following; eligibility is figured using income and resources on the application date; Refugee Cash Assistance is excluded from income for eligibility; refugees in their first eight (8) months in the U.S. who lose eligibility for non-refugee Medicaid will be transferred to Refugee Medical Assistance with no eligibility determination; denial of Refugee Cash Assistance is not a reason to deny Refugee Medical Assistance and, sections on Confidentiality of Records, Inclusive Gender and Severability are removed.

**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.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rulemaking was to comply with deadlines in amendments to governing law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Patti Campbell at (208)334-5818.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 23, 2000.

DATED this 16th day of June, 2000.

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) 332-7347 fax

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0306-0001**

**16.03.06 - RULES GOVERNING REFUGEE ~~RESETTLEMENT~~ MEDICAL ASSISTANCE**

**400. REFUGEE MEDICAL ASSISTANCE PROGRAM.**

**01. Time Limitation.** Medical assistance under the Refugee Medical Assistance Program will be limited to eight (8) consecutive months beginning with the month the refugee enters the United States. The eligibility period for a child born in the United States to parents receiving Refugee Medical Assistance expires when both of his parents with whom he is living are no longer eligible. (7-1-99)

**02. Medical Only.** A refugee is not required to apply for or receive Cash Assistance as a condition of eligibility for Refugee Medical Assistance. Denial or closure of Refugee Cash Assistance is not a reason to deny or close Refugee Medical Assistance. (~~7-1-99~~)(7-1-00)T

**03. Refugee Cash Assistance Excluded.** Refugee Cash Assistance is excluded from income and resources. (7-1-00)T

**034. Automatic Eligibility.** Refugees whose countable income does not exceed the AFDC payment standard are automatically eligible for medical assistance. The AFDC payment standard is listed in Table 400.034.

<b>TABLE 400.034 - AFDC PAYMENT STANDARD</b>	
<b>Number In Family</b>	<b>Payment Standard</b>
1	\$205
2	\$251
3	\$317
4	\$382
5	\$448
6	\$513
7	\$579
8	\$645
9	\$710
10	\$776
Over 10 Persons	Add \$65 Each

(~~7-1-99~~)(7-1-00)T

**045. Medical Assistance With "Spend Down".** An applicant for Refugee Medical Assistance whose countable income exceeds the AFDC payment standard may also become eligible for medical assistance under certain conditions. A special provision, for refugees only, will allow those refugees whose income exceeds the AFDC payment standard to apply their income above the payment standard to their medical costs and thus "spend down" to the AFDC eligibility level. This "spend down" will be computed on a quarterly basis; the quarter begins with the month of application. Compute the amount by which the refugee's income exceeds the AFDC payment standard on a monthly basis using the best estimate of income to be received during the quarter and multiply the monthly excess by three (3) to determine the quarterly "spend down". (7-1-99)

**056. Counting Income And Resources For Refugee Medical Assistance With A "Spend Down".**

(7-1-93)

a. AFDC policy determines which income must be counted, excluded, or deducted; ~~Exceptions that~~ Exceptions that ~~to AFDC policy are listed in Subsections 400.06.a.i. through 400.06.a.iii.~~ to AFDC policy are listed in Subsections 400.06.a.i. through 400.06.a.iii. (7-1-00)T

i. ~~The refugee is not entitled to the thirty dollars (\$30) and one third (1/3) disregard or the thirty dollar (\$30) disregard must not be allowed.~~ The refugee is not entitled to the thirty dollars (\$30) and one third (1/3) disregard. ~~(12-31-91)~~ (7-1-00)T

ii. The refugee is not entitled to the one third (1/3) disregard. (7-1-00)T

iii. Refugee Cash Assistance is excluded from income and resources. (7-1-00)T

b. The AFDC payment standard applicable for the size of family unit determines the amount to which an individual or family must “spend down” to be eligible for refugee medical assistance. (7-1-89)

c. AFDC policy determines which resources must be counted or excluded for a refugee unit which must meet a medical “spend down”. (10-1-82)

d. Total countable resources of the assistance unit must not exceed one thousand dollars (\$1,000). (7-1-89)

e. No financial resources which are not available to the refugee, including resources remaining in his homeland, are to be considered in determining eligibility for medical assistance. (6-1-81)

f. The income and resources of sponsors, and the in-kind services and shelter provided to refugees by their sponsors, will not be considered in determining eligibility for medical assistance. A shelter allowance must not be given for any in-kind shelter provided. (6-1-81)

**067. Financially Responsible Relatives.** (6-1-81)

a. The Department must consider the income and resources of nonrefugee spouses or parents as available to the refugee whether or not they are actually contributed, if they live in the same household. (6-1-81)

b. If the nonrefugee spouse or parent does not live with the individual, the Department must consider income and resources that are actually contributed by the spouse or parent as available to the refugee. (6-1-81)

**078. Deduction Of Incurred Medical Expenses.** If countable income exceeds the AFDC income standard, the Department must deduct from income, in the following order, incurred medical expenses that are not subject to payment by a third party: (6-1-81)

a. Medicare and other health insurance premiums, deductibles, or coinsurance charges, incurred by the individual or family or financially responsible relatives. (10-1-82)

b. Expenses incurred by the individual or family or financially responsible relatives for necessary medical and remedial services that are recognized under State law but not covered under the scope of the Medical Assistance Program. (6-1-81)

c. Expenses incurred by the individual or family or financially responsible relatives for necessary medical and remedial services covered in the scope of the Medical Assistance Program. (6-1-81)

d. The Department may set reasonable limits on expenses to be deducted from income under Subsections 400.078.a. and 400.078.b. ~~(12-31-91)~~ (7-1-00)T

**089. Determining Eligibility For Medical Assistance For Refugees Who Must Meet A “Spend Down”.** The refugee applicant must provide verification of expenses incurred pursuant to Subsection 400.078. If the applicant has medical coverage from a third party, he must verify that charges will not be paid by this third party by providing an Explanation of Benefits or other written statement from the third party. ~~(7-1-99)~~ (7-1-00)T

a. As the applicant submits medical expenses, the charges should be added in the order listed in Subsection 400.078 and then under Subsection 400.078.c. in chronological order by the date of service.

~~(7-1-99)~~(7-1-00)T

b. When the charges equal or exceed the amount of the “spend down”, the applicant becomes eligible for Medical Assistance.

(7-1-99)

c. The date of eligibility is the date of service on the last bill which is covered under the scope of the Medical Assistance Program.

(6-1-81)

d. It is the responsibility of the Case Manager to determine when the “spend down” has been met.

(7-1-99)

**0910. Issuing A Medical Card To A Refugee Who Must Meet A “Spend Down”.** A Medical Card will not be issued until the applicant has met the “spend down”. The dates on the Medical Card under “Valid Only During” will be the date the applicant becomes eligible for Medicaid benefits “to” the last day of the last month in the quarter for which the “spend down” has been determined.

(7-1-99)

**101. Extended Medical.** An assistance unit which becomes ineligible for refugee medical assistance because of increased earnings from employment of a member of the unit, is entitled to non-spend down refugee medical assistance through the refugee’s eighth month in the U.S.

(7-1-99)

**401. ~~599.~~ (RESERVED) INCOME AND RESOURCES ON DATE OF APPLICATION.**

Eligibility is determined using income and resources on the date of application. Income is not averaged over the application processing period.

(7-1-00)T

**402. TRANSITION TO REFUGEE MEDICAL ASSISTANCE.**

A refugee is transitioned from Medicaid to Refugee Medical Assistance, if he is within eight (8) months of entry to the United States, and loses Medicaid because of earnings from employment. The transition is made without a Refugee Medical Assistance eligibility determination.

(7-1-00)T

**403. -- 599. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**700. PRECEDENCE OF CATEGORICAL ASSISTANCE PROGRAMS.**

Eligibility for refugee medical assistance is limited to refugees who have been determined ineligible for TAFI, AABD, or Medicaid but who meet refugee medical assistance eligibility requirements.

(7-1-99)

**01. New Applicants.**

(7-1-93)

a. An applicant for medical assistance must first have his eligibility determined for TAFI, AABD and/or Medicaid. To be eligible for TAFI, AABD and/or Medicaid, the refugee must meet all the eligibility criteria for the applicable category of assistance.

(7-1-99)

b. If the applicant is determined ineligible for TAFI, AABD and/or Medicaid, his eligibility is then determined under the Refugee Medical Assistance Program.

(7-1-99)

**02. Transfer Of Cases.** At the end of the eight (8) month time limit for Refugee Medical Assistance, a refugee who is determined eligible may be transferred to Medicaid. The transition is made without a Refugee Medical Assistance eligibility determination.

~~(7-1-99)~~(7-1-00)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**~~997. 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".~~ (12-31-91)

**~~998. INCLUSIVE GENDER.~~**

~~For the purposes of these rules, words used in the masculine gender include the feminine, and vice versa, where appropriate.~~ (5-22-78)

**~~999. SEVERABILITY.~~**

~~Idaho Department of Health and Welfare Rules, IDAPA 16.03.06, are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance, is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter.~~ (5-22-78)

**997. – 999. (RESERVED).**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.08 - RULES GOVERNING TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO**

**DOCKET NO. 16-0308-0002**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2000, May 1, 2000 and July 1, 2000.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202, 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 16, 2000.

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 temporary and proposed rule:

TANF/TAFI funds will not be used for Medical services if the existing Idaho Medicaid plan will pay for a service, the purchase of vehicles (including down payments) or childcare.

Participants who close TAFI cash assistance due to employment must be under 200% of the Federal poverty guidelines at time of closure to receive Transitional Services.

At-Risk services changed to Career Enhancement Services with the following changes: 1) Non-custodial parents are eligible if the family's income is below 400% of the Federal Poverty guidelines; 2) The need must be work related and that if not met would prevent them from attaining or maintaining employment; 3) Supportive Services must be non-recurrent, short-term, and designed to meet a specific episode of need not to exceed four (4) months; 4) Work related activities (mentoring, counseling and training) can be provided up to twelve (12) months; 5) Must not be provided for a need already met by another program; 6) Cannot be receiving TANF or TAFI benefits or be serving a TAFI sanction; 7) Limit on number of participants is changed if a funding shortfall is projected.

Effective July 1, 2000, TAFI cash assistance, supportive services, and Career Enhancement services will be available to a person who has been convicted of a felony involving a controlled substance, if the person complies with the terms of a withheld judgement, probation or parole.

**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.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes were made to comply with deadlines in amendments to governing law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Patti Campbell at (208) 334-5818.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 23, 2000.

DATED this 14th day of June, 2000.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW - Division of Legal Services  
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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0308-0002**

**010. DEFINITIONS.**

- 01. Applicant.** An individual who applies for Temporary Assistance for Families in Idaho. (7-1-98)
- 02. Assistance.** Cash payments, vouchers, and other benefits designed to meet a family's ongoing basic needs. Assistance includes recurring benefits, such as transportation and child care, conditioned on participation in work activities. (1-1-00)T
- 023. Department.** The Idaho Department of Health and Welfare. (7-1-98)
- 04. Dependent Child.** A child under the age of eighteen (18), or under the age of nineteen (19) and attending, full time, a secondary school or the equivalent level of vocational or technical training. (1-1-00)T
- 035. Earned Income.** Cash or in-kind payment derived from employment or self-employment. Receipt of a service, benefit or durable goods instead of wages is in-kind income. Earned income is gross earnings before deductions for taxes or any other purposes. (7-1-98)
- 06. Family.** A family is an eligible individual or group of eligible individuals living in a common residence, whose income and resources are considered in determining eligibility. Spouses living together in a common residence are considered a family. Unrelated adults who are the parents of a common child are considered a family. Adult relatives who reside together are considered separate families. Unrelated families living in a common residence are considered separate families. (1-1-00)T
- 047. Good Cause.** The conduct of a reasonably prudent person in the same or similar circumstances, unless otherwise defined in these rules. (7-1-98)
- 08. Noncustodial Parent.** A parent legally responsible for the support of a dependent minor child, who does not live in the same household as the child. (1-1-00)T
- 059. Parent.** The mother or father of the dependent child. In Idaho, a man is presumed to be the child's father if he is married to the child's mother at the time of conception or at the time of the child's birth. (7-1-98)
- 0610. Participant.** An individual who has signed a Personal Responsibility Contract. (7-1-98)
- 0711. Personal Responsibility Contract (PRC).** An agreement negotiated between a family and the Department that is intended to result in self-reliance. (7-1-98)
- 12. Temporary Assistance for Families in Idaho (TAFI).** Idaho's family assistance program. TAFI replaced the Aid to Families With Dependent Children (AFDC) program. (1-1-00)T

**13. Temporary Assistance For Needy Families (TANF).** The Federal block grant provided to Idaho and used to fund TAFI. TANF funds other programs and services, including career enhancement and emergency assistance. (1-1-00)T

~~08~~**14. Unearned Income.** Income received from sources other than employment or self-employment, such as Social Security, unemployment insurance, and workers' compensation. (7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. TIME LIMIT.**

Lifetime eligibility for adults is limited to twenty-four (24) months unless otherwise provided by these rules. When there is more than one (1) adult in the family, the number of months of the adult with the most months of TANF participation must be counted towards the time limit. Any month that a TANF benefit was received in another state after June 30, 1997, counts toward the twenty-four (24) month Idaho time limit, unless the other state reports it did not count the months toward the federal time limit. If during the twenty-four (24) month time limit the Department does not end benefits at the appropriate time and a payment is made in error, the month is not counted towards the twenty-four (24) month time limit. It is counted toward the federal sixty (60) month time limit. (7-1-98)(1-1-00)T

**102. RESIDENCE EXCEPTION TO TIME LIMIT.**

In determining the number of months of federal TANF or state TAFI participation, the Department must not count any month the adult meets the conditions in Subsections 102.01 and 102.02. (7-1-99)(1-1-00)T

**01. Lived In Indian Country Or Alaskan Native Village.** The adult lived in Indian country or an Alaskan Native village during the month. (7-1-99)

**02. Fifty Percent Not Employed.** The most reliable data about the month shows at least one thousand (1,000) individuals lived in the Indian country unit or Alaskan Native Village and fifty percent (50%) or more of the adults living in Indian country or in the village were not employed. (7-1-99)(1-1-00)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**113. CONCURRENT BENEFIT PROHIBITION.**

If an individual is potentially eligible for either TAFI or AABD, only one (1) program may be chosen. If a child is potentially eligible for either TAFI or foster care, only one (1) program may be chosen. No individual may be eligible for benefits as a member of more than one (1) family in the same month. (7-1-98)(1-1-00)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**123. FAMILY (RESERVED).**

~~A family is an eligible individual or group of eligible individuals living in a common residence, whose income and resources are considered in determining eligibility and grant amount, and who may be included in the family size. Married spouses living together in a common residence are considered a family. Adult relatives who reside together are considered separate families. Unrelated families living in a common residence are considered separate families. No individual may be eligible for benefits as a member of more than one (1) family in the same month.~~ (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

**133. SOCIAL SECURITY NUMBER (SSN).**

A Social Security Number, or proof of an application for an SSN, must be provided ~~unless good cause is established.~~  
(7-1-98)(1-1-00)T

(BREAK IN CONTINUITY OF SECTIONS)

**135. MULTIPLE TANF BENEFITS.**

Individuals cannot receive TANFI benefits from Idaho and TANF benefits from another state in the same month.  
(7-1-98)(1-1-00)T

(BREAK IN CONTINUITY OF SECTIONS)

~~171. --175.~~ ~~(RESERVED)~~ **SUPPORTIVE SERVICES EXCLUDED.**

TANF funds must not be used for: (5-1-00)T

**01. Child Care Of Any Type:** (5-1-00)T

**02. Medical Services, Including Medical Exams; or** (5-1-00)T

**03. Purchase Or Down Payment For Motor Vehicle.** (5-1-00)T

~~172. -- 175.~~ ~~(RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

**240. INDIVIDUALS EXCLUDED FROM FAMILY SIZE.**

Individuals listed in Subsections 240.01 through 240.05 are excluded from the family size in determining eligibility and grant amount. Income and resources of these ineligible family members are counted. (7-1-99)

**01. Ineligible Non-Citizens.** Individuals who are non-citizens and are not listed in Section 131. (7-1-98)

**02. Drug Related Conviction.** ~~Felons~~ Individuals convicted under federal or state law of any offense classified as a felony ~~that~~ involves the possession, use or distribution of a controlled substance, when they do not comply with the terms of a withheld judgment, probation or parole, and #The conduct felony must have occurred after August 22, 1996. (7-1-99)(7-1-00)T

**03. Fleeing Felons.** Felons who are fleeing to avoid prosecution, custody or confinement after conviction of a felony or an attempt to commit a felony. (7-1-98)

**04. Felons Violating A Condition Of Probation Or Parole.** Felons who are violating a condition of probation or parole imposed for a federal or state felony. (7-1-98)

**05. Fraudulent Misrepresentation Of Residency.** Individuals convicted in a federal or state court of fraudulently misrepresenting residence to get TANF, AABD, Food Stamps, Medicaid or SSI from two (2) or more states at the same time are ineligible for ten (10) years from the date of conviction. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

**261. APPLICANT ONE-TIME CASH PAYMENT ELIGIBILITY CRITERIA.**

The applicant family must meet the criteria listed in Subsections 261.01 through 261.08. (7-1-99)

- 01. SSN.** An SSN, or proof of application for an SSN, must be provided for each adult family member. ~~(7-1-98)~~(1-1-00)T
- 02. Dependent Child.** The family must have a dependent child or a pregnant woman must be in her last trimester and be medically unable to work. (7-1-98)
- 03. Residence.** The family must live in Idaho and adults in the household must not have received a TANF payment in the same month from another state. (7-1-98)
- 04. Voluntary Quit.** An adult family member must not have voluntarily quit their most recent employment within sixty (60) days or be on strike. (7-1-98)
- 05. Income And Resources.** The family must be income eligible for TAFI and have no resources to meet the need. (7-1-98)
- 06. Period Of Ineligibility.** The family must not be in a period of TAFI ineligibility. (7-1-98)
- 07. Agreement.** The family must complete a one-time cash agreement. (7-1-98)
- 08. ~~Twelve Month~~ Episode Of Need Restriction.** If a family received ~~at-risk~~ Career Enhancement services or ~~an~~ Emergency Assistance ~~to Needy Families with Children~~ payment within the past twelve (12) months, the family cannot receive a one-time cash payment for the same episode of need. ~~(7-1-99)~~(1-1-00)T

(BREAK IN CONTINUITY OF SECTIONS)

**350. TRANSITIONAL SERVICES.**

Transitional services may be provided to an individual whose family is no longer eligible for TAFI due to employment or who requested TAFI closure because of employment. At the time of closure the family's income must be below two hundred percent (200%) of the federal poverty guidelines. ~~(4-5-00)~~(1-1-00)T

**351. TRANSITIONAL SERVICES CRITERIA.**

The individual must meet the criteria in Subsections 351.01 through 351.07. (4-5-00)

- 01. TAFI Family.** The family must have received TAFI for one (1) partial month or one (1) full month within the past twelve (12) months. (4-5-00)
- 02. Need For Work-Related Services.** The individual must be in need of work-related services to maintain employment. (4-5-00)
- 03. Residence.** The individual must live in the state of Idaho and must not be a resident of another state. (4-5-00)
- 04. Controlled Substance Felon.** ~~Felons~~ Individuals convicted ~~after August 22, 1996,~~ under federal or state law of any offense classified as a felony ~~that~~ involves the possession, use or distribution of a controlled substance, ~~cannot~~ receive transitional services when they comply with the terms of a withheld judgment, probation or parole. The felony must have occurred after August 22, 1996. ~~(4-5-00)~~(7-1-00)T

**05. Fleeing Felons.** Felons who are fleeing to avoid prosecution, custody or confinement after conviction of a felony or an attempt to commit a felony cannot receive transitional services. (4-5-00)

**06. Parole Violation.** Felons who are violating a condition of probation or parole imposed for a federal or state felony cannot receive transitional services. (4-5-00)

**07. Fraud.** Individuals convicted in a federal or state court of fraudulently misrepresenting residence to get TANF, AABD, Food Stamps, Medicaid, or SSI, from two (2) or more states at the same time, cannot receive transitional services for ten (10) years from the date of conviction. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**354. -- 3697. (RESERVED).**

**37068. AT-RISK CAREER ENHANCEMENT SERVICES.**

~~An individual with a dependent child, at risk of becoming eligible for TAFI within ninety (90) days without intervention, may be eligible for at-risk services. An application must be completed for at-risk services. SSN and income must be verified. Other eligibility criteria are verified at the discretion of the Department. Career Enhancement services may be provided to an individual with dependent children. The individual must have a work-related need, that if unmet, would prevent them from obtaining or maintaining employment. Career Enhancement services are non-recurrent, short-term, and designed to deal with a specific crisis situation or episode of need. Career Enhancement payments do not count towards the TAFI twenty-four (24) month time limit.~~ (7-1-99)(1-1-00)T

**369. CAREER ENHANCEMENT SUPPORTIVE SERVICES.**

Career Enhancement supportive services are provided to help individuals participate in career enhancement activities, including employment. Career Enhancement supportive services must not extend beyond four (4) months per episode of need. (1-1-00)T

**370. CAREER ENHANCEMENT MENTORING, COUNSELING, AND TRAINING ACTIVITIES.**

Career Enhancement mentoring, counseling, and training activities are provided to help individuals obtain or maintain employment. Mentoring, counseling and training activities can be provided for up to twelve (12) months. (1-1-00)T

**371. AT-RISK CAREER ENHANCEMENT ELIGIBILITY CRITERIA.**

The individual must meet the criteria in Subsections 371.01 through 371.14. (7-1-99)(1-1-00)T

**01. Application For Career Enhancement Services.** An application form must be completed for Career Enhancement services, unless the family already receives services from the Food Stamp Medicaid, Idaho Child Care or Child Support Services programs. A Career Enhancement service plan must be completed for all eligible individuals. (1-1-00)T

**02. Verification Of Career Enhancement Eligibility.** SSN must be verified. Other eligibility criteria are verified at the discretion of the Department. (1-1-00)T

**023. Eligible Individual.** The individual must ~~be a parent or a caretaker relative with the child in the home, or not have failed, without good cause, to comply with a previous Career Enhancement service plan.~~ The individual must be a parent or a caretaker relative with a dependant child in the home, a pregnant woman; or a non-custodial parent legally responsible to provide support for a dependent child who does not reside in the same home. (7-1-99)(1-1-00)T

**024. Need For Work-Related Services.** The individual must be in need of work-related services ~~and be unemployed or underemployed~~ to obtain or maintain employment. The individual must participate in meeting the need to the extent possible. This requires the individual to meet a portion of the need if possible, and to explore other

resources available to meet the need.

~~(7-1-99)~~(1-1-00)T

**035. Income Limit.** The family must meet the income limit for only the first month of the service to receive Career Enhancement services. The family's income must be below two hundred percent (200%) of the federal poverty guidelines. ~~The individual must meet the income criteria for only the first month to receive at-risk services for up to ninety (90) days.~~ or the family must be eligible for Food Stamps, Medicaid or ICCP. For non-custodial parents, the family's income must be below four hundred percent (400%) of the federal poverty guidelines, or the family must be eligible for Food Stamps or Medicaid.

~~(7-1-99)~~(1-1-00)T

~~**04. Resource Limit.** The family's resources must be such that he cannot meet an emergent need, or is unable to meet the emergent need because of circumstances beyond his control.~~

~~(7-1-99)~~

**056. Citizenship And Legal Non-Citizen.** The individual must be a citizen or must meet the legal non-citizenship requirements of Section 131.

(7-1-99)

**067. SSN.** An SSN, or proof of application for an SSN, must be provided for the individual.

~~(7-1-99)~~(1-1-00)T

**078. Residence.** The individual must live in the state of Idaho and must not be a resident of another state.

(7-1-99)

**09. Duplication of Services.** Career Enhancement services must not be provided for a need already met by Emergency Assistance under IDAPA 16.06.01, "Rules Governing Family and Children's Services," or by a one-time TAFI cash payment.

(1-1-00)T

~~**0810. TANF Restrictions.** The individual must ~~cannot~~ be ~~eligible for or~~ receiving TANF or TAFI benefits or be serving a TAFI sanction. The individual must ~~cannot~~ receive ~~at-risk~~ Career Enhancement services if he has received ~~twenty-four (24) months of TAFI benefits or has received~~ five (5) years of TANF benefits. The individual must not be receiving TANF Extended Cash Assistance.~~

~~(7-1-99)~~(1-1-00)T

~~**09. Twelve Month Restriction.** If the family received a TANF one-time cash payment or Emergency Assistance to Needy Families with Children payment within the past twelve (12) months the individual cannot receive at-risk services. If an individual received at-risk services within the past twelve (12) months the individual cannot receive at-risk services.~~

~~(7-1-99)~~

~~**10. JSAP Restriction.** The individual cannot receive at-risk services while receiving JSAP services.~~

~~(7-1-99)~~

**11. Controlled Substance Felons.** ~~Felons~~ Individuals convicted ~~after August 22, 1996,~~ under federal or state law of any offense classified as a felony ~~that~~ involving the possession, use or distribution of a controlled substance ~~cannot~~ receive ~~at-risk~~ Career Enhancement services ~~when they comply with the terms of a withheld judgment, probation or parole.~~ The felony must have occurred after August 22, 1996.

~~(7-1-99)~~(7-1-00)T

**12. Fleeing Felons.** Felons who are fleeing to avoid prosecution, custody or confinement after conviction of a felony or an attempt to commit a felony cannot receive ~~at-risk~~ Career Enhancement services.

~~(7-1-99)~~(1-1-00)T

**13. Probation Or Parole Violation.** Felons who are violating a condition of probation or parole imposed for a federal or state felony cannot receive ~~at-risk~~ Career Enhancement services.

~~(7-1-99)~~(1-1-00)T

**14. Fraud.** Individuals convicted in a federal or state court of fraudulently misrepresenting residence to get TANF, AABD, Food Stamps, Medicaid, or SSI, from two (2) or more states at the same time, cannot receive ~~at-risk~~ Career Enhancement services for ten (10) years from the date of conviction.

~~(7-1-99)~~(1-1-00)T

**372. AT-RISK SERVICES PAID (RESERVED).**

*At-risk services will be paid for only those work-related services identified and authorized in a thirty (30) day period to meet needs that do not extend beyond a ninety (90) day period. Payment for at-risk services will be made to the*

~~provider of the services.~~

~~(4-5-00)~~

**373. ~~LIMIT TO NUMBER OF AT-RISK PARTICIPANTS FUNDING RESTRICTIONS.~~**

~~The limit on the number of unduplicated at-risk cases eligible to receive at-risk services will be the limit established by the Idaho Department of Health and Welfare based on the federal fiscal year. An individual who applies for at-risk services after the limit has been reached must be denied at-risk services. If a funding shortfall is projected, the Department shall take action to reduce Career Enhancement Services payments.~~

~~(7-1-99)(1-1-00)T~~

**374. ~~AT-RISK CAREER ENHANCEMENT SERVICES TIME LIMIT.~~**

~~At-risk Career Enhancement Services payments do not count towards the TAFI twenty-four (24) month time limit or the sixty (60) month TANF time limit. If the Department pays ~~at-risk~~ Career Enhancement services in error, the month does not count towards the twenty-four (24) month TAFI time limit.~~

~~(4-5-00)(1-1-00)T~~

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE  
16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE**

**DOCKET NO. 16-0309-0005**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2000.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to 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 16, 2000.

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 temporary and proposed rule:

Adds clarification to existing rule that for the purchase of a wheelchair a physical therapist (PT) or occupational therapist (OT) evaluation is always required. Rental will be reviewed on a case-by-case basis as to whether the Department will require that request to have a PT or OT evaluation attached.

**TEMPORARY RULE JUSTIFICATION:** The temporary rule has been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to confer a benefit.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change is to add clarification to existing rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Colleen Osborn at (208) 364-1923.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 23, 2000.

DATED this 6th day of June, 2000.

Sherri Kovach  
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Boise, Idaho 83720-0036  
(208) 334-5564 phone, (208) 332-7347 fax

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0005**

**106. DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES.**

The Department will purchase or rent when medically necessary cost effective durable medical equipment and

medical supplies for recipients residing in community settings including those provided through home health agency plans of care which meet the requirements found in Subsections 105.01 and 105.02. No payment will be made for any recipient's DME or medical supplies that are included in the per diem payment while such an individual is an inpatient in a hospital NF, or ICF/MR. (7-1-99)

**01. Medical Necessity Criteria.** DME/medical supplies will be purchased or rented only if ordered in writing (signed and dated) by a physician prior to delivery of equipment or supplies. Date of delivery is considered the date of service. The following information to support the medical necessity of the item(s) shall be included in the physician's order and accompany all requests for prior authorization or be kept on file with the DME provider for items which do not require prior authorization: (7-1-99)

a. The recipient's medical diagnosis and prognosis including current information on the medical condition which requires the use of the supplies and/or medical equipment; and (7-1-99)

b. An estimate of the time period that the medical equipment or supply item will be necessary and frequency of use. As needed (PRN) orders must include the conditions for use and the expected frequency; and (7-1-99)

c. For medical equipment, a full description of the equipment needed. All modifications or attachments to basic equipment must be supported; and (7-1-99)

d. For medical supplies, the type and quantity of supplies necessary must be identified; and (11-1-86)

e. The number of months the equipment or supplies will be needed; and (7-1-99)

f. Additional information may be requested by the Department or its designee for specific equipment and/or supplies such as, but not limited to, wheelchairs, apnea monitors, oximeters, hospital beds. (4-5-00)

**02. Medical Equipment Program Requirements.** All claims for durable medical equipment are subject to the following guidelines: (7-1-99)

a. Unless specified by the Department, durable medical equipment does not require prior authorization by the Department or its designee. (7-1-99)

i. When multiple features or models of equipment are available, authorization will be limited to the least costly version that will reasonably and effectively meet the minimum requirements of the individuals needs. (4-5-00)

b. Unless specified by the Department in the Medical Vendors Handbook, all equipment must be rented except when it would be more cost effective to purchase it. Rentals are subject to the following guidelines: (7-1-99)

i. Rental payments, including intermittent payments, shall automatically be applied to the purchase of the equipment. When rental payments equal the purchase price of the equipment, ownership of the equipment shall pass to the recipient. (4-5-00)

ii. The Department may choose to continue to rent certain equipment without purchasing it. Such items include but are not limited to apnea monitor, ventilators and other respiratory or monitoring equipment. (4-5-00)

iii. The total monthly rental cost of a DME item shall not exceed one-tenth (1/10) of the total purchase price of the item. (7-1-99)

iv. The determination of cost-effectiveness of rental versus purchase will be made by the vendor based on guidelines specified by the Department in the most current Medical Vendors Handbook. Documentation to support the vendor's decision must be kept on file. (7-1-99)

- c. No reimbursement will be made for the cost of repairs (materials or labor) covered under the manufacturer's warranty. The date of purchase and warranty period must be kept on file by the DME vendor. The following warranty periods are required to be provided on equipment purchased by the Department: (7-1-99)
- i. A power drive wheelchair shall have a minimum one (1) year warranty period; (7-1-99)
  - ii. An ultra light wheelchair shall have a lifetime warranty period; (10-22-93)
  - iii. An active duty lightweight wheelchair shall have a minimum five (5) year warranty period; (7-1-99)
  - iv. All other wheelchairs shall have a minimum one (1) year warranty period; (7-1-99)
  - v. All electrical components and new or replacement parts shall have a minimum six (6) month warranty period; (7-1-99)
  - vi. All other DME not specified above shall have a minimum one (1) year warranty period; (7-1-99)
  - vii. If the manufacturer denies the warranty due to user misuse/abuse, that information shall be forwarded to the Department at the time of the request for repair or replacement; (10-1-91)
  - viii. The monthly rental payment shall include a full service warranty. All routine maintenance, repairs, and replacement of rental equipment is the responsibility of the provider. (10-22-93)
- d. Any equipment purchased will become the property of the recipient. (4-5-00)
- e. Covered equipment must meet the definition of durable medical equipment and be medically necessary as defined in Subsection 003.36. All equipment must be prior authorized by the Department or its designee except for the following: (4-5-00)
- i. Bilirubin lights; and (7-1-99)
  - ii. Commode chairs and toilet seat extenders; and (11-1-86)
  - iii. Crutches and canes; and (11-1-86)
  - iv. Electric or hydraulic patient lift devices designed to transfer a person to and from bed to bathtub, but excluding lift chairs, devices attached to motor vehicles, and wall mounted chairs which lift persons up and down stairs; and (7-1-99)
  - v. Grab bars for the bathroom adjacent to the toilet and/or bathtub; and (11-1-86)
  - vi. Hand-held showers; and (11-1-86)
  - vii. Head gear (protective); and (7-1-99)
  - viii. Hearing aids (see Section 108 for coverage and limitations); and (7-1-99)
  - ix. Home blood glucose monitoring equipment; and (11-1-86)
  - x. Intravenous infusion pumps, and/or NG tube feeding pumps, IV poles/stands, intrathecal kits; and (4-5-00)
  - xi. Hand-held nebulizers, air therapy vests, and manual or electric percussor; and (4-5-00)
  - xii. Medication organizers; and (7-1-99)

- xiii. Oxygen concentrators; and (11-1-86)
- xiv. Pacemaker monitors; and (11-1-86)
- xv. Compressors and breathing circuit humidifiers; and (4-5-00)
- xvi. Sliding boards and bath benches/chairs; and (11-1-86)
- xvii. Suction pumps; and (11-1-86)
- xviii. Sheep skins, foam or gel pads for the treatment of decubitus ulcers; and (7-1-99)
- xix. Traction equipment; and (7-1-99)
- xx. Walkers. (4-5-00)

**03. Coverage Conditions - Equipment.** The following medical equipment is subject to the following limitations and additional documentation requirements: (7-1-99)

a. Wheelchairs. The Department will provide the least costly wheelchair which is appropriate to meet the recipient's medical needs. The Department will authorize the purchase of one (1) wheelchair per recipient not more often than once every five (5) years. Specially designed seating systems for wheelchairs shall not be replaced more often than once every five (5) years. Wheelchair rental or purchase requires prior authorization by the Department or its designee and shall be authorized in accordance with the following criteria: (7-1-99)

i. In addition to the physician's information, each request for purchase of a wheelchair must be accompanied by a written evaluation by a physical therapist or an occupational therapist. The evaluation must include documentation of the appropriateness and cost effectiveness of the specific wheelchair and all modifications and/or attachments and its ability to meet the recipient's long-term medical needs. For each request for a rental of a wheelchair, a physical therapist or an occupational therapist evaluation may be required on a case-by-case basis, to be determined by the Department or its designee; ~~(7-1-99)~~(7-1-00)T

ii. Manual wheelchairs will be authorized based on the recipient's need according to the following criteria: (7-1-99)

(1) The recipient must be nonambulatory or have severely limited mobility and require a mobility aid to participate in normal daily activities and the alternative would be confinement to a bed or chair; (7-1-99)

(2) A standard lightweight wheelchair will be authorized if the recipient's condition is such that he cannot propel a standard weight wheelchair; (7-1-99)

(3) An ultra light weight wheelchair will be authorized if the recipient's conditions are such that he cannot propel a lightweight or standard weight wheelchair. (7-1-99)

iii. Electric wheelchairs are purchased only if the recipient's medical needs cannot be met by a manual wheelchair. The attending physician must certify that the power drive wheelchair is a safe means of mobility for the recipient and all of the following criteria are met: (7-1-99)

(1) The recipient is permanently disabled; and (7-1-99)

(2) The disability is such that, because of severe upper extremity weakness or lack of function, the recipient cannot operate any manual wheelchair. (7-1-99)

iv. Additional wheelchairs may be considered within the five (5) year limitation with written documentation from the physician and a written evaluation from a physical therapist or an occupational therapist indicating that the current wheelchair no longer meets the client medical needs and what may be damaging to client's medical condition. (4-5-00)

b. Electronic blood glucose testing devices with voice synthesizers must be prior authorized by the Department or its designee and are covered only when the following documentation is submitted and verified by the attending physician: (7-1-99)

i. The recipient has been determined to be legally blind and is unable to read a standard glucose monitor (this does not include any correctable vision defects; and) (7-1-99)

ii. The recipient lives alone or has no care giver available during the times when the glucose testing must be done. (7-1-99)

c. Electronic pain suppression/muscle stimulation devices TENS Units must be prior authorized by the Department or its designee and are purchased only when the effectiveness of such devices is documented by the physician and only after: (7-1-99)

i. The pain has been present for a minimum of three (3) months; and (7-1-99)

ii. Other treatment modalities have been tried and failed (documentation must be submitted with request for prior authorization; and) (7-1-99)

iii. The effectiveness of the device is documented following a maximum of a two (2) month trial rental period; and (7-1-99)

iv. The physician determines that the recipient is likely to derive significant therapeutic benefit from the continuous use of the device over a long period of time. (7-1-99)

d. Semi-electric hospital beds must be prior authorized by the Department or its designee and will be approved only when the following is documented by the physician: (4-5-00)

i. The recipient's medical condition is such that he is unable to operate a manual hospital bed; and (7-1-99)

ii. The recipient is unable to change position as needed without assistance; and (7-1-99)

iii. The recipient resides in an independent living situation where there is no one to provide assistance with a manual bed for the major portion of the day. (10-31-89)

e. Continuous positive airway pressure (C-PAP) machines must be prior authorized by the Department or its designee and are purchased or rented only in the following circumstances: (7-1-99)

i. The physician certifies that the recipient's diagnosis is obstructive sleep apnea, which is supported by a sleep study; and (7-1-99)

ii. There is documentation that the recipient's oxygen saturations improve with the use of the machine or respiratory events can be controlled with use of this machine. The machine may be rented for three (3) to six (6) months to determine its effectiveness. (7-1-99)

f. Bilevel positive airway pressure (BiPAP) machines must be prior authorized by the Department or its designee and are purchased or rented only in the following circumstances: (7-1-99)

i. A C-PAP machine has been proven ineffective in treating obstructive sleep apnea; and/or (10-22-93)

ii. The C-PAP machine has proven ineffective during titration; and/or (7-1-99)

iii. Used in place of a ventilator. (10-22-93)

g. Lymphedema pumps shall be authorized only as a last resort for the treatment of refractory lymphedema involving one (1) or more limbs. The following documentation must be provided: (4-5-00)

i. Documentation showing location and size of the venous stasis ulcer. (4-5-00)

ii. Documentation showing how long each ulcer has been present. (4-5-00)

iii. Documentation showing that the patient has been treated with regular compression bandaging for at least the past six (6) months. (4-5-00)

iv. Documentation showing approximately when and the results that the patient has been treated with custom fabricated gradient pressure stockings/sleeves. (4-5-00)

v. Documentation showing all other treatments used for the venous stasis ulcers during the last six (6) months. (4-5-00)

vi. Documentation showing the recipient has been seen regularly by a physician for treatment of venous stasis ulcer(s) during the last six (6) months. (4-5-00)

**04. Communication Devices.** Will be considered for purchase by the Department under the following conditions. (4-5-00)

a. Communication devices must be prescribed by the primary care physician. (4-5-00)

b. The need for the device must be based on a comprehensive history and physical. (4-5-00)

c. The device must be considered medically necessary by the primary care physician and the individual must lack the ability to communicate needs with the primary care physician or caregiver. (4-5-00)

d. The device must be the most effective least costly means of meeting the minimum requirements of the client's needs. If the individual knows sign language or is capable of learning sign language a communication device would not be considered medically necessary. (4-5-00)

e. The assessment and evaluation for the communication device must include comprehensive information as related to the individual's ability to communicate and review of the most cost effective devices to meet the individuals needs. Documentation shall include: (4-5-00)

i. Demographic and biographic summary; (4-5-00)

ii. Inventory of skills and sensory function; (4-5-00)

iii. Inventory of present and anticipated future communication needs; (4-5-00)

iv. Summary of device options; (4-5-00)

vi. Recommendation for device; and (4-5-00)

vii. Copy of individual treatment plan. (4-5-00)

f. Repairs to the device must be prior authorized and must not include modifications, technological improvements or upgrades. (4-5-00)

g. Reimbursable supplies include rechargeable batteries, overlays, and symbols. (4-5-00)

h. Replacements, modifications, and upgrades will be reimbursed only with prior authorization by the Department, and will require a complete new assessment. Authorization for replacements, modifications and upgrades will be issued only in the following circumstances: (4-5-00)

- i. System is broken through no fault of the client and is deemed non repairable and client is unable to function without it. (4-5-00)
- ii. System no longer meets the client's minimum medical needs. (4-5-00)
- iii. The use or provision of the system by any individual other than the recipient for which the system was authorized is prohibited. (4-5-00)
- iv. The Department shall have no obligation to repair or replace the communication device if it has been damaged, defaced, lost or destroyed as a result of neglect, abuse, or misuse of the equipment. (4-5-00)
- i. Training and orientation of the communication device may be billed as speech therapy by Medicaid approved providers such as a Developmental Disability Agency, or a Hospital that employs a speech therapist. (4-5-00)
- j. Rental of equipment shall equal one-tenth (1/10) of purchase price. (4-5-00)
- k. All rental applies to purchase of equipment. (4-5-00)

**05. Medical Supply Program Requirements.** All claims for medical supply items are subject to the following requirements: (7-1-99)

- a. The Department will purchase no more than a one (1) month supply of necessary medical supplies for the treatment or amelioration of a medical condition identified by the attending physician in an amount not to exceed one hundred dollars (\$100) per month without prior authorization. Any combination of one (1) month's worth of supplies greater than one hundred dollars (\$100) may require prior authorization by the Department or its designee. The prior authorization period will be established by the Department or its designee. (4-5-00)
- b. Each request for prior authorization must include all information required in Subsection 106.01. (7-1-99)
- c. Supplies other than those listed below will require prior authorization: (4-5-00)
  - i. Catheter supplies including catheters, drainage tubes, collection bags, and other incidental supplies; and (11-1-86)
  - ii. Cervical collars; and (11-1-86)
  - iii. Colostomy and/or urostomy supplies; and (11-1-86)
  - iv. Disposable supplies necessary to operate Department approved medical equipment such as suction catheters, syringes, saline solution, etc.; and (11-1-86)
  - v. Dressings and bandages to treat wounds, burns, or provide support to a body part; and (11-1-86)
  - vi. Fluids for irrigation; and (11-1-86)
  - vii. Incontinence supplies (See Subsection 106.05.b. for limitations); and (7-1-99)
  - viii. Injectable supplies including normal saline and Heparin but excluding all other prescription drug items; and (10-31-89)
  - ix. Blood glucose or urine glucose checking/monitoring materials (tablets, tapes, strips, etc.), automatic injectors; and (7-1-99)
  - x. Therapeutic drug level home monitoring kits. (10-31-89)

xi. Oral, enteral, or parenteral nutritional products (See Subsection 106.05.a. for limitations and additional documentation requirements). (7-1-99)

**06. Coverage Conditions - Supplies.** The following medical supply items are subject to the following limitations and additional documentation requirements: (7-1-99)

a. Nutritional products. Nutritional products will be purchased only under the following circumstances: (7-1-99)

i. A nutritional plan shall be developed and be on file with the provider and shall include appropriate nutritional history, the recipient's current height, weight, age and medical diagnosis. For recipients under the age of twenty-one (21), a growth chart including weight/height percentile must be included; (7-1-99)

ii. The plan shall include goals for either weight maintenance and/or weight gain and shall outline steps to be taken to decrease the recipient's dependence on continuing use of nutritional supplements; (10-1-91)

iii. Documentation of evaluation and updating of the nutritional plan and assessment by a physician as needed but at least annually. (7-1-99)

b. Incontinent supplies. Incontinent supplies are covered for persons over four (4) years of age only and do not require prior authorization unless the recipient needs supplies in excess of the following limitations: (7-1-99)

i. Diapers are restricted in number to two hundred forty (240) per month. If the physician documents that additional diapers are medically necessary, the Department or its designee may authorize additional amounts on an individual basis. (7-1-99)

ii. Disposable underpads are restricted to one hundred fifty (150) per month. (10-22-93)

iii. Pullups are only allowed when it is documented by the physician that the recipient is participating in a toilet training program. Documentation for toilet training program must be updated on a yearly basis. (4-5-00)

**07. Program Abuse.** The use or provision of DME/medical supply items to an individual other than the recipient for which such items were ordered is prohibited. The provision of DME/medical supply items that is not supported by required medical necessity documentation is prohibited and subject to recoupment. Violators are subject to penalties for program fraud and/or abuse which will be enforced by the Department. The Department shall have no obligation to repair or replace any piece of durable medical equipment that has been damaged, defaced, lost or destroyed as a result of neglect, abuse, or misuse of the equipment. Recipients suspected of the same shall be reported to the SUR/S committee. (7-1-99)

**08. Billing Procedures.** The Department will provide billing instructions to providers of DME/medical supplies. When prior authorization by the Department or its designee is required, the authorization number must be included on the claim form. (7-1-99)

**09. Fees And Upper Limits.** The Department will reimburse according to Subsection 060.04 Individual Provider Fees. (12-31-91)

**10. Date Of Service.** Unless specifically authorized by the Department or its designee the date of services for durable medical equipment and supplies is the date of delivery of the equipment and/or supply(s). The date of service cannot be prior to the vendor receiving all medical necessity documentation. (7-1-99)

**11. Notice Of Decision.** A Notice of Decision approving or denying a requested item will be issued to the client by the Department. The client has thirty (30) days to request an administrative hearing on the decision. Hearings will be conducted to IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)," Section 300, and IDAPA 16.05.03, "Rules Governing Contested Cases and Declaratory Rulings". (4-5-00)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.04.11 - RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES**

**DOCKET NO. 16-0411-9901**

**NOTICE OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is March 1, 2000. This pending rule has been adopted by the agency and is now pending review by the 2001 Idaho State Legislature for final adoption. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 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) 39-402 et seq., Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the existing temporary 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 change.

Changed Section 800 to require TSCs to include transition planning as part of the Individual Support Plan and modified the language to require DDAs to submit a quarterly report with client information. Pursuant to Senate Concurrent Resolution No. 153, Section 919, concerning transportation, and Subsection 920.08, concerning vehicle safety has been removed from this rule making docket. The proposed rules have been amended in response to public comment and to make transcriptional corrections to the rules, and are being amended pursuant to Section 67-5227, Idaho Code.

Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Board amended the temporary rule with the same revisions which have been made to the proposed rule.

Only the sections that have changes are printed in this bulletin. The original text of the proposed rules was published in the [November 3, 1999 Administrative Bulletin, Volume 99-11, pages 32 through 43](#).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Paul Swatsenbarg at (208) 334-5512.

DATED this 19th day of April, 2000.

Sherri Kovach  
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**IDAPA 16**  
**TITLE 04**  
**Chapter 11**

**RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES**

**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 text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 99-11, November 3, 1999, pages 32 through 43.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and adoption by the 2001 Idaho State Legislature as a final rule.**

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0411-9901**

**800. STANDARDS FOR DDA'S PROVIDING SERVICES TO CONSUMERS WITH AUTHORIZED INDIVIDUAL SUPPORT PLANS.**

Each DDA shall provide the following rehabilitative and habilitative services consistent with the needs of persons with developmental disabilities who have developed an Individual Support Plan with a Targeted Service Coordinator through a person centered planning process. (7-1-97)

**01. Intake.** (7-1-97)

a. To ensure the health and safety of the consumer, a medical profile sheet which contains relevant medical and identifying information about the consumer and family, and accurately reflects the current status and needs of the consumer shall be obtained or completed prior to the delivery of services. (7-1-97)

b. Prior to the delivery of services current and accurate comprehensive evaluations or specific skill assessments shall be completed or obtained, as necessary, to effectively plan the consumer's program. To be considered current, evaluations and assessments shall accurately reflect the current status of the consumer. (7-1-97)

**02. Evaluations.** (7-1-97)

a. Comprehensive assessments which are completed by the agency shall: (7-1-97)

b. Be conducted by qualified professionals for the respective disciplines as defined in this chapter; (7-1-97)

c. Be identified as a service on the Individual Support Plan. (7-1-97)

**03. Specific Skill Assessments.** Specific skill assessments which are completed by the agency shall: (7-1-97)

a. Be completed by qualified professionals for the respective disciplines as defined in this chapter; and (7-1-97)

b. Be identified as a service or need on the Individual Support Plan; and (7-1-97)

c. Be conducted for the purposes of determining baselines, or the need for further interventions. (7-1-97)

**04. Individual Support Plan.** Any services provided by the DDA must be included on the plan and authorized by the Regional ACCESS Unit before a consumer can receive the service from the agency. (7-1-97)

**05. Transition Plan.** ~~Each DDA shall develop an individual transition plan designed to facilitate independence, personal goals and interests. The transition plan may include vocational goals/objectives directed toward paid employment. The transition plan shall specify criteria for transition into alternative settings, vocational training, supported or independent employment, volunteer opportunities, community based organizations and activities, or less restrictive settings. The implementation of some components of the plan may necessitate decreased hours of service or discontinuation of services from a DDA.~~ Each Targeted Service Coordinator shall annually review Individual Support Plans for progress/outcomes and facilitate transition to more independent activities.

~~(3-1-00)F(3-1-00)T~~

**06. Implementation Plan.** The DDA shall be required to develop an Implementation Plan for each service or support which is included on the consumer's Individual Support Plan provided by the agency as outlined in these rules. The Implementation Plan shall include: (7-1-97)

a. The consumer's name; and (7-1-97)

b. The specific skill area; and (7-1-97)

c. A baseline statement addressing the consumer's specific skills and abilities related to the specific skill to be learned; and (7-1-97)

d. Measurable, behaviorally stated objectives which are developed from an identified service or support in the Individual Support Plan; and (7-1-97)

e. Written instructions to staff such as curriculum, lesson plans, locations, activity schedules, type and frequency of reinforcement and data collection, directed at the achievement of each objective. These instructions may be standardized, however, shall be individualized and revised as necessary to promote consumer progress toward the stated objective. (7-1-97)

f. Identification of the specific environment(s) where services shall be provided. (7-1-97)

g. These implementation plans shall be initiated within fourteen (14) calendar days of the initiation of services. (7-1-97)

h. The target date for completion. (7-1-97)

**07. ACCESS Unit Authorization.** ACCESS Unit prior authorization is required in the following circumstances: (7-1-97)

a. When revisions in the Implementation Plan change the type and amount of services listed on the Individual Support Plan; and (7-1-97)

b. At the consumer's annual review of DDA services as part of the annual update of the Individual Support Plan. (7-1-97)

**08. Program Documentation.** Each consumer's record shall include documentation of the consumer's participation in and response to services provided. This documentation shall include at a minimum: (7-1-97)

a. Daily entry of all activities conducted toward meeting consumer objectives; and (7-1-97)

b. Sufficient progress data to accurately assess the consumer's progress toward each objective; and (7-1-97)

c. A review of the data and, when indicated, changes in the daily activities or specific implementation

procedures by a DDP. The review shall include the DDP's dated initials; and (7-1-97)

- d. Documentation of notification of the consumer and when applicable, the consumer's guardian. (7-1-97)

**09. Program Changes.** (7-1-97)

a. DDA shall coordinate the consumer's DDA program with other service providers to maximize learning. (7-1-97)

b. Documentation of Implementation Plan Changes. Documentation of Implementation Plan changes will be included in the consumer's record. This documentation shall include at a minimum, the reason for the change, documentation of coordination with other service providers, where applicable, the date the change was made and the signature of the person making the change complete with date and title. A copy of an ISP will suffice for compliance to this requirement. (7-1-97)

**10. Records.** Each DDA licensed under these rules shall maintain accurate, current and complete consumer and administrative records. Each record of consumers with Targeted Service Coordinators shall contain the following information: (7-1-97)

a. Documentation which verifies that the services provided are recommended by a physician. A copy of an Individual Support Plan will suffice for compliance to this requirement; and (7-1-97)

b. When evaluations are completed or obtained by the agency the consumer's record shall include the evaluation forms and narrative reports, signed and dated by the respective evaluators; and (7-1-97)

c. A copy of the Individual Support Plan authorized by the ACCESS Unit; and (7-1-97)

d. Implementation Plans. Program documentation and monitoring records which comply with all applicable sections of these rules; and (7-1-97)

e. The case record shall be divided into program/discipline areas identified by tabs, such as, Individual Support Plan, medical, social, psychological, speech, and developmental. (7-1-97)

**801. STANDARDS FOR DDA'S PROVIDING SERVICES TO CONSUMERS WITHOUT TARGETED SERVICE COORDINATORS.**

Each DDA shall provide the following rehabilitative and habilitative services consistent with the needs of persons with developmental disabilities who have chosen not to access a Targeted Service Coordinator, to be available and accessible throughout its service area. (7-1-97)

**01. Eligibility Documentation.** Prior to the delivery of services, current and accurate comprehensive evaluations or specific skills assessments shall be completed or obtained, as necessary to determine eligibility as defined in Section 66-402, Idaho Code, and the Department's current interpretive guidelines, and to effectively plan the consumer's program. (7-1-97)

**02. Intake.** To ensure the health and safety of the consumer, medical information which accurately reflects the current status and needs of the consumer shall be obtained prior to the delivery of services. When this information is not available, a comprehensive medical evaluation shall be completed prior to the provision of services. (7-1-97)

**03. Evaluations.** (7-1-97)

a. Comprehensive evaluations which are completed by the agency shall be conducted by qualified professionals for the respective disciplines as defined in this chapter, recommended by a physician, identify accurate, current and relevant consumer strengths, needs and interests as applicable to the respective discipline, and recommend the type and amount of therapy necessary to address the consumer's needs. (7-1-97)

b. Prior to the delivery of ongoing services in a specific discipline a comprehensive medical, medical/social assessment shall be completed or obtained. (7-1-97)

c. Evaluation or specific skill assessments from additional disciplines such as speech and language pathologists or physical therapists, shall also be completed or obtained as necessary to meet the consumer's needs. (7-1-97)

d. All evaluations shall be completed within forty-five (45) calendar days of the date recommended by the physician. If not completed within this time frame, the consumer's records must contain consumer based documentation justifying the delay. (7-1-97)

e. A current psychological or psychiatric evaluation shall be completed or obtained when the consumer is receiving a behavior modifying drug(s), or prior to the initiation of restrictive interventions to modify inappropriate behavior(s), or an evaluation is necessary to determine eligibility for services or establish a diagnosis, or the consumer has a primary or secondary diagnosis of mental illness, or when otherwise required in this chapter. (7-1-97)

f. Comprehensive evaluations and specific skill assessments completed or obtained by the DDA shall be current. To be considered current, evaluations and assessments shall accurately reflect the current status of the consumer. (7-1-97)

**04. Individual Program Plan.** When a consumer has not developed an Individual Support Plan with a Targeted Service Coordinator through a person centered planning process, the DDA is required to complete an Individual Program Plan and the following shall apply: (7-1-97)

a. The Individual Program Plan shall be developed following obtainment or completion of all applicable evaluations consistent with the requirements of this chapter. (7-1-97)

b. The planning process shall include the consumer and guardian, if applicable, and others the individual chooses to have in attendance. The consumer and guardian where applicable, will be provided a copy of the completed individual program plan. If the consumer and guardian where applicable, is unable to participate, the reason shall be documented in the consumer's record. (7-1-97)

**05. Program Plan Components.** The Individual Program Plan shall promote self-sufficiency, the consumer's choice in program objectives and activities and encourage the consumer's participation and inclusion in the community. The Individual Program Plan shall include: (7-1-97)

a. The consumer's name and medical diagnosis; and (7-1-97)

b. The name of the DDP, the date of the planning meeting, and the name and titles of those present at the meeting; and (7-1-97)

c. Documentation that the plan is recommended by a physician; and (7-1-97)

d. The type, amount and duration of therapy to be provided such as individual speech therapy, thirty (30) minutes two (2) times per week; group developmental therapy, two and one-half (2 1/2) hours, five (5) days per week; and (7-1-97)

e. A list of the consumer's current personal goals, interests and choices; and (7-1-97)

f. An accurate, current and relevant list of the consumer's specific developmental and behavioral strengths; and (7-1-97)

g. An accurate, current and relevant list of the consumer's specific developmental and behavioral needs. This list will identify which needs are a priority based on the consumer's choices and preferences. An Individual Program Plan objective shall be developed for each priority need; and (7-1-97)

h. A list of the measurable, behaviorally stated objectives, which correspond to the list of priority needs. An Implementation Plan shall be developed for each objective; and (7-1-97)

i. The discipline or DDP responsible for each objective; and (7-1-97)

j. The target date for completion; and (7-1-97)

k. The review date; and (7-1-97)

l. An individual transition plan designed to facilitate independence, personal goals and interests. The transition plan may include vocational goals/objectives directed toward paid employment. The transition plan shall specify criteria for transition into alternative settings, vocational training, supported or independent employment, volunteer opportunities, community based organizations and activities, or less restrictive settings. The implementation of some components of the plan may necessitate decreased hours of service or discontinuation of services from a DDA. (7-1-97)

**06. Support Documentation.** The Individual Program Plan shall be supported by documentation included in the consumer's record. (7-1-97)

**07. Frequency Of Plan Development.** Members of the planning team shall meet at least annually, or more often if necessary, to review and update the plan to reflect any changes in the needs or status of the consumer. (7-1-97)

**08. Physician Recommendation.** There shall be documentation that the plan is recommended by a physician prior to implementing the Individual Program Plan and when revisions in the plan change the type, amount, or duration of the service provided, and at the annual review. (7-1-97)

**09. Regional Notification.** DDAs are responsible to send ~~initial and annual Individual Program Plans~~ a quarterly report to the Regional ACCESS Units for entry into a database. The report shall include each participant's name, date of birth, type and amount of service, start date, and social security number. ~~(3-1-00)~~(3-1-00)T

**10. Implementation Plan.** The DDA shall be required to develop an Implementation Plan for each objective listed on the Individual Program Plan. The implementation Plan shall include: (7-1-97)

a. The consumer's name; and (7-1-97)

b. The measurable, behaviorally stated Individual Program Plan objective; and (7-1-97)

c. Baseline assessment to determine the consumer's specific skills and abilities related to the specific skill to be learned; and (7-1-97)

d. Written instructions to staff such as curriculum, lesson plans, activity schedules, type and frequency of reinforcement and data collection, directed at the achievement of each objective. These instructions may be standardized, however, shall be individualized and revised as necessary to promote consumer progress towards the stated objective; and (7-1-97)

e. Identification of the specific location where services shall be provided; and (7-1-97)

f. These implementation plans shall be completed within fourteen (14) calendar days of the initiation of services; and (7-1-97)

g. The target date for completion. (7-1-97)

**11. Program Documentation.** Each consumer's record shall include documentation of the consumer's participation in and response to services provided. This documentation shall include at a minimum: (7-1-97)

a. Daily entry of all activities conducted toward meeting consumer objectives; and (7-1-97)

- b. Sufficient progress data to accurately assess the consumer's progress toward each objective; and (7-1-97)
- c. A review of the data and, when indicated, changes in the daily activities or specific implementation procedures by a DDP. The review shall include the DDP's dated initials. (7-1-97)

**12. Documentation Of Program Changes.** Documentation of all changes in the Individual Program Plan or Implementation Plan shall be included in the consumer's record. This documentation shall include at a minimum; (7-1-97)

- a. The reason for the change; and (7-1-97)
- b. The date the change was made; and (7-1-97)
- c. Signature of the person making the change complete with date and title; and (7-1-97)
- d. Documentation of notification of the consumer and, when applicable, the consumer's guardian. (7-1-97)

**13. Records.** Each DDA licensed under these rules shall maintain accurate, current and complete consumer and administrative records. Each consumer record shall support the individual's choices, interests and needs which result in the type and amount of each service provided. Each agency shall have an integrated consumer records system to provide past and current information and to safeguard consumer confidentiality pursuant to these rules. Each record of consumers without a Targeted Service Coordinator shall contain the following information: (7-1-97)

- a. Profile sheet containing necessary identifying information about the consumer and family; and (7-1-97)
- b. Medical/social history containing relevant medical and social history and information on the consumer and family; and (7-1-97)
- c. Documentation which verifies that the services provided are recommended by a physician; and (7-1-97)
- d. When evaluations are completed or obtained by the agency the consumer's record shall include the evaluation forms and narrative reports, signed and dated by the respective evaluators; and (7-1-97)
- e. Individual Program Plan, when developed by the agency; and (7-1-97)
- f. Implementation Plans, program documentation and monitoring records which comply with all applicable sections of these rules; and (7-1-97)
- g. The case records shall be divided into program/discipline areas identified by tabs, such as, Individual Program Plan, medical, social, psychological, speech, and developmental. (7-1-97)

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

**DOCKET NO. 16-0601-0001**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2000.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 16-1624, 16-2001, 16-2402, 39-105(l), 39-106(l)(a), 56-203b, 56-204(a) and 56-204A, 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 16, 2000.

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 temporary and proposed rule:

These temporary and proposed rules focus in a number of areas: (1) Increase in the foster parent reimbursement rate as approved in the FY2000 Family and Community Services Appropriate Legislation (HB-772). (2) Updates consistent with Public Law 105-89 (Adoption and Safe Families Act) and the Code of Federal Regulations (CFR Parts 1355, 1356 and 1357) regarding Title IV-E Foster Care Eligibility Reviews and corresponding changes in the Idaho Child Protective Act (Section 16-1601, Idaho Code) and Termination of Parent and Child Relationship (Section 16-2001, Idaho Code). (3) Updates consistent with the Foster Care Independence Act of 1999 (HR34-43). (4) Adoption practice has been largely decentralized away from the Department of Health and Welfare's Central Office and out into the regional service center. This accomplishes a transfer of knowledge to line staff and positions the worker closer to the client families receiving adoption services. (5) Effort to reduce the number of rules and to reorganize remaining rules so that they are easier to follow for both staff and other interested readers.

**TEMPORARY RULE JUSTIFICATION:** The temporary rule has been adopted in accordance with Section 67-5226, Idaho Code and is necessary in order to comply with deadlines in amendments to governing law and federal programs and to confer a benefit.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. Groups involved in this rulemaking were cross sections of legislators, citizens, state staff, advocates, and judges during the development of the changes, particularly relating to ASFA implementation and compliance.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Kathy Morris at (208) 334-5706.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 23, 2000.

DATED this 6th day of June, 2000.

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) 332-7347 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0601-0001

**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: (3-18-99)

**01. IV-E Foster Care.** Child care provided in lieu of parental care in a foster home, children's agency or institution eligible to receive Aid to Dependent Children under Title IV-E of the Social Security Act. (3-18-99)

~~02. A/R. Applicant for or recipient of services. (3-18-99)~~

~~03. Adoption Assistance.~~ Funds provided to adoptive parents of children who have special needs and/or could not be adopted without financial or medical assistance. (3-18-99)

~~04. 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. (3-18-99)

**05. 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 by Public Law 105-89, the Adoption and Safe Families Act of 1997, the Child Protective Act, Section 16-1601 et seq., Idaho Code, and the Indian Child Welfare Act.~~ (3-18-99)(7-1-00)T

**06. Assessment.** First step in the planning process which results in systematic documentation of the family's issues of concern, their strengths, and desired outcomes. (7-1-00)T

**07. Board.** The Idaho State Board of Health and Welfare. (3-18-99)

**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. (3-18-99)

**09. Case Plan.** See "Family Plan". (3-18-99)

**10. Central Office.** The state level administrative office of the Department of Health and Welfare located in Boise, Idaho. (3-18-99)

**11. Child Mental Health.** All of the following children under eighteen (18) years of age shall be served without regard to income or type of health insurance ~~who~~: (3-18-99)(7-1-00)T

a. ~~Are Those who have a seriously emotionally disturbed~~ Are Those who have a seriously emotionally disturbed ~~and/or a gravely impaired disability~~ and/or a gravely impaired disability due to a serious mental illness; and (3-18-99)(7-1-00)T

b. Present a significant risk of harm to themselves ~~and/or significant risk of harm~~ and/or significant risk of harm to others, due to their mental illness; and (3-18-99)(7-1-00)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's non-public system of care; ~~or~~ or (3-18-99)(7-1-00)T

d. ~~Seriously emotionally disturbed children who are~~ Seriously emotionally disturbed children who are involuntarily committed to the Department for out-of-home placement ~~shall be served without regard to income.~~ (3-18-99)(7-1-00)T

**11. Child Mental Health Services.** Services provided in response to the needs of ~~seriously emotionally disturbed~~ children with a serious emotional disturbance 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".  
(~~3-18-99~~)(7-1-00)T

**12. 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.~~  
(~~3-18-99~~)(7-1-00)T

**13. 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".  
(3-18-99)

**14. 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.  
(3-18-99)

**15. Concurrent Planning.** Planning which addresses a child's need for a permanent family by working toward family reunification while, at the same time, developing an alternative plan that will provide permanency for the child through adoption, guardianship, placement with a relative or other permanent placement.  
(~~3-18-99~~)(7-1-00)T

**16. DHW Regions.** Seven (7) geographically defined regions which serve as administrative units for the delivery of social services through local Department local offices.  
(3-18-99)

**17. 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.  
(3-18-99)

**18. 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.  
(3-18-99)

**19. Department.** The Idaho Department of Health and Welfare.  
(3-18-99)

**20. Director.** The Director of the Department of Health and Welfare or designee.  
(3-18-99)

**21. 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.  
(3-18-99)

**22. Extended Family Member Of An Indian Child.** As defined by the law, or custom of an Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.  
(~~3-18-99~~)(7-1-00)T

**23. FFP.** Federal Financial Participation.  
(3-18-99)

**24. Family.** Related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan.  
(3-18-99)

- 25. 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. (3-18-99)
- 26. 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. (3-18-99)
- 27. Family Case Record.** Electronic and hard copy compilation of all documentation relating to a family's case, including, but not limited to, legal documents, identifying information, and evaluations. ~~(3-18-99)~~(7-1-00)T
- 28. 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~~ safety, well being and permanency of children. ~~(3-18-99)~~(7-1-00)T
- 29. Family Plan.** Also referred to as Service Plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders and/or leaders should be consulted early in the plan development. ~~(3-18-99)~~(7-1-00)T
- 30. 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 of Parent and Child Relationship and Adoption of Children 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. ~~(3-18-99)~~(7-1-00)T
- 31. Field Office.** A Department of Health and Welfare service delivery site. (3-18-99)
- 32. Goal.** A statement of the long term outcome or plan for the child and family. (3-18-99)
- 33. Independent Living.** Services provided to eligible foster or former foster youth ages fifteen (15) to twenty-one (21) designed to support a successful transition to adulthood. (7-1-00)T
- 334. Indian.** Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (3-18-99)
- 345. Indian Child.** Any unmarried person who is under the age of eighteen (18) who is: (3-18-99)
- a. A member of an Indian tribe, or (3-18-99)
  - b. Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. (3-18-99)
- 356. Indian Child Welfare Act (ICWA).** The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (3-18-99)
- 367. Indian Child's Tribe.** (3-18-99)
- a. The Indian tribe in which an Indian child is a member or eligible for membership, or (3-18-99)
  - b. In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (3-18-99)

**378. Indian Tribe.** Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (3-18-99)

**389. 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.~~ (3-18-99)(7-1-00)T

**394.0. Interethnic ~~Placement Act~~ Adoption Provisions 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. (3-18-99)(7-1-00)T

**41. Issue.** Circumstances which brought a child and family to the attention of the Department. These circumstances typically involve safety issues which put the child at risk of harm. (7-1-00)T

**42. Kin.** Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers and members of a child's Indian tribe. Also known as fictive kin. (7-1-00)T

**403. Kinship Care.** Alternative care that is provided by ~~a relative by blood or marriage~~ kin. (3-18-99)(7-1-00)T

**414. 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". (3-18-99)

**425. Licensing.** See Idaho Department of Health and Welfare Rules, IDAPA 16.06.02, "Rules and Standards for Child Care Licensing," Section 100. (3-18-99)

**436. Medicaid.** See "Title XIX," ~~defined in Subsection 004.38.~~ (3-18-99)(7-1-00)T

**44. Medicare.** See "Title XVIII," ~~defined in Subsection 004.39.~~ (3-18-99)

**457. Multiethnic Placement Act Of 1994 (MEPA).** MEPA prohibits states or public and private foster care and adoption agencies that receive federal funds from delaying or denying the placement of any child solely on the basis of race, color or national origin. (3-18-99)

**46. 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.~~ (3-18-99)

**478. Objective.** ~~Statement of measured and specific progress toward a goal to be achieved during a stated period of time. Behaviorally specific description of how the family circumstances will look when the risk factors which brought a child and family to the Department's attention, either no longer exist or are significantly reduced.~~ (3-18-99)(7-1-00)T

**489. Permanency Planning.** A primary function of family services initiated in all cases to identify programs, services and activities designed to establish permanent home and family relationships for children within a reasonable amount of time. (3-18-99)

**495.0. Personal Care Services (PCS).** Services to eligible Medicaid recipients that involve personal and medically oriented tasks dealing with the physical or functional impairments of the individual. (3-18-99)

**501. 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.~~ (3-18-99)(7-1-00)T

**542.** **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. (3-18-99)(7-1-00)T

**523.** **Planning.** An orderly rational process which results in identification of ~~needs goals~~ and formulation of timely strategies to fulfill such ~~needs goals~~, within resource constraints. (3-18-99)(7-1-00)T

**534.** **Prevention.** Programs, services and activities aimed at preventing child ~~protective abuse and neglect~~ and severe ~~behavioral and emotional problems disturbance~~. ~~Prevention services are developed by the Department in collaboration with other statewide and community organizations as resources are available.~~ (3-18-99)(7-1-00)T

**545.** **Protective Services.** To provide assistance in response to potential, actual or alleged neglect, abuse or exploitation of children. (3-18-99)

**556.** **Purchase Of Services.** Provision of services to ~~clients~~ children and families by local agencies or individuals who contract with DHW. (3-18-99)(7-1-00)T

**567.** **Qualified Expert Witness--ICWA.** A person who is most likely to be a qualified expert witness in the placement of an Indian child is: (3-18-99)

a. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child rearing practices; (3-18-99)

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; (3-18-99)

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 (3-18-99)

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. (3-18-99)

**58.** **Relative.** Person related to a child by blood, marriage, or adoption. (7-1-00)T

**579.** **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. (3-18-99)

**5860.** **Respite Care.** Time limited care provided to children. Respite care is utilized in circumstances which require short term, temporary placement of a child from the home of their usual care giver to that of another licensed or agency approved family. In general, the duration of a respite placement is from one (1) to fourteen (14) days. ~~However, this time frame should allow enough flexibility for individual case considerations in determining the necessary length of a respite placement. Conditions where respite care services may be needed include, but are not limited to:~~ (3-18-99)(7-1-00)T

~~a. Personal emergencies of the care provider;~~ (3-18-99)

~~b. When it is not practical or appropriate for the child in care to accompany and travel with the family;~~ (3-18-99)

~~c. As a means of maintaining a placement by providing a break for the child and family; and~~

(3-18-99)

*d. Addressing other unanticipated, unpredictable events which may occur.* (3-18-99)

**5961.** **Risk Assessment.** ~~Direct~~ Standardized protocol for contact of between a family services worker ~~with and~~ a family to objectively determine if safety issues, risk issues or immediate service needs exist, which require further Family and Children's Services response. (3-18-99)(7-1-00)T

**602.** **SSI (Supplemental Security Income).** Income maintenance grants for eligible persons who are aged, blind or disabled. These grants are provided under Title VI of the Social Security Act and are administered by the Social Security Administration and local Social Security Offices. (3-18-99)

**63.** **Safety Plan.** Plan developed by the Department and a family which assures the immediate safety of a child who has been determined to be conditionally safe or unsafe. (7-1-00)T

**644.** **Self-Reliance Services.** Supportive social services provided to individuals and their families to increase their ability to obtain and retain employment. (3-18-99)

**625.** **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 and/or conduct disorder, and/or developmental disorder, alone does not constitute a serious emotional disturbance, although one (1) or more of these conditions may co-exist with serious emotional disturbance. (3-18-99)

~~**63.** **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.* (3-18-99)~~

**646.** **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. (3-18-99)

**657.** **TAFI.** Temporary Assistance to Families in Idaho. (3-18-99)

**668.** **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. (3-18-99)

**679.** **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. (3-18-99)

**6870.** **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. (3-18-99)

**6971.** **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. (3-18-99)

~~70. Title XVIII (Medicare). Title of the Social Security Act which provides funding for medical services for persons over age sixty-five (65). (3-18-99)~~

~~71. Title XIX (Medicaid). Title under the Social Security Act which provides "Grants to States for Medical Assistance Programs". (3-18-99)~~

~~72. Title XXI. (Children's Health Insurance Program). Title under the Social Security Act which provides access to health care for uninsured children under the age of nineteen (19). (3-18-99)~~

~~73. Tribal Court. A court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (3-18-99)~~

~~74. 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. (3-18-99)~~

~~75. Voluntary Services Agreement. A written and executed agreement between the Department and parents regarding the goal, issues, objectives and task responsibility including payment. ~~The A children's mental health family services plan is a~~ the Voluntary Service Agreement. ~~(3-18-99)(7-1-00)T~~~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**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 or their income shall be entitled to receive, upon referral or request: ~~(3-18-99)(7-1-00)T~~

- a. Accurate and current information about services to children and families provided through the Department. (3-18-99)
- b. Referral to other appropriate public or private services available in the community; and (3-18-99)
- c. A screening to determine service needs and safety issues that can be addressed through Family and Children's Services. (3-18-99)

**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. (3-18-99)

**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. (3-18-99)

**04. Record Of Request For Services.** The date of referral or request for services shall be documented in the records of the field office. (3-18-99)

**05. Information To Be Provided To Family.** Upon referral or application for services, the family services worker shall inform the family that: (3-18-99)

- a. They have the right to accept or reject services offered by the Department, except those services

imposed by law or by a court order; (3-18-99)

b. Fees may be charged for certain services, and that the parent has financial responsibility for the child in care; (3-18-99)

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. (3-18-99)

**~~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-~~ (3-18-99)

~~01. Risk Assessment. A risk assessment shall be conducted to determine the safety of the child, the family, and the community.~~ (3-18-99)

~~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.~~ (3-18-99)

~~03. Other Evaluations. When a family assessment indicates a need, other professional diagnostic evaluations of the family or individual involved shall be arranged.~~ (3-18-99)

~~021.~~ -- 029. (RESERVED).

**~~030. FAMILY SERVICES PROVIDED CORE FAMILY AND CHILDREN'S SERVICES.~~**

~~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: The following core services are the state and federally mandated services provided by or through regional Family and Children's Services offices:~~ (3-18-99)(7-1-00)T

~~01. Crisis Response Services. 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. Crisis Services are an immediate response to assure safety when a child is believed to be in imminent danger as a result of child abuse or neglect or to be in imminent danger of causing life-threatening harm to self or someone else due to a serious emotional disturbance. Crisis services require immediate access to services, twenty-four (24) hours per day, seven (7) days per week to assess risk and place in alternate care, if necessary, to assure safety for the child.~~ (3-18-99)(7-1-00)T

~~02. Case Service 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. Also referred to as case management. The goals of service management are to assure and coordinate family assessment, service planning, treatment and other services, protection of children, planning for permanency, advocacy, review and reassessment, documentation and timely closure of cases.~~ (3-18-99)(7-1-00)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. Screening Services. Initial contact with families and children to gather information to determine whether or not the child meets eligibility criteria to receive services as a member of the target population for Child Protection, Adoptions, and/or Children's Mental Health Services. When eligibility criteria is not met for Department mandated services, appropriate community referrals are made.~~ (3-18-99)(7-1-00)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.~~ **Assessment And Safety/Service Planning Services.** Process in which the safety issues, the family's concerns, strengths, and resources are identified. Based on this assessment, a written plan is developed together by the worker, the family and other interested parties. Each plan will identify a long-term goal, behaviorally specific and measurable objectives, specific tasks which identify who, how, and when the tasks will be completed. (3-18-99)(7-1-00)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.~~ Community-based services which support children and families and are designed to reduce the risk of child abuse and neglect as well as serious emotional disturbance. These services can involve direct services, but are primarily implemented through community education, and partnerships with other community agencies such as schools and courts. (3-18-99)(7-1-00)T

**06. Court Ordered Services.** These services primarily involve court-ordered investigations/assessments of situations where children are believed to be at risk due to child abuse or neglect or a harm to themselves or others due to the presence of a severe emotional disturbance. (7-1-00)T

**07. Alternate Care (Placement) Services.** Temporary living arrangements outside of the family home for children and youth who are victims of child abuse or neglect or children and youth with a severe emotional disturbance. These out of home placements are arranged for and financed in full or in part by the Department. Alternate care is initiated through either a court order or a voluntary out-of-home placement agreement. (7-1-00)T

**08. Community Treatment Services.** Services provided to a child and family in a community-based setting which are designed to increase the strengths and abilities of the child and family and to preserve the family whenever possible. Services include, but are not limited to: respite care; family preservation; psychosocial rehabilitative services, companion services and day treatment. (7-1-00)T

**09. Interstate Compact On Out-Of-State Placements.** Where necessary to encourage all possible positive contacts with family, including extended family, placement with family members or others who are outside the state of Idaho 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. (7-1-00)T

**10. Independent Living.** The assessment and development of a plan and provision of services to promote self-reliance and successful transition to adulthood for eligible adolescents. (7-1-00)T

**11. Adoption Services.** Department services designed to promote and support the permanency of children with special needs through adoption. This involves the legal and permanent transfer of all parental rights and responsibilities to the family assessed as the most suitable to meet the needs of the individual child. Adoption services also seeks to build the community's capacity to deliver adoptive services. (7-1-00)T

**12. Administrative Services.** Regulatory activities and services which assist the Department in meeting the goals of safety, permanency, health and well-being for children and families. These services include but are not limited to: (7-1-00)T

- a. Child care licensing; (7-1-00)T
- b. Day care licensing; (7-1-00)T
- c. Community development; (7-1-00)T
- d. Contract development and monitoring; and (7-1-00)T
- e. Pre-authorization of care. (7-1-00)T

(BREAK IN CONTINUITY OF SECTIONS)

**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. The goal of all Family and Children's Services Programs is the safety, permanency and well-being of children, as well as promoting the stability and security of Indian tribes and families. These goals are achieved through documented compliance with the Idaho's Child Protective Act, Children's Mental Health Services Act, Adoption of Children Act, and Termination of Parent and Child Relationship Act, and the following federal public laws: Adoption Assistance and Child Welfare Act; the Adoption and Safe Families Act; the Multiethnic Placement Act and its Interethnic Adoption Provisions; and the Indian Child Welfare Act. (3-18-99)(7-1-00)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. (3-18-99)~~

~~**02. Permanency Planning.** Permanency is the primary goal of family services in all cases by: (3-18-99)~~

~~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; (3-18-99)~~

~~b. Identifying temporary and permanent living arrangements for children who are unable to remain in their own homes; (3-18-99)~~

~~e. 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; (3-18-99)~~

~~d. Providing services and assistance to facilitate independent living when that is the goal of the permanency plan for a child; and (3-18-99)~~

~~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. (3-18-99)~~

~~**03. Family Plan Development.** The family plan shall be completed within thirty (30) days of the date the case was opened. (3-18-99)~~

~~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. (3-18-99)~~

~~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. (3-18-99)~~

~~e. 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. (3-18-99)~~

~~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.~~ (3-18-99)

~~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, including children placed in adoptive placements until a final court order of adoption is issued and placed in the family plan.~~ (3-18-99)

~~f. Planning for closure shall begin at the time the family plan is developed and the ending date for services shall be projected.~~ (3-18-99)

**SECTION 041 HAS BEEN RENUMBERED TO SECTION 051.**

**0421. -- 049. (RESERVED).**

**050. ~~SERVICES TO BE PROVIDED~~ PROTECTIONS AND SAFEGUARDS FOR CHILDREN AND FAMILIES.**

~~The role of the family services worker is to assure that the following services are provided and documented in the case record: The federal and state laws which are the basis for these rules include a number of mandatory protections and safeguards which are intended to assure timely permanency for children and to protect the rights of children, their families and their tribes.~~ (3-18-99)(7-1-00)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.~~ Efforts must be made as follows and specifically documented by the Department in reports to the court. The court will make the determination of whether or not the efforts were reasonable: (3-18-99)(7-1-00)T

a. Reasonable efforts to prevent or eliminate the need for a child to be removed from his home; and (7-1-00)T

b. Reasonable efforts to return a child home, if possible, as soon as it is safe to do so, or in the case of a judicial determination of aggravated circumstances, reasonable efforts to return a child home are not required; and (7-1-00)T

c. Reasonable efforts to finalize a permanent plan so that each child in the Department's care will have a family with whom the child can have a safe and permanent home. (7-1-00)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. (3-18-99)

**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. (3-18-99)

**04. Least Restrictive Setting.** Efforts shall be made to assure that any child in the Department's care, especially those children in care due to an emotional or behavioral disturbance, reside in the least restrictive, most family-like setting possible. Placement shall be made in the least restrictive setting and in close proximity to the parents or if not, written justification that the placement is in the best interest of the child; ~~or, for~~ For an Indian child, placement in the least restrictive setting is that setting which most approximates a family and is within reasonable proximity to the child's home taking into account any special needs of the child. (3-18-99)(7-1-00)T

**05. Legal Requirements For Indian Children.** ~~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 shall be sent by Certified Mail, Return Receipt Requested to the parent or Indian custodian and the Indian child's tribe, including notice of their right to intervene; their right to twenty (20) days<sup>2</sup> 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. (3-18-99)(7-1-00)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.~~ (3-18-99)

~~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.~~ (3-18-99)

~~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.~~ (3-18-99)

~~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 place the child with the parents or another family or an adoptive family. The court must sanction placement in a permanent foster home. If the placement is sanctioned by the court, the child is considered to be in a permanent family and permanency hearings are no longer required. Six (6) month reviews are still required.~~ (3-18-99)

~~106. **Visitation For Birth Parents.** Arrangements for visitation arrangements provided to the birth parents.~~ (3-18-99)

~~107. **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 423051.02.b.i.~~ entitled Notice Required for ICWA.~~ (3-18-99)(7-1-00)T

~~1208. **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.~~ (3-18-99)

~~1309. **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.~~ (3-18-99)

~~140. **ICWA Placement Preferences.** Compliance with the foster care placement preferences of the Indian Child Welfare Act.~~ (3-18-99)

~~151. **Compliance With Requirements Of The Multiethnic Placement Act And Interethnic Placement Act.**~~ (3-18-99)

~~12. **Family Decision Making And Plan Development.**~~ (7-1-00)T

~~a. A family plan shall be completed within thirty (30) days of the date the case was opened.~~ (7-1-00)T

~~b. Families shall be given ample opportunity to participate in the identification of issues, their strengths and developing service objectives and tasks. The family plan and any changes to it shall be signed and dated by the family. If the family refuses to sign the plan, the reason for their refusal shall be documented on the plan.~~ (7-1-00)T

~~c. Plans are to be reviewed with the family no less frequently than once every three (3) months. When there are major changes to the plan including a change in the long term goal, the family plan must be renegotiated by the Department and the family as well as signed by the family. A new plan must be negotiated at least annually.~~

(7-1-00)T

**13. Compelling Reasons.** Reasons why the parental rights of a parent of a child in the Department's care and custody should not be terminated when the child has been in the custody of the Department for fifteen (15) out of the last twenty-two (22) months. These reasons must be documented in the family plan, in a report to the court, and the court must make a determination if the reasons are sufficiently compelling. A compelling reason must be documented in the plan and in a report to the court when a child's plan for permanency is not adoption, guardianship, or return home. (7-1-00)T

**14. ASFA Placement Preferences.** The following placement preferences will be used when recommending and making permanency decisions: (7-1-00)T

- a. Return home if safe to do so: (7-1-00)T
- b. Adoption or legal guardianship by a relative: (7-1-00)T
- c. Adoption or legal guardianship by kin: (7-1-00)T
- d. Adoption or legal guardianship by non-relative: (7-1-00)T
- e. Other planned permanent placement such as long-term foster care. (7-1-00)T

**0451. 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. (3-18-99)

**0542. -- 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: (3-18-99)~~

~~**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. **Electronic And Physical Files.** The Department shall maintain an electronic file and a physical file containing information on each family receiving services. The physical file shall contain non-electronic documentation such as originals and/or original copies of all court orders, birth certificates, social security cards and assessment information which is original outside the Department. (3-18-99)(7-1-00)T~~

~~**02. Assessment.** Reports from the Assessment of Need for Services. (3-18-99)~~

~~**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. (3-18-99)~~

~~**04. Record Of Hearing.** Dates and results of any court actions, administrative reviews, administrative hearings or other significant actions involving the family. (3-18-99)~~

- ~~05. **Closure Of Plan.** Reasons for terminating services, based upon: (3-18-99)~~
- ~~a. Attainment of goals; (3-18-99)~~
  - ~~b. Services are no longer desired by the family, except when they are legally mandated; (3-18-99)~~
  - ~~c. Services are no longer legally mandated; (3-18-99)~~
  - ~~d. Services are no longer beneficial or appropriate for the family; or (3-18-99)~~
  - ~~e. Service capacity has been exceeded. (3-18-99)~~
- ~~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. (3-18-99)~~

**072. Storage Of Records.** All physical 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 for permanent storage. 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". ~~(3-18-99)~~(7-1-00)T

**(BREAK IN CONTINUITY OF SECTIONS)**

~~071. -- 099. (RESERVED).~~

**SECTION 100 HAS BEEN RENUMBERED TO SECTION 951.**

**SECTION 101 HAS BEEN RENUMBERED TO SECTION 952.**

**SECTION 102 HAS BEEN RENUMBERED TO SECTION 953.**

~~103. -- 109. (RESERVED).~~

**SECTION 110 HAS BEEN RENUMBERED TO SECTION 954.**

**SECTION 111 HAS BEEN RENUMBERED TO SECTION 955.**

**SECTION 112 HAS BEEN RENUMBERED TO SECTION 956.**

~~113. -- 149. (RESERVED).~~

**SECTION 150 HAS BEEN RENUMBERED TO SECTION 550.**

**SECTION 151 HAS BEEN RENUMBERED TO SECTION 551.**

**SECTION 152 HAS BEEN RENUMBERED TO SECTION 552.**

**SECTION 153 HAS BEEN RENUMBERED TO SECTION 553.**

**SECTION 154 HAS BEEN RENUMBERED TO SECTION 554.**

SECTION 155 HAS BEEN RENUMBERED TO SECTION 555.

SECTION 156 HAS BEEN RENUMBERED TO SECTION 556.

SECTION 157 HAS BEEN RENUMBERED TO SECTION 557.

SECTION 158 HAS BEEN RENUMBERED TO SECTION 558.

~~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.~~ (3-18-99)

SECTION 171 HAS BEEN RENUMBERED TO SECTION 559.

SECTION 172 HAS BEEN RENUMBERED TO SECTION 560.

SECTION 173 HAS BEEN RENUMBERED TO SECTION 561.

SECTION 174 HAS BEEN RENUMBERED TO SECTION 562.

~~175. -- 199. (RESERVED).~~

SECTION 200 HAS BEEN RENUMBERED TO SECTION 563.

SECTION 201 HAS BEEN RENUMBERED TO SECTION 564.

SECTION 202 HAS BEEN RENUMBERED TO SECTION 565.

~~203. -- 229. (RESERVED).~~

SECTION 230 HAS BEEN RENUMBERED TO SECTION 566.

~~230~~71. -- 239. (RESERVED).

**240. ADMINISTRATIVE SIX MONTH 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 the ~~the~~ child's 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~~ the plan focuses on the goals of safety, permanency and well-being of the child. (3-18-99)(7-1-00)T

**01. Notice Of ~~Administrative~~ Six Month Review.** The ~~administrative review shall include:~~ (3-18-99)

~~a.~~ The birth parents, adoptive parents, and foster parents of a child and any preadoptive parent or relative providing care for the child and an Indian child's tribe, if appropriate, are to be provided with notice of and an opportunity to be heard in the six (6) month review. This shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party solely to the review on the basis of such notice and opportunity to be heard. Participants have the right to be represented by the individual of their choice. (3-18-99)(7-1-00)T

~~b.~~ Action being considered; (3-18-99)

~~e.~~ The right to be represented by the individual of their choice. (3-18-99)

**02. Procedure In ~~Administrative~~ The Six Month Review.** The parties shall be given the opportunity

for face-to-face discussion including attending, asking questions and making statements. ~~(3-18-99)~~(7-1-00)T

**03. Members Of ~~Administrative~~ Six Month 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 or their designee to enable them to understand the review process and their roles as participants.

~~(3-18-99)~~(7-1-00)T

**04. Issues Considered In ~~Administrative~~ Six Month Review.** The six (6) month review panel shall:

~~(3-18-99)~~(7-1-00)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, and the appropriateness of a concurrent plan; and

~~(3-18-99)~~(7-1-00)T

b. Review compliance with the Indian Child Welfare Act, if appropriate; and

~~(3-18-99)~~(7-1-00)T

c. Make a determination of the continuing necessity for and appropriateness of the child's placement; and

(3-18-99)

d. Set ~~A~~a target date by which the child may safely be returned home or placed for adoption, legal guardianship or other permanent placement.

~~(3-18-99)~~(7-1-00)T

**05. Recommendations And Conclusions Of ~~Administrative~~ Six Month 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.

~~(3-18-99)~~(7-1-00)T

**SECTION 241 HAS BEEN RENUMBERED TO 251.**

**2421. -- ~~39249.~~ (RESERVED).**

**250. PERMANENCY HEARINGS.**

By the provision of Public Law 105-89, Adoption and Safe Families Act, and Idaho Code, every child in alternate care under state supervision must also have a Permanency Hearing conducted by the court or a court designee. Permanency Hearings shall be held no later than every twelve (12) months after the date of the child's removal and no later than every twelve (12) months thereafter as long as the child remains under the care and custody of the Department. A twelve (12) month Permanency Hearing shall be held by the court having jurisdiction in the case, if that is the preference of the court. If the court does not wish to conduct this hearing, the court may appoint a hearing officer. The appointed hearing officer may not be supervised or reimbursed by the Department.

(7-1-00)T

**01. Attendance At Permanency Hearings.** The Permanency Hearing shall include, at a minimum, the birth parents, adoptive parent, foster parents of a child, any preadoptive parent or relative providing care for the child, and/or the child's Indian tribe, if appropriate. Parties shall be provided, by the court, with written notice of the hearing and opportunity to be heard. This shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to the hearing solely on the basis of such notice and opportunity to be heard.

(7-1-00)T

**02. Judicial Determinations.**

(7-1-00)T

a. The court or designee officer shall determine if the Department has made reasonable efforts to finalize a permanent plan for the child and issue an order specifying the permanent plan.

(7-1-00)T

b. In cases where the Department has documented, in the family's service plan, compelling reasons for not terminating the parent and child relationship and for placing the child in long-term alternate care, the court shall

review and determine if the compelling reasons exist. (7-1-00)T

**2451. CITIZEN REVIEW PANELS.**

The Department shall have Citizen Review Panels in each region to review child protection cases. (3-18-99)

**252. -- 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: (3-18-99)

**01. Department Custody.** When the child is in the legal custody or guardianship of the Department; or (3-18-99)

**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~~ 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. Voluntary out-of-home placements exceeding one hundred eighty (180) days without a judicial determination that it is contrary to the welfare of the child to be returned home, cannot be reimbursed by Title IV-E funds. (~~3-18-99~~)(7-1-00)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: (3-18-99)

**01. Family Assessment.** The family assessment conducted in accordance with the provisions of ~~Section 022~~ the FACS Practice Manual. (~~3-18-99~~)(7-1-00)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. (3-18-99)

**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. (3-18-99)

~~**04. ICWA.** All requirements of the Indian Child Welfare Act. (3-18-99)~~

~~**05. MEPA.** All requirements of the Multiethnic Placement Act. (3-18-99)~~

~~**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. (3-18-99)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**SECTION 403 HAS BEEN RENUMBERED TO SUBSECTION 642.03**

**SECTION 404 HAS BEEN RENUMBERED TO SUBSECTION 030.09**

**403. -- 404. (RESERVED).**

**405. ALTERNATE CARE CASE MANAGEMENT.**

Case management shall continue while the child is in alternate care and shall ensure the following: (3-18-99)

**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. (3-18-99)

**02. Information For Alternate Care 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:

~~(3-18-99)~~(7-1-00)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; (3-18-99)

b. The name of the child's doctor; (3-18-99)

c. The child's current functioning and behaviors; (3-18-99)

d. The child's history and past experiences and reasons for placement into alternate care;

~~(3-18-99)~~(7-1-00)T

e. The child's cultural and racial identity; (3-18-99)

f. Any educational, developmental, or special needs of the child; (3-18-99)

g. The child's interest and talents; (3-18-99)

h. The child's attachment to current caretakers; (3-18-99)

i. The individualized and unique needs of the child; (3-18-99)

j. Procedures to follow in case of emergency; and (3-18-99)

k. Any additional information, that may be required by the terms of the contract with the alternate care provider. (3-18-99)

**03. ~~Parental Responsibilities~~ Consent For Medical Care.** 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. ~~(3-18-99)~~(7-1-00)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. (3-18-99)

**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. (3-18-99)

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 depending on the observable~~ needs of the child and/or the provider and the stability of the placement. ~~(3-18-99)(7-1-00)T~~

b. The Department shall have strategies in place to detect abuse or neglect of children in alternate care. (3-18-99)

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" at a minimum of once every ninety (90) days. ~~(3-18-99)(7-1-00)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. (3-18-99)

**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. (3-18-99)

**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. (3-18-99)

**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. (3-18-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**420. OTHER SOURCES OF 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. ~~(3-18-99)(7-1-00)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.~~ ~~(3-18-99)~~

**4221. OTHER SOURCES OF 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. ~~(3-18-99)(7-1-00)T~~

**01. Referral Criteria.** For referral to this program, the mother ~~must~~ shall: ~~(3-18-99)(7-1-00)T~~

- a. Be unmarried; (3-18-99)
  - b. Have a high-risk pregnancy; (3-18-99)
  - 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~~ who are enrolled in the educational component of the program; ~~(3-18-99)~~(7-1-00)T
  - d. Be a resident of the state of Idaho; (3-18-99)
  - e. Lack other community resources that would meet her needs in the most home-like environment; (3-18-99)
- and
- f. Be willing to enroll in the educational program provided by Booth if the mother has not completed high school or a GED. (3-18-99)

**02. Exclusions From Referral.** Individuals not appropriate for referral to Booth include: (3-18-99)

- a. Those who are a danger to self or others; (3-18-99)
- b. Those who could be better served by other levels of care, such as foster care or local board and room care; or (3-18-99)
- c. Those whose problems are of such levels that they need the structure of an institutional placement. (3-18-99)

**4232. ALTERNATE CARE PLANNING.**

Alternate care planning is mandated by the provisions of Sections 471(a)(15) and 475, P.L.96-272. (3-18-99)

**01. Alternate Care Plan Required.** Each child receiving alternate care under the supervision of the state shall have a standardized written alternate care plan. ~~(3-18-99)~~(7-1-00)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. (3-18-99)
- b. The alternate care plan shall be included ~~in~~ as part of the family service plan ~~required by Section 060.~~ ~~(3-18-99)~~(7-1-00)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. (3-18-99)

- 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. (3-18-99)
- b. The plan shall include documentation that the parents have been provided written notification of: (3-18-99)
  - i. Visitation arrangements made with the alternate care provider, including any changes in their visitation schedule; (3-18-99)
  - 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 (3-18-99)
  - 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. ~~(3-18-99)~~(7-1-00)T

- c. All parties involved in the alternate care plan, including the alternate care provider, parents and the child if of appropriate developmental age: (3-18-99)
- i. Will be required to sign a statement indicating that they have read and understood the alternate care plan; and (3-18-99)
- ii. Will receive a copy of the alternate care plan. (3-18-99)

**423. -- 424. (RESERVED).**

**~~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. (3-18-99)~~

~~**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): (3-18-99)~~

- ~~a. A description of the type of home or institution in which the child is to be placed; (3-18-99)~~
- ~~b. A discussion of the appropriateness and safety of the placement; (3-18-99)~~
- ~~c. A statement of how the plan is designed to achieve placement in a safe setting that is the least restrictive (most family-like) and most appropriate setting available; (3-18-99)~~
- ~~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; (3-18-99)~~
- ~~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. (3-18-99)~~
- ~~f. A plan for assuring that the child receives safe and proper care; (3-18-99)~~
- ~~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; (3-18-99)~~
- ~~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. (3-18-99)~~
- ~~i. Documentation of the actions taken to recruit and process an adoptive family, a fit and willing relative, a legal guardian or another planned permanent living arrangement and to finalize the adoption, legal guardianship or placement for those children for whom the plan is adoption or placement in another permanent home. Documentation must include the child specific recruitment efforts utilized including the use of state and national adoption exchanges and electronic exchanges. (3-18-99)~~
- ~~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; (3-18-99)~~

~~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. (3-18-99)~~

~~l. A discussion of the appropriateness of the services provided to the child under the plan; and (3-18-99)~~

~~m. To the extent available and accessible, current health and education records, including: (3-18-99)~~

~~i. The names and addresses of the child's health and educational providers; (3-18-99)~~

~~ii. The child's grade level performance; (3-18-99)~~

~~iii. The child's school record; (3-18-99)~~

~~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; (3-18-99)~~

~~v. A record of the child's immunizations; (3-18-99)~~

~~vi. The child's known medical problems including any emotional and/or behavioral disturbances and plans to remediate these problems; (3-18-99)~~

~~vii. Any other pertinent health and education information, including current medications, concerning the child. (3-18-99)~~

~~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; (3-18-99)~~

~~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. (3-18-99)~~

~~**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. The periodic reviews shall meet the following six (6) requirements: (3-18-99)~~

~~a. The periodic reviews have determined the continuing necessity for, and the appropriateness and safety of, the placement. (3-18-99)~~

~~b. The periodic reviews have determined the extent of compliance with the alternate care plan. (3-18-99)~~

~~c. The periodic reviews have determined the extent of progress which has been made toward alleviating or mitigating the causes necessitating the placement. (3-18-99)~~

~~d. The periodic reviews have projected a likely date by which the child may return to his or her own home and be safely maintained or be placed for adoption or in other permanent placements including kinship care and legal guardianship. (3-18-99)~~

~~e. The foster parents of a child, any preadoptive parent or relative providing care for the child, and the child's Indian tribe, if appropriate, are provided with notice of and opportunity to be heard. This shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a~~

~~party solely to the review on the basis of such notice and opportunity to be heard. (3-18-99)~~

~~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. (3-18-99)~~

~~**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. (3-18-99)~~

~~a. Permanency hearings shall meet the following three (3) requirements: (3-18-99)~~

~~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; (3-18-99)~~

~~ii. Procedural safeguards were applied with respect to parental rights pertaining to a change in the child's placement; and (3-18-99)~~

~~iii. Procedural safeguards were applied with respect to parental rights pertaining to any determination affecting visitation rights. (3-18-99)~~

~~b. Procedural safeguards shall assure fundamental fairness to the family including the following: (3-18-99)~~

~~i. Opportunity for a hearing prior to any change of disposition or of the status quo; (3-18-99)~~

~~ii. Adequate notice of such hearings, with time to prepare and right to be present; (3-18-99)~~

~~iii. Their right to know the allegations against them and to confront those allegations; and (3-18-99)~~

~~iv. Their right to have legal counsel appointed if requested and eligible. (3-18-99)~~

~~e. 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: (3-18-99)~~

~~i. Hearings are required each time any child is moved to a more restrictive alternate care setting: (3-18-99)~~

~~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 (3-18-99)~~

~~iii. Hearings are required in accordance with Section 16-2010(e), 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. (3-18-99)~~

~~d. The administrative or judicial hearing for permanency planning disposition must include, at a minimum: (3-18-99)~~

~~i. The foster parents of a child, any preadoptive parent or relative providing care for the child, and/or the child's Indian tribe, if appropriate, are provided with notice of and opportunity to be heard. This shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party solely to the hearing on the basis of such notice and opportunity to be heard. Written notice shall be provided at least two (2) weeks in advance specifying: (3-18-99)~~

~~(1) The date, time, and place of the review; (3-18-99)~~

- (2) ~~Action to be taken;~~ (3-18-99)
- (3) ~~Opportunity for face-to-face discussion including attending, asking questions, and making statements;~~ (3-18-99)
- (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.~~ (3-18-99)
- ii. ~~Determination of:~~ (3-18-99)
- (1) ~~Continuing necessity for, and appropriateness of, the child's placement, and where applicable, whether an out-of-state placement continues to be appropriate and in the best interests of the child.~~ (3-18-99)
- (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 the Department has documented to the state court 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.~~ (3-18-99)
- e. ~~The twelve (12) month permanency 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.~~ (3-18-99)
- 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.~~ (3-18-99)
- 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.~~ (3-18-99)
- f. ~~A written record of the administrative or judicial hearing shall be maintained.~~ (3-18-99)
- i. ~~Indicating the time, date, and place of the hearing and all the participants;~~ (3-18-99)
- ii. ~~Stating the recommendations and conclusions and the reasons therefore;~~ (3-18-99)
- iii. ~~Filed in the family's case record and with the court; and~~ (3-18-99)
- 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".~~ (3-18-99)

**425. -- 434. (RESERVED) AFDC-FC ELIGIBILITY.**

A child is eligible for AFDC-FC if the child would have been eligible to receive AFDC aid payments except that he was removed, by court order, from the home of a parent or other caretaker relative and placed in foster care. AFDC-FC is also available to eligible children voluntarily placed in foster care by a parent. The caretaker relative is the relative who exercises day-to-day physical custody of the child prior to the court action or voluntary placement. A child is not eligible for AFDC-FC if he is living in the home of a caretaker relative for more than six (6) months and expects to continue that care. The child may qualify for AFDC payments as a child living with a relative. Eligibility for AFDC-FC is determined by Family and Community Services. (7-1-00)T

**426. AFDC-FC ELIGIBILITY REQUIREMENTS.**

A child is eligible for AFDC-FC if he meets each of the eligibility requirements listed in Table 426.

<b>AFDC-FC ELIGIBILITY REQUIREMENTS - TABLE 426</b>		
	<b><u>CONDITION</u></b>	<b><u>DESCRIPTION</u></b>
<b>01.</b>	<b><u>Financial Need</u></b>	<p><u>A child is in financial need if, in the month court action to remove him from his home was initiated, or the month the voluntary out-of-home placement agreement is signed:</u>  <u>He was receiving AFDC</u>  <u>He would have been eligible to receive AFDC if an application had been filed on his behalf; or</u>  <u>He lived with his parent or other caretaker relative at some time within six (6) prior months and would have qualified for AFDC in the month of court action or voluntary placement if an application had been filed and he lived with a parent or other specified relative in that month.</u></p>
<b>02.</b>	<b><u>Voluntary Placement in Foster Home or Voluntary Relinquishment</u></b>	<p><u>A foster care placement is voluntary if the parent has a written agreement with the Department to place the child in foster care. The parent retains parental rights and may terminate the agreement at any time.</u></p> <p><u>A voluntary relinquishment is not a voluntary placement. A voluntary relinquishment occurs when the parent permanently gives up rights to a child. A court order is required for a voluntarily relinquished child to qualify for AFDC-FC.</u></p>
<b>03.</b>	<b><u>Age, Residence, Citizenship, and Deprivation</u></b>	<p><u>The other AFDC requirements the child must meet are:</u>  <u>Age;</u>  <u>Residence;</u>  <u>Citizenship;</u>  <u>Deprivation of parental support determined in relation to the home from which the child was removed; and</u>  <u>The AFDC resource limit.</u></p>
<b>04.</b>	<b><u>Court Ordered Removal</u></b>	<p><u>A child not voluntarily placed must have been removed from the parent or other caretaker relative by court order.</u>  <u>The initial court order must state remaining in the home would be "contrary to the welfare" of the child.</u></p> <p><u>For children removed on or after October 1, 1983, the court order must include a determination that reasonable efforts were made to prevent or eliminate the need for removal of the child or to make it possible for the child to return home. This judicial determination must be made within sixty (60) days of removal of the child from his home.</u></p> <p><u>The court order must state what reasonable efforts were made considering the family's circumstances and the safety of the child when the child is removed from the home in an emergency.</u>  <u>When there is a judicial determination of Aggravated Circumstances, the court order must state that no reasonable efforts to reunify the family are required.</u></p>

(7-1-00)T

**43527. 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. If the child is

ineligible for AFDC-FC, the family services worker must determine whether the child qualifies for Medicaid as a Title XIX foster child. (3-18-99)(7-1-00)T

**428. CUSTODY AND PLACEMENT.**

The child's placement and care are the Department's responsibility. The child must live in a licensed foster home, licensed institution, licensed group home, or in a licensed relative's home. (7-1-00)T

**429. EFFECTIVE DATE.**

AFDC-FC eligibility can begin as early as the first day of the month all eligibility factors are met, with the following exceptions: A child cannot receive AFDC and AFDC-FC or SSI and AFDC-FC in the same month; and AFDC-FC cannot begin until the month after the last month the child's needs were included in an AFDC grant or the child received SSI. (7-1-00)T

**430. ONGOING ELIGIBILITY.**

To continue eligibility for AFDC-FC, a child must meet each of the eligibility conditions listed in Table 430.

<b>CONTINUING ELIGIBILITY CONDITIONS, TABLE 430</b>		
	<b>CONDITION</b>	<b>DESCRIPTION</b>
<b>01.</b>	<b><u>Financial Need</u></b>	<u>The child's own income, after any applicable AFDC income exclusions and disregards, must not exceed the foster care need standard established for him by the Department.</u>
<b>02.</b>	<b><u>AFDC Factors</u></b>	<u>The child must continue to meet the following AFDC eligibility factors.</u> <u>Age;</u> <u>Residence;</u> <u>Citizenship;</u> <u>Resource limits; and</u> <u>Deprivation of parental support in relation to the current situation in the home from which the child was removed. A child removed from the home of a caretaker relative who is not his parent, meets the deprivation requirement without review.</u>
<b>03.</b>	<b><u>Ongoing Custody and Placement</u></b>	<u>The child must remain in the Department's custody through either a current court order or a voluntary placement agreement that has not been in effect more than one hundred and eighty (180) days. They must continue to live in a licensed foster home, licensed institution, licensed group home, or a licensed relative's home.</u>
<b>04.</b>	<b><u>Redetermination</u></b>	<u>The child's eligibility for AFDC-FC must be redetermined at least once every six (6) months.</u>  <u>A redetermination, rather than an initial eligibility determination, is used for a child who left foster care, was placed in a non-AFDC-FC living situation such as a hospital or detention center, did not return home, remained in the Department's custody throughout his absence, and returned to foster care.</u> <u>Any return home other than a visit requires a new judicial determination or a new agreement and a new determination of eligibility based on current circumstances.</u>  <u>Annual Review: An annual redetermination is required to assure that the court has determined that the Department has made reasonable efforts to finalize a permanent plan for the child. This is done at the Permanency Hearing held every twelve (12) months from the date of removal until the child is either adopted or placed in legal guardianship.</u>  <u>The foster care payment standard is also the child's eligibility income limit for determining continued eligibility for AFDC-FC.</u>

CONTINUING ELIGIBILITY CONDITIONS, TABLE 430		
	CONDITION	DESCRIPTION
05.	<u>Other Eligibility Considerations</u>	<p>The following must be considered for AFDC-FC eligibility:</p> <p><u>A child's eligibility does not depend on the availability of a home to which he can return;</u></p> <p><u>The Department must provide services designed to allow the child to return home, where not possible, the family's worker must aggressively pursue other permanent options for the child;</u></p> <p><u>A child receiving AFDC-FC who becomes available for adoption, remains eligible to receive AFDC-FC until he is legally adopted. The child must otherwise qualify for AFDC-FC;</u></p> <p><u>The child must not receive AFDC-FC and SSI, or AFDC-FC and AFDC, in the same month.</u></p>

(7-1-00)T

**431. AFDC-FC AND SSI ELIGIBILITY.**

When a child is eligible for both AFDC-FC and SSI, the caretaker relative or the family services worker, in consultation with the child's family, must choose the type of payment the child will receive. (7-1-00)T

**432. TITLE XIX FOSTER CHILD.**

A foster child residing in a foster home, children's agency or children's institution approved by the department is eligible for Title XIX Medicaid if he satisfied all of the following conditions: (7-1-00)T

**01. Eligibility Conditions.** A foster child is eligible if: (7-1-00)T

a. He is under age twenty-one (21); (7-1-00)T

b. He is not a recipient of AFDC-FC or SSI; (7-1-00)T

c. A departmental program other than the Medical Assistance or Welfare Programs has assumed full or partial financial responsibility for him; (7-1-00)T

d. His countable resources do not exceed the AFDC resource limit. In addition to the AFDC resource exclusions, the child may have an additional amount up to five thousand dollars (\$5,000) excluded if held in trust for him; (7-1-00)T

e. After applying the applicable AFDC income exclusions and earned income disregards, an additional income disregard of seventy dollars (\$70) is deducted; and (7-1-00)T

f. Total income must not exceed two hundred thirteen dollars (\$213) monthly. (7-1-00)T

**02. Ongoing Eligibility.** If a foster child is determined eligible to receive Title XIX Medicaid, the following provisions apply: (7-1-00)T

a. His eligibility must be redetermined at least once every six (6) months. (7-1-00)T

b. His eligibility must cease and other funding sources for medical care must be utilized if the foster home's license is revoked or expires and an application for license renewal is not on file, or if the child returns to his own home even if the Department retains legal custody of such child. (7-1-00)T

**03. Hospitalized Foster Child.** Where a child who is otherwise eligible for Title XIX Medicaid as a foster child is placed in a hospital prior to being physically placed in foster care, the child is considered to be living in a licensed foster care situation if the regional team appointed to review hospitalization of foster children certified in

writing that the plan for the child is to place him in foster care immediately upon discharge from the hospital. The certification must include the estimated date on which the child will enter foster care. (7-1-00)T

**~~560~~433. INCOME, BENEFITS AND SAVINGS OF CHILDREN IN FOSTER CARE.**

On behalf of the child and with the assistance of RDU staff, 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, DHW-FACS-RDU, 450 West State Street, P. O. Box 83720 Boise, ID 83720-0036. (~~3-18-99~~)(7-1-00)T

**~~562~~434. 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. (3-18-99)

**01. Return To Alternate Care.** If the child returns to alternate care, the Department shall be notified immediately of the correct payee. (3-18-99)

**02. Review After Six Months.** If an alternative care placement continues for a period of six (6) months, a careful review must be initiated to determine if a change of payee must be accomplished. (3-18-99)

**~~563~~435. 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. (3-18-99)

**SECTION 435 HAS BE RENUMBERED TO SECTION 427.**

**(BREAK IN CONTINUITY OF SECTIONS)**

**~~561~~437. ACCOUNTING AND REPORTING.**

Child Support Services DHW Division of Family and Community Services, Resource Development Unit shall account for the receipt of funds and develop reports showing how much money has been received and how it has been utilized. (~~3-18-99~~)(7-1-00)T

**~~437~~8. 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. (3-18-99)

**~~438~~9. 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. (3-18-99)

**~~439~~40. 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. (3-18-99)

**~~440~~1. REFERRAL TO CHILD SUPPORT SERVICES.**

The family shall be referred to the State Child Support Agency for support payment arrangements. (3-18-99)

**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. (3-18-99)

**02. Collection Of Child Support.** The Department shall take action to collect any child support ordered in a divorce decree. (3-18-99)

~~441. -- 499.~~ **(RESERVED).**

**~~500442.~~ 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.~~ (3-18-99)(7-1-00)T

**~~551443.~~ 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. (3-18-99)

**~~552444.~~ 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. (3-18-99)

**~~553445.~~ 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. (3-18-99)

**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. (3-18-99)

**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. (3-18-99)

**~~55446.~~ 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. (3-18-99)

~~447. -- 450.~~ **(RESERVED).**

**~~570451.~~ 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. (3-18-99)

**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. (3-18-99)

**02. Payment By Parents.** Only ~~the~~ parents of children in foster care ~~must~~ may authorize drivers' training, provide payment and sign for drivers' licenses. (3-18-99)( )

~~452. -- 479.~~ **(RESERVED).**

**5480. ALTERNATE CARE 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. ~~(3-18-99)~~(7-1-00)T

**5481. 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. (3-18-99)

**60482. PAYMENT FOR SHELTER CARE.**

Payment for placement of children requiring temporary, emergency alternate care is twenty dollars (\$20) per day for children from birth through age seventeen (17), for a maximum of thirty (30) days of shelter care for each uninterrupted placement. (3-18-99)

**60483. PAYMENT TO FAMILY FOSTER CARE PROVIDERS.**

Monthly payments for care provided by foster care families are:

<b>Family Foster Care Payments - TABLE <del>604</del> 483</b>			
Ages	0-5	6-12	13-18
Monthly Room and Board	\$ <del>228</del> <u>51</u>	\$ <del>250</del> <u>75</u>	\$ <del>358</del> <u>94</u>

~~(3-18-99)~~(7-1-00)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. (3-18-99)

**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. (3-18-99)

**03. School Fees.** School fees due upon enrollment shall be paid, based upon the Department's determination of the child's needs. (3-18-99)

**602484. 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. The specialized foster care rate is based upon a continuous ongoing assessment of the child's circumstances which necessitate special rates as well as the care provider's ability, activities, and involvement in addressing those special needs. Payment will be made as follows: ~~(3-18-99)~~(7-1-00)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: (3-18-99)

- a. Chronic medical problems; (3-18-99)
- b. Frequent, time-consuming transportation needs; (3-18-99)
- c. Behaviors requiring extra supervision and control; ~~or~~ and ~~(3-18-99)~~(7-1-00)T
- d. Need for preparation for independent living. (3-18-99)

**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: (3-18-99)

- a. Ongoing major medical problems; (3-18-99)
- b. Behaviors that require immediate action or control; ~~or~~ and (~~3-18-99~~)(7-1-00)T
- c. Alcohol or drug abuse. (3-18-99)

**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: (3-18-99)

- a. Serious emotional disturbance; (3-18-99)
- b. Severe developmental disability; ~~or~~ and (~~3-18-99~~)(7-1-00)T
- c. Severe physical disability such as quadriplegia. (3-18-99)

**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. (3-18-99)

**~~614~~485. 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. (3-18-99)

**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. (3-18-99)

**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. (3-18-99)

**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. (3-18-99)

**~~614~~486. GROUP FOSTER CARE.**

Group foster care is for children who generally require more structured activities and discipline than found in a family setting. Examples are intermediate residential treatment, short-term group care, and emancipation homes. (3-18-99)

**01. Referral - Group Foster Care.** Any ~~R~~referral of a child to a group foster care facility where the Department would be making full or partial payment shall be prior authorized by the Family and Children's Services Program Manager or designee. (~~3-18-99~~)(7-1-00)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. (3-18-99)

**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. (3-18-99)

**~~620~~487. INTENSIVE TREATMENT FACILITIES.**

Children with serious emotional and/or behavior disturbance may be placed in individualized day treatment or residential care. (3-18-99)

- 01. Referral - Intensive Treatment.** Any ~~R~~referral of a child to an intensive treatment facility where

the Department would be making full or partial payment shall be prior authorized by the ~~regional director~~ Family and Children's Services Program Manager or designee. ~~(3-18-99)(7-1-00)T~~

**02. Payment - Intensive Care.** When care is purchased ~~by~~ from private providers, payment shall be made pursuant to a contract authorized by the ~~regional director or division administrator~~ Family and Children's Services Program Manager, based on the needs of each child being placed and the services to be provided. When care is provided in facilities operated by the Department, payment shall be arranged in cooperation with Department fiscal officers. ~~(3-18-99)(7-1-00)T~~

**488. -- 490. (RESERVED).**

**630491. 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: ~~(3-18-99)~~

**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. ~~(3-18-99)~~

**02. Administrative Costs.** Reasonable costs of administration and operation of an institution necessarily required to provide the maintenance of the child. ~~(3-18-99)~~

**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. ~~(3-18-99)~~

**640492. 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~~ These options 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. ~~(3-18-99)(7-1-00)T~~

**493. -- 549. (RESERVED).**

**SECTION 500 HAS BEEN RENUMBERED TO 442.**

**4550. 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. ~~(3-18-99)(7-1-00)T~~

**SECTION 551 HAS BEEN RENUMBERED TO SECTION 443.**

**SECTION 552 HAS BEEN RENUMBERED TO SECTION 444.**

**SECTION 553 HAS BEEN RENUMBERED TO SECTION 445.**

**SECTION 554 HAS BEEN RENUMBERED TO SECTION 446.**

**~~§~~551. 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. (3-18-99)

**01. Ministers.** Duly ordained ministers of religion are exempt from reporting of child abuse and neglect if: (3-18-99)

- a. The church qualifies as tax-exempt under 26. U.S.C. 501(c)(3); (3-18-99)
- b. The confession or confidential communication was made directly to the duly ordained minister of religion; and (3-18-99)
- c. The confession was made in the manner and context 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. (3-18-99)

**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. (3-18-99)

**~~§~~552. 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. (3-18-99)

**~~§~~553. 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. (3-18-99)(7-1-00)T

**~~§~~554. 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. (3-18-99)

**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~~ shall be seen by a Department family services worker, law enforcement, and medical personnel if applicable, immediately unless written regional protocol agreements direct otherwise. All allegations of physical abuse of a child through the age of six (6) or with profound developmental disabilities should be considered under Priority I unless there is reason to believe that the child is not in immediate danger. (3-18-99)(7-1-00)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. (3-18-99)

**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. (3-18-99)

**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. (3-18-99)

~~555. 559.~~ **(RESERVED)**

**~~555.~~ 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. (3-18-99)

**~~556.~~ 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. (3-18-99)

**~~557.~~ 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. (3-18-99)

**~~558.~~ COMMUNITY RESOURCES.**

The Department shall provide information and referral to community resources or may offer preventative services to the family. (3-18-99)

**~~559.~~ CHILD PROTECTION RISK ASSESSMENT.**

The Department's risk assessment shall be conducted in a standardized format and shall utilize statewide risk assessment and multi-disciplinary team protocols. 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.

~~(3-18-99)~~(7-1-00)T

**01. Interview Of A Child.** The interview of a child concerning a child protection report shall be conducted: (3-18-99)

a. In a manner that protects all children involved from undergoing any unnecessary traumatic experience, including but not limited to multiple interviews; (3-18-99)

b. By a professional with specialized training in using techniques that consider the natural communication modes and developmental stages of children; and (3-18-99)

c. In a neutral, non-threatening environment, such as a specially equipped interview room, if available. (3-18-99)

**02. 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:

(3-18-99)

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; (3-18-99)

b. Determine if the family is of Indian heritage for the purposes of ICWA; (3-18-99)

c. Interview siblings who are identified as being at risk; and (3-18-99)

d. Not divulge the name of the person making the report during the course of the assessment. (3-18-99)

**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. (3-18-99)

**04. Completion Of A Comprehensive Risk Assessment.** An Immediate Protection/Safety Plan will be completed on each referral assigned for assessment of abuse and/or neglect. When there are findings of moderate or higher risk and a case remains open, a comprehensive risk assessment must be completed within thirty (30) days of initial contact with the child of concern. (7-1-00)T

**045. 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: (3-18-99)

a. Interviewing the alleged perpetrator; (3-18-99)

b. Removing the alleged perpetrator from the child's home in accordance with Section 39-6301, Idaho Code, the "Domestic Violence Act"; and (3-18-99)

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. (3-18-99)

**056. Notification Of Referent.** ~~Upon completion of the risk assessment, the~~ referent shall be notified when the risk assessment has been completed. ~~(3-18-99)~~(7-1-00)T

**SECTION 560 HAS BEEN RENUMBERED TO SECTION 433.**

**~~72~~560. DISPOSITION OF REPORTS.**

Within five (5) days ~~after~~ following 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: ~~(3-18-99)~~(7-1-00)T

**01. Valid.** Child abuse and neglect reports are confirmed by one (1) or more of the following: (7-1-00)T

a. ~~Witnessed~~ by a worker; (7-1-00)T

b. ~~Determined~~ or evaluated by a court; (7-1-00)T

c. ~~A~~ confession; or ~~are~~ (7-1-00)T

d. ~~Substantiated~~ through the presence of significant evidence that establishes a clear factual foundation for the determination of "valid". (3-18-99)(7-1-00)T

**02. Verifiable.** A "verifiable" disposition cannot show a pattern of repetition. Where there has been a previous disposition of "verifiable", the disposition should be recorded as "valid". If a subsequent disposition is recorded as "verifiable", a variance should be documented. Child abuse and neglect reports are confirmed by one (1) or more of the following: (3-18-99)(7-1-00)T

- a. Witnessed by a worker; (3-18-99)
- b. Determined or evaluated by a court; (3-18-99)
- c. A confession; or (3-18-99)

d. ~~Are~~ ~~Substantiated~~ through the presence of significant evidence, but where circumstances demonstrated that such incidents are not likely to reoccur. (3-18-99)(7-1-00)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. (3-18-99)

**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. (3-18-99)

**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. (3-18-99)

**SECTION 561 HAS BEEN RENUMBERED TO SECTION 437.**

~~43561.~~ **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. (3-18-99)

**SECTION 562 HAS BEEN RENUMBERED TO SECTION 434.**

~~44562.~~ **ALL OTHER REPORTS.**

If it is determined through the risk assessment that reports are "not valid" (Verifiable, Indicated, Unable to Determine, or Invalid), the family shall also be advised. (3-18-99)(7-1-00)T

**01. Request For Statement.** Upon the individual's request, the field office shall issue written statements indicating that: (3-18-99)

- a. The Department has not obtained sufficient information to warrant further assessment of or action on that specific report; and (3-18-99)
- 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. (3-18-99)

**02. Removal Of Identifying Information From The Department's Central Registry Of Valid Child Protection Referral Dispositions.** ~~Upon written request of the individual, the Department may shall~~ remove identifying information ~~relevant to that individual regarding an invalid report from the Department's data base a~~

specific individual only when that individual has successfully appealed his name being placed on the Central Registry. ~~(3-18-99)(7-1-00)T~~

**SECTION 563 HAS BEEN RENUMBERED TO SECTION 435.**

**~~200~~563. 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.* ~~(3-18-99)(7-1-00)T~~

~~564. — 569. (RESERVED).~~

**~~201~~564. PETITION UNDER THE 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. ~~(3-18-99)(7-1-00)T~~

**~~202~~565. COOPERATION WITH LAW ENFORCEMENT.**

The Department shall cooperate with law enforcement personnel in their handling of criminal investigations and the filing of criminal proceedings. (3-18-99)

**~~230~~566. CHILD CUSTODY INVESTIGATIONS FOR THE DISTRICT COURT.**

Where no other community resources are available and when ordered by the district courts, the Department shall, for a fee of thirty-five dollars (\$35) per hour, 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.* ~~(3-18-99)(7-1-00)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. (3-18-99)

**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. (3-18-99)

**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). (3-18-99)

**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". (3-18-99)

~~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.~~

~~(3-18-99)~~

**567. -- 639. (RESERVED).**

**SECTION 570 HAS BEEN RENUMBERED TO SECTION 451.**

~~571. -- 579. (RESERVED).~~

**SECTION 580 HAS BEEN RENUMBERED TO SECTION 481.**

**SECTION 581 HAS BEEN RENUMBERED TO SECTION 481.**

~~582. -- 599. (RESERVED).~~

**SECTION 600 HAS BEEN RENUMBERED TO SECTION 482.**

**SECTION 601 HAS BEEN RENUMBERED TO SECTION 483.**

~~603. -- 609. (RESERVED).~~

**SECTION 610 HAS BEEN RENUMBERED TO SECTION 485.**

**SECTION 611 HAS BEEN RENUMBERED TO SECTION 486.**

~~612. -- 619. (RESERVED).~~

**SECTION 620 HAS BEEN RENUMBERED TO SECTION 487.**

~~621. -- 629. (RESERVED).~~

**SECTION 630 HAS BEEN RENUMBERED TO SECTION 491.**

~~631. -- 639. (RESERVED).~~

**SECTION 640 HAS BEEN RENUMBERED TO SECTION 492.**

**640. CHILD MENTAL HEALTH SERVICES.**

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. Core services provided are identified in Section 030.

~~(7-1-00)T~~

~~**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:~~

~~(3-18-99)~~

- ~~a. The child is living in his or own home community;~~ ~~(3-18-99)~~
- ~~b. The child's primary relationships and social identity is with positive peers;~~ ~~(3-18-99)~~
- ~~c. The child attends and participates in his or her school regularly;~~ ~~(3-18-99)~~
- ~~d. The child's life is free of critical incidents which endanger him or her and/or others; and~~ ~~(3-18-99)~~
- ~~e. The child has no involvement with the juvenile corrections system.~~ ~~(3-18-99)~~

~~02. Use Of Public Funds And Benefits. Public funds and benefits will be used to provide services for children with serious emotional disturbances, including all Jeff D. class members and their families. 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. (3-18-99)~~

**641. OUTCOMES.**

~~01. Outcomes. Outcomes are measured through administration of a standardized assessment tool both before and after intervention. Major life areas such as school, community, mental status, family life are the focus of the assessment. (7-1-00)T~~

~~02. Progress. Progress on each of the following behavioral indicators would be suggestive of a positive outcome: (7-1-00)T~~

- ~~a. Child lives at home: (7-1-00)T~~
- ~~b. Child has positive peers: (7-1-00)T~~
- ~~c. Child attends and participates regularly in school: (7-1-00)T~~
- ~~d. Child manages psychiatric symptoms and is not a danger to self or others; and (7-1-00)T~~
- ~~e. Child does not exhibit criminal behavior. (7-1-00)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 children with a serious emotional disturbance and their families. (3-18-99)~~

~~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. (3-18-99)~~

~~02. Out Of Home Residential Services. Services which include, but are necessarily limited to: therapeutic group home, residential treatment, State hospital and psychiatric hospitalization. (3-18-99)~~

~~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. (3-18-99)~~

~~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. (3-18-99)~~

**646.2. 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 reasonable 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. ~~(3-18-99)~~(7-1-00)T

~~01. Response. The Department will respond to the following situations: (3-18-99)~~

~~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. (3-18-99)~~

~~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. (3-18-99)~~

~~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. (3-18-99)~~

**031. 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. (3-18-99)

**042. Payment For Treatment.** When parent(s) request Department payment for a child's treatment, a service agreement must be negotiated and signed by the parent(s) and the Department. ~~In addition, a~~ referral will be made to Child Support Services to collect payment for the cost of out-of-home care. ~~(3-18-99)(7-1-00)T~~

**03. 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. (7-1-00)T

**04. Use Of Public Funds And Benefits.** Public funds and benefits will be used to provide services for children with serious emotional disturbances, including all Jeff D. class members and their families. 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. (7-1-00)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**644. SLIDING SCALE FEE TABLE 644.**

Sliding scale fee for services provided to a child in their home will be calculated using the following table. This sliding fee scale is based on the current Poverty Guidelines published in the Federal Register. Incomes below the five percent (5%) level are not to be charged.

ANNUAL HOUSEHOLD INCOME									
Family Size								each add'l person	% pay child at home
1	2	3	4	5	6	7	8		
<\$8,050	<\$10,850	<\$13,650	<\$16,450	<\$19,250	<\$22,050	<\$24,850	<\$27,650		0 %

ANNUAL HOUSEHOLD INCOME									
Family Size								each add'l person	% pay child at home
1	2	3	4	5	6	7	8		
\$8,050	\$10,850	\$13,650	\$16,450	\$19,250	\$22,050	\$24,850	\$27,650	+\$2,800	0 %
\$10,062	\$13,562	\$17,062	\$20,562	\$24,062	\$27,562	\$31,062	\$34,562	+\$3,500	5 %
\$12,075	\$16,275	\$20,475	\$24,675	\$28,875	\$33,075	\$37,275	\$41,475	+\$4,200	10 %
\$14,087	\$18,987	\$23,887	\$28,787	\$33,687	\$38,587	\$43,487	\$48,387	+\$4,900	15 %
\$16,100	\$21,700	\$27,300	\$32,900	\$38,500	\$44,100	\$49,700	\$55,300	+\$5,600	20 %
\$18,112	\$24,412	\$30,712	\$37,012	\$43,312	\$49,612	\$55,912	\$62,212	+\$6,300	30 %
\$20,125	\$27,125	\$34,125	\$41,125	\$46,625	\$55,125	\$62,125	\$69,125	+\$7,000	40 %
\$22,137	\$30,712	\$37,537	\$45,237	\$51,437	\$60,637	\$68,337	\$76,037	+\$7,700	50 %
\$24,150	\$32,550	\$40,950	\$49,350	\$57,750	\$66,150	\$74,550	\$82,950	+\$8,400	60 %
\$26,162	\$35,262	\$44,362	\$53,462	\$62,562	\$71,662	\$80,762	\$89,862	+\$9,100	70 %
\$28,175	\$37,975	\$47,775	\$57,575	\$67,375	\$77,175	\$86,975	\$96,775	+\$9,800	80 %
\$30,187	\$40,687	\$51,187	\$61,687	\$72,187	\$82,687	\$93,187	\$103,687	+\$10,500	90 %
\$32,200	\$43,400	\$54,600	\$65,800	\$77,000	\$88,200	\$99,400	\$110,600	+\$11,200	100 %

~~(3-18-99)~~(7-1-00)T

**645. FEE DETERMINATION FOR SERVICES OTHER THAN ~~ALTERNATE~~ OUT-OF-HOME CARE.**

Parent(s) or guardians must complete an ~~voluntary~~ application for service and ~~complete~~ a "Fee Determination Form" prior to the delivery of services. The fee determination process includes the following features: ~~(3-18-99)~~(7-1-00)T

- 01. Ability to Pay.** Charges are based upon the number of dependents and family income. (3-18-99)
  - a. An ability to pay determination will be made at the time of the voluntary request for services or as soon as possible. (3-18-99)
  - 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. (3-18-99)
  - c. In determining the family's ability to pay for services, the Department shall deduct annualized amounts for: (3-18-99)
    - i. Court-ordered obligations; (3-18-99)
    - ii. Dependent support; (3-18-99)
    - iii. Child care payments necessary for parental employment; (3-18-99)
    - iv. Medical expenses; (3-18-99)
    - v. Transportation; (3-18-99)
    - vi. Extraordinary rehabilitative expenses; and (3-18-99)

vii. State and federal tax payments, including FICA taxes. (3-18-99)

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. (3-18-99)

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. (3-18-99)

**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. (3-18-99)

**03. Charges.** Using the sliding fee scale in Section 644, 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. ~~(3-18-99)~~(7-1-00)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. (3-18-99)~~

**054. Established Fee.** The maximum hourly fees or flat fees charged for children's mental health services ~~are shown in the following~~ shall be established by the Department of Health and Welfare. The current charges are set out in ~~Table 645~~

Table 645. Hourly Charges for Children's Mental Health Services		
		Hourly Charge
<b>a.</b>	<b>Psychosocial Rehabilitation Services</b>	
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>b.</b>	<b>Psychotherapy</b>	
i.	Individual	\$63 \$83*
ii.	Group Psychotherapy	\$24
iii.	Family Psychotherapy	\$63 \$77*
		*M.D. rate

~~(3-18-99)~~(7-1-00)T

**SECTION 646 HAS BEEN RENUMBERED TO SECTION 642.**

**647~~6~~ -- 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 in the best interests of the child~~. 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. ~~(3-18-99)~~(7-1-00)T

**701. SERVICES TO BE PROVIDED IN ADOPTIONS.**

In addition to the core family and children's services provided in accordance with these rules, the Department shall ~~provide~~ assure provision of the following: ~~(3-18-99)~~(7-1-00)T

**01. Response To Inquiries.** Written or personal inquiries from prospective adoptive families shall be answered within two (2) weeks. (3-18-99)

**02. Pre-Placement Child/Family Assessment.** An assessment of the child's family of origin history, needs as an individual and as part of a family, and completion of a life story book for each child preparing for adoptive placement. (3-18-99)

**03. Compliance With Multi-Ethnic Placement Act And Interethnic ~~Placement Act~~ Adoption Provisions.** Selection of the most appropriate adoptive family consistent with the Multi-Ethnic Placement Act and Interethnic ~~Placement Act~~ Adoption Provisions, if the child is not an Indian. ~~(3-18-99)~~(7-1-00)T

**04. (Pre-Placement) Home Study.** An adoptive home study to ensure selection of an appropriate adoptive home. (3-18-99)

**05. Preparation For Placement.** Preparation of the child by an assigned social worker who will assist the child in addressing anticipated grief and loss due to separation from his birth parents and assisting the child with the transition into an adoptive home. (3-18-99)

**06. Technical Assistance.** Assistance in completing the legal adoption, including compliance with the Indian Child Welfare Act. (3-18-99)

**07. Adoption Assistance.** A determination of eligibility for adoption assistance 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. (3-18-99)

**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. ~~(3-18-99)~~(7-1-00)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. (3-18-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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~~ is termination of parental rights 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 and placed in the child's permanent adoption record:~~ (3-18-99)(7-1-00)T

- 01. Informational Forms.** Informational background forms regarding the birth mother, birth father, and the child. (3-18-99)
- 02. Hospital Records.** Hospital birth records on child. (3-18-99)
- 03. Evaluations/Assessments.** Evaluations/Assessments previously completed on child. (3-18-99)
- 04. Current Picture.** Current picture of child. (3-18-99)
- 05. Narrative Social History.** Family and Child's Narrative Social History that addresses: (3-18-99)
  - a. Family dynamics and history; (3-18-99)
  - b. Child's current functioning and behaviors; (3-18-99)
  - c. Interests, talents, abilities, strengths; (3-18-99)
  - d. Child's cultural and racial identity needs. The ability to meet the cultural and racial needs of the child does not necessitate a family have the same culture or race as the child; (3-18-99)
  - e. Life story, moves, reasons, key people; (3-18-99)
  - f. Child's attachments to current caretakers, siblings and significant others; i.e., special friends, teachers, etc.; (3-18-99)
  - g. Medical, developmental and educational needs; (3-18-99)
  - h. Child's history, past experiences, and previous trauma; (3-18-99)
  - i. Indian child's membership or eligibility for membership in tribe(s); (3-18-99)
  - 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); (3-18-99)
  - k. Indian child's contacts with tribe(s); (3-18-99)
  - l. Individualized recommendations regarding each child's need for permanency; and (3-18-99)
  - m. Reasons for requesting termination of parental rights. (3-18-99)

**711. DECISION AND APPROVAL PROCESS FOR TERMINATION OF PARENT AND CHILD RELATIONSHIP (TPR).**

*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.*

**01. Recommendation For Termination.** 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.~~ (3-18-99)(7-1-00)T

**02. Approval To File A Petition.** When the Program Manager has approved, in writing, the request to file a petition for Termination of Parent and Child Relationship, the child's worker shall send the following information to the State Adoption Program Specialist:

- a. Child's name; (7-1-00)T
- b. Child's date of birth; (7-1-00)T
- c. Racial background; (7-1-00)T
- d. Sibling names and dates of birth; and (7-1-00)T
- e. The permanent plan for the child. (7-1-00)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.~~ (3-18-99)

**~~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.~~ (3-18-99)

**712. -- 713. (RESERVED).**

**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. (3-18-99)(7-1-00)T

**715. VOLUNTARY CONSENT.**

In obtaining a parent's consent to terminate their parental rights through the Department ~~the form:~~ a "Consent to Terminate Parental Rights and Waiver of Rights to Hearing" ~~must shall~~ be signed before the Magistrate Judge. Once the parent's consent has been given before the court, a corresponding petition under the Termination of Parent and Child Relationship Act ~~must shall~~ be filed by legal counsel representing the Department. (3-18-99)(7-1-00)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**717. FILING OF PETITION FOR VOLUNTARY TERMINATION.**

The petition for a voluntary termination of parental rights ~~shall~~ may 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. ~~(3-18-99)(7-1-00)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**719. INVESTIGATION.**

An investigation of the allegations in the petition and a report recommending disposition of the petition under the Termination of Parent and Child Relationship Act 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~~ verify the allegations through 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 of Parent and Child Relationship Act, is to serve as an aid to the court in determining a disposition that complies with the Indian Child Welfare Act where applicable, or that will be in the best interest of the child. If a petition is filed by a party other than the Department, the court may order such an investigation by the Department. The law also allows completion of an investigation by an authorized agency or a qualified individual, prior to adjudication and disposition. If the Department is the petitioner, the report shall accompany the petition. Reports submitted under the Termination of Parent and Child Relationship Act based on the birth parents' voluntary consent shall include: ~~(3-18-99)(7-1-00)T~~

- 01. Description Of Investigation.** The circumstances of the petition and the facts determined from the investigation; and (3-18-99)
- 02. Child-Related Factors.** Child related factors, including: (3-18-99)
  - a. Child's current functioning and behaviors; (3-18-99)
  - b. Medical, educational and developmental needs of the child; (3-18-99)
  - c. Child's history and past experiences; (3-18-99)
  - d. Child's identity needs; (3-18-99)
  - e. Child's interests and talents; (3-18-99)
  - f. Child's attachments to current caretakers and any absent parent; (3-18-99)
  - g. Child's current living situation; (3-18-99)
  - h. Indian child's membership or eligibility for membership in tribe(s); (3-18-99)
  - i. Indian child's contacts with tribe(s); (3-18-99)
  - j. The present circumstances, history, condition and desire of the parent whose rights are being terminated regarding plans for the child; (3-18-99)
  - k. Such other facts as may be pertinent to the parent and child relationship and this particular case; i.e., compliance with Interstate Compact Placement on Children; and (3-18-99)

1. A recommendation and reasons as to whether or not the termination of the parent and child relationship should be granted. (3-18-99)

**720. ~~REPORT TO THE COURT— FILING OF A PETITION FOR INVOLUNTARY TERMINATION OF PARENT AND CHILD RELATIONSHIP.~~**

~~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: Unless there are compelling reasons it would not be in the interest of the child, the Department shall be required to file a Petition to Terminate the Parent and Child Relationship within sixty (60) days of a judicial determination that one (1) or more of the following has occurred: (3-18-99)(7-1-00)T~~

~~01. **Allegations.** The allegations contained in the petition. **Abandonment.** An infant has been abandoned; (3-18-99)(7-1-00)T~~

~~02. **Investigation.** The process of the assessment and investigation. **Reasonable Efforts To Reunify The Family Are Not Required.** That reasonable efforts, as defined in Section 16-1610(b)(2)(iv), Idaho Code, are not required because the court determines the parent has subjected a child or children to aggravated circumstances. (3-18-99)(7-1-00)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. (3-18-99)~~

~~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. (3-18-99)~~

~~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. (3-18-99)~~

~~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. (3-18-99)~~

~~07. **Planning.** Proposed plans for the child consistent with: (3-18-99)~~

~~a. The Indian Child Welfare Act; including potential for placement with the Indian child's extended family, other members of the Indian child's tribe, or other Indian families; and (3-18-99)~~

~~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. (3-18-99)~~

~~08. **Compliance With The Indian Child Welfare Act.** Documentation of compliance with the Indian Child Welfare Act, including identification of whether the child is Indian and if so: (3-18-99)~~

~~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; (3-18-99)~~

~~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; (3-18-99)~~

*e. Notification that if the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel;* (3-18-99)

*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;* (3-18-99)

*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* (3-18-99)

*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.* (3-18-99)

**721. REPORT TO THE COURT - INVOLUNTARY TERMINATION.**

If a petition for an involuntary termination of parental rights has been brought before the Magistrate Court, an investigation or report to the court under the Termination Act is required. If the petition has been filed by the Department a report is required pursuant to Section 16-2008(b), Idaho Code. Reports submitted under the Termination Act based on an involuntary termination of parental rights shall include: (7-1-00)T

**01. Allegations.** The allegations contained in the petition. (7-1-00)T

**02. Investigation.** The process of the assessment and investigation. (7-1-00)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. (7-1-00)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. (7-1-00)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. (7-1-00)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. (7-1-00)T

**07. Planning.** Proposed plans for the child consistent with: (7-1-00)T

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 (7-1-00)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. (7-1-00)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: (7-1-00)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; (7-1-00)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; (7-1-00)T

c. Notification that if the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel; (7-1-00)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; (7-1-00)T

e. 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 (7-1-00)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. (7-1-00)T

~~7242.~~ -- 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. (3-18-99)

**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).~~ (3-18-99)(7-1-00)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: (3-18-99)

- a. The family's ability to form relationships and to bond with a specific child, or general description of children; (3-18-99)
- b. The family's ability to help the child integrate into the family; (3-18-99)
- c. The family's ability to accept the child's background and help the child cope with his or her past; (3-18-99)
- d. The family's ability to accept the behavior and personality of a specific child or general description of children; (3-18-99)
- e. The family's ability to nurture and validate a child's particular cultural, racial, and ethnic background; and (3-18-99)
- f. The family's ability to meet the child's particular educational, developmental or psychological needs. (3-18-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**760. PSYCHOLOGICAL EVALUATION.**

An ~~psychological~~ evaluation by a psychologist or a psychiatrist can be required by the family services worker when either ~~parent~~ applicant has received or is currently receiving treatment for psychological problems or mental illness or when the family services worker ~~feels, in consultation with his supervisor, determines~~ that there ~~are~~ appear to be emotional problems in the family that merit further evaluation. ~~(3-18-99)~~(7-1-00)T

**761. DENIAL OF APPLICATION.**

Following an initial interview, applicants who do not appear to meet the Department's requirements at the time of initial application may be denied a full home study. The family ~~services worker~~ shall be advised ~~the applicants as to~~ why they were ineligible for a full home study and provide notice to the applicant of their right to appeal this decision. Upon resolution of the factors leading to the denial, ~~The family~~ applicant may again file an application and receive a home study ~~at a later date.~~ ~~(3-18-99)~~(7-1-00)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. ~~(3-18-99)~~(7-1-00)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**770. ADOPTIVE HOME STUDIES.**

Pre-placement home studies for Department adoption and for independent, relative and step parent adoptions shall document the following: (3-18-99)

**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. (3-18-99)

**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: (3-18-99)

a. Viewing a certified copy of the birth certificate filed with the Bureau of Vital Statistics; or (3-18-99)

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, including a valid Idaho driver's license, passport, visa, alien identification cards or naturalization papers. ~~(3-18-99)~~(7-1-00)T

c. If verifying documentation is not available, the report shall indicate the date and place of birth and reason for lack of verification. (3-18-99)

**03. Medical Examination.** A medical examination, with the medical report form signed and dated by the examining physician. (3-18-99)

**04. Photograph.** A photograph of the adopting family. (3-18-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**790. FOSTER PARENT ADOPTIONS.**

*If When a child ~~has been~~ is in a foster home ~~for a length of one (1) year or longer~~, the plan for the child is adoption, 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~~ Adoption Provisions of 1996.*  
(3-18-99)(7-1-00)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**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 to the family.

(3-18-99)(7-1-00)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**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.

(3-18-99)

**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.

(3-18-99)

**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 of Children Act, shall be initiated within five (5) days of placement, and shall be completed within sixty (60) days.

(3-18-99)(7-1-00)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.~~

(3-18-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. In situations where a foster family has a significant relationship with a child and the child has been placed in their home for at least the last twelve (12) months, the supervisory period may be reduced to a

minimum of three (3) months. The family services worker shall make scheduled ~~monthly~~ visits to the home at least monthly during this period to assist the child and the family in their adjustment to each other and will update the child's permanent record by means of monthly progress reports. When completion of the adoption is recommended by the field office and approved by the 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. ~~(3-18-99)~~(7-1-00)T

**861. PROGRESS REPORTS.**

Progress reports shall be prepared regularly and shall be based on the family services worker's findings. (3-18-99)

**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: (3-18-99)

- a. The family services worker's observation of the child and the prospective adopting parents, with emphasis on: (3-18-99)
- b. Special needs/circumstances of child(ren) at time of placement; (3-18-99)
- c. Services provided to child(ren) and family during report period; (3-18-99)
- d. Services to be provided to child(ren) and family; (3-18-99)
- e. General appearance and adjustment of child(ren) during report period (may include eating, sleep patterns, responsiveness, bonding); (3-18-99)
- f. School/day care/day treatment program adjustment; (3-18-99)
- g. Health/developmental progress, medical practitioner information; (3-18-99)
- h. ~~Has~~ Whether the child(ren) have been accepted for coverage on family's medical insurance<sup>2</sup>, ~~When can~~ coverage begins<sup>2</sup>, and ~~whether~~ Will there will be any limitations/exclusions<sup>2</sup>; ~~(3-18-99)~~(7-1-00)T
- i. Family's adjustment to adoptive placement; (3-18-99)
- j. Whether respite care is a need for the family; (3-18-99)
- k. Changes in family situation or circumstances; (3-18-99)
- l. Areas of concern during report period as addressed by both child(ren) and adoptive parents; and (3-18-99)
- m. Date of next required six (6) month review or twelve (12) month permanency hearing; (3-18-99)

**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~~ a foster care license is required for all prospective adoptive parents. ~~(3-18-99)~~(7-1-00)T

**03. Adoptive And Foster Home Studies Sufficient.** ~~An approved adoption study~~ foster home evaluation 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~~ forms the foundation of the pre-placement adoptive homestudy. ~~(3-18-99)~~(7-1-00)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 Department*.  
(3-18-99)(7-1-00)T

**862. ~~REPORT TO THE COURT~~ PETITION TO ADOPT UNDER THE ADOPTION OF CHILDREN ACT.**

**01. Filing A Petition.** When the family and the child who was placed for adoption in that home are ready to finalize the adoption, the family's attorney 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.  
(3-18-99)(7-1-00)T

**02. 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.  
(3-18-99)

~~**02. Initial Interview.** Upon receipt of the petition, the family services worker or qualified individual shall arrange an initial interview with the adopting family.  
(3-18-99)~~

~~**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.  
(3-18-99)~~

~~**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.  
(3-18-99)~~

**863. ADOPTION REPORT TO THE COURT INVESTIGATION OF PETITION TO ADOPT.**

~~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: An investigation of the petition and report to the court on the investigation is required to be filed with the court unless the investigation is waived by order of 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:  
(3-18-99)(7-1-00)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: **Initial Interview.** Upon receipt of the petition, the family services worker or qualified individual shall arrange an initial interview with the adopting family.  
(3-18-99)(7-1-00)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.~~ **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 petitioner's attorney and the independent agency of the need to comply with the Indian Child Welfare Act. (3-18-99)(7-1-00)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.~~ **Legal Availability Of The Child.** It is the responsibility of the petitioners, through their attorney, to present documentary evidence to the court so the judge can examine it and be satisfied that the identity, birthdate, and parentage of the child are as represented in the petition. The family services worker 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 the following: (7-1-00)T

- a. The birth certificate of the child and the birth or death certificates of the birth parents from the Bureau of Vital Statistics; (7-1-00)T
- b. The consents of both birth parents, termination decrees and divorce decrees; (7-1-00)T
- c. Indian child's parent or Indian custodian, and tribe have received notice of their right to intervene; and (7-1-00)T
- d. Consent has been secured for all persons from whom it is required, including a legal guardian, to make the child legally available for adoption. (3-18-99)(7-1-00)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.~~ (3-18-99)

**054. Needs Of The Child.** The study shall address the needs of the child in regards to the proposed adoption, including but not limited to: (3-18-99)

- a. The history of the child and the child's birth family; (3-18-99)
- b. The circumstances of the placement; ~~and~~ (3-18-99)(7-1-00)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; and (3-18-99)(7-1-00)T
- d. The appropriateness of the family for the particular child or children who are the subject of the petition. (7-1-00)T
- e. A financial accounting, approved by the court, of any financial assistance given to the birth parent(s) which exceeds five hundred dollars (\$500), pursuant to Section 18-1511, Idaho Code. (7-1-00)T

**05. 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. (7-1-00)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.~~ (3-18-99)

**076. 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. (3-18-99)

**07. 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. (7-1-00)T

**08. 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. (7-1-00)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. (3-18-99)

**01. Prior Approval On Decision For Removal.** The decision for removal may be made by the Department, the family or, in some cases, jointly. The removal must be prior-authorized by the Department and reported to the State Adoption Program Specialist. (3-18-99)(7-1-00)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 Family and Children's Services program manager. 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.~~ (3-18-99)

**032. 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. (3-18-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. (3-18-99)

**01. Reapplication Process.** ~~*When an adoption has been previously successfully completed by the Department and the a*~~Adoptive parents who have experienced a successful adoption and wish to reapply, they shall complete an adoption application and financial statement, and submit medical reports and four (4) references. (3-18-99)(7-1-00)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. (3-18-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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: (3-18-99)

**01. Motion Of Petitioners.** Upon the motion of petitioners or the person adopted; ~~(3-18-99)~~(7-1-00)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; ~~(3-18-99)~~(7-1-00)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; and ~~(3-18-99)~~(7-1-00)T

**04. SResealing Records.** Such record can be resealed-~~again~~. ~~(3-18-99)~~(7-1-00)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**890. QUALIFIED INDIVIDUAL REQUIREMENTS.**

Qualified individuals are family services workers as defined in these rules or others with related college degrees and professional experience, deemed related to the field of adoptions by the Family and Children's Services program manager, 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 (4) years. Individuals designated by the Indian child's tribe to perform these duties are not subject to these provisions. (3-18-99)

**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. (3-18-99)

**02. Decertification.** A qualified individual can be decertified by the Department at any time during a four (4) year period of certification. Notification of decertification will be made by the Department by certified mail. The notice shall state the specific grounds for decertification. This decision may be appealed within thirty-five (35) days of receipt. Grounds for decertification are the following: (7-1-00)T

a. Conviction for a felony; (7-1-00)T

b. Negligence in carrying out the duties of a qualified individual; (7-1-00)T

c. Misrepresentation of facts regarding their qualifications to be a qualified individual and/or the qualifications of a prospective adoptive family to adopt; and (7-1-00)T

d. A demonstrated pattern of failure to obtain Departmental review and approval of Pre-Placement Homestudies and Placement Supervision Reports. (7-1-00)T

**03. Denial Of Recertification.** The Department may choose not to recertify a qualified individual for one (1) or more of the following reasons. Notification of denial will be made by the Department by certified mail. The notice shall state the specific grounds for denial of recertification. This decision may be appealed within thirty-five (35) days of receipt. Grounds for denial of recertification are the following: (7-1-00)T

- a. Substandard quality of work following the development of a quality improvement plan: (7-1-00)T
- b. Failure to gain twenty (20) additional hours of adoption continuing education required for recertification; or (7-1-00)T
- c. A demonstrated pattern of negligence or incompetence in performing the duties of a qualified individual. (7-1-00)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**892. MINIMUM STANDARDS FOR SERVICE.**

Standards for pre-placement home studies, court reports, and supervisory ~~services~~ reports must, at a minimum, meet the standards for adoption services ~~provided through~~ established by the Department in these rules.

~~(3-18-99)~~(7-1-00)T

**893. RECORDS OF THE QUALIFIED INDIVIDUAL.**

Records of the pre-placement 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.

~~(3-18-99)~~(7-1-00)T

**894. FEES CHARGED BY THE DEPARTMENT.**

Monitoring fees shall accompany the submission of ~~the~~ each report and be paid directly to the Department through the Family and Children's Services' regional office as follows:

Table 894. Qualified Individuals	
Home study or Court Report	\$50.00
Supervision Report	\$30.00

~~(3-18-99)~~(7-1-00)T

**895. DEPARTMENT RESPONSIBILITY TO QUALIFIED INDIVIDUAL.**

The regional Family and Children's Services designee ~~will~~ shall review the reports provided within a timely manner to insure filing of documentation by required court date by the qualified individual. The region shall initiate corrective action plans when the documentation of any Qualified Individual is determined to be incorrect or substandard.

~~(3-18-99)~~(7-1-00)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**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.

(3-18-99)

**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). (3-18-99)

- 02. Factors Considered.** The definition of special needs includes the following factors: (3-18-99)
- a. The child cannot or should not be returned to the home of the parents; and (3-18-99)
  - 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 (3-18-99)
  - c. The child's age makes it difficult to find an adoptive home; or (3-18-99)
  - d. The child is a member of a sibling group that must not be placed apart; or (3-18-99)
  - e. The child has established such close emotional ties with a foster family or relative family that replacement is likely to be as traumatic to the child as removal from a natural family; and (3-18-99)
  - f. Except in cases of foster parent or relative adoption, the child must have been listed with a state, regional or national adoption exchange. Private agencies and independent adoption attorneys shall show documentation of efforts to recruit the most suitable family for a specific child. ~~(3-18-99)~~(7-1-00)T

**03. Racial Backgrounds Other Than Caucasian.** It is recognized that children of racial backgrounds other than Caucasian add another level of complexity in recruiting potential adoptive families. Greater consideration will be given to children who meet the special needs definition who are also a race other than Caucasian. (3-18-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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: (3-18-99)

**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. (3-18-99)

**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.~~ rates for family foster care. For children who are currently eligible for Personal Care Services (PCS), the professional foster care rate may be used in negotiating the adoption assistance amount if the prospective adoptive family meets the educational requirements. Benefits shall continue until the child reaches eighteen (18) years, based upon an annual determination of continuing need. ~~(3-18-99)~~(7-1-00)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. ~~(3-18-99)~~(7-1-00)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. (3-18-99)

**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. (3-18-99)

**02. Suspension Or Termination Of Adoption Assistance.** Adoption assistance may be suspended or terminated if the adoptive family fails to compete 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 regardless of the child's educational status. ~~(3-18-99)~~(7-1-00)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. (3-18-99)

**04. Continuation Of Eligibility For IV-E 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 IV-E adoption assistance in any subsequent adoption. ~~(3-18-99)~~(7-1-00)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**923. -- 99950. (RESERVED).**

**~~100951.~~ 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. (3-18-99)

**~~101952.~~ 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. (3-18-99)

**02. Eligible Child.** The family contains a child under the age of eighteen (18). (3-18-99)

**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. (3-18-99)

**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. (3-18-99)

**~~102~~953. EMERGENCY CONDITIONS.**

A family meets the requirements for emergency conditions in the following circumstances: (3-18-99)

**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 (3-18-99)

**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 (3-18-99)

**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. (3-18-99)

**~~109~~54. 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. (3-18-99)

**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. (3-18-99)

**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. (3-18-99)

**~~119~~55. 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. (3-18-99)

**~~129~~56. 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. (3-18-99)

**957. -- 999. (RESERVED).**

**IDAPA 22 - IDAHO STATE BOARD OF MEDICINE**  
**22.01.07 - RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF MEDICINE**  
**DOCKET NO. 22-0107-0001 (REPEAL)**  
**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2000.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule and regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-1806 (2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 16, 2000.

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 temporary and proposed rule:

To comply with the legislative intent of HB 628 the Idaho State Board of Medicine is required to adopt new rules consistent with the Attorney General's Rules for Practice and Procedure Governing Contested Case and Rule-Making Procedure and repeal the current rules of Practice and Procedure. The rule is therefore being repealed in its entirety and has been rewritten under Docket No. 22-0107-0002 which is being published in this Bulletin following this notice.

**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:

The rule is being adopted as temporary in order to comply with deadlines in amendments to governing law.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rulemaking is being done to comply with deadlines in amendments to governing law.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary and proposed rule, contact Nancy M. Kerr at (208) 327-7000.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 23, 2000.

DATED this 16th day of June, 2000.

Nancy M. Kerr  
Executive Director  
Idaho State Board of Medicine  
1755 Westgate Drive  
PO Box 83720  
Boise, Idaho 83720-0058  
(208) 327-7000, Fax (208) 327-7005

**THIS CHAPTER IS BEING REPEALED IN ITS ENTIRETY.**

**IDAPA 22 - IDAHO STATE BOARD OF MEDICINE**  
**22.01.07 - RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF MEDICINE**  
**DOCKET NO. 22-0107-0002 (REWRITE)**  
**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2000.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 54-1806(2) Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 16, 2000.

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

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

The rulemaking is being done to comply with the legislative intent of HB 628 the Idaho State Board of Medicine is required to adopt new rules consistent with the Idaho Rules of Administrative Procedure of the Attorney General.

**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:

The temporary rule is being adopted in order to comply with deadlines in amendments to governing law.

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

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rulemaking was to comply with deadlines in amendments to governing law, however, affected organizations were included in planning meetings.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Nancy M. Kerr, Idaho State Board of Medicine, (208) 327-7000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2000

DATED this 16th day of June, 2000.

Nancy M. Kerr  
Executive Director  
Idaho State Board of Medicine  
1755 Westgate Drive  
PO Box 83720  
Boise, Idaho 83720-0058  
(208) 327-7000, Fax (208) 327-7005

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 22-0107-0002**

**IDAPA 22**  
**TITLE 01**  
**Chapter 07**

**22.01.07 - RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF MEDICINE**

**000. LEGAL AUTHORITY (Rule 0).**

This chapter is adopted under the legal authority of Sections 54-1806(2), Idaho Code. (7-1-00)T

**001. TITLE AND SCOPE (Rule 1).**

The title of this chapter is IDAPA 22.01.07, "Rules of Practice and Procedure of the Board of Medicine". This chapter has the following scope: these rules govern all aspects of administrative procedure before the Board of Medicine including rulemaking, contested cases, meeting procedure, and appearances before the Board. (7-1-00)T

**002. WRITTEN INTERPRETATIONS - - AGENCY GUIDELINES (Rule 2).**

Written interpretations of these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking in the adoption of these rules are available from the Office of the Attorney General, Statehouse, Boise, Idaho 83720. (7-1-00)T

**003. ADMINISTRATIVE APPEAL (Rule 3).**

All contested cases shall be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedures of the Attorney General" and this chapter. (7-1-00)T

**004. PUBLIC RECORD ACT COMPLIANCE (Rule 4)**

These rules have been adopted in accordance with Title 67, Chapter 52, Idaho Code and are public records. (7-1-00)T

**005. INCORPORATION BY REFERENCE**

The Board of Medicine adopts Subchapters A, B and C, of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," with minor changes to parts of Subchapters A and B. The following Sections have been incorporated by reference from IDAPA 04.11.01: Section(s) 04.11.01.005, 006, 050 through 057, 100 through 104, 151 through 155, 200, 201, 203 through 206, 210, 220, 230, 240, 250, 260, 270, 280, 301 through 305, 400 through 402, 410 through 417, 420 through 425, 500 through 502, 510 through 514, 521 through 523, 550 through 566, 600 through 602, 604 through 606, 610 through 614, 650, 651, 700 through 702, 710, 711, 720, 730, 740, 750, 760, 770, 780, 790 through 791, 800, 810 through 815, 820 through 836, 840, 850, and 860. (7-1-00)T

**006. OFFICE--OFFICE HOURS--MAILING ADDRESS AND STREET ADDRESS (Rule 7).**

The central office of the Board of Medicine will be in Boise, Idaho. The Board's mailing address, unless otherwise indicated, will be Idaho State Board of Medicine, Statehouse Mail, Boise, Idaho 83720. The Board's street address is 1755 Westgate Drive, Suite 140, Boise, Idaho 83704. The telephone number of the Board is (208) 327-7000. The Board's facsimile (FAX) number is (208) 377-7005. The Board's office hours for filing documents are 8:00 a.m. to 5:00 p.m. MST. (7-1-00)T

**007. FILING OF DOCUMENTS - NUMBER OF COPIES (Rule 8).**

All documents in rule-making or contested case proceedings must be filed with the office of the Board. The original and ten (10) copies of all documents must be filed with the office of the Board. (7-1-00)T

**008. -- 149. (RESERVED).**

**150. PARTIES TO CONTESTED CASES LISTED (Rule 150).**

Parties to contested cases before the agency are called applicants or claimants or appellants, petitioners, complainants, respondents or protestants. On reconsideration or appeal within the agency parties are called by their original titles listed in the previous sentence. (7-1-00)T

**151. -- 155. (RESERVED).**

**156. RIGHTS OF PARTIES AND OF AGENCY STAFF (Rule 156).**

Subject to IDAPA 04.11.01.558, 04.11.01.560, and 04.11.01.600, as incorporated by reference, all parties and agency staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments. (7-1-00)T

**157. PERSONS DEFINED--PERSONS NOT PARTIES--INTERESTED PERSONS (Rule 157).**

The term "person" includes natural persons, partnerships, corporations, associations, municipalities, government entities and subdivisions, and any other entity authorized by law to participate in the administrative proceeding. Persons other than the persons named in Rules 151 through 156 of IDAPA 04.11.01, as incorporated by reference, are not parties for the purpose of any statute or rule addressing rights or obligations of parties to a contested case. (7-1-00)T

**158. -- 201. (RESERVED).**

**202. REPRESENTATION OF PARTIES AT HEARING (Rule 202).**

**01. Appearances And Representation.** To the extent authorized or required by law, appearances and representation of parties or other persons at formal hearing or prehearing conference must be as follows: (7-1-00)T

- a. Natural Person. A natural person may represent himself or herself or be represented by an attorney. (7-1-00)T
- b. A partnership may be represented by a partner or an attorney. (7-1-00)T
- c. A corporation may be represented by an officer or an attorney. (7-1-00)T
- d. A municipal corporation, local government agency, unincorporated association or nonprofit organization may be represented by an officer, duly authorized employee, or attorney. (7-1-00)T
- e. A state, federal or tribal governmental entity or agency may be represented by an officer, duly authorized employee, or attorney. (7-1-00)T

**02. Representatives.** The representatives of parties at hearing, and no other persons or parties appearing before the agency, are entitled to examine witnesses and make or argue motions. (7-1-00)T

**03. Attorneys.** Attorneys who represent parties must be licensed to practice law in the state of Idaho. (7-1-00)T

**203. -- 299. (RESERVED).**

**300. FILING DOCUMENTS WITH THE AGENCY--NUMBER OF COPIES—FACSIMILE TRANSMISSION (FAX) (Rule 300).**

An original and necessary copies (if any are required by the agency) of all documents intended to be part of an agency record must be filed with the officer designated by the agency to receive filing in the case and a copy must be mailed to any Hearing Officer appointed by the Board. Pleadings and other documents not exceeding ten (10) pages in length requiring urgent or immediate action may be filed by facsimile transmission (FAX) if the agency's individual rule of practice lists a FAX number for that agency. Whenever any document is filed by FAX, if possible, originals must be delivered by overnight mail the next working day. (7-1-00)T

**301. -- 349. (RESERVED).**

**350. INTERVENTION PROHIBITED (Rule 350).**

Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding shall not be allowed to intervene. (7-1-00)T

**351. -- 519. (RESERVED).**

**520. KINDS AND SCOPE OF DISCOVERY LISTED (Rule 520).**

**01. Kinds Of Discovery.** The kinds of discovery recognized by these rules in contested cases are:

(7-1-00)T

a. Depositions;

(7-1-00)T

b. Subpoenas; and

(7-1-00)T

c. Statutory inspection, examination (including physical or mental examination), investigation, etc.

(7-1-00)T

**02. Rules Of Civil Procedure.** Unless otherwise provided by statute, rule, order or notice, when discovery is authorized before the agency, the scope of discovery, other than statutory inspection, examination, investigation, etc., is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26(b)).

(7-1-00)T

**521. -- 523. (RESERVED).**

**524. SUBPOENAS (Rule 524).**

The agency may issue subpoenas as authorized by statute, upon a party's motion or upon its own initiative. The agency upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may quash the subpoena, or condition denial of the motion to quash upon reasonable terms. (7-1-00)T

**525. STATUTORY INSPECTION, EXAMINATION, INVESTIGATION, ETC. -- CONTRASTED WITH OTHER DISCOVERY (Rule 525).**

This rule recognizes, but does not enlarge or restrict, an agency's statutory right of inspection, examination (including mental or physical examination), investigation, etc. This statutory right of an agency is independent of and cumulative to any right of discovery in formal proceedings and may be exercised by the agency whether or not a person is party to a formal proceeding before the agency. Information obtained from statutory inspection, examination, investigation, etc., may be used in formal proceedings or for any other purpose, except as restricted by statute or rule. The rights of deposition, and subpoena, can be used by parties only in connection with formal proceedings before the agency.

(7-1-00)T

**526. FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS (Rule 526).**

Notices of deposition, and objections to discovery must be filed and served as provided in the order compelling discovery. (7-1-00)T

**527. EXHIBIT NUMBERS (Rule 527).**

The agency assigns exhibit numbers to each party.

(7-1-00)T

**528. PREPARED TESTIMONY AND EXHIBITS (Rule 528).**

Order, notice or rule may require a party or parties to file before hearing and to serve on all other parties prepared expert testimony and exhibits to be presented at hearing. Assigned exhibit numbers should be used in all prepared testimony. (7-1-00)T

**529. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY (Rule 529).**

The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery. (7-1-00)T

**530. PROTECTIVE ORDERS (Rule 530).**

As authorized by statute or rule, the agency may issue protective orders limiting access to information generated during settlement negotiations, discovery or hearing. (7-1-00)T

**531. -- 603. (RESERVED).**

**603. DEPOSITIONS.**

Depositions may be offered into evidence if notice is given prior to the taking of the deposition that the deposition will be offered in lieu of testimony at the hearing and if all parties have had an opportunity to examine or cross-examine the deponent's testimony. (7-1-00)T

**604. -- 999. (RESERVED).**

**IDAPA 22 - IDAHO STATE BOARD OF MEDICINE**  
**22.01.14 - RULES RELATING TO COMPLAINT INVESTIGATION**  
**DOCKET NO. 22-0114-0001**  
**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2000.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-1806(2) Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 16, 2000.

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

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

To comply with the legislative intent of HB 628 the Idaho State Board of Medicine is required to adopt new rules for the receipt, investigation and deposition of complaints.

**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:

The temporary rule is being adopted in order to comply with deadlines in amendments to governing law.

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

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the rulemaking is being done to comply with deadlines in amendments to governing law, however, affected organizations were included in planning meetings.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Nancy M. Kerr, Idaho State Board of Medicine (208) 327-7000.

Anyone may submit written comments regarding this proposed rule. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2000.

DATED this 16th day of June, 2000.

Nancy M. Kerr  
Executive Director  
Idaho State Board of Medicine  
1755 Westgate Drive  
PO Box 83720  
Boise, Idaho 83720-0058  
(208) 327-7000, Fax (208) 327-7005

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 22-0114-0001**

**IDAPA 22**  
**TITLE 01**  
**Chapter 14**

**22.01.14 - RULES RELATING TO COMPLAINT INVESTIGATION**

**000. LEGAL AUTHORITY.**

Pursuant to Section 54-1806(2), Idaho Code, the Idaho State Board of Medicine is authorized to promulgate rules for the receipt and investigation of complaints. (7-1-00)T

**001. TITLE AND SCOPE.**

These rules shall be cited as IDAPA 22.01.14, "Rules Relating to Complaint Investigation". (7-1-00)T

**002. WRITTEN INTERPRETATIONS.**

Written interpretations of these rules in the form of explanatory comments accompanying the notice of proposed rule-making that originally proposed the rules and review of comments submitted in the rulemaking process in the adoption of these rules are available for review and copying at cost from the Board Of Medicine, 1755 Westgate Drive, Suite 140, Box 83720 Boise, Idaho 83720-0058. (7-1-00)T

**003. ADMINISTRATIVE APPEAL (Rule 3).**

All contested cases shall be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedures of the Attorney General" and this chapter. (7-1-00)T

**004. PUBLIC RECORD ACT COMPLIANCE (Rule 4).**

These rules have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. (7-1-00)T

**005. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference into this rule. (7-1-00)T

**006. OFFICE--OFFICE HOURS--MAILING ADDRESS AND STREET ADDRESS (Rule 7).**

The central office of the Board of Medicine will be in Boise, Idaho. The Board's mailing address, unless otherwise indicated, will be Idaho State Board of Medicine, Statehouse Mail, Boise, Idaho 83720. The Board's street address is 1755 Westgate Drive, Suite 140, Boise, Idaho 83704. The telephone number of the Board is (208) 327-7000. The Board's facsimile (FAX) number is (208) 377-7005. The Board's office hours for filing documents are 8:00 a.m. to 5:00 p.m. MST. (7-1-00)T

**007. FILING OF DOCUMENTS - NUMBER OF COPIES (Rule 8).**

All documents in rule-making or contested case proceedings must be filed with the office of the Board. The original and ten (10) copies of all documents must be filed with the office of the Board. (7-1-00)T

**008. -- 009. (RESERVED).**

**010. COMPLAINTS.**

Complaints received, which are related to allegations against health care providers regulated by the Board, shall be referred to the appropriate Quality Assurance staff. (7-1-00)T

**011. FORMAT FOR SUBMISSION OF COMPLAINT.**

Complaints will be submitted in writing to the Board, with the name of the provider, the approximate date of the incident or care, the individual's concerns regarding the incident or care, and the name and address of the

complainant. (7-1-00)T

**012. DETERMINATION OF AUTHORITY.**

The Quality Assurance Specialist (QAS) shall determine if the complaint falls within the statutory authority of the Board as defined in the appropriate practice act and rules. Questions related to jurisdiction will be referred to the Executive Director and/or Board Counsel. (7-1-00)T

**01. Outside Statutory Authority.** If the complaint falls outside of the statutory authority of the Board, the QAS shall notify the complainant in writing and may offer referral to an appropriate agency, if indicated. The staff will maintain a copy of the complaint and response for a period of one (1) year. (7-1-00)T

**02. Within Statutory Authority.** If the complaint falls within the authority of the Board, the QAS will: (7-1-00)T

- a. Establish a complaint file; (7-1-00)T
- b. Assign a case number; (7-1-00)T
- c. Enter information regarding the complaint onto the database. (7-1-00)T
- d. Correspond in writing with the complainant and the provider within ten (10) business days, when possible, explaining the nature of the complaint; (7-1-00)T
- e. Provide written information to the complainant and provider regarding the complaint process; (7-1-00)T

f. Monitor the case to insure the provider has replied and that the complainant and the provider are kept informed of the status of the investigation at least every forty-five to sixty (45 to 60) days. (7-1-00)T

**013. COMPLAINT AUTHORITY.**

At the time the complaint is opened, the Quality Assurance Specialist will assign a priority rating\* (\*rating may change at any point in the investigation as new information is received) to the investigation according to the following table:

CATEGORY	DESCRIPTION	DESCRIPTION
1	Imminent, or current danger to the public	Impairment by psychiatric or substance abuse problems.
2	Threat to the public, currently monitored or controlled.	Retired, incarcerated, enrolled in recognized treatment program poses no immediate threat to the public.
3	Identified as having practice, skills, or judgment concern considered a potential threat to the public.	Prescribing concerns, isolated incident of error, negligence, or misconduct.
4	Medium to low risk to public	Improper delegation Disciplinary action in another state
5	Low risk to public	Paperwork problems Record keeping issues Failure to transfer medical records.

(7-1-00)T

**01. Category One.** Category one (1) requires immediate referral to the Executive Director for

appropriate action. (7-1-00)T

- 02. Category Two.** Category two (2) is reported to the Executive Director for appropriate action. (7-1-00)T

**014. – 019. (RESERVED).**

**020. REPORT OF INVESTIGATION.**

When the needed response and documentation is received, QAS shall prepare a report containing the following: (7-1-00)T

- 01. Provider Information.** The name of the provider, city, specialty, and date. (7-1-00)T

- 02. Previous Complaints.** A summary of previous complaints against the provider. (7-1-00)T

- 03. Complaint Concerns.** A summary of the complainant's concerns. (7-1-00)T

- 04. Provider's Response.** A summary of the provider's response. (7-1-00)T

- 05. QAS Review.** A summary of the QAS review of medical records/documentation; (7-1-00)T

**06. Copies Of Documents.** Copies of the written complaint and response shall be attached to the summary. Other documents may be attached as indicated by the nature of the summary. (7-1-00)T

**021. TRACKING.**

After review by the Committee of Professional Discipline and/or the Board of Medicine: (7-1-00)T

**01. Case Is Closed.** If closed by the Board, the QAS shall correspond with the complainant and provider and notify each of the Board's final determination and action within the bounds of confidentiality. (7-1-00)T

**02. Further Investigation Is Requested.** If further investigation is requested by the Board, the QAS shall obtain the requested information and prepare a summary as described in Section 020. The complainant and provider shall be notified of the status of the complaint. (7-1-00)T

**03. Consultant Is Requested.** If a consultant is requested by the Board, the QAS shall, after appropriate consultation, request a consultant, with a comparable specialty, to review the information provided and prepare a report of findings to the Board. (7-1-00)T

**04. Records Review Is Requested.** If a records review is requested, the Board will define the focus, scope and depth of the review. (7-1-00)T

**05. Stipulation And Order Is Issued.** If a stipulation and order is issued, the QAS will complete the stipulation checklist as indicated by the nature of the stipulation, identify the monitoring requirements and establish a monitoring plan for the provider. (7-1-00)T

**06. Other Disciplinary Action Directed.** If other disciplinary actions are directed by the Board, the QAS will act under the guidance of the Executive Director and/or Board counsel. (7-1-00)T

**07. Opportunity To Meet With Committee.** Before the initiation of formal disciplinary proceedings, a person under investigation shall be provided an opportunity to meet with the Committee on Professional Discipline or its staff. (7-1-00)T

**08. Recording Of Board Action.** The QAS will update the database and the case file to reflect the Board's action on the reviewed cases. (7-1-00)T

**022. AUTHORITY TO CLOSE COMPLAINTS.**

The only individuals authorized to close complaint files are the Committee of Professional Discipline and/or the Board of Medicine. All complaints must be presented to the respective Board for consideration and action.

(7-1-00)T

**023. -- 999. (RESERVED).**

**IDAPA 29 - IDAHO POTATO COMMISSION**

**29.01.02 - RULES GOVERNING PAYMENT OF ADVERTISING TAX AND  
USAGE OF FEDERALLY REGISTERED TRADEMARKS**

**DOCKET NO. 29-0102-0001**

**NOTICE OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is June 30, 2000. These rules have been adopted by the agency and are now pending review by the 2001 Idaho State Legislature for final adoption. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 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) 67-5221(1), 67-5226, and 22-1207(7) and (8) Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the existing temporary 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 language of the temporary rule failed to specify that Uniform Product Code Numbers ("UPC") adopted to identify Idaho, potato containers must be used in the area reserved for their use on the potato containers approved for use by the temporary rule. This change, suggested by the public at the hearing, corrects that oversight.

The proposed rule has been amended in response to public comment and is being amended pursuant to Section 67-5227, Idaho Code. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Commission amended the temporary rule with the same revisions which have been made to the proposed rule.

Only the sections that have changes are printed in this bulletin. The original text of the proposed rule was published in the [June 7, 2000 Idaho Administrative Bulletin, Volume No. 00-6, pages 63 through 67](#).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Patrick J. Kole, Vice-President, Legal and Governmental Affairs and Assistant to the Director, Idaho Potato Commission, 208-334-2350.

DATED this 23rd day of June, 2000.

Patrick J. Kole  
Vice President,  
Legal & Governmental Affairs  
& Assistant to the Director  
Idaho Potato Commission  
599 West Bannock Street  
Post Office Box 1068  
Boise, ID 83701  
Phone: 208-334-2350 Facsimile: 208-334-2274

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**IDAPA 29  
TITLE 01  
Chapter 02**

**RULES GOVERNING PAYMENT OF ADVERTISING TAX AND USAGE OF  
FEDERALLY REGISTERED TRADEMARKS**

**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 text of the proposed rule was published in the Idaho Administrative  
Bulletin, Volume 00-6, June 7, 2000, pages 63 through 67.**

**This rule has been adopted as a pending rule by the Agency and is now pending  
review and adoption by the 2001 Idaho State Legislature as a final rule.**

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 29-0102-0001**

**102. CERTIFICATION MARKS FOR IDAHO® POTATO CONTAINERS.**

**01. Containers.** All potatoes grown in Idaho and packed or repacked in containers in Idaho shall be in containers printed, labeled or stenciled in a plain and legible manner with one of the Commission's registered Certification Marks, and the "GROWN IN IDAHO®" Certification Mark. An exact reproduction of the Commission's Certification Marks appears in appendix A. Certification Marks may not be stamped on any Idaho® potato container. (6-30-00)T

**02. Marks.** No person, firm or corporation packing or repacking potatoes or potato products outside of the state of Idaho shall use any of the Commission's Certification Marks on any containers of potatoes or potato products packed or repacked outside the state of Idaho unless they have first executed an agreement for the use of the Certification Marks with the Idaho Potato Commission, and unless they are actually packing or repacking in such containers Idaho grown potatoes or potato products made from Idaho® grown potatoes. (6-30-00)T

**03. Agreement.** No person, including without limitation manufacturers, container manufacturers, growers, shippers, processors and repackers, shall use or reproduce any of the Commission's Certification Marks on any container without first executing an agreement for the use of the marks with the Idaho Potato Commission. (7-1-93)

**04. Recognition.** Whenever the "GROWN IN IDAHO®," "IDAHO®" or other Certification Marks are used, recognition must be given that the marks are registered under the appropriate Federal statute. This recognition must be: by printing a legible capital "R" inside a circle (®), immediately after the word "IDAHO". (6-30-00)T

**05. No Certification Mark.** No Certification Mark shall be incorporated into any private label, brand or seal but shall be portrayed without embellishment as shown in appendix A. (6-30-00)T

**06. Not Incorporated.** The word "IDAHO®" shall not be incorporated into any private label, brand or seal unless such label, brand or seal was registered with the U.S. Patent Office prior to January 1, 1966. (6-30-00)T

**07. Size.** When a Certification Mark is used on the front of a one hundred pound (100) sack type container, it shall not be less than five (5) inches in diameter or width and shall not be placed closer than two (2) inches from the bottom of said container. When any Certification Mark is used on the rear of a one hundred pound (100) sack type container, it shall not be less than twelve (12) inches in diameter or width. The marks may also be used on both the front and back of one hundred pound (100) sack type containers, if placed as indicated and in the

sizes indicated.

(7-1-93)

**08. Limitation Of Use.** On fifty (50) pound sack type containers, a Certification Mark shall be used as on the one hundred pound containers, but in proportionate sizes. (7-1-93)

**09. Other Type Containers.** On all sack type containers of less than fifty (50) pounds, a Certification Mark shall appear plainly visible on the front of the containers; and it shall be in relative proportion to brands, labels or other printed matter thereon, but not less than one and one-half (1 1/2) inches in diameter or width. (7-1-93)

**10. Box Type Containers.** (6-30-00)T

a. On all box type containers in which number 1 grade Idaho® Potatoes will be packed, a Certification Mark may be located on the sides, ends or top of the container as desired, but shall be so placed and of such size as to be plainly visible. (6-30-00)T

b. On all box type containers in which number two (2) grade Idaho® Potatoes will be packed, packing is permitted only when the following requirements are met: (6-30-00)T

i. The container must be manufactured in a kraft, or non-colored cardboard material and be of a single piece construction; (6-30-00)T

ii. The rectangular "Grown in Idaho®" certification mark shall be placed on each side and end panel of the container, with a width measurement of three and one-half (3 1/2) inches and length measurement of five and one-half (5 1/2) inches. The mark shall be located as shown in Appendix B; (6-30-00)T

iii. The certification mark "Idaho® Potatoes" shall be printed on all four (4) sides of the container in one (1) inch lettering in the locations shown in Appendix B; (6-30-00)T

iv. The words "U. S. NO. 2" shall be printed on all four (4) sides of the container in one (1) inch lettering in the locations shown in Appendix B and on one (1) of the top flaps of the container; (6-30-00)T

v. The top one and three quarters (1 3/4) inches of the carton shall contain no preprinting on all four (4) sides of the container; (6-30-00)T

vi. One (1) of the elongated top flaps shall contain the "Grown in Idaho®" certification mark with a width of three and one-half (3 1/2) inches and length of five and one-half (5 1/2) inches, together with the certification mark "Idaho® Potatoes" in one (1) inch height and the words "U. S. NO. 2" in one (1) inch height; ~~and~~ (6-30-00)T (6-30-00)T

vii. Product code identification numbers on containers bearing the certification marks shall use Idaho specific codes where the same have been obtained; and (6-30-00)T

viii. All other requirements regarding container packaging set forth in these rules and the license agreements of the Idaho Potato Commission apply to the use of this type of container. (6-30-00)T

**11. Tote Bin Type.** On all tote bin type containers, Certification Marks must be used on the front of said container but may be used elsewhere and shall not be less than twelve (12) inches in diameter or width. (7-1-93)

**12. Identity Of Commodity.** All containers bearing the marks shall specify the identity of the commodity contained therein and the name and place of business of the manufacturer, packer or distributor of the commodity. Containers which do not comply with the rules of the Idaho Potato Commission shall not be used by any manufacturer, packer or distributor for any potatoes or potato products subject to these rules. (7-1-93)

**13. Words Printed.** All potatoes grown in Idaho and packed or repacked in Idaho shall have the words "PACKED IN IDAHO" printed on the container. (7-1-93)

**14. Sack Type Containers -- Fifty Pounds Or Over.** On all sack type containers for fifty (50) pounds

or over the words "PACKED IN IDAHO" shall be located on the front lower half of the container but not closer than six (6) inches to the bottom thereof. (7-1-93)

**15. Sack Type Containers -- Less Than Fifty Pounds.** On all sack type containers containing less than fifty (50) pounds of potatoes the words "PACKED IN IDAHO" may be placed anywhere on the container but shall be so placed as to be plainly visible. (7-1-93)

**16. Location Of Words.** On all box type containers the words "PACKED IN IDAHO" may be located on the ends, sides or top of the container but shall be so placed as to be plainly visible. (7-1-93)

**17. Colors.** All marks when used and the words "PACKED IN IDAHO" shall be in color or colors in contrast with the color of the container. (7-1-93)

**18. Use.** Only in connection with potatoes and potato products grown within the state of Idaho may growers, shippers and packers use the name "IDAHO®" in any mark, label or stencil applied to containers for such produce and products. The growers, shippers and packers of potatoes within the state of Idaho are not precluded from processing, packing and shipping potatoes grown outside the state of Idaho so long as such potatoes are not misrepresented or misbranded as Idaho® Potatoes. (6-30-00)T

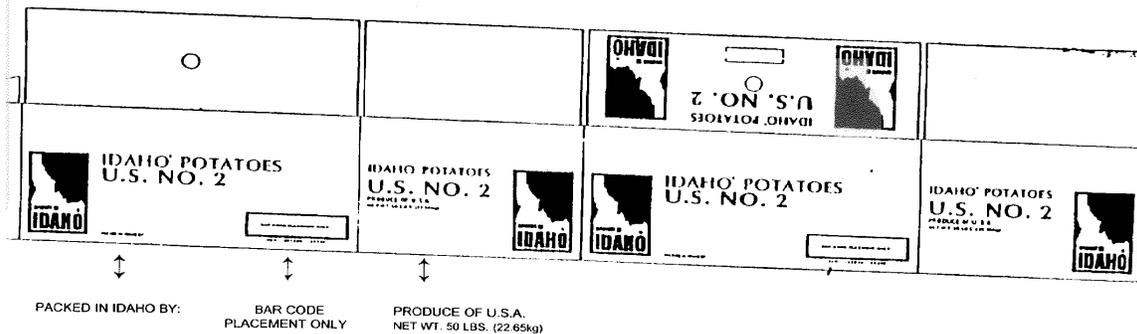
**19. Compulsory Printing.** Printing of the mark "GROWN IN IDAHO®" and the words "PACKED IN IDAHO" is compulsory on all potato containers printed or contracted for after December 1, 1964. (6-30-00)T

**20. Idahos.** The word "IDAHOS" shall not be used on any container for potatoes, potato products nor on any other printing or advertising material or correspondence used to identify or promote Idaho® potatoes. (6-30-00)T

**21. Exemption.** Only shipments of certified seed potatoes to destinations outside of the state of Idaho are exempt from this rule. (7-1-93)

**22. Other Rules.** Other rules on containers, grade and size are covered under Title 22, Chapter 9, Idaho Code, and applicable marketing orders. (7-1-93)

**APPENDIX B**



**IDAPA 44 - OFFICE OF THE ADMINISTRATIVE RULES COORDINATOR**

**44.01.01 - RULES OF THE ADMINISTRATIVE RULES COORDINATOR**

**DOCKET NO. 44-0101-0001**

**NOTICE OF PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that the Office of the Administrative Rules Coordinator has proposed rulemaking. The action is authorized pursuant to Section 67-5206, 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 16, 2000.

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:

Changes made to the Administrative Procedure Act require that IDAPA 44.01.01 be amended to conform to those changes. This rulemaking corrects citations and references to the APA and updates the rules to be consistent with statutory changes that address the incorporation by reference provision in the APA that affect all state agency administrative rules.

Other changes include the following: the addition of a definition for "section," "subsection," "paragraph," and "subparagraph" that are used to describe formatting requirements outlined in this rule and for making reference citations to rules; a change in the format requirements to include rule sections for "Incorporation By Reference," "Office -- Office Hours -- Mailing Address And Street Address," and "Public Records Compliance Act"; makes the rules consistent with the rule drafters manual; and corrects typographical errors.

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

No fees or charges are being set in this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rulemaking is being done to bring the rules into conformity with existing state law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dennis Stevenson at 332-1820.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2000

DATED this 5th day of July, 2000.

Rick Thompson, Administrative Rules Coordinator  
Department of Administration  
Office of Administrative Rules  
650 W. State St.  
PO Box 83720-0306  
Boise, Idaho 83720  
Phone: (208) 332-1820  
Fax: (208) 334-2395

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 44-0101-0001**

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(169)(b)(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 at the Office of the Administrative Rules Coordinator, 650 West State Street -- Room 100, P.O. Box 83720, Boise, Idaho, 83720-0306. (7-1-97)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. ~~(RESERVED)~~ INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into this rule. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**007. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

The principal place of business of the Office of Administrative Rules is in Boise, Idaho. The office is located at 650 W. State Street, Room 100, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Office of Administrative Rules, P.O. Box 83720, Boise, Idaho 83720-0306. The telephone of the office is (208) 332-1820. The facsimile number of the office is (208) 334-2395. ( )

**008. PUBLIC RECORDS ACT COMPLIANCE.**

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

~~007.~~—009. (RESERVED).

**010. DEFINITIONS.**

- 01. APA.** The Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (7-1-93)
- 02. Agency.** Each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV, of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction. (7-1-93)
- 03. Agency Action.** In these rules means the whole or part of a rule, or the failure to issue a rule. (7-1-93)
- 04. Agency Head.** An individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. (7-1-93)
- 05. Bulletin.** The Idaho administrative bulletin established in Section 67-5203, Idaho Code. (7-1-93)
- 06. Catchline.** A short description of the section or subsection used to introduce a block of text at the major section level and first sublevel. (7-1-93)
- 07. Certified Rules.** Rules certified in effect during a specified period in time after July 1, 1993. Only the coordinator shall certify rules as the officially promulgated rules of Idaho. (7-1-93)

- 08. Code.** The Idaho administrative code established in Title 67, Chapter 52, Idaho Code. (7-1-93)
- 09. Coordinator.** The office of the Administrative Rules Coordinator, as created in Section 67-5202, Idaho Code. (7-1-97)
- 10. Document.** Any proclamation, executive order, notice, rule or statement of policy of an agency. (7-1-93)
- 11. Form Or Format.** The internal organization, structure and presentation of the rules in Idaho as set forth in this chapter. (7-1-93)
- 12. IDAPA.** A numbering designation for all administrative rules in Idaho which denotes rules promulgated in accordance with the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. The numbering scheme denotes a distinct agency code, a title code, a chapter code, and section, ~~and~~ subsection, paragraph, and subparagraph numbering as appropriate. (7-1-97)(      )
- 13. Legal Citation.** The specific reference to a document or passage of a document using the generally accepted method of notation. For all rules, the designation incorporates a form of the IDAPA numbering scheme. (7-1-93)
- 14. Legislative Format.** A form of displaying modifications to text by underscoring new text and overstriking deleted text. (7-1-97)
- 15. Numbering.** The alpha-numeric display schematic for the rules in Idaho, also known as the IDAPA system, as set forth in this chapter. (7-1-93)
- 16. Official Text.** Text of a document promulgated by an agency in accordance with Title 67, Chapter 52, Idaho Code, and is the only legally enforceable text of such document. (7-1-93)
- 17. Page.** One (1) page is one (1) impression side of the official text published in the Code or Bulletin. (7-1-97)
- 18. Publish.** To bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law. (7-1-93)
- 19. Regulation.** A federal rule promulgated in accordance with the federal Administrative Procedures Act, Public Law 404, 60 Stat. 237 (1946), as amended. (7-1-93)
- 20. Rule.** The whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of Title 67, Chapter 52, Idaho Code. (7-1-93)
- 21. Rule Drafter.** A person who creates, modifies, or proposes change to the administrative rules of the state of Idaho. (7-1-93)
- 22. Rulemaking.** The process for formulation and promulgation, in order to adopt, amend, or repeal a rule. (7-1-93)
- 23. Section, Subsection, Paragraph, And Subparagraph.** Section, subsection, paragraph, and subparagraph are divisions that breakdown the text of a rule into separate blocks of text that are numbered using the numbering schematic set forth in this rule. If further breakdown of the rule beyond the subparagraph level is required, approval must be granted by the Office of Administrative Rules. The text of a rule is subdivided in the following format: (      )
- a. Section.** This will include all text that appears at the main three (3) digit level. As an example, this text is part of the larger main Section "010". The entire section is cited as Section 010. (      )

b. Subsection. This is the further breakdown of a main section and will use a numeric code. As an example, this subsection is “.23” and is cited as Subsection 010.23. ( )

c. Paragraph. This is the further breakdown of a subsection and will use a lower case alphabetic code. As an example, this paragraph is “c.” and is cited as Paragraph 010.23.c. ( )

d. Subparagraph. This is a further breakdown of a paragraph and will use a lower case roman numeral code. As an example, a further breakdown of this paragraph would be cited as Subparagraph 010.23.d.i. ( )

**234. Style.** A method of writing rules denoting standard elements of consistency, simplicity, and clarity as set forth in this chapter. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. UNIFORM STYLE AND FORMAT OF RULES.**

In accordance with Section 67-5206(1)(b), Idaho Code, The coordinator shall establish a uniform style and format applicable to rules adopted by all agencies. (7-1-93)

**01. Standard Requirements Of Style.** Text used within a rule shall include three (3) distinct elements: (7-1-97)

a. Consistency denotes standardized arrangement of specific organizational division of text as well as language structures. Rule text shall appear with consistent application of terms, sentences, structures, formats, numbering, and other structures to avoid confusion to the reader. (7-1-93)

b. Simplicity denotes presentation of complex ideas into easily understood concepts within the text of the rule. (7-1-93)

c. Clarity in rule drafting avoids unclear, ambiguous and obscure terms. Rules shall be simple, concrete combinations of text that conveys the meaning while avoiding vagueness and the need for varying interpretations. (7-1-93)

**02. Uniform Format Requirements.** Uniform format shall be required for all rules adopted in accordance with the APA. All rules shall incorporate consistent organizational structure and content which will allow the coordinator to consistently index and reference all rules. Rules not formatted as described in this chapter shall not be inserted in the administrative code and shall not be considered valid for the purposes of Section 67-5231(1), Idaho Code. Specific requirements are as follows: (7-1-97)

a. All major sections shall include the numbering scheme provided in this chapter followed by the catchline capitalized. (7-1-97)

b. The first required section of each rule chapter, the “000” section, shall be entitled “LEGAL AUTHORITY”. This section shall include all statutory authorities granted or implied which allow rulemaking authority to the agency as set forth Section 67-5231(1), Idaho Code. (7-1-93)

c. The second required section of each rule chapter, the “001” section, shall be entitled “TITLE AND SCOPE”. This section shall include a precise description of the legal citation of the chapter. Also, this section shall include a brief descriptive summary of the scope of the rule. (7-1-93)

d. The third required section of each rule chapter, the “002” section, shall be entitled “WRITTEN INTERPRETATIONS”. This section shall indicate if the agency has or relies on any written interpretive statements of the rule chapter in accordance with Section 67-5201(1)(b)(iv), Idaho Code. ~~(7-1-93)~~( )

e. The fourth required section of each rule chapter, the “003” section, shall be entitled

“ADMINISTRATIVE APPEALS”. This section is used to describe any appeal or hearing rights for affected individuals relating to the programs or services described in the rule chapter. (7-1-93)

f. The fifth required section of each rule chapter, the “004” section, shall be entitled “INCORPORATION BY REFERENCE”. This section is used to describe and list all documents being incorporated by reference into the rule pursuant to, and in accordance with, Section 67-5229, Idaho Code. ( )

g. The sixth required section of each rule chapter, the “005” section, shall be entitled “OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS”. This section includes the principal location of the main office, the hours the office is open to the public, the mailing address where documents may be filed or obtained, and the physical address of the main office of the agency. ( )

h. The seventh required section of each rule chapter, the “006” section, shall be entitled “PUBLIC RECORDS ACT COMPLIANCE” and shall state that the rule has been promulgated in accordance with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and is a public record. ( )

hi. The ~~###~~ eighth required section of each rule chapter, one (1) of “004~~7~~” through “010” sections, shall be entitled “DEFINITIONS”. This section lists alphabetically all terms distinct to the rule chapter. Definitions are used to describe specific terms of art and other words or phrases to aid the user in describing the intent of the rule. (7-1-93)( )

gj. Reserved major sections may be used as appropriate to allow for expansion, segregation, and flexibility within the chapter. Subsections, paragraphs, and subparagraphs shall not be designated as reserved. (7-1-97)( )

hk. The remaining sections within the body of the rule chapter, the “011” through “999” sections, may be used as the agency deems necessary for describing the programs, services, requirements, focus and intent of the rule. (7-1-93)

il. A paragraph of descriptive references may be used at the end of the major section after all sublevel sections. This descriptive paragraph may include: effective dates set by the legislature, cross-references, compiler’s notes, references or extractions of written interpretations, or other reference tools approved by the coordinator. The descriptive paragraph shall include a format and style distinct from the text of the rules as approved by the coordinator. (7-1-97)

**03. Maps, Charts, Graphs, Diagrams, And Other Visual Aids.** Rules may contain maps, charts, graphs, diagrams, illustrations, forms, or similar descriptive text within the body of the rule. (7-1-97)

a. Agencies are encouraged to include written interpretations of the rule where the requirement to list the material in the rule is in question. (7-1-97)

b. Agencies are encouraged to include written interpretations by incorporating such documents by reference, in accordance with Section 67-5229, Idaho Code. (7-1-97)

**04. Legislative Format.** All modified rule text shall underscore text to be added and overstrike text to be deleted. (7-1-97)

a. In the case of amendment to a current rule, the desired amendments to text are made using legislative format. The effective date shall be overstruck followed by parentheses surrounding eight (8) underscored spaces, flushed right. (7-1-93)

b. When an agency proposes to enact a new section within an existing rule, the entire proposed text shall be underscored. All effective dates are noted as parentheses surrounding eight (8) underscored spaces, flushed right. (7-1-93)

c. When an agency proposes to repeal a complete chapter, overstriking is not required. The bulletin will note that the chapter has been “REPEALED IN ITS ENTIRETY”. (7-1-93)

d. When an agency proposes to adopt a complete chapter of rules, underscoring is not required. The effective date shall be noted as parentheses surrounding eight (8) spaces, flushed right after each block of text.

(7-1-93)( )

e. Modifications to text appearing in the paragraph of descriptive references shall not appear in legislative format.

(7-1-97)

**102. UNIFORM NUMBERING OF RULES.**

In accordance with Section 67-5206(1)(a), Idaho Code, the coordinator shall establish a uniform numbering system applicable to rules adopted by all agencies.

(7-1-93)

**01. IDAPA Numbering.** The uniform numbering system is known as the "IDAPA" system. For complete citation, rule numbering is preceded with the term "IDAPA", followed by a two (2) numerical digit agency code followed by a period, a two (2) numerical digit division or title code followed by a period, and a two (2) numerical digit program or chapter code ~~followed by a period~~. For example, this chapter is numbered as follows: IDAPA 44.01.01.

(7-1-97)( )

**02. Internal Numbering.** All chapters of agency rules consist of major sections identified by three (3) numerical digits beginning with "000" and ending with "999".

(7-1-93)

**03. Sublevels.** ~~Two~~ Three (3) sublevels shall be allowed following the major section code.

(7-1-93)( )

a. The first sublevel, called a Subsection, shall be a two (2) digit numeric code, beginning with "01." and ending with "99."

(7-1-93)( )

b. The second sublevel, called a Paragraph, shall be a single digit alphabetic code beginning with "a." and ending with "z." On a case-by-case basis, the coordinator may allow additional characters for expansion of this sublevel, using a double digit alphabetic code beginning with "aa." and ending with "zz."

(7-1-93)( )

c. The third sublevel, called a Subparagraph, shall be a lower case roman numeral code, beginning with "i."

( )

d. On a case-by-case basis, the coordinator may allow ~~an~~ additional sublevels consisting of ~~lower case roman numbers~~ an alternating code of numbers and letters enclosed in parentheses.

(7-1-93)( )

**04. Cross-Referencing.** In order to clarify intent or avoid repetition, references to other rules are allowed. Such references are divided as follows:

(7-1-93)

a. Internal Reference/Citation. References to a section or sections within a chapter shall provide a thorough notation of the identity of the text referenced. A citation to this section is "~~Subsection Paragraph~~ 102.04.a." Internal references may also utilize the complete legal citation using the complete IDAPA numbering system. A citation to this section is "IDAPA 44.01.01.102.04.a."

(7-1-97)( )

b. External Reference/Citation. References outside the chapter shall identify the complete legal citation using the IDAPA numbering system and shall include the name of the agency, the name of the chapter being referenced and the complete legal citation of the chapter being referenced.

(7-1-93)( )

c. External referencing of documents other than Idaho administrative rules shall follow the provisions of Section 67-5229, Idaho Code, regarding incorporation by reference.

(7-1-93)

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**LEGISLATIVE CHANGES AFFECTING THE ADMINISTRATIVE RULES OF THE**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**DOCKET NO. 58-0100-0002**

**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 by Chapters 1, 36, 44, 58, 72, 76, Title 39, Idaho Code.

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

**Tuesday, August 24, 2000, 7:00 p.m.**  
**Department of Environmental Quality Conference Center**  
**1410 N. Hilton, Boise, Idaho.**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208)373-0418.

**DESCRIPTIVE SUMMARY:** Under Senate Bill 1426, 2000 Session Law Chapter 132, the Idaho Legislature created a new Department of Environmental Quality (DEQ). Prior to this action, DEQ was a division of the Department of Health and Welfare (DHW). As a division of DHW, DEQ's administrative rules referred to DHW's rules for administrative procedure and confidentiality of records. The purpose of this rulemaking is to update all administrative rules of DEQ so that the rules refer to the proposed "Rules of Administrative Procedure Before the Board of Environmental Quality," IDAPA 58.01.23 (Docket No. 58-0123-0001) and the "Rules Governing the Protection and Disclosure of Records in the Possession of the Department of Environmental Quality," IDAPA 58.01.21. This proposed rule docket and Docket No. 58-0123-0001 have been scheduled so that both actions, once adopted by the Board of Environmental Quality and approved by the Legislature, will take effect simultaneously. Corrections have also been made to provisions that are inconsistent with the administrative procedures set out in the proposed Rules of Administrative Procedure Before the Board of Environmental Quality.

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.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2000 for adoption of a pending rule. The rules are expected to be final and effective upon the conclusion of the 2001 session of the Idaho Legislature.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted because the rulemaking schedule did not allow for the timing of it. In addition, this rulemaking does not warrant negotiated rulemaking because it simply changes the DEQ rules so that they accurately reference the proposed DEQ rules and the procedures governed by those rules.

**GENERAL INFORMATION:** For more information about the Department of Environmental Quality's programs and activities, visit DEQ's web site at [www.state.id.us/deq](http://www.state.id.us/deq).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact Paula Gradwohl (208)373-0418, [psaul@deq.state.id.us](mailto:psaul@deq.state.id.us).

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before September 6, 2000.

Dated this 23rd day of June, 2000.

Paula Gradwohl  
Environmental Quality Section

Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
Fax No. (208)373-0481 / psaul@deq.state.id.us

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0100-0002.**

**This Docket Includes Multiple Chapters Of Rules And Are Separated By “(Break In Chapters)”.**

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**IDAPA 58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**003. ADMINISTRATIVE APPEALS.**

Persons may be entitled to appeal *final* agency actions authorized under this chapter pursuant to IDAPA ~~16.05.03, Rules of the Department of Health and Welfare, IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings~~ 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality”.  
(5-1-94)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**534. APPEALS.**

Persons may file an appeal within thirty (30) days of the date the person received the assessment and receipt issued under Subsection 531.03, or within thirty (30) days of the date the person received an assessment issued under Sections 530 or 535. The appeal shall be filed in accordance with ~~the Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings~~ 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality”.  
(5-1-94)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**587. LISTING OR DELISTING TOXIC AIR POLLUTANT INCREMENTS.**

Persons may request the listing of any toxic substance or delisting of any toxic air pollutant in Sections 585 or 586 by filing a petition for adoption of rules in accordance with IDAPA ~~16.05.03, “Rules Governing Contested Cases and Declaratory Rulings~~ 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality”.  
(5-1-94)( )

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**(BREAK IN CHAPTERS)**

**IDAPA 58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS**

**996. ADMINISTRATIVE PROVISIONS.**

~~Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 16.05.03.000 et seq., "Rules Governing Contested Cases and Declaratory Rulings".~~ Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (7-1-93)(\_\_\_\_)

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**(BREAK IN CHAPTERS)**

**IDAPA 58.01.03 - INDIVIDUAL/SUBSURFACE SEWAGE DISPOSAL RULES**

**996. ADMINISTRATIVE PROVISIONS.**

~~Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000 et seq., "Rules Governing Contested Cases and Declaratory Rulings".~~ Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (5-7-93)(\_\_\_\_)

**997. CONFIDENTIALITY OF RECORDS.**

~~Any disclosure of information obtained by the Department under these rules 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 public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality."~~ (5-7-93)(\_\_\_\_)

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**(BREAK IN CHAPTERS)**

**IDAPA 58.01.04 - RULES FOR ADMINISTRATION OF WASTEWATER  
TREATMENT FACILITY GRANTS**

**080. SUSPENSION OR TERMINATION OF GRANT.**

**01. Causes.** The Director may suspend or terminate any grant for failure by the grantee or its agents, including his architectural/engineering firm(s), contractor(s) or subcontractor(s) to perform. A grant may be suspended or terminated for good cause including, but not limited to, the following: (3-15-85)

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or (3-15-85)

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or (3-6-85)

c. Violation(s) of any term of agreement of the grant offer or contract agreement; or (3-15-85)

d. Any willful or serious failure to perform within the scope of the project, plan of operation and project schedule, terms of architectural/engineering subagreements, or contracts for construction; or (3-15-85)

e. Debarment of a contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-15-85)

**02. Notice.** The Director will notify the grantee in writing and by certified mail of the intent to suspend or terminate the grant. The notice of intent shall state: (3-15-85)

a. Specific acts or omissions which form the basis for suspension or termination; and (3-15-85)

b. ~~Availability of a hearing, conducted by the Director as hearing officer or by his designee as hearing officer, said hearing being conducted in an informal manner at a time and in a place specified by the Director. That~~ the grantee may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-85)(\_\_\_\_)

**03. Determination.** ~~Upon the proof of the existence of cause(s) for suspension or termination by substantial evidence or by proof of judgement or conviction of offense(s), the Director shall make a written determination, sending the determination to the grantee by certified mail within seven (7) days of the hearing. A~~ determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-85)(\_\_\_\_)

**04. Reinstatement Of Suspended Grant.** Upon written request by the grantee and evidence that the causes(s) for suspension no longer exist, the Director may, if funds are available reinstate the grant. (3-15-85)

**05. Reinstatement Of Terminated Grant.** No terminated grant shall be reinstated. (3-15-85)

**(BREAK IN CONTINUITY OF SECTIONS)**

**996. ADMINISTRATIVE PROVISIONS.**

~~Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000, et seq., "Rules Governing Contested Cases and Declaratory Rulings".~~ Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (12-31-91)(\_\_\_\_)

**997. CONFIDENTIALITY.**

Information ~~received~~ obtained by the Department ~~from grant applicants and recipients~~ under these rules is subject to ~~the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Rules Governing Protection and Disclosure of Department Records~~ public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality". (1-1-82)(\_\_\_\_)

**(BREAK IN CHAPTERS)**

**IDAPA 58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE**

**996. ADMINISTRATIVE PROVISIONS.**

Except as set forth in Section 013 administrative appeals ~~from all final of~~ agency ~~decisions~~ actions shall be governed by ~~Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Rules Governing Contested Cases and Declaratory Rulings~~ 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (4-5-00)(\_\_\_\_)

**(BREAK IN CHAPTERS)**

**IDAPA 58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS**

**005. GENERAL PROVISIONS FOR WAIVERS, VARIANCES, AND EXEMPTIONS.**

40 CFR 141.4, revised as of July 1, 1999, is herein incorporated by reference. (4-5-00)

**01. Waivers.** (12-10-92)

a. The Department may waive any requirement of Sections 550 through 552, if it can be shown to the satisfaction of the Department that the requirement is not necessary for the protection of public health, protection from contamination, and satisfactory operation and maintenance of a public water system. (12-10-92)

b. The Department may at its discretion waive the requirements outlined in Section 010. (10-1-93)

**02. Conditions.** A waiver, exemption or variance may be granted upon any conditions that the Department, in its discretion, determines are appropriate. Failure by the public water system to comply with any condition voids the waiver, variance or exemption. (12-10-92)

**03. Public Hearing.** The Department shall provide public notice and an opportunity for public hearing in the area served by the public water system before any exemption or variance under Section 005 is granted by the Department. (12-10-92)

**04. Exceptions.** Any person aggrieved by the Department's decision on a request for a waiver, variance or exemption may file a petition for a contested case with the Board. Such petitions shall be filed with the Board, as prescribed in *Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Rules Governing Contested Cases and Declaratory Rulings 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality"*. (10-1-93)(\_\_\_\_)

**05. Surface Water Variances.** Variances from the requirements of Sections 300 through 303 are not allowed. (4-5-00)

**06. Surface Water Exemptions.** Exemptions from 40 CFR 141.72(a)(3) and 40 CFR 141.72(b)(2), incorporated by reference herein, are not allowed. (10-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**996. ADMINISTRATIVE PROVISIONS.**

*Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, Sections 16.05.03.000 et seq., "Rules Governing Contested Cases and Declaratory Rulings". Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality."* (10-1-93)(\_\_\_\_)

**(BREAK IN CHAPTERS)**

**IDAPA 58.01.09 - RULES REGULATING SWINE AND POULTRY FACILITIES**

**003. ADMINISTRATIVE APPEALS.**

Persons may be entitled to appeal agency actions authorized under these rules pursuant to *Rules of the Department of Health and Welfare*, IDAPA 16.05.03, "~~Rules Governing Contested Case Proceedings and Declaratory Rulings~~ 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (4-5-00)( )

**(BREAK IN CHAPTERS)**

**IDAPA 58.01.11 - GROUND WATER QUALITY RULE**

**002. ADMINISTRATIVE APPEALS.**

Persons may be entitled to appeal *final* agency actions authorized under this chapter pursuant to ~~IDAPA 16.05.03, Rules of the Department of Health and Welfare, IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings~~ 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (4-5-00)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**350. PROCEDURES FOR CATEGORIZING OR RECATEGORIZING AN AQUIFER.**

The following process shall be used for categorizing or recategorizing an aquifer. (3-20-97)

**01. Criteria For Aquifer Categories.** The following criteria shall be considered when a petition to categorize or recategorize aquifers or portions of aquifers is submitted to the Board: (3-20-97)

- a. For Sensitive Resource aquifers: (3-20-97)
  - i. The ground water in an aquifer or portion of an aquifer is of a better quality than the ground water quality standards in Section 200 and maintenance of this quality is needed to protect an identified beneficial use(s); (3-20-97)
  - ii. The ground water in an aquifer or portion of an aquifer is considered highly vulnerable; (3-20-97)
  - iii. The ground water in an aquifer or portion of an aquifer represents an irreplaceable source for the identified beneficial use(s); (3-20-97)
  - iv. The ground water quality in an aquifer or portion of an aquifer has been degraded and there is a need for additional protection measures to maintain or improve the water quality or prevent impairment of a beneficial use; (3-20-97)
  - v. The ground water within an aquifer or portion of an aquifer is shown to be hydrologically interconnected with surface water and additional protection is needed to maintain the quality of either surface or ground water. Hydrologic interconnections can include either natural or induced ground water recharge or discharge areas; or (7-1-98)
  - vi. The ground water within an aquifer or portion of an aquifer demonstrates other criteria which justify the need for additional protection. (3-20-97)

- b. For General Resource aquifers: (3-20-97)
  - i. An activity with the potential to degrade ground water quality is initiated over an aquifer or portion of an aquifer which presently has no such activities; (3-20-97)
  - ii. The ground water in an aquifer or portion of an aquifer is currently being used for drinking water or another beneficial use which requires similar protection; or (3-20-97)
  - iii. The ground water in an aquifer or portion of an aquifer has a projected future beneficial use of drinking water or another beneficial use which requires similar protection. (3-20-97)
- c. For other resource aquifers: (3-20-97)
  - i. The ground water quality within an aquifer or portion of an aquifer does not meet one or more of the ground water quality standards in Section 200; and allowing the ground water quality to remain at this level does not impair existing or projected future beneficial uses within the aquifer or portion of an aquifer; (3-20-97)
  - ii. The projected ground water quality within an aquifer or portion of an aquifer will not meet one or more of the ground water quality standards in Section 200 as a result of activities over or within the aquifer or portion of an aquifer; and allowing the proposed degradation will not impair existing or projected future beneficial uses; (3-20-97)
  - iii. Human caused conditions or sources of contamination have resulted in ground water quality standards in Section 200 being exceeded, and the contamination cannot be remedied for economical or technical reasons, or remediation would cause more environmental damage to correct than to leave in place; or (3-20-97)
  - iv. The ground water within an aquifer or portion of an aquifer demonstrates other criteria which justify the need for categorization as an Other Resource. (3-20-97)

**02. Petition Process.** The Department or any other person may petition the Board to initiate rulemaking to categorize or recategorize an aquifer or portion of an aquifer pursuant to ~~IDAPA 16.05.03 Rules of the Department of Health and Welfare, IDAPA 16.05.03, "Rules Governing Contested Cases and Declaratory Hearings 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality"~~. In addition to the information required in a rulemaking Petition pursuant to ~~IDAPA 16.05.03 58.01.23~~, the following information shall be submitted in writing by the Petitioner for the identified aquifer or portion of an aquifer: ~~(3-20-97)~~(\_\_\_\_)

- a. Current category, if applicable; (3-20-97)
- met; b. Proposed category and an explanation of how one or more of the criteria in Subsection 350.01 are (3-20-97)
- c. An explanation of why the categorization or recategorization is being proposed; (3-20-97)
- d. Location, description and areal extent; (3-20-97)
- e. General location and description of existing and projected future ground water beneficial uses; (3-20-97)
- f. Documentation of the existing ground water quality; (3-20-97)
- g. Documentation of aquifer characteristics, where available, including, but not limited to: (3-20-97)
- i. Depth to ground water; (3-20-97)
- ii. Thickness of the water bearing section; (3-20-97)
- iii. Direction and rate of ground water flow; (3-20-97)

- iv. Known recharge and discharge areas; and (3-20-97)
- v. Geology of the area; (3-20-97)
- h. Identification of any proposed standards, for specified constituents, which would be stricter or less strict than the ground water quality standards in Section 200, or any standards to be applied in addition to those in Section 200; and a rationale for the proposed standards. (3-20-97)

**03. Preliminary Department Review.** Prior to submission of a petition to the Board to categorize or recategorize an aquifer, any person may seek a preliminary review of the petition from the Department. The Department shall respond to the petitioner with comments within forty-five (45) days. (3-20-97)

**(BREAK IN CHAPTERS)**

**IDAPA 58.01.12 - RULES FOR ADMINISTRATION OF WASTEWATER  
TREATMENT FACILITY LOANS**

**080. SUSPENSION OR TERMINATION OF LOAN CONTRACTS.**

**01. Causes.** The Director may suspend or terminate any loan contract prior to final disbursement for failure by the loan recipient or its agents, including architectural/engineering firm(s), contractor(s) or subcontractor(s) to perform. A loan contract may be suspended or terminated for good cause including, but not limited to, the following: (1-1-89)

- a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or (1-1-89)
- b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years' imprisonment or any crime involving or affecting the project; or (1-1-89)
- c. Violation(s) of any term of the loan contract; or (1-1-89)
- d. Any willful or serious failure to perform within the scope of the project, plan of operation and project schedule, terms of architectural/engineering subagreements, or contracts for construction; or (1-1-89)
- e. Debarment of a contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (1-1-89)

**02. Notice.** The Director will notify the loan recipient in writing and by certified mail of the intent to suspend or terminate the loan contract. The notice of intent shall state: (1-1-89)

- a. Specific acts or omissions which form the basis for suspension or termination; and (1-1-89)
- b. ~~Availability of a hearing, conducted by the Director, hearing officer or his designee as hearing officer, said hearing being conducted in an informal manner at a time and in a place specified by the Director. That the loan recipient may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality".~~ (1-1-89)(\_\_\_\_)

**03. Determination.** ~~Upon the proof of the existence of cause(s) for suspension or termination by substantial evidence or by proof of judgment or conviction of offense(s), the Director shall make a written~~

~~determination, sending the determination to the loan recipient by certified mail within seven (7) days of the hearing.~~  
A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (1-1-89)( )

**04. Reinstatement Of Suspended Loan.** Upon written request by the loan recipient with evidence that the causes(s) for suspension no longer exists, the Director may, if funds are available reinstate the loan contract. If a suspended loan contract is not reinstated, the loan will be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. (1-1-89)

**05. Reinstatement Of Terminated Loan.** No terminated loan shall be reinstated. Terminated loans will be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. (1-1-89)

**(BREAK IN CONTINUITY OF SECTIONS)**

**996. ADMINISTRATIVE PROVISIONS.**

~~Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000, et seq., "Rules Governing Contested Cases and Declaratory Rulings".~~ Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (12-31-91)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**998. CONFIDENTIALITY.**

Information ~~received~~ obtained by the Department ~~from loan applicants and recipients~~ under these rules is subject to ~~the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Rules Governing Protection and Disclosure of Department Records~~ public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality". (1-1-89)( )

**(BREAK IN CHAPTERS)**

**IDAPA 58.01.13. - RULES FOR ORE PROCESSING BY CYANIDATION**

**850. PERMIT REVOCATION.**

**01. Cause For Revocation.** A material violation of a permit or these rules may be grounds for the Director to revoke a permit. A violation that is shown to have occurred as the result of an unforeseeable act of God despite a permittee's reasonable efforts to comply with all applicable legal requirements shall not be grounds for revocation. (1-1-88)

**02. Revocation Hearing.** If the Director decides to revoke a permit he shall issue a notice of intent which shall become final within twenty (20) days of service upon the permittee, unless the permittee requests in writing an administrative hearing. Written notice of the time and place of the hearing shall be mailed, at least twenty (20) days prior to the date set for the hearing, to the permittee. The hearing shall be conducted in accordance with ~~Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Rules Governing Contested Cases and Declaratory Rulings~~ 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality". (12-31-91)( )

(BREAK IN CONTINUITY OF SECTIONS)

**996. ADMINISTRATIVE PROVISIONS.**

~~Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Subsection 000, et seq., "Rules Governing Contested Cases and Declaratory Rulings".~~ Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (12-31-91)( )

**997. CONFIDENTIALITY OF RECORDS.**

~~Any disclosure of information obtained by the Department under these rules 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 public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality".~~ (12-31-91)( )

(BREAK IN CHAPTERS)

**IDAPA 58.01.14 - RULES FOR ADMINISTRATION OF AGRICULTURAL  
WATER QUALITY PROGRAM**

**403. CONTRACT VIOLATION AND APPEALS.**

**01. Cause Of Violation.** A participant shall be in violation of the contract if he: (11-1-81)

a. Knowingly or negligently destroys or breaks up a BMP in the water quality plan, unless prior written approval is given by the district; or (11-1-81)

b. Files a request for payment for BMP's not carried out or for BMP's carried out in a manner which does not meet district specifications. (11-1-81)

**02. Forfeiture Of Further Cost-Share Payments.** The participant shall agree by signing a contract to forfeit all rights to further cost-share payments under the contract and to refund all cost-share payments received thereunder, if the district determines: (11-1-81)

a. That there has been a violation of the contract; and (11-1-81)

b. That the violation is of such a nature as to warrant termination of the contract. (11-1-81)

**03. Refund Of Cost-Share Payments.** The participant shall agree by signing a contract to make refunds of cost-share payments received under the contract or to accept payment adjustments in the contract, if the district determines: (11-1-81)

a. That there has been a violation of the contract; and (11-1-81)

b. That said violation is of such a nature as not to warrant termination of the contract. (11-1-81)

c. Payment adjustments may include decreasing the rate of a cost-share or deleting from the contract a cost-share commitment or withholding cost-share payments earned but not paid. (11-1-81)

**04. Notice Of Violation.** (11-1-81)

a. If the district believes that a violation of a contract has occurred which would call for a forfeiture, refund, payment adjustment, or termination, written notice thereof shall be given to the participant(s) under said contract. (11-1-81)

b. The written notice, sent by certified mail, return receipt requested, shall set forth the nature of the alleged violation and shall inform the participant that he will be given an opportunity to appear at a contract violation review before the district if he files a written request for such review with the district no later than thirty (30) days after the issuance of the notice of violation. (11-22-89)

**05. Contract Violation Review.** (11-1-81)

a. Upon receipt of a request for contract violation review, the district shall notify the participant in writing of the time, date, and place set for the review. (11-1-81)

b. The review shall be conducted in the manner considered most likely to obtain the facts relevant to the alleged violation. (11-1-81)

c. If the participant does not file written request for a review, or does not appear at the appointed time, or is not represented at a review so requested, the participant shall have no further right to a review before the district. (11-1-81)

d. The district shall make a determination on the basis of the review. This determination shall: (11-1-81)

i. Be based on the BMP standards and specifications adopted by the district at the time the water quality plan is prepared; and (11-1-81)

ii. Shall specifically state whether the violation of the contract is of such a nature as to warrant termination of the contract or that the violation does not warrant termination of the contract. (11-1-81)

e. Each participant under said contract shall be notified in writing of the determination. (11-1-81)

**06. Appeal Of District Determination.** Appeal to the Board may be made by any participant adversely affected by a contract violation review determination of the district in accordance with IDAPA ~~16.05.03, Sections 000, et seq., "Rules Governing Contested Cases and Declaratory Rulings," upon which no further rights to appeal are granted.~~ 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality," upon which there shall be no further rights to appeal in the program. ~~(12-31-91)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**996. ADMINISTRATIVE PROVISIONS.**

~~Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000, et seq., "Rules Governing Contested Cases and Declaratory Rulings," upon which no further rights to appeal are granted.~~ Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". ~~(12-31-91)( )~~

**997. CONFIDENTIALITY.**

Information ~~received~~ obtained by the Department ~~involving contested case proceedings~~ under these rules is subject to the provisions of ~~Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Rules Governing Protection and Disclosure of Department Records~~ public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho

Department of Environmental Quality”.

(11-1-81)( )

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**(BREAK IN CHAPTERS)**

**IDAPA 58.01.15 - RULES GOVERNING CLEANING OF SEPTIC TANKS**

**996. ADMINISTRATIVE PROVISIONS.**

~~Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Subsections 000, et seq., “Rules Governing Contested Cases and Declaratory Rulings”. Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality”.~~ (12-31-91)( )

**997. CONFIDENTIALITY OF RECORDS.**

~~Any disclosure of information obtained by the Department under these rules 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 public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality”.~~ (12-31-91)( )

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**(BREAK IN CHAPTERS)**

**IDAPA 58.01.16 - RULES FOR NUTRIENT MANAGEMENT**

**200. CONSISTENCY REVIEW OF LOCAL NUTRIENT MANAGEMENT PROGRAMS ESTABLISHED PRIOR TO THE DEVELOPMENT OF THE STATE NUTRIENT MANAGEMENT PLAN.**

**01. Responsibilities.**

(7-1-93)

a. Local Units of Government. Any local unit of government that develops a nutrient management program prior to the development of the appropriate basin nutrient management plan shall submit an application for a consistency determination to the local Health District Board and the Department. Local units of government that have enacted nutrient management programs prior to the effective date of these rules shall submit an application for a consistency determination to the local Health District Board and the Department within thirty (30) days of the effective date of these rules. (12-28-94)

b. Health District Board. The local Health District Board is responsible, with the Department, for providing an evaluation of the findings and making a consistency determination within ninety (90) days of receipt of a complete application from the local unit of government. The local Health District Board is also responsible, with the Department, for reconsidering final consistency determinations as necessary. (7-9-90)

c. Department. The Department is responsible, with the local Health District Board, for providing an evaluation of the findings and making a consistency determination within ninety (90) days of receipt of a complete application from the local unit of government. The Department is also responsible, with the local Health District Board, for reconsidering final consistency determinations as necessary. (7-9-90)

**02. Review And Evaluation Of Local Nutrient Management Programs And Findings Of Fact.**

(7-9-90)

a. **Submission of Application.** The local unit of government shall submit to the local Health District Board and the Department an application for consistency determination which shall consist of a written request for a consistency determination, a complete copy of the proposed nutrient management program, and the findings together with supporting documentation. (7-9-90)

b. **Criteria for a Local Nutrient Management Program.** Any local nutrient management program shall be consistent with the criteria for nutrient management plans as required in Section 39-105(3)(o), Idaho Code. The program shall: (7-9-90)

i. Be based upon the examination of the scientific evidence identifying nutrients and nutrient sources that have the potential to result in the overfeeding of aquatic plant life and a subsequent uncontrolled increase in the growth of algae or aquatic macrophytes; (7-9-90)

ii. Be based upon a consideration of the dynamics of nutrient removal, use and dispersal in the identified receiving waters; and (7-9-90)

iii. Include an evaluation of preventative or remedial actions and include such actions as are feasible and necessary to protect the receiving surface waters. (7-9-90)

c. **Basis for Evaluation.** A determination of inconsistency shall be based upon a finding that a local nutrient management program does not have a rational basis addressing a legitimate local nutrient management concern pursuant to and consistent with the criteria set forth in Subsection 200.02.b. and available scientific evidence. The basis for evaluation of a local nutrient management program shall include, but is not limited to, consideration of the adequacy of the findings with regard to the following items: (12-31-91)

i. **Identification of Nutrient Sources.** The findings shall identify nutrient(s), nutrient source(s) and receiving surface waters of concern. The findings shall include an evaluation of the effect the identified nutrient(s) and nutrient source(s) have or have the potential to have on the water quality of the identified receiving surface waters. (7-9-90)

ii. **Identification of the Dynamics of Nutrient Removal, Use and Dispersal.** The findings shall include an evaluation of the dynamics of nutrient removal, use and dispersal in the identified receiving surface waters. (7-9-90)

iii. **Identification of Preventative or Remedial Actions.** The findings shall include an evaluation of the feasibility and necessity of any preventative or remedial actions, and their need for protecting identified receiving surface waters. (7-9-90)

iv. **Best Management Practices.** Any local nutrient management program that is a Best Management Practice (BMP) or the equivalent insofar as it addresses nonpoint sources of nutrients shall be compatible with any approved BMP defined in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Rules Governing Water Quality Standards and Wastewater Treatment Requirements," or any other BMP developed pursuant to the state Nonpoint Source (Section 319) Management Program, the state Agricultural Pollution Abatement Plan, or the state Forest Practices Water Quality Management Plan. (12-31-91)

**03. Consistency Determination.** (7-9-90)

a. **Public Decision.** The local nutrient management program will be reviewed by both the local Health District Board and the Department. A report on the consistency of the local nutrient program and recommendations will be provided jointly by the local Health District Board and the Department at a public meeting. The final consistency determination will be decided by a vote, in public, of the local Health District Board and the Director, each having one (1) vote. A tie vote will result in a determination of inconsistency. (7-9-90)

b. **Notification of Consistency Determination.** The Department shall provide written notification of the final consistency determination to the applicant and any other interested person requesting notification. (7-9-90)

c. Determination of Inconsistency. Any local nutrient management program found not to meet the criteria for inclusion in the comprehensive state nutrient management plan as enumerated in Subsection 200.02.b. shall be declared inconsistent. (12-31-91)

i. Reasons for a determination of inconsistency will be provided with the Department's notification of the final consistency determination. (7-9-90)

ii. A determination of inconsistency does not preclude or limit the applicant from reapplying for another consistency determination when the deficiencies in the local nutrient management program or the findings are resolved. (7-9-90)

d. Reconsideration of a Final Consistency Determination. Within thirty (30) days of receipt of a notification of consistency determination, the applicant or any interested person may petition jointly the local Health District Board and the Department to reconsider the final consistency determination in accordance with this section. (7-9-90)

i. Petition for Reconsideration. Any petition for reconsideration shall be in writing and state the reasons supporting the reconsideration. (7-9-90)

ii. Evaluation of a Petition for Reconsideration. A contested case hearing in accordance with ~~Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Rules Governing Contested Cases and Declaratory Rulings 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality,"~~ will be held within sixty (60) days of the filing of a petition for reconsideration. A public meeting will be held within forty-five (45) days of the receipt of the hearing officer's report by the Department and local Health District Board for the purpose of reconsidering the final consistency determination. A vote, in public, will decide if the final consistency determination should be reversed. The public meeting will be held in accordance with Subsection 200.05.c. and the public vote taken in accordance with Subsection 200.03.a. (~~12-28-94~~)(\_\_\_\_)

**04. Nutrient Management Program Modifications.** Any modification to an existing local nutrient management program, prior to the completion of the basin nutrient management plan, shall be deemed a new nutrient management program and require a consistency review. (7-9-90)

**05. Public Participation.** (7-9-90)

a. Publication of Receipt of Application. Within fifteen (15) days of receipt of an application for a consistency determination, the local Health District Board and the Department shall jointly give public notice of the application by the following methods: (7-9-90)

i. By publishing notice of receipt of the application together with a summary of the application in a daily or weekly major newspaper of general circulation in the area affected by the local nutrient management program. (7-9-90)

ii. By mail to those persons on a mailing list who request to be notified. (7-9-90)

iii. By any other reasonable method needed to give actual notice of the application to the persons potentially affected, including radio or television notices. (7-9-90)

b. Availability of Application. Copies of the application including the local nutrient management program together with the findings shall be made available at a public office within the area affected by the local nutrient management program. (7-9-90)

c. Public Meetings and Comments. A public meeting(s) shall be held in the hydrologic basin of concern jointly by the local Health District Board and the Department to facilitate consistency determinations of local nutrient management programs and, as appropriate, reconsideration of final consistency determinations. The proceedings of the public meetings shall be transcribed and deemed part of the record for review. A public notice will be given for all public meetings. (7-9-90)

i. Comments germane to the local nutrient management program or, as appropriate, the final consistency determination, may be submitted by any person at or prior to the public meeting. (7-9-90)

ii. A public vote of the local Health District Board and the Director will be taken at a public meeting to determine the final consistency determination. If substantial comments are received at the initial public meeting, the public vote may take place at a subsequent public meeting. If an additional public meeting is necessary, written comments will be accepted if received within fifteen (15) days of the first public meeting. (7-9-90)

**(BREAK IN CONTINUITY OF SECTIONS)**

**996. ADMINISTRATIVE PROVISIONS.**

~~Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Subsections 000, et seq., "Rules Governing Contested Cases and Declaratory". Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality".~~ (12-28-94)(\_\_\_\_)

**997. CONFIDENTIALITY OF RECORDS.**

~~Any disclosure of information obtained by the Department under these rules 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" public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality".~~ (12-28-94)(\_\_\_\_)

**(BREAK IN CHAPTERS)**

**IDAPA 58.01.17 - WASTEWATER-LAND APPLICATION PERMIT RULES**

~~801. -- 899. (RESERVED).~~

~~900. ADMINISTRATIVE APPEAL OF FINAL PERMITS.~~

~~01. Review Of Decision. Within sixty (60) days after receipt of a notice of an incomplete application, a decision denying an application, or a final permit, the applicant may petition the Director to review the decision in accordance with this section. (4-1-88)~~

~~02. Time Period For Review. The sixty (60) day period within which an applicant may request review under this section begins on the date of receipt of the Director's decision unless a later date is specified in that notice. (4-1-88)~~

~~03. Petition -- Review. Any petition for administrative review shall be in writing and state the reasons supporting review. (4-1-88)~~

~~04. Hearing. Within a reasonable time following filing of a petition for review, the Director shall hold a hearing and issue a final decision. (12-31-91)~~

~~9801. -- 919. (RESERVED).~~

**920. PERMIT REVOCATION.**

**01. Conditions For Revocation.** The Director may revoke a permit if the permittee violates any permit condition or these rules. (4-1-88)

**02. Notice Of Revocation.** Except in cases of emergency, the Director shall issue a written notice of intent to revoke to the permittee prior to final revocation. Revocation shall become final within twenty (20) days of receipt of the notice by the permittee, unless within that time the permittee requests an administrative hearing in writing. (4-1-88)

~~**03. Notice Of Hearing.** The Director shall notify the permittee in writing of any revocation hearing at least twenty (20) days prior to the date set for such hearing. The hearing shall be conducted in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Rules Governing Contested Cases and Declaratory Rulings 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality". (12-31-91)( )~~

~~**043. Emergency Action.** If the Director finds the public health, safety or welfare requires emergency action, the Director shall incorporate findings in support of such action in a written notice of emergency revocation issued to the permittee. Emergency revocation shall be effective upon receipt by the permittee. Thereafter, if requested by the permittee in writing, the Director shall provide the permittee a revocation hearing and prior notice thereof. Such hearings shall be conducted in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Rules Governing Contested Cases and Declaratory Rulings 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality". (12-31-91)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**996. ADMINISTRATIVE PROVISIONS.**

~~Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Subsections 000, et seq., "Rules Governing Contested Cases and Declaratory Rulings". Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (12-31-91)( )~~

**997. CONFIDENTIALITY OF RECORDS.**

~~Any disclosure of information obtained by the Department under these rules 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 public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality". (12-31-91)( )~~

**(BREAK IN CHAPTERS)**

**IDAPA 58.01.18 - IDAHO LAND REMEDIATION RULES**

**003. ADMINISTRATIVE APPEALS.**

Persons may be entitled to appeal final agency actions authorized under these rules pursuant to ~~IDAPA 16.05.03, Rules of the Department of Health and Welfare, IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-13-97)( )~~

**(BREAK IN CHAPTERS)**

**IDAPA 58.01.19 - SMALL COMMUNITIES IMPROVEMENT PROGRAM RULES**

**003. ADMINISTRATIVE APPEALS.**

Persons may be entitled to appeal *final* agency actions authorized under these rules pursuant to ~~IDAPA 16.05.03, Rules of the Department of Health and Welfare, IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings~~ 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality".  
(3-23-98)( )

**(BREAK IN CHAPTERS)**

**IDAPA 58.01.20 - RULES FOR ADMINISTRATION OF DRINKING WATER LOAN ACCOUNT**

**003. ADMINISTRATIVE APPEALS.**

Persons may be entitled to appeal *final* Department of Environmental Quality actions authorized under these rules pursuant to ~~IDAPA 16.05.03, Rules of the Department of Health and Welfare, IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings~~ 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality".  
(3-23-98)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**080. SUSPENSION OR TERMINATION OF LOAN CONTRACTS.**

**01. Causes.** The Director may suspend or terminate any loan contract prior to final disbursement for failure by the loan recipient or its agents including architectural/engineering firm(s), contractor(s), or subcontractor(s) to perform. A loan contract may be suspended or terminated for good cause including, but not limited to, the following: (3-23-98)

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification, or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; (3-23-98)

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years of imprisonment or any crime involving or affecting the project; (3-23-98)

c. Violation(s) of any term of the loan contract; (3-23-98)

d. Any willful or serious failure to perform within the scope of the project, plan of operation, project schedule, terms of architectural/engineering sub-agreements, or contracts for construction; or (3-23-98)

e. Debarment of a contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-23-98)

**02. Notice.** The Director shall notify the loan recipient in writing, and forwarded by certified mail, of the intent to suspend or terminate the loan contract. The notice of intent shall state: (3-23-98)

a. Specific acts or omissions which form the basis for suspension or termination; and (3-23-98)

b. ~~Availability of a hearing conducted by the Director, hearing officer, or his/her designee as hearing officer, and said hearing being conducted in an informal manner at a time and in a place specified by the Director. That the loan recipient may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality".~~ (3-23-98)(\_\_\_\_)

**03. Determination.** ~~Upon the proof of the existence of cause(s) for suspension or termination by substantial evidence or by proof of judgment or conviction of offense(s), the Director shall make a written determination and send the determination to the loan recipient by certified mail within seven (7) days of the hearing. A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality".~~ (3-23-98)(\_\_\_\_)

**04. Reinstatement Of Suspended Loan.** Upon written request by the loan recipient with evidence that the causes(s) for suspension no longer exist(s), the Director may, if funds are available, reinstate the loan contract. If a suspended loan contract is not reinstated, the loan shall be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. (3-23-98)

**05. Reinstatement Of Terminated Loan.** No terminated loan shall be reinstated. Terminated loans shall be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. (3-23-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**996. CONFIDENTIALITY.**

Information ~~submitted to~~ obtained by the Department ~~by loan applicants and recipients may be made available to the public under these rules is~~ subject to public disclosure pursuant to the provisions of ~~Idaho Code Section 9-337 et seq. Title 9, Chapter 3, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality".~~ (3-23-98)(\_\_\_\_)

**(BREAK IN CHAPTERS)**

**IDAPA 58.01.21 - RULES GOVERNING THE PROTECTION AND DISCLOSURE OF RECORDS  
IN THE POSSESSION OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY**

**003. APPEALS.**

Persons may be entitled to appeal ~~final~~ agency actions under these rules pursuant to Sections 9-342A(6)(b) or 9-343, Idaho Code, or the ~~Rules of the Department of Health and Welfare, IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings~~ 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (4-5-00)(\_\_\_\_)

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 58-0101-9903**  
**(This Docket Was Originally Numbered 16-0101-9903)**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is June 23, 2000.

**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 has adopted a temporary rule and the Department of Environmental Quality (DEQ) 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:

**Thursday, September 7, 2000, 7:00 p.m.**  
**Department of Environmental Quality Conference Center**  
**1410 N. Hilton, Boise, Idaho.**

Before opening the record to receive oral comments, DEQ staff will answer questions regarding the rule.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208)373-0418.

**DESCRIPTIVE SUMMARY:** The purpose of this rule is to provide an alternative to the process weight rate rule. DEQ is taking this action because process weight rate is difficult to implement and enforce for a number of reasons. First, defining a specific process can be difficult in the industrial setting. Second, quantifying the weight of process through-put even if the process can be adequately defined can likewise be problematic. Therefore, showing compliance with the process weight rate rule can be very difficult also. The process weight rate rule, as an air pollution control standard, is an applicable requirement under 40 CFR Part 70 (Title V). 40 CFR Part 70 requires that compliance be shown for all applicable requirements.

40 CFR Part 70 also requires that no applicable requirement be relaxed or eliminated. So in order to comply with enforceability requirements and stringency requirements of 40 CFR Part 70, DEQ is proposing to replace the process weight rate with a grain loading standard. The grain loading standard is a particulate standard measured in grains per dry standard cubic foot. Compliance can be directly determined by testing the emission point for particulate emissions measured in grains per dry standard cubic foot. It is expected that the grain loading standard will be essentially equivalent to the process weight rate with regards to particulate emissions.

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

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2000 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2001 session of the Idaho Legislature.

**NEGOTIATED RULEMAKING:** The text of the rule is based on a consensus recommendation resulting from the negotiated rulemaking process conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 04.11.01.812 through 815. The negotiation was open to the public. Participants in the negotiation included industry representatives and EPA. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, [Volume 99-6, June 2, 1999, page 67.](#)

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because this rule confers a benefit to the regulated community and agency in that the new rule is expected to be easier to implement and comply with.

**GENERAL INFORMATION:** For more information about the Department of Environmental Quality's programs and activities, visit DEQ's web site at [www.state.id.us/deq](http://www.state.id.us/deq).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact Tim Teater at (208)373-0502, [tteater@deq.state.id.us](mailto:tteater@deq.state.id.us).

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before September 8, 2000.

Dated this 22nd day of June, 2000.

Paula J. Gradwohl  
Environmental Quality Section  
Attorney General's Office  
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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-9903**  
**(This Docket Was Originally Numbered 16-0101-9903)**

**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:
- i. Upon written request of the applicant, provide a draft permit for applicant review. Agency action on the permit under this Section may be delayed if deemed necessary to respond to applicant comments. (4-5-00)
- ii. Notify the applicant in writing of the approval, conditional approval, or denial of the application if an opportunity for public comment is not required pursuant to Subsection 209.01.c. The Department shall set forth reasons for any denial; or (5-1-94)
- iii. Issue a proposed approval, proposed conditional approval, or proposed denial. (5-1-94)
- c. An opportunity for public comment will be provided on all applications requiring a permit to construct. Public comment shall be provided on an application for any new major facility or major modification, any new facility or modification which would affect any Class I area, any application which uses fluid modeling or a field study to establish a good engineering practice stack height pursuant to Sections 510 through 516, any application which uses an interpollutant trade pursuant to Subsection 210.17, any application for a permit with a particulate matter emission standard requested pursuant to Subsection 710.10, any application which the Director determines an

opportunity for public comment should be provided, and any application upon which the applicant so requests.

~~(4-5-00)~~(6-23-00)T

i. The Department's proposed action, together with the information submitted by the applicant and the Department's analysis of the information, shall be made available to the public in at least one (1) location in the region in which the stationary source or facility is to be located. (5-1-94)

ii. The availability of such materials shall be made known by notice published in a newspaper of general circulation in the county(ies) in which the stationary source or facility is to be located. (5-1-94)

iii. A copy of such notice shall be sent to the applicant and to appropriate federal, state and local agencies. (5-1-94)

iv. There shall be a thirty (30) day period after initial publication for comment on the Department's proposed action, such comment to be made in writing to the Department. (5-1-94)

v. After consideration of comments and any additional information submitted during the comment period, and within forty-five (45) days after initial publication of the notice, or notice of public hearing if one is requested under Subsections 209.02.b.iv. or 209.02.a.ii., unless the Director deems that additional time is required to evaluate comments and information received, the Department shall notify the applicant in writing of approval, conditional approval, or denial of the permit. The Department shall set forth the reasons for any denial. (5-1-94)

vi. All comments and additional information received during the comment period, together with the Department's final determination, shall be made available to the public at the same location as the preliminary determination. (5-1-94)

d. A copy of each permit will be sent to the U.S. Environmental Protection Agency. (5-1-94)

**02. Additional Procedures For Specified Sources.** (5-1-94)

a. For any new major facility or major modification in an attainment or unclassifiable area for any regulated air pollutant, except for those new major facilities and major modifications exempted under Subsection 205.04. (4-5-00)

i. The public notice issued pursuant to Subsection 209.01.c.ii. shall indicate the degree of increment consumption that is expected from the new major facility or major modification; and (5-1-94)

ii. The public notice issued pursuant to Subsection 209.01.c.ii. shall indicate the opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality effects of the new major facility or major modification, alternatives to it, the control technology required, and other appropriate considerations. All requests for public hearings during a comment period with an opportunity for a hearing must be requested in writing by interested persons within fourteen (14) days of the publication of the legal notice of the proposed permit to construct or within fourteen (14) days prior to the end of the comment period, whichever is later. (3-23-98)

b. For any new major facility or major modification which would affect a federal Class I area or an integral vista of a mandatory federal Class I area. (5-1-94)

i. If the Department is notified of the intent to apply for a permit to construct, it shall notify the appropriate Federal Land Manager within thirty (30) days; (5-1-94)

ii. A copy of the permit application and all relevant information, including an analysis of the anticipated effects on visibility in any federal Class I area, shall be sent to the Administrator of the U.S. Environmental Protection Agency and the Federal Land Manager within thirty (30) days of receipt of a complete application and at least sixty (60) days prior to any public hearing on the application; (5-1-94)

iii. Notice of every action related to the consideration of the permit shall be sent to the Administrator

of the U.S. Environmental Protection Agency; (5-1-94)

iv. The public notice issued pursuant to Subsection 209.01.c.ii. shall indicate the opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality effect of the new major facility or major modification, alternatives to it, the control technology required, and other appropriate considerations. All requests for public hearings during a comment period with an opportunity for a hearing must be requested in writing by interested persons within fourteen (14) days of the publication of the legal notice of the proposed permit to construct or within fourteen (14) days prior to the end of the comment period, whichever is later. (3-23-98)

v. The notice of public hearing, if required, shall explain any differences between the Department's preliminary determination and any visibility analysis performed by the Federal Land Manager and provided to the Department within thirty (30) days of the notification pursuant to Subsection 209.02.b.ii. (5-1-94)

vi. Upon a sufficient showing by the Federal Land Manager that a proposed new major facility or major modification will have an adverse impact upon the air quality related values (including visibility) of any federal mandatory Class I area, the Director may deny the application notwithstanding the fact that the concentrations of regulated air pollutants would not exceed the maximum allowable increases for a Class I area. (4-5-00)

**03. Establishing A Good Engineering Stack Height.** The Department will notify the public of the availability of any fluid model or field study used to establish a good engineering practice stack height and provide an opportunity for a public hearing before issuing a permit or setting an emission standard based thereon. (5-1-94)

**04. Revisions Of Permits To Construct.** The Director may approve a revision of any permit to construct provided the stationary source or facility continues to meet all applicable requirements of Sections 200 through 223. Revised permits will be issued pursuant to procedures for issuing permits (Section 209), except that the requirements of Subsections 209.01.c., 209.02.a., and 209.02.b., shall only apply if the permit revision results in an increase in emissions authorized by the permit or if deemed appropriate by the Director. (4-5-00)

**05. Permit To Construct Procedures For Tier I Sources.** For Tier I sources that require a permit to construct, the owner or operator shall either: (5-1-94)

a. Submit only the information required by Sections 200 through 219 for a permit to construct, in which case: (3-23-98)

i. A permit to construct or denial will be issued in accordance with Subsections 209.01.a. and 209.01.b. (5-1-94)

ii. The owner or operator may construct the source after permit to construct issuance or in accordance with Subsection 213.02.c. (3-23-98)

iii. The owner or operator may operate the source after permit to construct issuance so long as it does not violate any terms or conditions of the existing Tier I operating permit and complies with Subsection 380.02. (4-5-00)

iv. Unless a different time is prescribed by these rules, the applicable requirements contained in a permit to construct will be incorporated into the Tier I operating permit during renewal (Section 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. (3-19-99)

v. The application or minor or significant permit modification request shall be processed in accordance with timelines: Section 361 and Subsections 367.02 through 367.05. (3-19-99)

- vi. The final Tier I operating permit action shall incorporate the relevant terms and conditions from the permit to construct; or (4-5-00)
- b. Submit all information required by Sections 200 through 219 for a permit to construct and Sections 300 through 386 for a Tier I operating permit, or Tier I operating permit modification, in which case: (4-5-00)
- i. Completeness of the application shall be determined within thirty (30) days. (5-1-94)
- ii. The Department shall prepare a proposed permit to construct or denial in accordance with Sections 200 through 219 and a draft Tier I operating permit or Tier I operating permit modification in accordance with Sections 300 through 386 within sixty (60) days. (4-5-00)
- iii. The Department shall provide for public comment and affected state review in accordance with Sections 209, 364 and 365 on the proposed permit to construct or denial and draft Tier I operating permit or Tier I operating permit modification. (4-5-00)
- iv. Except as otherwise provided by these rules, the Department shall prepare and issue to the owner or operator a final permit to construct or denial within fifteen (15) days of the close of the public comment period. The owner or operator may construct the source after permit to construct issuance or in accordance with Subsection 213.02.c. (4-5-00)
- v. The final permit to construct will be sent to EPA, along with the proposed Tier I operating permit or modification. The proposed Tier I operating permit or modification shall be sent for review in accordance with Section 366. (4-5-00)
- vi. The Tier I operating permit, or Tier I operating permit modification, will be issued in accordance with Section 367. The owner or operator may operate the source after permit to construct issuance so long as it does not violate any terms or conditions of the existing Tier I operating permit and complies with Subsection 380.02; or (4-5-00)
- c. Submit all information required by Sections 200 through 219 for a permit to construct and Sections 300 through 381 for a Tier I operating permit, or Tier I operating permit modification, in which case: (4-5-00)
- i. Completeness of the application shall be determined within thirty (30) days. (4-5-00)
- ii. The Department shall prepare a draft permit to construct or denial in accordance with Sections 200 through 219 and that also meets the requirements of Sections 300 through 381 within sixty (60) days. (4-5-00)
- iii. The Department shall provide for public comment and affected state review in accordance with Sections 209, 364, and 365 on the draft permit to construct or denial. (4-5-00)
- iv. The Department shall prepare and send a proposed permit to construct or denial to EPA for review in accordance with Section 366. EPA review of the proposed permit to construct or denial in accordance with Section 366 can occur concurrently with public comment and affected state review of the draft permit, as provided in Subsection 209.05.c.iii. above, except that if the draft permit or denial is revised in response to public comment or affected state review, the Department must send the revised proposed permit to construct or denial to EPA for review in accordance with Section 366. (4-5-00)
- v. Except as otherwise provided by these rules, the Department shall prepare and issue to the owner or operator a final permit to construct or denial in accordance with Section 367. The owner or operator may construct the source after permit to construct issuance or in accordance with Subsection 213.02.c. (4-5-00)
- vi. The permittee may, at any time after issuance, request that the permit to construct requirements be incorporated into the Tier I operating permit through an administrative amendment in accordance with Section 381. The owner or operator may operate the source or modification upon submittal of the request for an administrative amendment. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**700. PARTICULATE MATTER--PROCESS WEIGHT LIMITATIONS.**

**01. Particulate Matter Emission Limitations.** The purpose of Sections 700 through 703 is to establish particulate matter emission limitations for process equipment. Sections 700 through 703 shall not apply on or after July 1, 2000, unless specifically referenced in a permit issued prior to July 1, 2000. ~~(5-1-94)~~(6-23-00)T

**02. Minimum Allowable Emission.** Notwithstanding the provisions of Sections 701 and 702, no source shall be required to meet an emission limit of less than one (1) pound per hour. (4-5-00)

**03. Averaging Period.** For the purposes of Sections 701 through 703, emissions shall be averaged according to the following, whichever is the lesser period of time: (4-5-00)

- a. One (1) complete cycle of operation; or (4-5-00)
- b. One (1) hour of operation representing worst-case conditions for the emissions of particulate matter. (4-5-00)

**04. Test Methods And Procedures.** The appropriate test method under Sections 700 through 703 shall be EPA Method 5 contained in 40 CFR Part 60 or such comparable and equivalent methods approved in accordance with Subsection 157.02.d. Test methods and procedures shall comply with Section 157. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**710. PARTICULATE MATTER -- PROCESS EQUIPMENT EMISSION LIMITATIONS ON OR AFTER JULY 1, 2000.**

**01. Purpose Of Section 710.** The purpose of Section 710 is to establish particulate matter emission limitations for non-fugitive emissions from process equipment. Non-fugitive emissions are those emissions which pass through a stack, chimney, vent, or other functionally equivalent opening. (6-23-00)T

**02. De Minimis Exception.** Subsection 710.08 shall not apply to a point of emissions with particulate matter emissions that are at all times less than or equal to one (1) pound per hour. (6-23-00)T

**03. Otherwise Listed Exception.** Subsection 710.08 shall not apply to sources subject to a particulate matter emission standard listed in Sections 676, 677, 786, 821, 822, or 823. (6-23-00)T

**04. Transition To New Particulate Matter Standard For Permitted Sources.** Subsection 710.08 shall not apply to process equipment with an existing permit term or condition establishing a particulate matter standard prior to July 1, 2000 unless or until the existing permit is modified, revised, or incorporated into a new permit to construct or operating permit. At that time: (6-23-00)T

a. The Department shall replace any particulate matter standard based solely on the process weight rate standard in Sections 700 through 703 with the applicable emission standard listed in Subsection 710.08; or (6-23-00)T

b. The permittee can request that the Department replace the particulate matter standard in the permit with a limit at least as stringent in terms of pounds per twenty-four (24) hour period as that contained in the existing permit in accordance with Subsection 710.10. (6-23-00)T

**05. Alternative Permitted Standard.** Where a particulate matter emission standard in a permit issued

on or after July 1, 2000 pursuant to this chapter, and in accordance with Subsection 710.10, is applicable to a specific emissions unit or units, such standard will apply in lieu of the process equipment emission limitations listed in Subsection 710.08. (6-23-00)T

**06. Averaging Period.** For the purposes of Section 710, emissions shall be averaged according to the following: (6-23-00)T

a. One (1) complete cycle of operation; or (6-23-00)T

b. One (1) hour of operation representing maximum emissions of particulate matter. (6-23-00)T

**07. Test Methods And Procedures.** The reference test method under Subsection 710.08 shall be EPA Method 5 contained in 40 CFR Part 60 or such comparable and equivalent methods approved in accordance with Subsection 157.02.d. Test methods and procedures shall comply with Section 157. (6-23-00)T

**08. Emission Standard.** No person shall emit to the atmosphere from any point of emission particulate matter in excess of: (6-23-00)T

a. Two tenths (0.2) grains per dry standard cubic foot for process equipment for which construction or modification has commenced prior to July 1, 2000; or (6-23-00)T

b. One tenth (0.1) grains per dry standard cubic foot for process equipment for which construction or modification has commenced on or after July 1, 2000; or (6-23-00)T

c. For material transfer and storage equipment with design gas flow rates less than or equal to ten thousand (10,000) dry standard cubic feet per minute: (6-23-00)T

i. Two (2) pounds per ton of process weight for equipment with a design throughput less than or equal to thirteen thousand six hundred (13,600) pounds per hour for equipment commencing operation prior to October 1, 1979 and less than or equal to eleven thousand three hundred fifty (11,350) pounds per hour for equipment commencing operation on or after October 1, 1979; or (6-23-00)T

ii. One (1) pound per ton of process weight for equipment with a design throughput greater than thirteen thousand six hundred (13,600) but less than or equal to thirty-nine thousand (39,000) pounds per hour for equipment commencing operation prior to October 1, 1979 and greater than eleven thousand three hundred fifty (11,350) but less than or equal to twenty-eight thousand six hundred (28,600) pounds per hour for equipment commencing operation on or after October 1, 1979; or (6-23-00)T

iii. Five tenths (0.5) pound per ton of process weight for equipment with a design throughput greater than thirty-nine thousand (39,000) but less than or equal to one hundred thousand (100,000) pounds per hour for equipment commencing operation prior to October 1, 1979 and greater than twenty-eight thousand six hundred (28,600) but less than or equal to seventy-two thousand (72,000) pounds per hour for equipment commencing operation on or after October 1, 1979; or (6-23-00)T

iv. Three tenths (0.3) pound per ton of process weight for equipment with a design throughput greater than one hundred thousand (100,000) but less than or equal to two hundred thousand (200,000) pounds per hour for equipment commencing operation prior to October 1, 1979 and greater than seventy-two thousand (72,000) but less than or equal to one hundred forty-two thousand five hundred (142,500) pounds per hour for equipment commencing operation on or after October 1, 1979. (6-23-00)T

**09. Common Stacks.** When two (2) or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emissions units, and the relative contributions of the individual emissions units to the common discharge are not readily distinguishable, then the particulate matter emissions of the common stack must meet the most restrictive particulate matter emission standard of any of the connected emissions units. (6-23-00)T

**10. Alternative Permitted Standard.** For a particulate matter standard in a permit issued on or after

July 1, 2000 to apply in lieu of the standard in Subsection 710.08, or the existing permit pursuant to Subsection 710.04.b., the following must occur: (6-23-00)T

a. The permittee must submit, in its application for a permit under Section 200, 300, or 400, or for a revision, or modification, thereof, a request that an alternative limit apply in lieu of the particulate matter standard in Subsection 710.08 or the existing permit pursuant to Subsection 710.04.b. along with a demonstration that the requested permit limit is at least as stringent, in terms of pounds per twenty-four (24) hour period, as the particulate matter standard in Subsection 710.08 or the existing permit pursuant to Subsection 710.04.b. Such demonstration shall include, but is not limited to: (6-23-00)T

i. Emission limits in different forms must be converted to a common format and/or units of measure or a correlation established among different formats for purposes of comparison. (6-23-00)T

ii. Comparisons of effective dates of compliance, transfer or collection efficiencies, averaging times, and test methods prescribed. (6-23-00)T

iii. A comparison of any work practice requirements directly supporting an emission limit. (6-23-00)T

b. If the Department determines that the limit is more stringent, the Department shall prepare and submit to EPA for review a draft or proposed permit, as appropriate, and technical memorandum, under Section 200, 300, or 400 prior to the scheduled public comment period, that contains the alternative emission limit, along with: (6-23-00)T

i. A demonstration that the requested permit limit is at least as stringent, in terms of pounds per twenty-four (24) hour period, as the particulate matter standard in Subsection 710.08 or the existing permit pursuant to Subsection 710.04.b.; and (6-23-00)T

ii. A letter that specifically requests EPA review of the Department's determination that the alternative permit limit is at least as stringent as the particulate matter standard in Subsection 710.08 or the existing permit pursuant to Subsection 710.04.b. (6-23-00)T

c. In the case of a permit under Section 300, the proposed permit shall expressly state that, pursuant to this Section, the particulate matter standard established in this permit applies in lieu of the particulate matter standards in Subsection 710.08 or the existing permit pursuant to Subsection 710.04.b. (6-23-00)T

d. In the event the alternative permit limit is accomplished through a revision to a permit under Section 300, it must be accomplished using the significant permit modification procedures of Section 382. (6-23-00)T

e. At the conclusion of any public comment period, the Department shall submit to EPA a copy of any comments received. (6-23-00)T

f. EPA has not objected to the alternative limit as follows: (6-23-00)T

i. In the case of a permit issued under Section 300, EPA has not objected to issuance of the proposed Tier 1 permit within EPA's review period pursuant to Section 366. (6-23-00)T

ii. In the case of a permit issued under Section 200 or 400, EPA has not notified the Department in writing that EPA objects to issuance of the proposed permit within forty-five (45) days of receipt of the proposed permit. (6-23-00)T

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 58-0101-0001**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is June 23, 2000.

**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 has adopted a temporary rule and the Department of Environmental Quality (DEQ) is commencing proposed rulemaking to promulgate a final rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking is not a federal requirement; however, under 64 Fed. Reg. 69637-43 (December 14, 1999) the U.S. Environmental Protection Agency (EPA) allows state permitting authorities the discretion to defer permit requirements until December 9, 2004.

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

**Thursday, September 7, 2000, 7:00 p.m.**  
**Department of Environmental Quality Conference Center**  
**1410 N. Hilton, Boise, Idaho.**

Before opening the record to receive oral comments, DEQ staff will answer questions regarding the rule.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208)373-0418.

**DESCRIPTIVE SUMMARY:** This rulemaking amends the exceptions from the requirement to obtain a Tier I operating permit by providing an option for all other sources not located at a major facility as identified in Subsection 301.02.b.iv. to defer Tier I operating permit requirements until June 1, 2006 if they register and provide emissions inventory data by May 1, 2001. For Tier I sources that register, a complete permit application would not be required until June 1, 2005 unless DEQ provides written notification of an earlier date to the owner or operator.

As part of this rulemaking corrections have been made to the Rules for the Control of Air Pollution in Idaho at Sections 201 and 586. At Section 201, Permit to Construct Required, the last sentence has been removed because the language is no longer necessary nor applicable now that DEQ is no longer a division of the Department of Health and Welfare. At Section 586, Toxic Air Pollutants Carcinogenic Increments, corrections have been made to typographical errors found at the entries for perchloroethylene, tetrachloroethylene, and trichloroethylene.

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

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2000 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2001 session of the Idaho Legislature.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because this rulemaking confers a benefit. Benefits affected industrial categories--Provides an option for owners and operators of affected Tier I sources that are currently required to obtain a Tier I operating permit by June 1, 2001 to instead register the source by May 1, 2001 and provide emissions inventory information. Sources that register may defer obtaining a Tier I operating permit and payment of fees until such time as EPA and DEQ have collected sufficient information to demonstrate that requiring operating permits for non-major sources through the Title V permitting process will result in a real benefit to air quality through enhanced compliance with new source performance standards and emission standards for hazardous air pollutants. Benefits the State--Deferring permit requirements for non-major sources allows the State to focus limited regulatory resources on completing the review process for major facilities and sources first. This will help ensure that the major sources that emit air contaminants are adequately reviewed and receive a permit establishing operating requirements and limits in a timely manner to protect the health of Idaho's citizens and the quality of Idaho's environment. The

registration process will benefit the State through ensuring that affected sources are included in the current emissions inventory used in the assessment of air quality and management of Idaho's airsheds.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted because the temporary rulemaking schedule did not allow for the timing of it.

**GENERAL INFORMATION:** For more information about the DEQ's programs and activities, visit DEQ's web site at [www.state.id.us/deq](http://www.state.id.us/deq).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact Marjorie MartzEmerson at (208) 373-0502, [mmartzem@deq.state.id.us](mailto:mmartzem@deq.state.id.us), or contact Mike Simon at (208)373-0502, [msimon@deq.state.id.us](mailto:msimon@deq.state.id.us).

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before September 8, 2000.

Dated this 22nd day of June, 2000.

Paula J. Gradwohl  
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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-0001**

**201. PERMIT TO CONSTRUCT REQUIRED.**

No owner or operator may commence construction or modification of any stationary source, facility, major facility, or major modification without first obtaining a permit to construct from the Department which satisfies the requirements of Sections 200 through 223 unless the source is exempted in any of Sections 220 through 223, or the owner or operator complies with Section 213 and obtains the required permit to construct. ~~No permit to construct shall be issued by the Department for any solid waste incineration unit subject to a standard pursuant to 42 U.S.C. 7429 to any Division within the Department.~~ (4-5-00)(6-23-00)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**301. REQUIREMENT TO OBTAIN TIER I OPERATING PERMIT.**

**01. Prohibition.** No owner or operator shall operate, or allow or tolerate the operation of, any Tier I source without an effective Tier I operating permit. (5-1-94)

**02. Exceptions.** (3-23-98)

- a. No Tier I operating permit is required if the owner or operator is in compliance with Sections 311 through 315 and the Department has not taken final action on the application. (5-1-94)
- b. Tier I sources not located at major facilities do not require a Tier I operating permit until: (3-23-98)
  - i. December 31, 1997 for Phase II sulfur dioxide sources; (3-23-98)
  - ii. January 1, 1999 for Phase II nitrogen oxides sources; (3-23-98)
  - iii. January 1, 2000 for solid waste incineration units required to obtain a permit pursuant to 42 U.S.C. Section 7429(e); and (3-23-98)
  - iv. June 1, 2001 for all other such sources, unless an earlier date is required by an applicable standard or EPA determines that no Tier I operating permit is required. All other such sources may request deferral of the Tier I operating permit requirements until June 1, 2006, or such time as the Department provides written notification of an earlier date, by registering the source in accordance with Subsection 313.01.e. ~~(3-23-98)~~(6-23-00)T
- c. No Tier I operating permit is required for the following Tier I sources: (5-1-94)
  - i. All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA; and (5-1-94)
  - ii. All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61.145. (5-1-94)

**(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.: (3-23-98)

i. Existing on July 1, 1998, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit by no later than January 1, 1999, unless the Department provides written notification of an earlier date to the owner or operator. (3-23-98)

ii. That become Tier I sources after July 1, 1998, located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit within twelve (12) months after becoming a Tier I source or commencing operation, unless the Department provides written notification of an earlier date to the owner or operator. (3-23-98)

e. For Tier I sources identified in Subsection 301.02.b.iv.: (3-23-98)

i. Existing on January 1, 2000, the owner or operator of the Tier I source shall: (6-23-00)T

(1) 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; or (~~3-23-98~~)(6-23-00)T

(2) Register the source by submitting the information listed in Subsection 313.01.f. to the Department no later than May 1, 2001. Complete applications for an original Tier I operating permit for sources registered by May 1, 2001 shall be submitted to the Department no later than June 1, 2005, unless the Department provides written notification of an earlier date to the owner or operator. Any additional plans, specifications, evidence or documents that the Department may require to complete an evaluation of a registered source shall be furnished on request. (6-23-00)T

ii. That become Tier I sources after January 1, 2000 but before January 1, 2005, and are located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source shall: (6-23-00)T

(1) Submit to the Department a complete application for an original Tier I operating permit within twelve (12) months of becoming a Tier I source or commencing operation, or (6-23-00)T

(2) Register the source by submitting the information listed in Subsection 313.01.f. to the Department no later than twelve (12) months after becoming a Tier I source or commencing operation. Complete applications for an original Tier I operating permit for a Tier I source that registers under this provision shall be submitted to the Department no later than June 1, 2005, unless the Department provides written notification of an earlier date to the owner or operator. Any additional plans, specifications, evidence or documents that the Department may require to complete the evaluation of a registered source shall be furnished on request. (6-23-00)T

iii. That become Tier I sources after January 1, 2005, 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~~)(6-23-00)T

f. Any person owning or operating a Tier I source which applies Subsections 313.01.e.i.(2) or 313.01.e.ii.(2) in lieu of applying Subsections 313.01.e.i.(1) or 313.01.e.ii.(1) shall, by May 1, 2001 or within twelve (12) months after becoming a Tier I source, register with the Department by providing the following information: (6-23-00)T

i. Facility information. The name, address, telephone number, and location of the facility. (6-23-00)T

ii. Owner/operator information. The name, address, and telephone numbers of the owners and operators. (6-23-00)T

iii. Facility emissions units. The number and type of emissions units present at the facility. (6-23-00)T

iv. Pollutant registration. The emissions from the previous calendar year, or other twelve (12) month period requested by the registrant and approved by the Department, for any regulated air pollutant based on actual annual emissions and/or an estimate of the actual annual emissions calculated using the unit's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. Additional detailed information on sources, stacks, and emissions may be requested by the Department on an annual basis. (6-23-00)T

**02. Earlier Dates During Initial Period.** Except as otherwise provided in these rules, during the initial period which begins May 1, 1994 and ends three (3) years after EPA approval of the Tier I operating program, the Department may designate Tier I sources for processing as follows: (5-1-94)

a. The Department may develop a general estimate of the total work load and benefits associated with the Tier I operating permit applications that are predicted to be submitted during the initial period including, but not limited to, original permit applications and significant permit modification applications. (3-19-99)

b. Considering the complexity of the applications, air quality benefits of permitting and requests for early actions from owners and operators, the Department may divide the applications into three (3) groups each representing approximately one-third (1/3) of the total work load and benefits. (5-1-94)

c. The Department may prioritize the three (3) groups and the Tier I sources within each group for processing, establish early application deadlines and notify the owners or operators of the Tier I sources in the group in writing of a required submittal date earlier than the general deadlines provided in Subsection 313.01. (5-1-94)

**03. Renewals Of Tier I Operating Permits.** The owner or operator of the Tier I source shall submit a complete application to the Department for a renewal of the Tier I operating permit at least six (6) months before, but no earlier than eighteen (18) months before, the expiration date of the existing Tier I operating permit. To ensure that the term of the operating permit does not expire before the permit is renewed, the owner or operator is encouraged to submit the application nine (9) months prior to expiration. (4-5-00)

**04. Changes To Tier I Operating Permits.** Sections 380 through 386 provide the requirements and procedures for changes at Tier I sources and to Tier I operating permits. (3-19-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**586. TOXIC AIR POLLUTANTS CARCINOGENIC INCREMENTS.**

The screening emissions levels (EL) and acceptable ambient concentrations (AACC) for carcinogens are as provided in the following table. The AACC in this section are annual averages.

CAS NUMBER	SUBSTANCE	URF	EL lb/hr	AACC ug/m3
75-07-0	Acetaldehyde	2.2E-06	3.0E-03	4.5E-01
79-06-1	Acrylamide	1.3E-03	5.1E-06	7.7E-04
107-13-1	Acrylonitrile	6.8E-05	9.8E-05	1.5E-02
309-00-2	Aldrin	4.9E-03	1.3E-06	2.0E-04
62-53-3	Aniline	7.4E-06	9.0E-04	1.4E-01
140-57-8	Aramite	7.1E-06	9.3E-04	1.4E-01
NA	Aroclor, all (PCB) (ID)	---	6.6E-05	1.0E-02

CAS NUMBER	SUBSTANCE	URF	EL lb/hr	AACC ug/m3
7440-38-2	Arsenic compounds	4.3E-03	1.5E-06	2.3E-04
1332-21-4	Asbestos (Fibers /M.L.)	2.3E-01	N/A	4.0E-06
71-43-2	Benzene	8.3E-06	8.0E-04	1.2E-01
92-87-5	Benzidine	6.7E-02	9.9E-08	1.5E-05
50-32-8	Benzo(a)pyrene	3.3E-03	2.0E-06	3.0E-04
440-41-7	Beryllium & compounds	2.4E-04	2.8E-05	4.2E-03
106-99-0	1,3-Butadiene	2.8E-04	2.4E-05	3.6E-03
111-44-4	Bis (2-chloroethyl) ether	3.3E-04	2.0E-05	3.0E-03
542-88-1	Bis (chloromethyl) ether	6.2E-02	1.0E-07	1.6E-05
108-60-1	Bis (2-chloro-1-methyl- ethyl) ether	2.0E-05	3.3E-04	5.0E-02
117-81-7	Bis (2-ethylhexyl) phthalate	2.4E-07	2.8E-02	4.2E+00
7440-43-9	Cadmium and compounds	1.8E-03	3.7E-06	5.6E-04
56-23-5	Carbon tetrachloride	1.5E-05	4.4E-04	6.7E-02
57-74-9	Chlordane	3.7E-04	1.8E-04	2.7E-03
67-66-3	Chloroform	2.3E-05	2.8E-04	4.3E-02
7440-47-3	Chromium (VI) & compounds as Cr+6	1.2E-02	5.6E-07	8.3E-05
NA	Coal Tar Volatiles as benzene			
NA	Coke oven emissions	6.2E-04	1.1E-05	1.6E-03
8001-58-9	Creosote (ID) See coal tar volatiles as benzene extractables			
50-29-3	DDT (Dichlorodi phenyltrichloroethane)	9.7E-05	6.8E-05	1.0E-02
96-12-8	1,2-Dibromo-3-chloropropane	6.3E-03	1.0E-06	1.6E-04
75-34-3	1,1 dichloroethane	2.6E-05	2.5E-04	3.8E-02
107-06-2	1,2 dichloroethane	2.6E-05	2.5E-04	3.8E-02
75-35-4	1,1 dichloroethylene	5.0E-05	1.3E-04	2.0E-02
75-09-2	Dichloromethane (Methylenechloride)	4.1E-06	1.6E-03	2.4E-01
542-75-6	1,3 dichloropropene	3.5E-01	1.9E-07	2.9E-06
764-41-0	1,4-Dichloro-2-butene	2.6E-03	2.5E-06	3.8E-04
60-57-1	Dieldrin	4.6E-03	1.4E-06	2.1E-04
56-53-1	Diethylstilbestrol	1.4E-01	4.7E-08	7.1E-06
123-91-1	1,4 dioxane	1.4E-06	4.8E-03	7.1E-01

CAS NUMBER	SUBSTANCE	URF	EL lb/hr	AACC ug/m3
	Dioxin and Furans (2,3,7,8,TCDD & mixtures) Dioxin and Furan emissions shall be considered as one TAP and expressed as an equivalent emission of 2,3,7,8, TCDD based on the relative potency of the isomers in accordance with US EPA guidelines. Copies of EPA Interim procedures for estimating risks associated with exposures to mixtures of chlorinated dibenzo-p-dioxins and dibenzofurans (CDDs and CDFs). 1989 Updates are available by requesting EPA/625/3-89/016, March 1989 from ORD Publications (513) 684-7562.			
122-66-7	1,2-Diphenylhydrazine	2.2E-04	3.0E-05	4.5E-03
106-89-8	Epichlorohydrin	1.2E-06	5.6E-03	8.3E-01
106-93-4	Ethylene dibromide	2.2E-04	3.0E-05	4.5E-03
75-21-8	Ethylene oxide	1.0E-04	6.7E-05	1.0E-02
50-00-0	Formaldehyde	1.3E-05	5.1E-04	7.7E-02
76-44-8	Heptachlor	1.3E-03	5.1E-06	7.7E-04
1024-57-3	Heptachlor Epoxide	2.6E-03	2.5E-06	3.5E-04
118-74-1	Hexachlorobenzene	4.9E-04	1.3E-05	2.0E-03
87-68-3	Hexachlorobutadiene	2.0E-05	3.3E-04	5.0E-02
	Hexachlorocyclo-hexane, Technical	5.1E-04	1.3E-05	1.9E-03
319-84-6	Hexachlorocyclohexane (Lindane) Alpha (BHC)	1.8E-03	3.7E-06	5.6E-04
319-86-8	alpha Hexachlorocyclohexane	1.8E-03	3.6E-05	5.6E-03
319-85-7	Hexachlorocyclohexane (Lindane) Beta (BHC)	5.3E-04	1.3E-05	1.8E-03
319-86-8	b-Hexachlorocyclohexane	5.3E-04	1.3E-06	1.9E-04
58-89-9	Hexachlorocyclohexane (Lindane) Gamma (BHC)	3.8E-04	1.7E-05	2.6E-03
67-72-1	Hexachloroethane	4.0E-06	1.7E-03	2.5E-01
301-01-2	Hydrazine	2.9E-03	2.3E-06	3.4E-04
302-01-2	Hydrazine Sulfate	2.9E-03	2.2E-06	3.5E-04
56-49-5	3-methylcholanthrene	2.7E-03	2.5E-06	3.7E-04
75-09-2	Methylene Chloride	4.1E-06	1.6E-03	2.4E-01
74-87-3	Methyl chloride	3.6E-06	1.9E-03	2.8E-01
101-14-4	4,4-Methylene bis(2-Chloroaniline)	4.7E-05	1.4E-04	2.1E-02
60-34-4	Methyl hydrazine	3.1E-04	2.2E-05	3.2E-03
7440-02-0	Nickel	2.4E-04	2.7E-05	4.2E-03
12035-72-2	Nickel Subsulfide	4.8E-04	1.4E-05	2.1E-02
7440-02-0	Nickel Refinery Dust	2.4E-04	2.8E-05	4.2E-02
79-46-9	2-Nitropropane	2.7E-02	2.5E-07	3.7E-05
55-18-5	N-Nitrosodiethylamine (diethylnitrosoamine) (DEN)	4.3E-02	1.5E-07	2.3E-05
62-75-9	N-Nitrosodimethylamine	1.4E-02	4.8E-07	7.1E-05

CAS NUMBER	SUBSTANCE	URF	EL lb/hr	AACC ug/m3
924-16-3	N-Nitrosodi-n-butylamine	1.6E-03	4.1E-06	6.3E-04
930-55-2	N-Nitrosopyrrolidine	6.1E-04	1.1E-05	1.6E-03
684-93-5	N-Nitroso-N-methylurea (NMU)	3.5E-01	1.9E-08	2.9E-06
794-93-4	Panfuran S (see dihydroxymethyl-furatrizine)			
82-68-8	Pentachloronitrobenzene	7.3E-05	9.1E-05	1.4E-02
127-18-4	Perchloroethylene (see tetrachloroethylene)	<del>7.3E-05</del>	<del>9.1E-05</del>	<del>1.4E-02</del>
NA	Polyaromatic Hydrocarbons	7.3E-05	9.1E-05	1.4E-02
	(Polycyclic Organic Matter) For emissions of PAH mixtures, the following PAHs and shall be considered together as one TAP, equivalent in potency to benzo(a)pyrene: benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenzo(a,h)anthracene, chrysene, indenol(1,2,3,-cd)pyrene, benzo(a)pyrene. (WA)			
23950-58-5	Promanide	4.6E-06	1.5E-03	2.2E-01
50-55-5	Reserpine	3.0E-03	2.2E-06	3.3E-04
1746-01-6	2,3,7,8,-Tetrachlorodibenzo-p-dioxin (2,3,7,8, -TCDD)	4.5.E+01	1.5E-10	2.2E-08
NA	Soots and Tars (ID) See coal tar volatiles as benzene extractables.			
79-34-5	1,1,2,2,Tetrachloro-ethane	5.8E-05	1.1E-05	1.7E-02
<del>127-18-4</del>	Tetrachloroethylene	4.8E-07	1.3E-02	2.1E+00
79-00-5	1,1,2 - trichloroethane	1.6E-05	4.2E-04	6.2E-02
62-56-6	Thiourea	5.5E-04	1.2E-05	1.8E-03
8001-35-2	Toxaphene	3.2E-04	2.0E-05	3.0E-03
79-01-6	Trichloroethylene	1.3E-06	5.1E-04	<del>7.7E-02</del> <u>1</u>
88-06-2	2,4,6 - Trichlorophenol	5.7E-06	1.2E-03	1.8E-01
75-01-4	Vinyl chloride	7.1E-06	9.4E-04	1.4E-01

~~(6-30-95)(6-23-00)T~~

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 58-0101-0002**

**NOTICE OF NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation in an informal, negotiated rulemaking process prior to the initiation of formal rulemaking procedures by the agency. The negotiated rulemaking action is authorized by Section 39-105, Idaho Code. The formal rulemaking action is authorized by Sections 39-105 and 39-107, Idaho Code.

**MEETING SCHEDULE:** Persons interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting:

**August 30, 2000, 1 p.m. to 4 p.m.**  
**Department of Environmental Quality, Conference Rooms A and D**  
**1410 N. Hilton, Boise, Idaho**

The meeting site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting. For arrangements, contact the undersigned at (208)373-0418.

**DESCRIPTIVE SUMMARY:** The purpose of this negotiated rulemaking is to evaluate potential options for clarifying and streamlining the State air quality permitting process to build a more efficient and effective program. This rulemaking will consider a number of issues in the permitting program, including, but not limited to: (a) transition from permits to construct (PTCs) to permits to operate; (b) clarification of permit requirements prior to construction and prior to operation; (c) integration of PTC and Tier II operating permit requirements into Tier I permits, where appropriate, to reduce the burden of maintaining multiple permits; (d) expiration, renewal, and modification of operating permits; and (e) permits by rule.

This rulemaking should be of interest to affected industry, the special interest groups who participate in the protection of air quality in Idaho, and the general public. The proposed air quality permitting program revisions will affect how stationary sources are permitted statewide. The rule will be developed by DEQ in conjunction with an advisory committee made up of persons having interests in the protection of air quality in Idaho.

The goal of the negotiated rulemaking process is to develop by consensus the text of a recommended rule. If a consensus is reached, a draft of the rule, incorporating the consensus and any other appropriate information, recommendations, or materials, will be transmitted to DEQ for consideration and use in the formal rulemaking process. If a consensus is unable to be achieved on particular issues, the negotiated rulemaking process may result in a report specifying those areas on which consensus was and was not reached, together with arguments for and against positions advocated by various participants. At the conclusion of the negotiated rulemaking process, DEQ intends to present a rule to the Board of Environmental Quality (Board) for temporary adoption and, at the same time, commence formal rulemaking with the publication of a proposed rule, using and taking into consideration the results of the negotiated rulemaking process. DEQ intends to present the rule to the Board for temporary adoption in 2001.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.state.id.us/deq](http://www.state.id.us/deq).

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the negotiated rulemaking, contact Marjorie MartzEmerson at (208) 373-0502, [mmartzem@deq.state.id.us](mailto:mmartzem@deq.state.id.us). Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposal to initiate negotiated rulemaking. All written comments must be received by the undersigned on or before August 23, 2000.

Dated this 7th day of July, 2000.

Paula J. Gradwohl, Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton, Boise, Idaho 83706-1255  
Fax No. (208)373-0481, [psaul@deq.state.id.us](mailto:psaul@deq.state.id.us)

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**58.01.23 - RULES OF ADMINISTRATIVE PROCEDURE BEFORE THE**  
**BOARD OF ENVIRONMENTAL QUALITY**

**DOCKET NO. 58-0123-0001**

**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 by Sections 39-105 and 39-107, Idaho Code.

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

**Tuesday, August 24, 2000, 7:00 p.m.**  
**Department of Environmental Quality Conference Center**  
**1410 N. Hilton, Boise, Idaho.**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208)373-0418.

**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to adopt a new rule chapter entitled "Rules of Administrative Procedure Before the Board of Environmental Quality". The purpose of this rulemaking is to implement the provisions of Senate Bill 1426, 2000 Session Law Chapter 132, wherein the Idaho Legislature created a new Department of Environmental Quality and mandated the new Department to promulgate contested case rules. The proposed rules include administrative procedures governing petitions to initiate rulemaking and declaratory rulings as well as contested cases. To the extent possible, the proposed rules are consistent with IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General".

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2000 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2001 session of the Idaho Legislature.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted because the rulemaking schedule did not allow for the timing of it.

**GENERAL INFORMATION:** For more information about the Department of Environmental Quality's programs and activities, visit DEQ's web site at [www.state.id.us/deq](http://www.state.id.us/deq).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact Paula J. Gradwohl (208)373-0418, [psaul@deq.state.id.us](mailto:psaul@deq.state.id.us).

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before September 6, 2000.

Dated this 23rd day of June, 2000.

Paula J. Gradwohl  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
Fax No. (208)373-0481  
[psaul@deq.state.id.us](mailto:psaul@deq.state.id.us)

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0123-0001**

**IDAPA 58**  
**TITLE 01**  
**Chapter 23**

**58.01.23 - RULES OF ADMINISTRATIVE PROCEDURE**  
**BEFORE THE BOARD OF ENVIRONMENTAL QUALITY**

**000. LEGAL AUTHORITY.**

Under Sections 39-105, 39-107 and 67-5206, Idaho Code, the Idaho Legislature has granted the Board of Environmental Quality the authority to promulgate these rules. ( )

**001. TITLE, SCOPE, AND APPLICABILITY.**

**01. Title.** These rules are shall be cited as IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality”. ( )

**02. Scope.** These rules establish general standards for contested case proceedings, petitions for rulemaking, and declaratory ruling proceedings as required by law.

**03. Applicability Of Contested Case Provisions.** Section 39-107, Idaho Code, provides the opportunity to initiate a contested case proceeding. It provides that any person aggrieved by an action or inaction of the Department shall be afforded an opportunity for a fair hearing upon a request therefore in writing pursuant to Chapter 52, Title 67, Idaho Code. These rules govern such proceedings, except for the following: ( )

a. Hazardous Waste Permit Program--Procedures for Decision Making. The procedure for decision making regarding all hazardous waste permits, including all hearings and administrative appeals, shall be governed by Rules of the Idaho Department of Environmental Quality, IDAPA 58.01.05, Section 013, “Rules and Standards for Hazardous Waste”. ( )

b. Personnel Grievances and Employment Related Actions. Personnel grievances and employment related actions are governed by IDAPA 15.04.01, “Rules of the Division of Human Resources and Personnel Commission,” and the DEQ Personnel Policies and Procedures Manual. ( )

**002. WRITTEN INTERPRETATIONS.**

As described in Section 67-5201(16)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255. ( )

**003. ADMINISTRATIVE PROCEDURES.**

These rules govern administrative procedures before the Board of Environmental Quality. ( )

**004. INCORPORATION BY REFERENCE.**

These rules do not contain documents incorporated by reference. ( )

**005. CONFIDENTIALITY OF RECORDS.**

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality”. ( )

**006. APPLICABILITY OF RULES OF ADMINISTRATIVE PROCEDURE OF THE ATTORNEY GENERAL.**

**01. Inapplicable Provisions.** The Board of Environmental Quality finds that the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 009 through 799, are inapplicable and inappropriate for contested cases involving the programs administered by the Department, under the circumstances, because of the specific and unique requirements of federal and state law regarding notices, hearing processes, procedural requirements, time-lines, program guidelines, and other provisions requiring the Department to adopt its own procedures pursuant to Section 67-5206(5)(b), Idaho Code, and hereby affirmatively promulgates and adopts alternative procedures and elects not to be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedures of the Attorney General," Sections 009 through 799. However, the contested case provisions in these rules are consistent with IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," to the extent possible given the statutory authority of, and the programs administered by, the Department. ( )

**02. Applicable Provisions.** The Board of Environmental Quality finds that the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 000 through 008 and 800 through 860, are applicable for rulemaking procedures of the Department and elects to be governed by these provisions. ( )

**007. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. ( )

**008. FILING OF DOCUMENTS.**

All documents concerning actions governed by these rules shall be filed with the hearing coordinator at the following address: Hearing Coordinator, Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, FAX No. (208)373-0481. Pleadings and other documents may be filed by facsimile transmission (FAX). The originating party is responsible for retaining proof of filing by FAX. The documents are deemed to be filed on the date received by the hearing coordinator. Upon receipt of the filed document, the hearing coordinator will provide a conformed copy to the originating party. With the exception of the pleading initiating the contested case, a copy of each document filed with the hearing coordinator shall be served upon the presiding officer. ( )

**009. (RESERVED).**

**010. DEFINITIONS AND ABBREVIATIONS.**

**01. Agency.** The Department of Environmental Quality or the Board of Environmental Quality. ( )

**02. Agency Head.** The Idaho Board of Environmental Quality. ( )

**03. Aggrieved Person Or Person Aggrieved.** Any person or entity with legal standing to challenge an action or inaction of the Department. ( )

**04. Board.** The Idaho Board of Environmental Quality. ( )

**05. Contested Case.** A proceeding resulting in an order, in which the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons are required by law to be determined by the Board after an opportunity for a hearing, which shall not include rulemaking or Personnel grievances and employment related actions or proceedings pursuant to the hazardous waste permit program governed by the Rules of the Department of Environmental Quality, IDAPA 58.01.05, "Rules and Standards for Hazardous Waste." ( )

**06. Declaratory Ruling.** An interpretation by the Board, rendered pursuant to Section 67- 5232, Idaho Code, as to the applicability of any statute, order, or rule of the Board to a person's circumstances. ( )

- 07. Department Or DEQ.** The Idaho Department of Environmental Quality. ( )
- 08. Director.** The Director of the Department of Environmental Quality. ( )
- 09. Hearing Coordinator.** The Person who coordinates, schedules, issues notices, and administers actions governed by these rules on behalf of the presiding officer. The hearing coordinator assigns a permanent docket number to each action for purposes of identification and acts as custodian of records for all information and documentation involving actions governed by these rules. The hearing coordinator's mailing address and phone number is: Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0418, FAX (208)373-0481. ( )
- 10. Hearing Officer.** A Person appointed or designated by the Board, who presides over actions governed by these rules and who may act as the presiding officer. ( )
- 11. Idaho Administrative Bulletin.** The Idaho Administrative Bulletin established in Chapter 52, Title 67, Idaho Code. ( )
- 12. Order.** An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. ( )
- 13. Party.** Each person or agency named or admitted as a party. A party to a contested case shall be one (1) of the following: ( )
- a. **Petitioner.** Any person aggrieved by an action or inaction of the Department who files, in accordance with these rules and Section 39-107, Idaho Code, a written petition for a determination of or appeal of his rights, duties, licenses or interests and any person who files a petition for a declaratory ruling or petition to initiate rulemaking. ( )
- b. **Respondent.** Any person who responds to a petition filed in accordance with these rules. ( )
- c. **Intervenor.** Any person, other than the petitioner or respondent, who is permitted to participate as a party pursuant to Sections 350 through 354. ( )
- 14. Person.** Any individual, partnership, corporation, association, governmental subdivision, department, agency or instrumentality, or public and private organization or entity of any character. ( )
- 15. Petition.** Pleadings initiating a contested case, rulemaking, or declaratory ruling, or to intervene filed in accordance with these rules. ( )
- 16. Pleadings.** All those documents filed by any party in a contested case proceeding. ( )
- 17. Presiding Officer(s).** One (1) or more members of the Board or a duly appointed hearing officer. When more than one (1) officer sits at hearing, they may all jointly be presiding officers or may designate one (1) of them to be the presiding officer. ( )
- 011. LIBERAL CONSTRUCTION.**  
The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless required by statute, or otherwise expressly provided in these rules or order of the presiding officer, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency. ( )
- 012. IDENTIFICATION OF COMMUNICATIONS.**  
Parties' communications addressing or pertaining to a given proceeding should be written under that proceeding's case caption and case number, if applicable. ( )
- 013. COMPUTATION OF TIME.**  
In computing any period of time prescribed or allowed by these rules or by order of the presiding officer, the date of

the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. ( )

**014. -- 039. (RESERVED).**

**040. FORM AND CONTENTS OF PETITION TO INITIATE RULEMAKING.**

This rule addresses petitions to initiate rule-making as described by Section 67-5230, Idaho Code. ( )

**01. Requirement.** Any person petitioning for initiation of rulemaking must comply with this rule. ( )

**02. Form And Contents.** The petition must be filed with the agency and shall: ( )

a. Identify the petitioner and state the petitioner's interest(s) in the matter; ( )

b. Describe the nature of the rule or amendment to the rule urged to be promulgated and the petitioner's suggested rule or amendment; and ( )

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the proposed rulemaking. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. ( )

**041. AGENCY RESPONSE TO PETITION.**

**01. Action Of Agency.** The Board shall have until the first regularly scheduled meeting that takes place fourteen (14) or more days after submission of the petition to initiate rulemaking proceedings in accordance with Sections 67-5220 through 67-5225, Idaho Code, or deny the petition in writing, stating its reasons for the denial. ( )

**02. Denial.** If the petition is denied, the written denial shall state: ( )

a. The agency has denied your petition to initiate rulemaking. This denial is a final agency action within the meaning of Section 67-5230, Idaho Code. ( )

b. Pursuant to Section 67-5270, Idaho Code, any person aggrieved by this final agency action may seek review of the denial to initiate rule-making by filing a petition in the District Court of the county in which: ( )

i. The hearing was held; ( )

ii. This final agency action was taken; ( )

iii. The party seeking review resides, or operates its principal place of business in Idaho; or ( )

iv. The real property or personal property that was the subject of the denial of the petition for rulemaking is located. ( )

c. This appeal must be filed within twenty-eight (28) days of the service date of this denial of the petition to initiate rulemaking. See Section 67-5273, Idaho Code. ( )

**042. NOTICE OF INTENT TO INITIATE RULEMAKING CONSTITUTES ACTION ON PETITION.**

The agency may initiate rulemaking proceedings in response to a petition to initiate rulemaking by issuing a notice of intent to promulgate rules in accordance with Section 67-5220, Idaho Code, on the subject matter of the petition if it wishes to obtain further comment whether a rule should be proposed or what rule should be proposed. Publication of

a notice of intent to promulgate rules satisfies an agency's obligations to take action on the petition and is not a denial of a petition to initiate rulemaking. ( )

**043. -- 049. (RESERVED).**

**050. FORM AND CONTENTS OF PETITION FOR DECLARATORY RULINGS.**

Any person petitioning for a declaratory ruling on the applicability of a statute, rule or order administered by the agency must comply with this rule. ( )

**01. Form.** The petition shall: ( )

a. Identify the petitioner and state the petitioner's interest in the matter; ( )

b. State the declaratory ruling that the petitioner seeks; and ( )

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition. ( )

**02. Legal Assertions.** Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. ( )

**051. NOTICE OF PETITION FOR DECLARATORY RULING.**

Notice of receipt of a petition for declaratory ruling may be issued by the agency consistent with the requirements of Chapter 1, Title 60, Idaho Code. ( )

**052. PETITIONS FOR DECLARATORY RULINGS TO BE DECIDED BY ORDER.**

**01. Final Agency Action.** The agency's decision on a petition for declaratory ruling on the applicability of any statute, rule or order administered by the agency is a final agency action decided by order. ( )

**02. Content.** The order issuing the declaratory ruling shall contain or must be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ( )

a. This is a final agency action issuing a declaratory ruling. ( )

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any person aggrieved by this declaratory ruling may appeal to district court by filing a petition in the District Court in the county in which: ( )

i. A hearing was held; ( )

ii. The declaratory ruling was issued; ( )

iii. The party appealing resides, or operates its principal place of business in Idaho; or ( )

iv. The real property or personal property that was the subject of the declaratory ruling is located. ( )

c. This appeal must be filed within twenty-eight (28) days of the service date of this declaratory ruling. See Section 67-5273, Idaho Code. ( )

**053. -- 099. (RESERVED).**

**100. TIME PERIOD FOR FILING PETITION TO INITIATE CONTESTED CASE.**

The individual program rules for time limitations within which certain actions must be taken or documents filed shall be followed. In the event there is no provision in the Idaho Code or other specific rule, an aggrieved person shall have twenty-eight (28) days to file a petition initiating a contested case regarding any action or inaction of the Department.

( )

**101. DEPARTMENT ACTION NOT STAYED.**

An action or inaction of the Department, which is the subject of a proceeding governed by these rules, is not stayed unless, upon a motion filed by a party, it is so ordered by the presiding officer. ( )

**102. PETITIONER HAS BURDEN OF PROOF.**

Unless otherwise provided by statute or by the presiding officer, the petitioner in a contested case has the burden of proving the facts upon which relief is requested. ( )

**103. DISMISSAL OF INACTIVE CONTESTED CASES.**

In the absence of a showing of good cause for retention, any contested case in which no action has been taken for a period of six (6) months shall be dismissed. At least fourteen (14) days prior to such dismissal, the notice of the pending dismissal shall be served on all parties by mailing the notice to the last known addresses most likely to give notice to the parties. ( )

**104. -- 199. (RESERVED).**

**200. INITIAL PLEADING BY PARTY--LISTING OF REPRESENTATIVES.**

The initial pleading of each party to a contested case must name the party's representative(s) for service and state the representative's(s) address(es) for purposes of receipt of all official documents. No more than two (2) representatives for service of documents may be listed in an initial pleading. Service of documents on the named representative(s) is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as the party's representative, the person signing the pleading will be considered the party's representative. If an initial pleading is signed by more than one (1) person without identifying the representative(s) for service of documents, the presiding officer may select the person(s) upon whom documents are to be served. If two (2) or more parties or persons file identical or substantially like initial pleadings, the presiding officer may limit the number of parties or persons required to be served with official documents in order to expedite the proceeding and reasonably manage the burden of service upon the parties. ( )

**201. (RESERVED).**

**202. REPRESENTATION OF PARTIES.**

**01. Appearances And Representation.** To the extent authorized or required by law, appearances and representation of parties or other persons at contested case proceedings must be as follows: ( )

a. Natural Person. A natural person may represent himself or herself or be represented by an attorney or, if the person lacks full legal capacity to act for himself or herself, then by a legal guardian or guardian ad litem or representative of an estate. ( )

b. A general partnership may be represented by a partner or an attorney. ( )

c. A corporation, or any other business entity other than a general partnership, shall be represented by an attorney. ( )

d. A municipal corporation, local government agency, unincorporated association or nonprofit organization shall be represented by an attorney. ( )

e. A state, federal or tribal governmental entity or agency shall be represented by an attorney. ( )

**02. Representation.** The representatives of parties at hearing, and no other persons or parties appearing before the agency, are entitled to examine witnesses and make or argue motions. ( )

**203. SERVICE ON REPRESENTATIVES OF PARTIES.**

From the time a party files its initial pleading in a contested case, that party must serve and all other parties must serve all future documents intended to be part of the agency record upon all other parties' representatives designated

pursuant to Section 200, unless otherwise directed by order or notice or by the presiding officer on the record. The presiding officer may order parties to serve past documents filed in the case upon those representatives. ( )

**204. WITHDRAWAL OF PARTIES.**

Any party may withdraw from a proceeding in writing or at the hearing. ( )

**205. SUBSTITUTION OF REPRESENTATIVE--WITHDRAWAL OF REPRESENTATIVE.**

A party's representative may be changed and a new representative may be substituted by notice to all parties so long as the proceedings are not unreasonably delayed. The presiding officer may permit substitution of representatives at the hearing in the presiding officer's discretion. Persons representing a party who wish to withdraw their representation of a party in a proceeding before the agency must immediately file in writing a notice of withdrawal of representation and serve that notice on the party represented and all other parties. ( )

**206. -- 209. (RESERVED).**

**210. PLEADINGS IN CONTESTED CASES LISTED--MISCELLANEOUS.**

Pleadings in contested cases are called petitions, responses, motions, and objections. Affidavits or declarations under penalty of perjury may also be filed. A party's initial pleading in any proceeding must comply with Section 200. All pleadings filed during the proceeding must be filed in accordance with Sections 008 and 300 through 302. A party may adopt or join in any other party's pleading. Two (2) or more separately stated grounds, claims or answers concerning the same subject matter may be included in one (1) pleading. ( )

**211. PETITIONS TO INITIATE CONTESTED CASE--DEFINED--FORM AND CONTENTS.**

**01. Defined.** The pleading initiating a contested case is called a "petition". ( )

**02. Form And Contents.** The form and contents of a petition initiating a contested cases shall: ( )

a. Fully state the facts upon which it is based, including the specific alleged action or inaction of the Department; ( )

b. Refer to the particular provisions of statute, rule, order or other controlling law upon which it is based; ( )

c. State the relief sought; and ( )

d. State the name of the person petitioned against (the respondent), if any. ( )

**212. RESPONSES IN CONTESTED CASES--DEFINED--FORM AND CONTENTS.**

**01. Defined.** The pleading filed by the respondent in response to the petition initiating the contested case is called a "response". ( )

**02. Form And Contents.** The form and contents of a response to a petition initiating a contested case shall: ( )

a. Separately admit or deny to each factual averment in the petition; ( )

b. Separately admit or deny the applicability of each legal authority asserted in the petition; ( )

c. Fully state any additional facts necessary to decision of the contested case; ( )

d. Refer to any additional provisions of statute, rule, order or other controlling law upon which it is based; and ( )

e. State the relief sought. ( )

**03. Filing And Service.** Responses to petitions must be filed and served on all parties of record within twenty-one (21) days after service of the petition, unless order modifies the time within which a response may be made, or a motion to dismiss is filed within twenty-one (21) days. When a response is not timely filed under this rule, the presiding officer may enter a default order pursuant to Sections 700 through 702. ( )

**213. MOTIONS--DEFINED--FORM AND CONTENTS.**

**01. Defined.** All pleadings requesting the agency to take any other action in a contested case, except petitions, are called "motions". Motions include, but are not limited to, those allowed by the Idaho Rules of Civil Procedure. ( )

**02. Idaho Rules Of Civil Procedure.** Unless required by statute, or otherwise expressly provided in these rules or order of the presiding officer, the Idaho Rules of Civil Procedure shall govern the form, standard for determining, procedure, and time frames for filing and responding to or objecting to all motions, including motions to dismiss, and motions for summary judgment. ( )

**214. -- 299. (RESERVED).**

**300. FORM OF PLEADINGS.**

**01. Pleadings.** All pleadings, except those on agency forms, submitted by a party and intended to be part of an agency record should: ( )

a. Be submitted on white eight and one-half inch (8 1/2") by eleven inch (11") paper copied on one (1) side only; ( )

b. State the case caption, case number, if applicable, and title of the document; ( )

c. Include on the upper left corner of the first page the name(s), mailing and street address(es), and telephone and FAX number(s) of the person(s) filing the document or the person(s) to whom questions about the document can be directed; and ( )

d. Have at least one inch (1") left and top margins. ( )

**02. Form.** Documents complying with this rule will be in the following form:

Name of Representative  
Mailing Address of Representative  
Street Address of Representative (if different)  
Telephone Number of Representative  
FAX Number of Representative (if there is one)  
Attorney/Representative for (Name of Party)

BEFORE THE BOARD OF ENVIRONMENTAL QUALITY

(Title of Proceeding)

(CASE NO.)

)

(TITLE OF DOCUMENT)

)

( )

**301. SERVICE ON PARTIES AND OTHER PERSONS.**

Concurrently with filing the original with the hearing coordinator as set out in Section 008, all documents intended to be part of the agency record for decision must be served upon the representatives of each party of record and the

presiding officer. ( )

**302. PROOF OF SERVICE.**

Every document filed with and intended to be part of the agency record must be attached to or accompanied by proof of service by the following or similar certificate:

I HEREBY CERTIFY (swear or affirm) that I have this day of, served the foregoing (name(s) of document(s) upon all parties of record in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid, to: (list names)).  
(Signature) ( )

**303. DEFECTIVE, INSUFFICIENT OR UNTIMELY PLEADINGS.**

Defective, insufficient or untimely pleadings shall not be considered unless the presiding officer determines otherwise. ( )

**304. AMENDMENTS TO PLEADINGS--WITHDRAWAL OF PLEADINGS.**

The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective fourteen (14) days after filing. ( )

**305. -- 349. (RESERVED).**

**350. INTERVENTION.**

Persons not petitioners or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party. ( )

**351. FORM AND CONTENTS OF PETITIONS TO INTERVENE.**

Petitions to intervene must comply with Sections 200 through 349. The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it. ( )

**352. TIMELY FILING OF PETITIONS TO INTERVENE.**

Petitions to intervene must be filed at least fourteen (14) days before the date set for the hearing or prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions not timely filed must state a substantial reason for delay. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors are bound by orders and notices entered earlier in the proceeding. ( )

**353. GRANTING PETITIONS TO INTERVENE.**

If a petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding, does not unduly broaden the issues, and will not cause delay or prejudice to the parties, the presiding officer may grant intervention, subject to reasonable conditions. ( )

**354. ORDERS GRANTING INTERVENTION--OBJECTIONS.**

No order granting a petition to intervene will be acted upon fewer than seven (7) days after its filing. Any party opposing a petition to intervene, must file the objection within seven (7) days after receipt of the petition to intervene and serve the objection upon all parties of record and upon the person petitioning to intervene. ( )

**355. -- 409. (RESERVED).**

**410. APPOINTMENT OF HEARING OFFICERS--NOTICE.**

A hearing officer is a person other than the Board appointed to preside over contested cases on behalf of the Board. Unless otherwise provided by statute or rule, hearing officers may be employees of the agency or independent contractors. Hearing officers may be (but need not be) attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues before the Board. The Board may appoint or

designate a hearing officer to preside over a contested case proceeding to the extent provided in Section 411 of these rules. The hearing coordinator shall administer the appointment of the hearing officer. Notice of appointment of a hearing officer shall be served on all parties. ( )

**411. HEARING OFFICERS CONTRASTED WITH THE BOARD -- BOARD MEMBERS MUST ACT AS PRESIDING OFFICERS AT THE CONTESTED CASE HEARING.**

Members of the Board are not hearing officers even when they are presiding at contested case hearings. The term "hearing officer" as used in these rules refers only to officers subordinate to the Board. One (1) or more Board members shall act as the presiding officer at the contested case hearing. The Board may use a hearing officer to assist the Board at the contested case hearing. Nothing in this section limits the authority of the Board to appoint hearing officers to handle all prehearing matters, including but not limited to, the issuance of orders resulting from dispositive motions. Notice of those Board members who will act as presiding officers will be served on all parties. ( )

**412. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES.**

Any party shall have the right to one (1) disqualification without cause of any person serving or designated to serve as a presiding officer except where a decision is required to be rendered within fourteen (14) days of the date of a request for hearing by state or federal statutes or rules of the Department. In all other cases any party shall have a right to file a motion to disqualify a presiding officer for bias, prejudice, interest, substantial prior involvement in the matter other than as a presiding officer, status as an employee of the agency hearing the contested case, lack of professional knowledge in the subject matter of the contested case, or for any other cause provided for which a judge is or may be disqualified. Any such petition for disqualification of a person serving or designated to serve as a presiding officer shall be filed within fourteen (14) days after receipt of the notice indicating that the person will preside at the contested case, or for disqualification for cause, promptly upon discovering facts establishing grounds for such disqualification, whichever is later. Any party may assert a blanket disqualification for cause of all employees of the agency, other than the Board, without awaiting designation of a presiding officer. A presiding officer whose disqualification for cause is requested, shall determine in writing whether to grant the petition, stating facts and reasons for the determination. In the event that a proposed disqualification of the Board or a member of the agency would result in an inability to decide a contested case, the actions of the Board shall be treated as a conflict of interest pursuant to the provisions of Section 59-704, Idaho Code. ( )

**413. SCOPE OF AUTHORITY OF PRESIDING OFFICERS.**

**01. Scope Of Authority.** Unless the Board otherwise provides, and to the extent allowed in Section 411, presiding officers have the following authority: ( )

a. Authority to schedule cases, including authority to issue notices of prehearing conference and of hearing, as appropriate; ( )

b. Authority to schedule and compel discovery, when discovery is authorized before the agency, and to require advance filing of expert testimony, when authorized before the agency; ( )

c. Authority to preside at and conduct hearings, accept evidence into the record, rule upon objections to evidence, and otherwise oversee the orderly presentations of the parties at hearing; and ( )

d. Authority to issue a written decision, including a narrative of the proceedings before the presiding officer and findings of fact, conclusions of law, and preliminary orders. ( )

**02. Limitation.** Hearing officers may not act as presiding officers at the contested case hearing, but may assist the Board at the contested case hearing. A hearing officer's scope of authority may be further limited, either in general, or for a specific proceeding, by the Board. ( )

**414. (RESERVED).**

**415. CHALLENGES TO STATUTES.**

A presiding officer in a contested case has no authority to declare a statute unconstitutional. However, when a court of competent jurisdiction whose decisions are binding precedent in the state of Idaho has declared a statute unconstitutional, or when a federal authority has preempted a state statute or rule, and the presiding officer finds that

the same state statute or rule or a substantively identical state statute or rule that would otherwise apply has been challenged in the proceeding before the presiding officer, then the presiding officer shall apply the precedent of the court or the preemptive action of the federal authority to the proceeding before the presiding officer and decide the proceeding before the presiding officer in accordance with the precedent of the court or the preemptive action of the federal authority. ( )

**416. (RESERVED).**

**417. EX PARTE COMMUNICATIONS.**

Unless required for the disposition of a matter specifically authorized by statute to be done ex parte, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). When a presiding officer becomes aware of a written ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer shall place a copy of the communication in the file for the case and order the party providing the written communication to serve a copy of the written communication upon all parties of record. Written communications from a party showing service upon all other parties are not ex parte communications. ( )

**418. -- 499. (RESERVED).**

**500. ALTERNATIVE RESOLUTION OF CONTESTED CASES.**

The Idaho Legislature encourages informal means of alternative dispute resolution (ADR). For contested cases, the means of ADR include, but are not limited to, settlement negotiations, mediation, fact finding, minitrials, and arbitration, or any combination of them. ( )

**501. -- 509. (RESERVED).**

**510. PREHEARING CONFERENCE.**

Any time after the Department files its response to the petition for contested case, the presiding officer may, upon written or other sufficient notice to all interested parties, hold a prehearing conference for the following purposes: ( )

- a. To formulate or simplify the issues; ( )
- b. To obtain admissions or stipulations of fact and of documents; ( )
- c. To arrange for exchange of proposed exhibits or prepared expert testimony; ( )
- d. To limit the number of witnesses; ( )
- e. To determine the procedure at the hearing; and ( )
- f. To determine any other matters which may expedite the orderly conduct and disposition of the proceeding. ( )

**511. RECORD OF CONFERENCE.**

Prehearing conferences may be held formally (on the record) or informally (off the record) before or in the absence of a presiding officer, according to order or notice. Agreements by the parties to the conference may be put on the record during formal conferences or may be reduced to writing and filed with the hearing coordinator after formal or informal conferences. ( )

**512. ORDERS RESULTING FROM PREHEARING CONFERENCE.**

The presiding officer may issue a prehearing order or notice based upon the results of the agreements reached at or rulings made at a prehearing conference. A prehearing order will control the course of subsequent proceedings unless modified by the presiding officer for good cause. ( )

**513. -- 539. (RESERVED).**

**540. DISCOVERY.**

Unless required by statute, or otherwise expressly provided in these rules or order of the presiding officer, the scope and methods of discovery are governed by the Idaho Rules of Civil Procedure. ( )

**541. SUBPOENAS.**

Pursuant to Section 39-107(3), Idaho Code, the presiding officer shall have the power to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony. The presiding officer may, if a witness refuses to attend or testify, or to produce any papers required by such subpoenas, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the presiding officer, or has refused to answer questions propounded to him in the course of said proceedings, and ask an order of said court compelling the witness to attend and testify and produce said papers before the presiding officer. The court, upon the petition of the presiding officer, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he has not attended and testified or produced said papers before the presiding officer. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the presiding officer and regularly served, the court shall thereupon order that said witness appear before the presiding officer at the time and place fixed in said order, and testify or produce the required papers. Upon failure to obey said order, said witness shall be dealt with for contempt of court. ( )

**542. FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS.**

Discovery requests and responses thereto shall not be filed with the hearing coordinator. The party serving discovery requests or responses thereto shall file with the hearing coordinator a notice of when the discovery requests or responses were served and upon whom. ( )

**543. DEPOSITIONS, PREPARED TESTIMONY AND EXHIBITS.**

Unless otherwise specified in an order pursuant to Section 512, all parties shall serve on all other parties any depositions, prepared expert testimony and/or exhibits to be presented at hearing not later than seven (7) days prior to the hearing. Assigned exhibits numbers should be used in all prepared testimony. ( )

**544. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY.**

The presiding officer may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery. ( )

**545. PROTECTIVE ORDERS.**

As authorized by statute or rule, the presiding officer may issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing. ( )

**546. -- 549. (RESERVED).**

**550. NOTICE OF HEARING.**

**01. Form And Content.** All parties in a contested case proceeding shall receive notice that shall include: ( )

a. A statement of the time, place and nature of the hearing; ( )

b. A statement of the legal authority under which the hearing is to be held; ( )

c. A short and plain statement of the matters asserted or the issues involved; and ( )

d. A statement that the hearing will be conducted in a facility meeting the accessibility requirements of the Americans with Disabilities Act and that assistance can be provided upon request to the hearing coordinator at

least five (5) days before the date set for hearing. ( )

**02. Time For Service.** The Notice of Hearing shall be served on all parties at least five (5) days before the date set for hearing, unless the presiding officer finds by order that it is necessary or appropriate that the hearing be held earlier. ( )

**551. HOW HEARINGS HELD.**

Hearings may be held in person or by telephone or television or other electronic means if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. ( )

**552. LOCATION OF HEARINGS AND ADA REQUIREMENTS.**

All hearings concerning actions governed by these rules shall be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act, shall be open to the public, and shall be held in a location reasonably convenient to all parties to the proceeding. The location shall be arranged by the hearing coordinator. ( )

**553. CONFERENCE AT HEARING.**

In any proceeding the presiding officer may convene the parties before the hearing or recess the hearing to discuss formulation or simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite orderly conduct of the hearing. The presiding officer shall state the results of the conference on the record. ( )

**554. PRELIMINARY PROCEDURE AT HEARING.**

Before taking evidence, the presiding officer will call the hearing to order, take appearances of parties, and act upon any pending motions or petitions. The presiding officer may allow opening statements as necessary or appropriate to explain a party's presentation. ( )

**555. CONSOLIDATION OF PROCEEDINGS.**

The agency may consolidate two (2) or more proceedings for hearing upon finding that they present issues that are related and that the rights of the parties will not be prejudiced. In consolidated hearings, the presiding officer determines the order of the proceeding. ( )

**556. STIPULATIONS.**

Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the presiding officer or presented at hearing or by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The presiding officer may regard a stipulation as evidence or may require proof by evidence of the facts stipulated. The presiding officer is not bound to adopt a stipulation of the parties, but may do so. If the presiding officer rejects a stipulation, it will do so before issuing a final order, and it will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. ( )

**557. ORDER OF PROCEDURE.**

The presiding officer may determine the order of presentation of witnesses and examination of witnesses. Unless otherwise determined by the presiding officer, the petitioner shall present its case first, followed by the respondent's case. ( )

**558. TESTIMONY UNDER OATH.**

All testimony presented at hearings will be given under oath. ( )

**559. PARTIES AND PERSONS WITH SIMILAR INTERESTS.**

If two (2) or more parties or persons have substantially like interests or positions, to expedite the proceeding and avoid duplication, the presiding officer may limit the number of them who testify, examine witnesses, or make and argue motions and objections. ( )

**560. CONTINUANCE OF HEARING.**

The presiding officer may continue proceedings for further hearing for good cause shown. ( )

**561. ORAL ARGUMENT.**

The presiding officer may set and hear oral argument on any matter in the contested case on reasonable notice according to the circumstances. ( )

**562. BRIEFS--MEMORANDA--PROPOSED ORDERS OF THE PARTIES--STATEMENTS OF POSITION.**

In any contested case, any party may ask to file briefs, memoranda, proposed orders or statements of position, and the presiding officer may request briefs, proposed orders, or statements of position. ( )

**563. PROCEDURE ON PREHEARING MOTIONS.**

The presiding officer may consider and decide prehearing motions with or without oral argument or hearing. If oral argument or hearing on a motion is requested and denied, the presiding officer must state the grounds for denying the request. Unless otherwise provided by the presiding officer, or otherwise provided in these rules, when a motion has been filed, all parties seeking similar substantive or procedural relief must join in the motion or file a similar motion within seven (7) days after receiving the original motion. The party(ies) responding to the motion(s) will have fourteen (14) days to respond. ( )

**564. -- 599. (RESERVED).**

**600. RULES OF EVIDENCE--EVALUATION OF EVIDENCE.**

The presiding officer at hearing is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any order. The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. All other evidence may be admitted. The agency's experience, technical competence and specialized knowledge may be used in evaluation of evidence. ( )

**601. DOCUMENTARY EVIDENCE.**

Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original if available. To be admissible, document copies must be authenticated. ( )

**602. OFFICIAL NOTICE--AGENCY STAFF MEMORANDA.**

Official notice may be taken of any facts that could be judicially noticed in the courts of Idaho and generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified of the specific facts or material noticed and the source thereof, including any staff memoranda and data. Notice should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material noticed. Parties must be afforded a timely and meaningful opportunity to contest and rebut the facts or material so noticed. When the presiding officer proposes to notice staff memoranda or reports, a responsible staff member shall be made available for cross-examination if any party so requests. ( )

**603. DEPOSITIONS.**

Depositions may be offered into evidence. ( )

**604. OBJECTIONS -- OFFERS OF PROOF.**

Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. An offer of proof for the record consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the presiding officer will rule on the objection. ( )

**605. PREPARED TESTIMONY.**

The presiding officer may order a witness's prepared testimony previously distributed to all parties to be included in the record of hearing as if read. Admissibility of prepared testimony is subject to Section 600. Upon request of any party, the witness shall be available for cross-examination on the prepared testimony. ( )

**606. EXHIBITS.**

A copy of each documentary exhibit must be furnished to each party present and to the presiding officer. Copies must be of good quality. Exhibits offered at hearing are subject to appropriate and timely objection. Exhibits to which no

objection is made are automatically admitted into evidence. ( )

**607. -- 609. (RESERVED).**

**610. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS.**

Evidence of furnishing, offering, or promising to furnish, or accepting, offering, or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for, invalidity of, or amount of the claim or any other claim. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This section does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This section does not require exclusion if the evidence is offered for another purpose, such as proving bias or prejudice of a witness or negating a contention of undue delay. Compromise negotiations encompass mediation. ( )

**611. SUGGESTION FOR OR INQUIRY ABOUT SETTLEMENTS.**

Through notice or order or on the record at prehearing conference or hearing, the presiding officer may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated or may invite settlement of an entire proceeding or certain issues. ( )

**612. CONSIDERATION OF SETTLEMENTS.**

When one (1) or more parties to a proceeding is not a party to the settlement or when the settlement presents issues of significant implication for other persons, the settlement agreement shall be presented to the presiding officer for approval. The presiding officer may hold an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the agency's charge under the law. ( )

**613. BURDENS OF PROOF REGARDING SETTLEMENTS.**

Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. The presiding officer may require the development of an appropriate record in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement. ( )

**614. SETTLEMENT NOT BINDING.**

The presiding officer is not bound by settlement agreements that are not unanimously accepted by all parties or that have significant implications for persons not parties. In these instances, the presiding officer will independently review any proposed settlement to determine whether the settlement is in accordance with the law. ( )

**615. -- 649. (RESERVED).**

**650. RECORD FOR DECISION.**

**01. Official Record.** The agency shall maintain an official record for each contested case and (unless a statute provides otherwise) base its decision in a contested case on the official record for the case. ( )

**02. Contents Of Record.** The record for a contested case shall include: ( )

a. All notices of proceedings; ( )

b. All petitions, responses, motions, and objections filed in the proceeding; ( )

c. All intermediate or interlocutory rulings of the presiding officer; ( )

d. All evidence received or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing); ( )

e. All offers of proof, however made; ( )

f. All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties; ( )

- g. All evidentiary rulings on testimony, exhibits, or offers of proof; ( )
- h. All staff memoranda or data submitted in connection with the consideration of the proceeding; ( )
- i. A statement of matters officially noticed; and ( )
- j. All preliminary orders and final orders. ( )

**651. RECORDING OF HEARINGS.**

All hearings shall be recorded by a certified court reporter and transcribed at the agency's expense. Any party may have a copy of the transcript prepared at its own expense. ( )

**652. -- 699. (RESERVED).**

**700. NOTICE OF PROPOSED DEFAULT ORDER.**

If a party fails to appear at the time and place set for hearing or fails to timely file a response as set out in Section 212, the presiding officer may serve upon all parties a notice of proposed default order. The notice shall include a statement of the grounds for the proposed order. ( )

**701. SEVEN DAYS TO RESPOND TO PROPOSED DEFAULT ORDER.**

Within seven (7) days after service of the notice of proposed default order, the party against whom it was issued may file a written petition requesting the proposed order to be vacated. The petition shall state the grounds relied upon. ( )

**702. DEFAULT ORDER.**

The presiding officer shall either issue or vacate the default order promptly after the expiration of the time within which the party may file a petition as provided in Section 701. If the presiding officer issues a default order, the officer shall conduct any further proceedings necessary to complete the adjudication without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. ( )

**703. -- 709. (RESERVED).**

**710. INTERLOCUTORY ORDERS.**

Interlocutory orders are orders that do not decide all previously undecided issues presented in a proceeding, except the agency may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review by appeal, but is not final on other issues. Unless an order contains or is accompanied by a document containing one (1) of the statements set forth in Sections 730 or 740 or a statement substantially similar, the order is interlocutory. The following orders are always interlocutory: orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders compelling or refusing to compel discovery. ( )

**711. -- 729. (RESERVED).**

**730. PRELIMINARY ORDERS.**

**01. Preliminary Orders - Definition.** Preliminary orders are orders issued by a person other than the Board that will become a final order of the Board unless reviewed by the Board pursuant to Section 67-5245, Idaho Code. ( )

**02. Contents Of Preliminary Order.** Every preliminary order must contain or be accompanied by a document containing the following statements or substantially similar statements: This is a preliminary order of the presiding officer. Pursuant to Section 67-5245, Idaho Code, this preliminary order can and will become final without further notice unless any party files a petition for review within fourteen (14) days after issuance of this preliminary

order. ( )

**03. Petition For Review Of Preliminary Order.** ( )

a. Pursuant to Section 67-5245, the Board, upon its own motion may, or, upon motion by any party shall, review a preliminary order. A petition for review of the preliminary order must be filed with the hearing coordinator as set out in Section 008 within fourteen (14) days after issuance of the preliminary order. The basis for review of the preliminary order shall be stated in the petition. ( )

b. If a petition for review of the preliminary order is filed in accordance with Subsection 730.03.a., the Board shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. The briefs shall be filed pursuant to a briefing schedule issued by the Board. The Board will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The Board may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. ( )

**04. No Motions For Reconsideration.** Motions for reconsideration of any preliminary order shall not be considered. ( )

**731. -- 739. (RESERVED).**

**740. FINAL ORDERS.**

**01. Final Order - Definition.** Final orders are preliminary orders that have become final under Section 730 pursuant to Section 67-5245, Idaho Code, or orders issued by the Board pursuant to Section 67-5246, Idaho Code, or emergency orders, including cease and desist or show cause orders, issued by the Board pursuant to Section 67-5247, Idaho Code. ( )

**02. Content Of Final Order.** Every final order issued by the Board must contain or be accompanied by a document containing the following statements or substantially similar statements: ( )

a. This is a final order of the agency. ( )

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any person aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: ( )

i. A hearing was held; ( )

ii. The final agency action was taken; ( )

iii. The party seeking review of the order resides; or ( )

iv. The real property or personal property that was the subject of the agency action is located. ( )

c. An appeal must be filed within twenty-eight (28) days of the service date of this final order. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. ( )

**03. No Motions For Reconsideration.** Motions for reconsideration of any final order shall not be considered. ( )

**741. -- 779. (RESERVED).**

**780. STAY OF ORDERS.**

The filing of the petition for review does not itself stay the effectiveness or enforcement of the Board action. The

Board may grant, or the reviewing court may order, a stay upon appropriate terms. ( )

**781. -- 789. (RESERVED).**

**790. PERSONS WHO MAY APPEAL.**

Pursuant to Section 67-5270, Idaho Code, any person aggrieved by a final order of an agency in a contested case may appeal to district court. Pursuant to Section 67-5271, Idaho Code, a person is not entitled to judicial review of an agency action in district court until that person has exhausted all administrative remedies available with the agency, but a preliminary, procedural, or intermediate agency action or ruling is immediately reviewable in district court if administrative review of the final agency action would not provide an adequate remedy. ( )

**791. NOTICE OF APPEAL.**

The notice of appeal must be filed with the agency and with the district court and served on all parties. ( )

**01. Filing Appeal.** Pursuant to Section 67-5272, Idaho Code, appeals may be filed in the District Court of the county in which: ( )

- a. The hearing was held; ( )
- b. The final agency action was taken; ( )
- c. The party seeking review of the agency action resides; or ( )
- d. The real property or personal property that was the subject of the agency is located. ( )

**02. Filing Deadline.** Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final order in a contested case must be filed within twenty-eight (28) days of the service date of the final order. ( )

**792. -- 999. (RESERVED).**

**IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO**

**59.01.06 - RETIREMENT RULES OF THE PUBLIC EMPLOYEE  
RETIREMENT SYSTEM OF IDAHO (PERSI)**

**DOCKET NO. 59-0106-0001**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2000.

**AUTHORITY:** In compliance with Sections 67-5222(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 Sections 59-1314(1) and 72-1405, 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 16, 2000.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodations 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:

During the 2000 session, the legislature passed HB 402 authorizing PERSI to establish an unused sick leave pool for the benefit of PERSI members and employers who do not currently participate in such a pool. This was intended primarily for cities, counties, and other political subdivisions such as taxing districts. Employers participate voluntarily. Although PERSI is not required to do so, it was authorized to implement such a plan effective July 1, 2000. Such arrangements are possible only if certain IRS requirements are met. This docket modifies existing rules governing unused sick leave arrangements to accommodate the "voluntary pool." It also adds additional sections that relate solely to the "voluntary pool." The new provisions are necessary to establish and to set forth the requirements for participation in the PERSI administered pool.

In addition, during the 2000 session, the legislature passed two bills providing for the purchase of service under the PERSI defined benefit plan. HB 657 authorized the purchase of up to forty-eight (48) months of membership service for active duty service in the armed forces of the United States that does not qualify for "military service" under section 59-1302(23), Idaho Code. HB 717 authorized the purchase of up to forty-eight (48) months of membership service by any active vested member for any reason. Both bills are effective July 1, 2000. This docket adds new provisions that describe the methods for purchasing service and other requirements related to service purchase.

**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:

This rule change will confer a benefit on PERSI members and employers and is necessary to comply with deadlines imposed by amendments made to governing law by the legislature.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the Retirement Board has exclusive fiduciary responsibility for plan operations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rules, contact Alan H. Winkle, Executive Director of PERSI, (208) 334-3365.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2000.

DATED this 22nd day of June, 2000.

Alan H. Winkle  
Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8<sup>th</sup>, Boise, ID 83702  
P.O. Box 83720, Boise, ID 83720-0078  
Phone: 208-334-3365/ FAX: 208-334-3804

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0106-0001**

**Subchapter D -- Unused Sick Leave Benefits**  
**(Rule 550 through ~~649~~575) -- General ~~Members~~ Provisions**

**550. COMPUTING VALUE OF SICK LEAVE--~~EMPLOYEE NOT COVERED BY CONTRACT~~ (Rule 550).**  
For those members who accrue sick leave based upon each month of service, the rate of pay for purposes of computing the monetary value of a retired member's unused sick leave as outlined in Sections 59-1365, 67-5339, 33-1228, and 33-2109A, Idaho Code, shall be the hourly rate of compensation reported by the employer during the month of separation from employment prior to retirement. For members employed on a contract basis, such as teachers, the rate of pay for purposes of computing the monetary value of a retiring member's unused sick leave based upon each month of service shall be determined at a daily rate by dividing the annual contract amount by the required days of work. No other forms of leave may be converted to sick leave or otherwise considered in computing the value of unused sick leave.  
*Statutory References: Sections 33-1228, 33-2109A, and 67-5339, Idaho Code.* (1-1-94)(7-1-00)T

**551. ~~COMPUTING VALUE OF SICK LEAVE EMPLOYEE COVERED BY CONTRACT~~ (Rule 551) (RESERVED).**  
*For members employed on a contract basis, such as teachers, the rate of pay for purposes of computing the monetary value of a retiring member's unused sick leave based upon each month of service shall be determined at a daily rate by dividing the annual contract amount by the required days of work.*  
*Statutory References: Sections 33-1228, 33-2109A, and 67-5339, Idaho Code.* (1-1-94)

**552. SICK LEAVE FUNDING RATES--STATE EMPLOYEES--SCHOOL EMPLOYEES (Rule 552).**  
The sick leave ~~rate~~ pools shall be funded by employer contributions as follows: (1-1-94)(7-1-00)T

**01. State- Agencies And Junior College Districts.** All employer groups participating in the pools established by Sections 33-2109A and 67-5339, Idaho Code, shall contribute point sixty-five percent (.65%) of employee covered payroll. (1-1-94)(7-1-00)T

**02. Schools:** All employer groups participating in the pool established by Section 33-1228, Idaho Code, shall contribute one point fifteen percent (1.15%) of employee covered payroll.  
*Statutory References: Sections 33-1228, 33-2109A, and 67-5339, Idaho Code. Cross References: (Amended 1-23-96.)* (3-20-97)(7-1-00)T

**03. Subdivisions.** All employer groups participating in the pool established by Section 59-1365, Idaho Code, shall make contributions as provided in Rule 578. (7-1-00)T

**553. LIMITATION ON INSURANCE PROGRAMS (Rule 553).**  
The group health, accident, and life insurance programs maintained by employers as outlined in Sections 59-1365, 67-5339, 33-1228, and 33-2109A, Idaho Code, are limited to group plans where the policy holder is the employer or

a consortium of employers. The board may require group plans to sign an agreement before participating.  
*Statutory References: Sections 33-1228, 33-2109A, and 33-5339, Idaho Code.* (1-1-94)(7-1-00)T

**554. PAYMENT OF INSURANCE PREMIUMS (Rule 554).**

Upon certification by the employer and the insurance carrier that a group plan qualifies under Rule 553, of this chapter, the board may pay the monthly premiums for a retired member using unused sick leave account funds as prescribed by Idaho Code. (1-1-94)

**01. Adjustments.** Coverage and premium changes or adjustments must be submitted to PERSI no less than thirty (30) days prior to their effective date unless PERSI has previously agreed in writing to a shorter period. (7-1-00)T

**02. Duration Of Payments.** Premium payments will continue to be made from the unused sick leave account until credits are insufficient to make a premium payment, or until the retiree's death, whichever first occurs. Unless otherwise notified in writing by the member, when unused sick leave credits become depleted and are insufficient to meet additional premium payments, PERSI will continue to pay monthly premiums if the member's net monthly benefit is greater than the monthly premium, deducting the same from the member's monthly retirement allowance. (7-1-00)T

**555. --599. (RESERVED) SEPARATION BY REASON OF RETIREMENT (Rule 555).**

Unused sick leave benefits are credited only to employees who are eligible to retire at the time they separate from the employer. When an employee separates from service and does not immediately retire, unused sick leave benefits are credited to the member but not available for use unless the member actually retires without intervening employment resulting in PERSI participation. The existence of available unused sick leave credits does not necessarily mean they are usable. A member must also be eligible to participate in the retiree plan offered by the employer from which the member retired. Except for school district employees transferring from one (1) district to another, unused sick leave credits may not be transferred from one (1) employer to another. If a member negates their retirement under Rule 148 and returns to work for a new PERSI employer, unused sick leave credits are also negated and eligibility for unused sick leave credits must be reestablished with the new employer. (7-1-00)T

**556. PROHIBITION AGAINST CASH OPTION (Rule 556).**

All employers participating in any PERSI administered sick leave pool are prohibited from offering or permitting any employee to convert unused sick leave to cash, other forms of leave, or any other benefit, even if the employee is not eligible to receive credits. Failure to comply with this prohibition will result in the employer's inability to participate in PERSI administered unused sick leave pools. (7-1-00)T

**557. -- 575. (RESERVED).**

**Subchapter E – Subdivision Unused Sick Leave Benefits**  
**(Rule 576 through 599) – Specific Provisions**

**576. PARTICIPATION IN SUBDIVISION UNUSED SICK LEAVE POOL (Rule 576).**

Any PERSI employer meeting the following requirements may elect to participate in the unused sick leave pool authorized by Section 59-1365, Idaho Code: (7-1-00)T

**01. No Current Plan.** The employer does not participate in any other statutorily created plan that offers benefits for unused sick leave, including but not limited to, those plans created under Sections 33-1228, 33-2109, and 67-5339, Idaho Code. (7-1-00)T

**02. All Inclusive Participation.** All of a participating employer's employees who are PERSI members and who accrue sick leave must be participants in the plan, except that employers may exclude certain distinctive classes of employees for legitimate business reasons. For example, a city could exclude employees covered by a collective bargaining agreement, or a county may choose to exclude elected officials. (7-1-00)T

**03. No Other Options For Unused Sick Leave.** No employee may be given any option to receive

benefits from unused sick leave other than through this plan. For example, no employee, other than those properly excluded under Subsection 576.02, may be given the option of exchanging sick leave for cash or other forms of payment or leave. (7-1-00)T

**04. Fixed Annual Accrual Of Sick Leave.** Employer must comply with a policy that offers a fixed amount of sick leave annually that is applicable to all employees or employee groups. A “personal leave” option that fails to distinguish between sick, vacation, or other forms of leave is not permitted. (7-1-00)T

**577. OPERATION OF SUBDIVISION POOL (Rule 577).**

Upon separation from employment by retirement, in accordance with Chapter 13, Title 59, Idaho Code, every employee of a participating employer shall, upon payment by the employer under Rule 578, receive a credit for unused sick leave in the same manner and under the same terms as provided in Section 67-5339(1), Idaho Code. (7-1-00)T

**578. FUNDING OF SUBDIVISION POOL (Rule 578).**

Participating employers shall, within ten (10) days of retiree’s last day in pay status, pay to PERSI a sum equal to the retiree’s unused sick leave credit, together with any administrative fees the board may require. Investment earnings on funds paid into this pool will remain in the pool, together with any reversions due to the death of a retiree, and may be used by the board to pay some or all administrative costs. (7-1-00)T

**579. -- 599. (RESERVED).**

**Subchapter ~~EF~~ -- Rules for FRF Members Regarding Retirement**  
**Rule 600 through 699**

**(BREAK IN CONTINUITY OF SECTIONS)**

**603. -- 9699. (RESERVED).**

**Subchapter G – Purchase of Service**  
**(Rule 700 through 799)**

**700. PURCHASE OF SERVICE GENERALLY (Rule 700).**

No member may purchase more than forty-eight (48) months of membership service, whether purchased under Section 59-1362, or 59-1363, Idaho Code, or a combination thereof. In all cases, the cost of purchasing service shall be the full actuarial costs, as determined by the board, of providing additional benefits resulting from the purchased service. Service may only be purchased at the time of retirement. In no event can a member revoke a purchase of service after payment has been made. (7-1-00)T

**701. TIME OF RETIREMENT (Rule 701).**

Within ninety (90) days before an active member’s effective date of retirement, the member may request the cost of service to be purchased. Costs provided for purchased service are valid only for the effective date requested. Purchased service will be calculated into the member’s benefit only to the extent that it is paid by the effective date. In no event shall service be credited for which payment has not been made. Service may be purchased with after-tax dollars or with eligible rollover distributions. (7-1-00)T

**702. RETIREMENT DELAYED OR NEGATED AFTER PURCHASE (Rule 702).**

If a member purchases service and thereafter revokes their application for retirement or negates their retirement as provided in Retirement Rule 148, the contributions made to purchase the service shall remain in the system until a distributable event occurs. If the distributable event results in payment of a monthly retirement benefit or an optional death benefit, the purchase price of the service previously purchased will be recalculated based on factors existing on the date the new benefit becomes effective. If, based on the new factors, the purchase price is higher than previously determined, the number of months purchased will be reduced to reflect the higher cost unless the member elects to

pay the difference. If the purchase price is lower, the difference will be paid to the member as a lump-sum payment within sixty (60) days after the date of retirement unless the member elects to convert the difference into additional months and can do so without exceeding the forty-eight (48) month limit, the IRS limit referenced in Subsection 705.05, or any other statutory limitation, including the limitation in Section 59-1342(6), Idaho Code. (7-1-00)T

**703. TREATMENT OF PURCHASE OF SERVICE CONTRIBUTIONS (Rule 703).**

Contributions made for purposes of purchasing service, and interest earnings thereon, are not considered for purposes of determining death benefits under Section 59-1361(3), Idaho Code, and distributions under Section 59-1309(5), Idaho Code. When determining death benefits under Section 59-1361(3), Idaho Code, first calculate two hundred percent (200%) of accumulated contributions, excluding contributions and interest related to purchased service, then add member contributions and interest related to purchased service. Member contributions and interest will also be included in any separation benefit. In no event shall employer contributions for purchased service be included in any separation benefit or lump-sum death benefit. (7-1-00)T

**704. EMPLOYER PARTICIPATION (Rule 704).**

Employer participation must be in the form of lump-sum payments at the time of retirement. In the event an employer makes a contribution on behalf of a member and a distribution other than periodic payments occurs prior to the actual retirement effective date, the employer may claim a credit against future contributions equal to the amount of the contribution. Employer contributions must be accompanied by or preceded by a written statement endorsed by the governing body or officer of the employer verifying that the participation is properly authorized and that the employer indemnifies PERSI against any loss resulting from failure of the employer, or any person acting on its behalf, to act within its authority. (7-1-00)T

**705. ADDITIONAL LIMITS ON PURCHASED SERVICE (Rule 705).**

The Internal Revenue Code imposes limits on the amount of retirement benefits that can be paid to a retiree under a defined benefit plan. Benefits acquired through purchase of service are subject to these limits for some purposes. In no event can a member purchase service that would result in the member exceeding the limits imposed in IRC Section 415(n)(1)(A). In addition, a member's initial retirement benefit, including purchased service, continues to be subject to the limitation in Section 59-1342(6), Idaho Code. (7-1-00)T

**706. -- 999. (RESERVED).**

# Subjects Affected Index

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## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.03.06 - RULES GOVERNING REFUGEE MEDICAL ASSISTANCE**

#### **Docket No. 16-0306-0001**

400. Refugee Medical Assistance Program.....	22
401. Income And Resources On Date Of Application.....	24
402. Transition To Refugee Medical Assistance.....	24
403. -- 599. (Reserved).....	24
700. Precedence Of Categorical Assistance Programs.....	24
997. – 999. (Reserved).....	25

### **16.03.08 - RULES GOVERNING TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO**

#### **Docket No. 16-0308-0002**

010. Definitions.....	27
101. Time Limit.....	28
102. Residence Exception To Time Limit.....	28
113. Concurrent Benefit Prohibition.....	28
123. (Reserved).....	28
133. Social Security Number (SSN).....	29
135. Multiple TANF Benefits.....	29
171. Supportive Services Excluded.....	29
172. -- 175. (Reserved).....	29
240. Individuals Excluded From Family Size.....	29
261. Applicant One-time Cash Payment Eligibility Criteria.....	30
350. Transitional Services.....	30
351. Transitional Services Criteria.....	30
354. -- 367. (Reserved).....	31
368. Career Enhancement Services.....	31
369. Career Enhancement Supportive Services.....	31
370. Career Enhancement Mentoring, Counseling, And Training Activities.....	31
371. Career Enhancement Eligibility Criteria.....	31
372. (Reserved).....	32
373. Funding Restrictions.....	33
374. Career Enhancement Services Time Limit.....	33

### **16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE**

#### **Docket No. 16-0309-0005**

106. Durable Medical Equipment And Medical Supplies.....	34
--	----

### **16.04.11 - RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES**

#### **Docket No. 16-0411-9901**

800. Standards For DDA's Providing Services To Consumers With Authorized Individual Support Plans.....	43
801. Standards For DDA's Providing Services To Consumers Without Targeted Service Coordinators.....	45

### **16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES**

#### **Docket No. 16-0601-0001**

010. Definitions And Abbreviations.....	50
020. General Requirements Applicable To All Family And Children's Services Programs.....	56
021. -- 029. (Reserved).....	57

030. Core Family And Children's Services.....	57
040. Family Services Practice.....	59
041. -- 049. (Reserved).....	60
050. Protections And Safeguards For Children And Families.....	60
051. Notice Required For ICWA.....	62
052. -- 059. (Reserved).....	62
060. Family Case Records.....	62
071. -- 239. (Reserved).....	64
240. Six Month Review.....	64
241. -- 249. (Reserved).....	65
250. Permanency Hearings.....	65
251. Citizen Review Panels.....	66
252. -- 399. (Reserved).....	66
400. Authority For Alternate Care Services.....	66
401. Considerations For Placement In Alternative Care.....	66
403. -- 404. (Reserved).....	67
405. Alternate Care Case Management.....	67
420. Other Sources Of Alternate Care - Casey Family Program, Boise Division.....	68
421. Other Sources Of Alternate Care - Placement Of Unwed Mothers At Booth Memorial Home.....	68
422. Alternate Care Planning.....	69
423. -- 424. (Reserved).....	70
425. AFDC-FC Eligibility.....	73
426. AFDC-FC Eligibility Requirements.....	73
427. Determination Of Eligibility For ADC-FC.....	74
428. Custody And Placement.....	75
429. Effective Date.....	75
430. Ongoing Eligibility.....	75
431. AFDC-FC And Ssi Eligibility.....	76
432. Title XIX Foster Child.....	76
433. Income, Benefits And Savings Of Children In Foster Care.....	77
434. Forwarding Of Benefits.....	77
435. Periodic Review Of Benefits From Bureau Of Indian Affairs (BIA).....	77
437. Accounting And Reporting.....	77
438. Support Agreement For Voluntary Placements.....	77
439. Support In Court-ordered Placement.....	77
440. Insurance Coverage.....	77
441. Referral To Child Support Services.....	77
442. Health And Dental Care For Children In Alternate Care.....	78
443. EPSDT Screening.....	78
444. Medical Emergencies.....	78
445. Dental Care.....	78
446. Costs Of Prescription Drugs.....	78
447. -- 450. (Reserved).....	78
451. Drivers' Licenses For Children In Alternate Care.....	78
452. -- 479. (Reserved).....	78
480. Alternate Care Licensure.....	79
481. Facilities Operated By The State.....	79
482. Payment For Shelter Care.....	79
483. Payment To Family Foster Care Providers.....	79
484. Specialized Foster Care.....	79
485. Professional Foster Care.....	80
486. Group Foster Care.....	80

487. Intensive Treatment Facilities.....	80
488. -- 490. (Reserved).....	81
491. Foster Care Maintenance Payments.....	81
492. Payment In The Home Of A Relative.....	81
493. -- 549. (Reserved).....	81
550. Child Protection Services.....	81
551. Reporting Abuse, Abandonment Or Neglect.....	82
552. Reporting System.....	82
553. Assigning Reports For Risk Assessment.....	82
554. Response Priorities.....	82
555. Supervisory Review - Certain Priority I And II Cases.....	83
556. Reports Involving Indian Children.....	83
557. Reports Involving Military Families.....	83
558. Community Resources.....	83
559. Child Protection Risk Assessment.....	83
560. Disposition Of Reports.....	84
561. Valid Reports.....	85
562. All Other Reports.....	85
563. Court-ordered Child Protection Risk Assessment.....	86
564. Petition Under The Child Protective Act.....	86
565. Cooperation With Law Enforcement.....	86
566. Child Custody Investigations For The District Court.....	86
567. -- 639. (Reserved).....	87
640. Child Mental Health Services.....	87
641. Outcomes.....	88
642. Access To Services.....	88
644. Sliding Scale Fee Table 644.....	89
645. Fee Determination For Services Other Than Out-Of-Home Care.....	90
646. -- 699. (Reserved).....	92
700. Adoption Services Policy.....	92
701. Services To Be Provided In Adoptions.....	92
710. Family History.....	93
711. Decision And Approval Process For Termination Of Parent And Child Relationship (TPR).....	94
712. -- 713. (Reserved).....	94
714. Voluntary Termination.....	94
715. Voluntary Consent.....	94
717. Filing Of Petition For Voluntary Termination.....	95
719. Investigation.....	95
720. Filing Of A Petition For Involuntary Termination Of Parent And Child Relationship.....	96
721. Report To The Court - Involuntary Termination.....	97
722. -- 749. (Reserved).....	98
750. Application To Be Adoptive Parents.....	98
760. Psychological Evaluation.....	99
761. Denial Of Application.....	99
763. Applicant Responsibilities.....	99
770. Adoptive Home Studies.....	99
790. Foster Parent Adoptions.....	100
832. Placement Supervision - Transfer From Other Public Agency.....	100
850. Independent, Relative And Stepparent Adoptions.....	100
860. Procedures Following The Adoptive Placement.....	100
861. Progress Reports.....	101
862. Petition To Adopt Under The Adoption Of Children Act.....	102

863. Investigation Of Petition To Adopt.....	102
870. Removal Of A Child From An Adoptive Home.....	104
880. Applications For Second Placement.....	104
884. Opening Sealed Records Of Adoptions.....	105
890. Qualified Individual Requirements.....	105
892. Minimum Standards For Service.....	106
893. Records Of The Qualified Individual.....	106
894. Fees Charged By The Department.....	106
895. Department Responsibility To Qualified Individual.....	106
900. Adoption Assistance.....	106
910. Types And Amounts Of Assistance.....	107
911. Adoption Assistance Program Agreement.....	108
923. -- 950. (Reserved).....	108
951. Emergency Assistance To Families.....	108
952. Emergency Assistance Requirements.....	108
953. Emergency Conditions.....	109
954. Emergency Services.....	109
955. Authorization And Duration Of Services And Assistance.....	109
956. Program Administration.....	109
957. -- 999. (Reserved).....	109

**IDAPA 22 - IDAHO STATE BOARD OF MEDICINE****22.01.07 - RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF MEDICINE**Docket No. **22-0107-0002** (Rewrite)

000. Legal Authority (Rule 0).....	112
001. Title And Scope (Rule 1).....	112
002. Written Interpretations - - Agency Guidelines (Rule 2).....	112
003. Administrative Appeal (Rule 3).....	112
004. Public Record Act Compliance (Rule 4).....	112
005. Incorporation By Reference.....	112
006. Office--Office Hours--Mailing Address And Street Address (Rule 7).....	112
007. Filing Of Documents - Number Of Copies (Rule 8).....	112
008. -- 149. (Reserved).....	112
150. Parties To Contested Cases Listed (Rule 150).....	113
151. -- 155. (Reserved).....	113
156. Rights Of Parties And Of Agency Staff (Rule 156).....	113
157. Persons Defined--Persons Not Parties--Interested Persons (Rule 157).....	113
158. -- 201. (Reserved).....	113
202. Representation Of Parties At Hearing (Rule 202).....	113
203. -- 299. (Reserved).....	113
300. Filing Documents With The Agency--Number Of Copies— Facsimile Transmission (FAX) (Rule 300).....	113
301. -- 349. (Reserved).....	114
350. Intervention Prohibited (Rule 350).....	114
351. -- 519. (Reserved).....	114
520. Kinds And Scope Of Discovery Listed (Rule 520).....	114
521. -- 523. (Reserved).....	114
524. Subpoenas (Rule 524).....	114
525. Statutory Inspection, Examination, Investigation, Etc. -- Contrasted With Other Discovery (Rule 525).....	114
526. Filing And Service Of Discovery-Related Documents (Rule 526).....	114
527. Exhibit Numbers (Rule 527).....	114

528. Prepared Testimony And Exhibits (Rule 528).....	114
529. Sanctions For Failure To Obey Order Compelling Discovery (Rule 529).....	114
530. Protective Orders (Rule 530).....	115
531. -- 603. (Reserved).....	115
603. Depositions.....	115
604. -- 999. (Reserved).....	115

**22.01.14 - RULES RELATING TO COMPLAINT INVESTIGATION****Docket No. 22-0114-0001**

000. Legal Authority.....	117
001. Title And Scope.....	117
002. Written Interpretations.....	117
003. Administrative Appeal (Rule 3).....	117
004. Public Record Act Compliance (Rule 4).....	117
005. Incorporation By Reference.....	117
006. Office--Office Hours--Mailing Address And Street Address (Rule 7).....	117
007. Filing Of Documents - Number Of Copies (Rule 8).....	117
008. -- 009. (Reserved).....	117
010. Complaints.....	117
011. Format For Submission Of Complaint.....	117
012. Determination Of Authority.....	118
013. Complaint Authority.....	118
014. -- 019. (Reserved).....	119
020. Report Of Investigation.....	119
021. Tracking.....	119
022. Authority To Close Complaints.....	120
023. -- 999. (Reserved).....	120

**IDAPA 29 - IDAHO POTATO COMMISSION****29.01.02 - RULES GOVERNING PAYMENT OF ADVERTISING TAX  
AND USAGE OF FEDERALLY REGISTERED TRADEMARKS****Docket No. 29-0102-0001**

102. Certification Marks For Idaho, Potato Containers.....	122
--	-----

**IDAPA 44 - OFFICE OF THE ADMINISTRATIVE RULES COORDINATOR****44.01.01 - RULES OF THE ADMINISTRATIVE RULES COORDINATOR****Docket No. 44-0101-0001**

002. Written Interpretations.....	126
004. Incorporation By Reference.....	126
007. Office -- Office Hours -- Mailing Address And Street Address.....	126
008. Public Records Act Compliance.....	126
009. (Reserved).....	126
010. Definitions.....	126
101. Uniform Style And Format Of Rules.....	128
102. Uniform Numbering Of Rules.....	130

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY****58.01.00 - LEGISLATIVE CHANGES AFFECTING THE ADMINISTRATIVE RULES OF THE  
DEPARTMENT OF ENVIRONMENTAL QUALITY****Docket No. 58-0100-0002**

<b>58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO</b>	
003. Administrative Appeals.....	132
534. Appeals. ....	132
587. Listing Or Delisting Toxic Air Pollutant Increments. ....	132
<b>58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS</b>	
996. Administrative Provisions. ....	133
<b>58.01.03 - INDIVIDUAL/SUBSURFACE SEWAGE DISPOSAL RULES</b>	
996. Administrative Provisions. ....	133
997. Confidentiality Of Records.....	133
<b>58.01.04 - RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS</b>	
080. Suspension Or Termination Of Grant.....	133
996. Administrative Provisions. ....	134
997. Confidentiality.....	134
<b>58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE</b>	
996. Administrative Provisions. ....	134
<b>58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS</b>	
005. General Provisions For Waivers, Variances, And Exemptions. ....	135
996. Administrative Provisions. ....	135
<b>58.01.09 - RULES REGULATING SWINE AND POULTRY FACILITIES</b>	
003. Administrative Appeals.....	136
<b>58.01.11 - GROUND WATER QUALITY RULE</b>	
002. Administrative Appeals.....	136
350. Procedures For Categorizing Or Recategorizing An Aquifer.....	136
<b>58.01.12 - RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY LOANS</b>	
080. Suspension Or Termination Of Loan Contracts. ....	138
996. Administrative Provisions. ....	139
998. Confidentiality.....	139
<b>58.01.13 - RULES FOR ORE PROCESSING BY CYANIDATION</b>	
850. Permit Revocation.....	139
996. Administrative Provisions. ....	140
997. Confidentiality Of Records.....	140
<b>58.01.14 - RULES FOR ADMINISTRATION OF AGRICULTURAL WATER QUALITY PROGRAM</b>	
403. Contract Violation And Appeals.....	140
996. Administrative Provisions. ....	141
997. Confidentiality.....	141
<b>58.01.15 - RULES GOVERNING CLEANING OF SEPTIC TANKS</b>	
996. Administrative Provisions. ....	142
997. Confidentiality Of Records.....	142

**58.01.16 - RULES FOR NUTRIENT MANAGEMENT**  
 200. Consistency Review Of Local Nutrient Management Programs Established Prior To The Development Of The State Nutrient Management Plan..... 142  
 996. Administrative Provisions..... 145  
 997. Confidentiality Of Records..... 145

**58.01.17 - WASTEWATER-LAND APPLICATION PERMIT RULES**  
 801. -- 919. (Reserved)..... 145  
 920. Permit Revocation..... 145  
 996. Administrative Provisions..... 146  
 997. Confidentiality Of Records..... 146

**58.01.18 - IDAHO LAND REMEDIATION RULES**  
 003. Administrative Appeals..... 146

**58.01.19 - SMALL COMMUNITIES IMPROVEMENT PROGRAM RULES**  
 003. Administrative Appeals..... 147

**58.01.20 - RULES FOR ADMINISTRATION OF DRINKING WATER LOAN ACCOUNT**  
 003. Administrative Appeals..... 147  
 080. Suspension Or Termination Of Loan Contracts..... 147  
 996. Confidentiality..... 148

**58.01.21 - RULES GOVERNING THE PROTECTION AND DISCLOSURE OF RECORDS IN THE POSSESSION OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY**  
 003. Appeals..... 148

**58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**  
 Docket No. **58-0101-9903** (This Docket Was Originally Numbered **16-0101-9903**)  
 209. Procedure For Issuing Permits..... 150  
 700. Particulate Matter--Process Weight Limitations..... 154  
 710. Particulate Matter -- Process Equipment Emission Limitations On Or After July 1, 2000..... 154

Docket No. **58-0101-0001**  
 201. Permit To Construct Required..... 158  
 301. Requirement To Obtain Tier I Operating Permit..... 158  
 313. Timely Application..... 159  
 586. Toxic Air Pollutants Carcinogenic Increments..... 161

**58.01.23 - RULES OF ADMINISTRATIVE PROCEDURE BEFORE THE BOARD OF ENVIRONMENTAL QUALITY**  
 Docket No. **58-0123-0001**  
 000. Legal Authority..... 167  
 001. Title, Scope, And Applicability..... 167  
 002. Written Interpretations..... 167  
 003. Administrative Procedures..... 167  
 004. Incorporation By Reference..... 167  
 005. Confidentiality Of Records..... 167  
 006. Applicability Of Rules Of Administrative Procedure Of The Attorney General..... 168  
 007. Office -- Office Hours -- Mailing Address And Street Address..... 168  
 008. Filing Of Documents..... 168  
 009. (Reserved)..... 168

010. Definitions And Abbreviations .....	168
011. Liberal Construction .....	169
012. Identification Of Communications.....	169
013. Computation Of Time .....	169
014. -- 039. (Reserved).....	170
040. Form And Contents Of Petition To Initiate Rulemaking.....	170
041. Agency Response To Petition.....	170
042. Notice Of Intent To Initiate Rulemaking Constitutes Action On Petition.....	170
043. -- 049. (Reserved).....	171
050. Form And Contents Of Petition For Declaratory Rulings.....	171
051. Notice Of Petition For Declaratory Ruling .....	171
052. Petitions For Declaratory Rulings To Be Decided By Order.....	171
053. -- 099. (Reserved).....	171
100. Time Period For Filing Petition To Initiate Contested Case .....	171
101. Department Action Not Stayed.....	172
102. Petitioner Has Burden Of Proof.....	172
103. Dismissal Of Inactive Contested Cases .....	172
104. -- 199. (Reserved).....	172
200. Initial Pleading By Party--Listing Of Representatives.....	172
201. (Reserved).....	172
202. Representation Of Parties.....	172
203. Service On Representatives Of Parties.....	172
204. Withdrawal Of Parties.....	173
205. Substitution Of Representative--Withdrawal Of Representative .....	173
206. -- 209. (Reserved).....	173
210. Pleadings In Contested Cases Listed--Miscellaneous .....	173
211. Petitions To Initiate Contested Case--Defined--Form And Contents.....	173
212. Responses In Contested Cases--Defined--Form And Contents .....	173
213. Motions--Defined--Form And Contents .....	174
214. -- 299. (Reserved).....	174
300. Form Of Pleadings .....	174
301. Service On Parties And Other Persons.....	174
302. Proof Of Service.....	175
303. Defective, Insufficient Or Untimely Pleadings .....	175
304. Amendments To Pleadings--Withdrawal Of Pleadings .....	175
305. -- 349. (Reserved).....	175
350. Intervention.....	175
351. Form And Contents Of Petitions To Intervene .....	175
352. Timely Filing Of Petitions To Intervene .....	175
353. Granting Petitions To Intervene.....	175
354. Orders Granting Intervention--Objections .....	175
355. -- 409. (Reserved).....	175
410. Appointment Of Hearing Officers--Notice.....	175
411. Hearing Officers Contrasted With The Board -- Board Members Must Act As Presiding Officers At The Contested Case Hearing.....	176
412. Disqualification Of Officers Hearing Contested Cases.....	176
413. Scope Of Authority Of Presiding Officers .....	176
414. (Reserved).....	176
415. Challenges To Statutes .....	176
416. (Reserved).....	177
417. Ex Parte Communications.....	177
418. -- 499. (Reserved).....	177

500. Alternative Resolution Of Contested Cases .....	177
501. -- 509. (Reserved).....	177
510. Prehearing Conference.....	177
511. Record Of Conference.....	177
512. Orders Resulting From Prehearing Conference.....	177
513. -- 539. (Reserved).....	178
540. Discovery.....	178
541. Subpoenas.....	178
542. Filing And Service Of Discovery-related Documents.....	178
543. Depositions, Prepared Testimony And Exhibits.....	178
544. Sanctions For Failure To Obey Order Compelling Discovery.....	178
545. Protective Orders.....	178
546. -- 549. (Reserved).....	178
550. Notice Of Hearing.....	178
551. How Hearings Held.....	179
552. Location Of Hearings And ADA Requirements.....	179
553. Conference At Hearing.....	179
554. Preliminary Procedure At Hearing.....	179
555. Consolidation Of Proceedings.....	179
556. Stipulations.....	179
557. Order Of Procedure.....	179
558. Testimony Under Oath.....	179
559. Parties And Persons With Similar Interests.....	179
560. Continuance Of Hearing.....	179
561. Oral Argument.....	180
562. Briefs--Memoranda--Proposed Orders Of The Parties--Statements Of Position.....	180
563. Procedure On Prehearing Motions.....	180
564. -- 599. (Reserved).....	180
600. Rules Of Evidence--Evaluation Of Evidence.....	180
601. Documentary Evidence.....	180
602. Official Notice--Agency Staff Memoranda.....	180
603. Depositions.....	180
604. Objections -- Offers Of Proof.....	180
605. Prepared Testimony.....	180
606. Exhibits.....	180
607. -- 609. (Reserved).....	181
610. Confidentiality Of Settlement Negotiations.....	181
611. Suggestion For Or Inquiry About Settlements.....	181
612. Consideration Of Settlements.....	181
613. Burdens Of Proof Regarding Settlements.....	181
614. Settlement Not Binding.....	181
615. -- 649. (Reserved).....	181
650. Record For Decision.....	181
651. Recording Of Hearings.....	182
652. -- 699. (Reserved).....	182
700. Notice Of Proposed Default Order.....	182
701. Seven Days To Respond To Proposed Default Order.....	182
702. Default Order.....	182
703. -- 709. (Reserved).....	182
710. Interlocutory Orders.....	182
711. -- 729. (Reserved).....	182
730. Preliminary Orders.....	182

731. -- 739. (Reserved).....	183
740. Final Orders.....	183
741. -- 779. (Reserved).....	183
780. Stay Of Orders.....	183
781. -- 789. (Reserved).....	184
790. Persons Who May Appeal.....	184
791. Notice Of Appeal.....	184
792. -- 999. (Reserved).....	184

**IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO****59.01.06 - RETIREMENT RULES OF THE PUBLIC EMPLOYEE  
RETIREMENT SYSTEM OF IDAHO (PERSI)****Docket No. 59-0106-0001**

550. Computing Value Of Sick Leave (Rule 550).....	186
551. (Reserved).....	186
552. Sick Leave Funding Rates--State Employees--School Employees (Rule 552).....	186
553. Limitation On Insurance Programs (Rule 553).....	186
554. Payment Of Insurance Premiums (Rule 554).....	187
555. Separation By Reason Of Retirement (Rule 555).....	187
556. Prohibition Against Cash Option (Rule 556).....	187
557. -- 575. (Reserved).....	187
576. Participation In Subdivision Unused Sick Leave Pool (Rule 576).....	187
577. Operation Of Subdivision Pool (Rule 577).....	188
578. Funding Of Subdivision Pool (Rule 578).....	188
579. -- 599. (Reserved).....	188
603. -- 699. (Reserved).....	188
700. Purchase Of Service Generally (Rule 700).....	188
701. Time Of Retirement (Rule 701).....	188
702. Retirement Delayed Or Negated After Purchase (Rule 702).....	188
703. Treatment Of Purchase Of Service Contributions (Rule 703).....	189
704. Employer Participation (Rule 704).....	189
705. Additional Limits On Purchased Service (Rule 705).....	189
706. -- 999. (Reserved).....	189

# Bulletin Summary of Proposed Rulemakings

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## PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

### **IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE P.O. Box 83720, Boise, Idaho 83720-0036**

Docket No. **16-0306-0001**, Rules Governing Refugee Medical Assistance. Uses income and resources on the application date to figure eligibility; Refugee Cash Assistance is excluded from income for eligibility; refugees in their first 8 months in the U.S. who lose eligibility for non-refugee Medicaid will be transferred to Refugee Medical Assistance with no eligibility determination; denial of Refugee Cash Assistance is not a reason to deny Refugee Medical Assistance; and deletes unnecessary sections. Comment By: 8/23/00.

Docket No. **16-0308-0002**, Rules Governing Temporary Assistance for Families in Idaho. If existing Idaho Medicaid plan will pay for a service, purchase of vehicles or childcare, program funds will not be used for Medical services; participants who close TAFI cash assistance due to employment must be under 200% of the Federal poverty guidelines at time of closure to receive Transitional Services; At-Risk services changed to Career Enhancement Services with the following changes: 1) non-custodial parents are eligible if the family's income is below 400% of the Federal Poverty guidelines; 2) the need must be work related and that, if not met, would prevent them from attaining or maintaining employment; 3) Supportive Services must be non-recurrent, short-term, and designed to meet a specific episode of need not to exceed 4 months; 4) work related activities (mentoring, counseling and training) can be provided up to 12 months; 5) must not be provided for a need already met by another program; 6) cannot be receiving TANF or TAFI benefits or be serving a TAFI sanction; 7) limit on number of participants is changed if a funding shortfall is projected. Effective 7/1/00, TAFI cash assistance, supportive and Career Enhancement services will be available to a person with a controlled substance felony conviction, if complying with the terms of a withheld judgment, probation or parole. Comment By: 8/23/00.

Docket No. **16-0309-0005**, Rules Governing Medical Assistance Program in Idaho. Adds clarification that a physical therapist or occupational therapist evaluation is always required for purchase of a wheelchair and that requests for wheelchair rental will be reviewed on a case-by-case basis for same requirement. Comment By: 8/23/00.

Docket No. **16-0601-0001**, Rules Governing Family and Children's Services. Increase in foster parent reimbursement rate approved by HB 772; updates rules to be consistent with Public Law, the CFR, and state law changes; transfers adoption practice from Health and Welfare central office to regional offices; and minor changes. Comment By: 8/23/00.

### **IDAPA 22 – IDAHO BOARD OF MEDICINE P. O. Box 83720, Boise, ID 83720-0058**

Docket No. **22-0107-0001 (Repeal)**, Rules of the Practice and Procedure of the Board of Medicine. Repeal of chapter. Comment By: 8/23/00.

Docket No. **22-0107-0002 (Rewrite)**, Rules of the Practice and Procedure of the Board of Medicine. Rewrite of chapter conforms to HB 628 addresses contested cases, declaratory rulings, and hearings and adopts by reference much of IDAPA 04.11.01, Idaho Rules of Administrative Procedure of the Attorney General. Comment By: 8/23/00.

Docket No. **22-0114-0001**, Rules Relating to Complaints Investigation. New chapter complies with HB 628 to adopt new rules for the receipt, investigation and deposition of complaints. Comment By: 8/23/00.

**IDAPA 44 – OFFICE OF THE ADMINISTRATIVE RULES COORDINATOR  
P.O. Box 83720, Boise, Idaho 83720-0306**

Docket No. **44-0101-0001**, Rules of the Administrative Rules Coordinator. Corrects citations to reflect legislative changes made to the APA; adds definition for “section,” “subsection,” “paragraph,” and “subparagraph” used in formatting and making citations to rules; adds new sections required to be in all agency rules; corrects spelling errors. Comment By 8/23/00.

**IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY  
1410 N. Hilton, Boise, Idaho 83706-1255**

Docket No. **58-0100-0002**, Legislative Changes Affecting the Administrative Rules of DEQ. Conforms to SB 1426 and Session Law Chapter 132 creating the Department of Environmental Quality and requiring DEQ to adopt rules for administrative procedure and confidentiality of records. This docket updates all DEQ rules affected by these changes. Comment By: 9/6/00.

Docket No. **58-0101-9903**, Rules for the Control of Air Pollution in Idaho. Provides an alternative to the process weight rate rule and proposes to replace it with a grain loading standard which is a particulate standard measured in grains per dry standard cubic foot and whose particulate emissions can be measured and tested for compliance at the emission point. It is expected that the particulate emissions will be essentially equivalent for both. Comment By: 9/8/00.

Docket No. **58-0101-0001**, Rules for the Control of Air Pollution in Idaho. Provides an option for all other sources not located at a major facility to defer Tier I operating permit requirements until 6/1/06 if they register and provide emissions inventory data by 5/1/01 and, if registered, would not require a complete permit application until 6/1/05 unless DEQ provides written notification of an earlier date; removes obsolete language and corrects typographical errors. Comment By: 9/8/00.

Docket No. **58-0123-0001**, Rules of Administrative Procedure Before the Board of Environmental Quality. New rule chapter implements SB 1426, 2000 Session Law Chapter 132, adopting rules of administrative procedures governing petitions to initiate rulemaking and declaratory rulings as well as contested cases. Comment By: 9/6/00.

**IDAPA 59 – PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO  
P.O. Box 83720, Boise, Idaho 83720-0078**

Docket No. **59-0106-0001**, Retirement Rules of PERSI. Statutory changes authorize PERSI to establish an unused sick leave pool for PERSI members and employers who don't currently participate and to establish and set the requirements for participation in the PERSI administered pool, which is a voluntary pool. Also HB 657 and HB 717 provide for the purchase of service under the PERSI defined benefit plan and the rule is being amended to add new provisions that describe the methods for purchasing service and other requirements related to service purchase. Comment By: 8/23/00.

**PUBLIC HEARINGS** – Public Hearings have been scheduled for the following dockets:

Department of Environmental Quality

Docket No. **58-0100-0002**, Legislative Changes Affecting DEQ Rules. Comment deadline: 9/6/00.

Docket No. **58-0101-9903**, Rules for the Control of Air Pollution in Idaho. Comment deadline: 9/8/00.

Docket No. **58-0101-0001**, Rules for the Control of Air Pollution in Idaho. Comment deadline: 9/8/00.

Docket No. **58-0101-0002**, Rules for the Control of Air Pollution in Idaho. Comment deadline: 8/23/00.

Docket No. **58-0123-0001**, Rules of Administrative Procedure Before the Board of Environmental Quality. Comment deadline: 9/6/00.

Please refer to the Idaho Administrative Bulletin, **August 2, 2000, Volume 00-8** for notices and text of all rulemakings, public hearing schedules, Governor's executives orders, and agency contact names.

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**VOLUME 1 - IDAPA 01 THROUGH 15**

**VOLUME 2 - IDAPA 16 THROUGH 19**

**VOLUME 3 - IDAPA 20 THROUGH 59**

# Subject Index

## A

- ACCESS Unit Authorization, Standards For DDA's Providing Services To Consumers With Authorized ISP 44
- AFDC-FC And SSI Eligibility 76
- AFDC-FC Eligibility 73
- AFDC-FC Eligibility Requirements 73
- APA 126
- ASFA Placement Preferences 62
- Abandonment, Involuntary Termination Of Parental Rights 96
- Ability Of Providers, Considerations For Placement In Alternative Care 66
- Ability To Pay, Fee Determination For Services Other Than Out-Of-Home Care 90
- Absent Parent, Involuntary Parental Rights Termination 97
- Access To Services, The Department Will Prioritize Services 88
- Accounting And Reporting, Family And Children's Services 77
- Action Of Agency 170
- Active Efforts, Protections And Safeguards For Children And Families 60
- Additional Limits On Purchased Service, Purchase Of Service 189
- Additional Procedures For Specified Sources 151
- Administrative Appeals 132, 136, 146, 147
- Administrative Costs, Foster Care Maintenance Payments 81
- Administrative Provisions 133, 134, 135, 139, 140, 141, 142, 145, 146
- Adoption Assistance 50
- Adoption Assistance Follows The Child 108
- Adoption Assistance Program Agreement 108
- Adoption Assistance, Determination Of Eligibility 92
- Adoption Assistance, Purpose For The Adoption Assistance Program 106
- Adoption Services 50
- Adoption Services Policy 92
- Adoption Services, Core Family And Children's Services 58
- Adoptive And Foster Home Studies, Prospective Adopting Parents 101
- Adoptive Home Studies 99
- Adoptive Parent Is Spouse Of Birth Parent 100
- Agency 126, 168
- Agency Action 126
- Agency Head 126
- Agency Response To Petition 170
- Agreement Specifications, Adoption Assistance Program Agreement 108
- Agreement, One-Time Cash Payment Eligibility Criteria 30
- Agreement, Use Of Certification Marks 122
- All Other Reports, Child Abuse And Neglect Reports 85
- Allegations, Contained In Petition 97
- Alternate Care 50
- Alternate Care (Placement) Services, Core Family And Children's Services 58
- Alternate Care Case Management 67
- Alternate Care Licensure, Private Homes And Facilities Providing Care For Children 79
- Alternate Care Plan Required, Each Child Receiving Alternate Care 69
- Alternate Care Planning 69
- Alternative Permitted Standard, In Accordance With Subsection 710.10 154
- Alternative Permitted Standard, In Lieu of The Standard In Subsection 710.08 155
- Alternative Resolution Of Contested Cases 177
- Amendments To Pleadings, Withdrawal Of Pleadings 175
- Appeal Of District Determination 141
- Appeals 132, 148
- Appearances And Representation, Board Of Medicine Hearings 113
- Appearances And Representation, Contested Case Proceedings 172
- Applicability Of Rules Of Administrative Procedure Of The Attorney General, Department of DEQ 168
- Applicant 27
- Applicant One-Time Cash Payment Eligibility Criteria 30
- Applicant Responsibilities, Adoptive Applicants 99
- Application For Career Enhancement Services 31
- Application To Be Adoptive Parents 98
- Application, Emergency Assistance Requirements 108
- Applications For Second Placement, Adoptive Applicants May Reapply After Finalization Of Previous Placement 104
- Appointment Of Hearing Officers, Notice 175
- Appropriateness Of The Adoptive Family 103
- Assessment 70
- Assessment And Safety/Service Planning Services, Core Family And Children's Services 58
- Assigning Reports For Risk Assessment, Reporting Abuse, Abandonment Or Neglect 82
- Assignment Of Child Support, Family And Children's Services 77
- Attendance At Permanency Hearings, Child In Alternate Care Under State Supervision 65
- Authority For Alternate Care Services 66
- Authority To Close Complaints, Board Of Medicine 120
- Authorization And Duration Of Services And Assistance, Family And Children's Services 109
- Automatic Eligibility, Income Does Not Exceed The AFDC Payment Standard 22
- Averaging Period, Particulate Matter 154
- Averaging Period, Particulate Matter Emission 155

## B

- Billing Procedures, Department Will Provide Instructions 41
- Board 50
- Box Type Containers 123
- Briefs, Memoranda, Proposed Orders Of The Parties, Statements Of Position 180
- Bulletin 126
- Burdens Of Proof, Proponents 181

**C**

- Career Enhancement Eligibility Criteria 31
- Career Enhancement Mentoring, Counseling, And Training Activities 31
- Career Enhancement Services Time Limit 33
- Career Enhancement Services, TAFI 31
- Career Enhancement Supportive Services 31
- Case Management 50
- Case Plan 50
- Catchline 126
- Cause For Revocation 139
- Cause Of Violation 140
- Causes 133
- Causes, Suspension/Termination Of Loan Contracts 147
- Central Office 50
- Certification Marks For Idaho (Registered Trademark) Potato Containers 122
- Certified Rules 126
- Challenges To Statutes, Presiding Officer In A Contested Case 176
- Changes To Tier I Operating Permits 161
- Charges, Fee Determination For Services Other Than Out-Of-Home Care 91
- Child Custody Investigations For The District Court 86
- Child Mental Health 50
- Child Mental Health Services 51
- Child Mental Health Services, Establishing and Coordinating Community Supports 87
- Child Protection 51
- Child Protection Risk Assessment 83
- Child Protection Services 81
- Child Protective Services 51
- Child's Mental Health, Emergency Assistance Requirements 109
- Child-Related Factors, Termination Of Parental Rights 95
- Citizen Review Panels 66
- Citizenship And Legal Non-Citizen, At-Risk Eligibility Criteria 32
- Clothing, Payment To Family Foster Care Providers 79
- Code 127
- Collateral Interviews, Child Protection Risk Assessment 84
- Collection Of Child Support, Family And Children's Services 78
- Colors, Certification Marks 124
- Common Stacks, Two Or More Emmissions Units Connected To A Common Stack 155
- Communication Devices, Considered For Purchase By The Department 39
- Community Resources 83
- Community Treatment Services, Core Family And Children's Services 58
- Compact Administrator 51
- Compelling Reasons, For Not Terminating Parental Rights 62
- Complaint Authority, QAS Will Assign A Priority Rating 118
- Completion Of A Comprehensive Risk Assessment, Child Protection Risk Assessment 84
- Compliance With Multi-Ethnic Adoption Provisions, Services To Be Provided In Adoptions 92
- Compliance With Requirements Of The Multiethnic Placement Act 61
- Compliance With The Indian Child Welfare Act, Involuntary Parental Rights Termination 97
- Compulsory Printing 124
- Computation Of Time 169
- Computing Value Of Sick Leave-- Employee Not Covered By Contract 186
- Concurrent Benefit Prohibition 28
- Concurrent Planning 51
- Conditions For Revocation 146
- Conduct Of The Assessment, Child Custody Investigations For The District Court 86
- Conference At Hearing 179
- Confidentiality 134, 139, 141, 148
- Confidentiality Of Information, Investigation Of Petition To Adopt 104
- Confidentiality Of Records 133, 140, 142, 145, 146
- Confidentiality Of Settlement Negotiations 181
- Consent For Medical Care, Alternate Care Case Management 67
- Consideration Of Settlements 181
- Considerations For Placement In Alternative Care 66
- Consistency Determination, Local Nutrient Management Program 143
- Consistency Review Of Local Nutrient Management Programs Established Prior To The Development Of The State Nutrient Management Plan 142
- Consolidation Of Proceedings, Two Or More Hearings 179
- Contact With Child, Alternate Care Case Management 67
- Containers 122
- Content, Declaratory Ruling 171
- Contested Case 168
- Continuance Of Hearing 179
- Continuation Of Eligibility For IV-E Adoption Assistance 108
- Contract Violation And Appeals 140
- Contract Violation Review 141
- Controlled Substance Felon, Convicted 30
- Controlled Substance Felons 32
- Cooperation With Law Enforcement, Health And Welfare 86
- Coordinator 127
- Core Family And Children's Services 57
- Costs Of Prescription Drugs, Family And Children's Services 78
- Costs Paid By Medicaid, Family And Children's Services 78
- Counting Income And Resources For Refugee Medical Assistance With A "Spend Down" 22
- Court Ordered Service, Core Family And Children's Services 58
- Court-Ordered Child Protection Risk Assessment 86
- Coverage Conditions - Equipment 37
- Coverage Conditions - Supplies 41
- Crisis Services, Core Family And Children's Services 57
- Criteria For Aquifer Categories 136
- Cross-Referencing 130
- Current Picture, Child 93
- Custody And Placement, Department Responsibility 75

**D**

DHW Regions 51

- Date Of Service, Date Of Delivery 41  
Day Care For Children 51  
Day Treatment Services 51  
Decertification, Family Service Workers 105  
Decision And Approval Process For Termination Of Parent And Child Relationship (TPR) 94  
Declaratory Ruling 168  
Deduction Of Incurred Medical Expenses 23  
Defective, Insufficient Or Untimely Pleadings 175  
Definitions And Abbreviations, IDAPA 16.06.01 50  
Definitions And Abbreviations, IDAPA 58.01.23 168  
Definitions, IDAPA 16.03.08 27  
Definitions, IDAPA 44.01.01 126  
Degree Of Relationship Of The Child To Petitioners, Investigation Of Petition To Adopt 103  
Denial Of Application, Application To Be Adoptive Parents 99  
Denial Of Recertification, Family Service Workers 105  
Denial, Rulemaking Petition 170  
Dental Care, Family And Children's Services 78  
Department 27, 51  
Department Clients, Child Custody Investigations For The District Court 86  
Department Custody, Authority For Alternate Care Services 66  
Department Responsibility To Qualified Individual 106  
Dependent Child 27, 30  
Depositions, Board Of Medicine 115  
Depositions, May Be Offered Into Evidence 180  
Description Of Investigation, Termination Of Parental Rights 95  
Depositions, Prepared Testimony And Exhibits 178  
Determination Of Authority, QAS 118  
Determination Of Eligibility For ADC-FC 74  
Determination Of Need For Assistance, Adoption Assistance 106  
Determination, Suspension/Termination Of Loan Contracts 148  
Determining Eligibility For Medical Assistance For Refugees Who Must Meet A "Spend Down" 23  
Development Of The Alternate Care Plan 69  
Director 51  
Discharge Planning, Alternate Care Case Management 68  
Dismissal Of Inactive Contested Cases 172  
Disposition Of Reports, Child Protection Risk Assessment 84  
Disqualification Of Officers Hearing Contested Cases 176  
Document 127  
Documentary Evidence 180  
Documentation Of Program Changes, Changes In The Individual Program/ Implementation Plan 48  
Drivers' Licenses For Children In Alternate Care 78  
Drug Related Conviction, Excluded From Family Size 29  
Durable Medical Equipment And Medical Supplies 34
- E**
- EPSDT Screening 78  
Earlier Dates During Initial Period 161  
Earned Income 27  
Efforts To Maintain Family, Involuntary Parental Rights Termination 97  
Electronic And Physical Files, Family Case Records 62  
Eligibility Conditions, Title XIX Foster Child 76  
Eligibility Documentation, Standards For DDA's Providing Services To Consumers Without Targeted Service Coordinators 45  
Eligible Child, Emergency Assistance Requirements 108  
Eligible Individual, At-Risk Eligibility Criteria 31  
Emergencies, Family And Children's Services 78  
Emergency Action, Permit Revocation 146  
Emergency Assistance Requirements 108  
Emergency Assistance To Families 51  
Emergency Assistance To Families, Referral Indicating An Emergency Condition And Determines An Emergency Exists 108  
Emergency Conditions, Emergency Assistance Requirements 109  
Emergency Payments, Family And Children's Services 109  
Emergency Services, Family And Children's Services 109  
Emission Standard, Particulate Matter Emission 155  
Employer Participation, Purchase Of Service 189  
Episode Of Need Restriction, Career Enhancement/Emergency Assistance Services 30  
Established Fee, Children's Mental Health Services 91  
Establishing A Good Engineering Stack Height 152  
Evaluation And Recommendation, Investigation Of Petition To Adopt 103  
Evaluations, Standards For DDA's Providing Services To Consumers With Authorized ISP 43  
Evaluations, Standards For DDA's Providing Services To Consumers Without Targeted Service Coordinators 45  
Evaluations/Assessments, Family History 93  
Ex Parte Communications 177  
Exclusions From Referral, Placement Of Unwed Mothers At Booth Memorial Home 69  
Exclusions, Foster Care Maintenance Payments 81  
Exemption, Shipments Outside The State Of Idaho 124  
Exhibit Numbers 114  
Exhibits, Each Documentary Exhibit 180  
Exigent Circumstances, Independent, Relative And Stepparent Adoptions 100  
Extended Family Member Of An Indian Child 51  
Extended Medical, Refugee Medical Assistance Program 24
- F**
- FFP 51  
Facilities Operated By The State,

Providing Care For Children 79  
Factors Considered, Adoption Assistance 107  
Family 51  
Family And Children's Services (FACS) 52  
Family Assessment 52  
Family Assessment, Considerations For Placement In Alternative Care 66  
Family Case Record 52  
Family Case Records, On Every Family That Is Provided Family And Children's Services 62  
Family Centered Services 52  
Family Circumstances, Report To The Court-Involuntary Parental Rights Termination 97  
Family Decision Making And Plan Development, Protections And Safeguards For Children And Families 61  
Family History, Termination Of Parental Rights 93  
Family Involvement, Considerations For Placement In Alternative Care 66  
Family Plan 52  
Family Services Practice 59  
Family Services Worker 52  
Fee Determination For Services Other Than Out-Of-Home Care 90  
Fees And Upper Limits, Durable Medical Equipment/Supplies 41  
Fees Charged By The Department, Monitoring Fees 106  
Felons Violating A Condition Of Probation Or Parole, Excluded From Family Size 29  
Field Office 52  
Fifty Percent Not Employed, Adults Living In Indian Country 28  
Filing And Service Of Discovery, Related Documents 178  
Filing And Service Of Discovery, Related Documents, Board Of Medicine 114  
Filing Documents With The Agency-- Number Of Copies—Facsimile Transmission (Fax), Board Of Medicine 113  
Filing Of A Petition For Involuntary Termination Of Parent And Child

Relationship 96  
Filing Of Petition For Voluntary Termination, Parental Rights 95  
Final Agency Action, Declaratory Rulings Petition 171  
Final Orders 183  
Final Report, Prospective Adopting Parents 101  
Financial And Support Services, Alternate Care Case Management 68  
Financial Arrangements, Alternate Care Case Management 67  
Financially Responsible Relatives 23  
Fixed Annual Accrual Of Sick Leave, Benefits For Unused Sick Leave 188  
Fleeing Felons, Cannot Receive At-Risk Services 32  
Fleeing Felons, Excluded From Family Size 29  
Fleeing Felons, To Avoid Prosecution, Custody Or Confinement 31  
Forfeiture Of Further Cost-Share Payments 140  
Form And Contents Of Petition For Declaratory Rulings 171  
Form And Contents Of Petition To Initiate RuleMaking 170  
Form And Contents Of Petitions To Intervene 175  
Form And Contents, Petition To Initiate RuleMaking 170  
Form Of Pleadings 174  
Form Or Format 127  
Forwarding Of Benefits, Income, Benefits And Savings Of Children In Foster Care 77  
Foster Care Maintenance Payments 81  
Foster Parent Adoptions 100  
Fraud, Convicted In Federal Or State Court 31  
Fraud, Misrepresenting Residence 32  
Fraudulent Misrepresentation Of Residency 29  
Frequency Of Plan Development, Standards For DDA's Providing Services To Consumers Without Targeted Service Coordinators 47  
Funding Of Subdivision Pool, Unused Sick Leave Credit 188  
Funding Restrictions, Career Enhancement 33

Further Investigation Is Requested, By The Board Of Medicine 119

## G

General Provisions For Waivers, Variances, And Exemptions 135  
General Requirements Applicable To All Family And Children's Services Programs 56  
Gifts, Payment To Family Foster Care Providers 79  
Goal 52  
Good Cause 27  
Granting Petitions To Intervene 175  
Group Foster Care 80

## H

Health And Dental Care For Children In Alternate Care 78  
Health And Welfare Employees, Reporting Abuse, Abandonment Or Neglect 82  
Hearing Officers Contrasted With The Board -- Board Members Must Act As Presiding Officers At The Contested Case Hearing 176  
Highest Level Of Need For Specialized Care, Specialized Foster Care 80  
Hospital Records, Family History 93  
Hospitalized Foster Child, Title XIX Foster Child 76  
How Hearings Held, In Person, By Telephone/Television Or Other Electronic Means 179

## I

ICWA Placement Preferences 61  
ICWA Preferences, Protections And Safeguards For Children And Families 60  
IDAPA 127  
IDAPA Numbering 130  
IV-E Foster Care 50  
Idahos 124  
Identification Of Communications, Proceeding's Case Caption And Number 169  
Identity Of Commodity, Potato Container 123  
Implementation Plan, Standards For DDA's Providing Services To Consumers With Authorized ISP 44  
Implementation Plan, Standards For

DDA's Providing Services To Consumers Without Targeted Service Coordinators 47  
Income And Resources 30  
Income And Resources On Date Of Application, Refugee Medical Assistance 24  
Income Limit, At-Risk Eligibility Criteria 32  
Income, Benefits And Savings Of Children In Foster Care 77  
Independent Living 52  
Independent Living, Core Family And Children's Services 58  
Independent, Relative And Stepparent Adoptions 100  
Indian 52  
Indian Child 52  
Indian Child Welfare Act (ICWA) 52  
Indian Child's Tribe 52  
Indian Tribe 53  
Indicated, Child Abuse And Neglect Reports 85  
Individual Authorized To Request Voluntary Services, Family And Children's Services Programs 56  
Individual Program Plan, Standards For DDA's Providing Services To Consumers Without Targeted Service Coordinators 46  
Individual Support Plan, Standards For DDA's Providing Services To Consumers With Authorized ISP 44  
Individuals Excluded From Family Size 29  
Individual's Motion, Opening Sealed Records Of Adoptions 105  
Ineligible Non-Citizens, Excluded From Family Size 29  
Information And Referral Services 53  
Information For Alternate Care Provider, Alternate Care Case Management 67  
Information To Be Provided To Family, Family And Children's Services Programs 56  
Information, Referral And Screening, Family And Children's Services Programs 56  
Informational Forms, Family History 93  
Initial And Subsequent Reports,

Prospective Adopting Parents 101  
Initial Interview, Investigation Of Petition To Adopt 102  
Initial Pleading By Party Listing Of Representatives 172  
Initiating Family And Children's Services' 56  
Insurance Coverage, Family And Children's Services 77  
Intake, Medical Information Obtained Prior To Delivery Of Services 45  
Intake, Standards For DDA's Providing Services To Consumers With Authorized ISP 43  
Intensive Treatment Facilities 80  
Interethnic Adoption Provisions Of 1996 (IEPA) 53  
Interlocutory Orders 182  
Internal Numbering 130  
Interstate Compact On Out-Of-State Placements, Core Family And Children's Services 58  
Intervention Prohibited, Board Of Medicine 114  
Interview Of A Child, Child Protection Risk Assessment 83  
Interview Of Family, Child Protection Risk Assessment 83  
Interviews With Potential Applicants, Application To Be Adoptive Parents 98  
Invalid, Child Abuse And Neglect Reports 85  
Investigation Of Petition To Adopt 102  
Investigation, Report To The Court- Involuntary Parental Rights Termination 97  
Investigation, Termination Of Parental Rights Shall Be Completed And Submitted To The Court Within Thirty Days 95  
Involuntary Placement Under The Children's Mental Health Services Act 89  
Issuance Of Default Order 182  
Issues Considered In Six Month Review, Placement Under The Child Protective Act 65  
Issuing A Medical Card To A Refugee Who Must Meet A "Spend Down" 24

**J**

Judicial Determinations, Child In Alternate Care Under State Supervision 65

**K**

Kinds And Scope Of Discovery Listed 178  
Kinds And Scope Of Discovery Listed, Board Of Medicine Contested Cases 114  
Kinship Care 53

**L**

Least Restrictive Setting, Protections And Safeguards For Children And Families 60  
Legal Assertions, Petition For Declaratory Rulings 171  
Legal Availability Of The Child, Investigation Of Petition To Adopt 103  
Legal Citation 127  
Legal Requirements For Indian Children, Protections And Safeguards For Children And Families 60  
Legislative Format 127  
Legislative Format, All Modified Rule Text 129  
Licensed 53  
Licensing 53  
Limitation Of Use, Certification Marks 123  
Limitation On Insurance Programs 186  
Limitation, Hearing Officers 176  
Listing Or Delisting Toxic Air Pollutant Increments 132  
Lived In Indian Country Or Alaskan Native Village 28  
Local Resources And Plan Development, Access To Services 89  
Location Of Hearings And ADA Requirements 179  
Location Of Words, Potato Container 124  
Lowest Level Of Need For Specialized Care, Specialized Foster Care 79

**M**

Maintenance Of Child, Foster Care Maintenance Payments 81  
Maps, Charts, Graphs, Diagrams, And

Other Visual Aids 129  
Marks 122  
Medicaid 53  
Medical Assistance With "Spend  
Down" 22  
Medical Emergencies, Family And  
Children's Services 78  
Medical Equipment Program  
Requirements 35  
Medical Examination, Adoptive Home  
Studies 99  
Medical Information, Involuntary  
Parental Rights Termination 97  
Medical Information, Made Available  
To The Adopting Family 104  
Medical Necessity Criteria, DME/  
Medical Supplies 35  
Medical Only, Refugee Medical  
Assistance 22  
Medical Supply Program  
Requirements 40  
Members Of Six Month Review Panel,  
Placement Under The Child  
Protective Act 65  
Minimum Allowable Emission 154  
Minimum Standards For Service, Pre-  
Placement Home Studies/Court  
Reports/Supervisory Reports 106  
Ministers, Reporting Abuse,  
Abandonment Or Neglect 82  
Moderate Level Of Need For  
Specialized Care, Specialized Foster  
Care 79  
Monthly Foster Care Payments - Pre-  
Adoptive Placement 101  
Monthly Maintenance Payment, Types  
And Amounts Of Adoption  
Assistance 107  
Motion Of Petitioners, Opening Sealed  
Records Of Adoptions 105  
Motions, Defined, Form And Contents,  
Time For Filing 174  
Multiethnic Placement Act Of 1994  
(MEPA) 53  
Multiple TANF Benefits 29

**N**

Narrative Social History, Family  
History 93  
Necessity For Assistance, Emergency  
Assistance Requirements 108  
Need For Work-Related Services 30  
Need For Work-Related Services, At-

Risk Eligibility Criteria 31  
Needs Of The Child, Investigation Of  
Petition To Adopt 103  
New Applicants, Precedence Of  
Categorical Assistance Programs 24  
No Certification Mark 122  
No Current Plan, Benefits For Unused  
Sick Leave 187  
No Motions For Reconsideration, Final  
Orders 183  
No Other Options for Unused Sick  
Leave 187  
Noncustodial Parent 27  
Nonrecurring Adoption Costs, Types  
And Amounts Of Assistance 107  
Not Incorporated 122  
Notice 147  
Notice Of Appeal, Filed With The  
Agency 184  
Notice Of Decision, Approving/  
Denying A Requested Item 41  
Notice Of Hearing 146  
Notice Of Hearing, Contested  
Case 178  
Notice Of Intent To Initiate Rulemaking  
Constitutes Action On Petition 170  
Notice Of Petition For Declaratory  
Ruling 171  
Notice Of Proposed Default After  
Failure To Appear 182  
Notice Of Revocation 146  
Notice Of Six Month Review,  
Placement Under The Child  
Protective Act 64  
Notice Of Violation 141  
Notice Required For ICWA 62  
Notification Of Change In Placement,  
Birth Parents 61  
Notification Of Change In Visitation,  
Birth Parents 61  
Notification Of Referent, Child  
Protection Risk Assessment 84  
Notification Of Right To Participate  
And Appeal, Birth Parents 61  
Notification To Referent, Response  
Priorities Abuse, Abandonment Or  
Neglect 83  
Numbering 127  
Nutrient Management Program  
Modifications 144

**O**

OFFICE 117

Objections, Offers Of Proof 180  
Objective 53  
Office -- Office Hours -- Mailing  
Address And Street Address,  
Administrative Rules 126  
Office Hours, Mailing Address And  
Street Address, DEQ 168  
Office--Office Hours--Mailing Address  
And Street Address, Board Of  
Medicine 112  
Official Notice, Agency Staff  
Memoranda 180  
Official Text 127  
Ongoing Eligibility, AFDC-FC 75  
Ongoing Eligibility, Title XIX Foster  
Child 76  
Opening Sealed Records Of  
Adoptions 105  
Operation Of Subdivision Pool, Unused  
Sick Leave 188  
Oral Argument 180  
Order Granting Intervention  
Necessary 175  
Order Of Procedure 179  
Orders Granting Intervention,  
Opposition 175  
Orders Resulting From Prehearing  
Conference 177  
Original Tier I Operating Permits 159  
Other Request, Opening Sealed Records  
Of Adoptions 105  
Other Sources Of Alternate Care - Casey  
Family Program, Boise Division 68  
Other Sources Of Alternate Care -  
Placement Of Unwed Mothers At  
Booth Memorial Home 68  
Other Type Containers, Sack Type  
Potato Containers 123  
Outcomes, Child Mental Health  
Services 88  
Outside/Within Statutory  
Authority 118

**P**

P.L. 105-89, Prohibits States From  
Delaying Or Denying Placement  
With An Approved Family 54  
P.L. 96-272, Require States To  
Implement A Case Review 53  
Page 127  
Parent 27  
Parent's Refusal Of To Cooperate With  
TAFI Requirements, A Personal

- Responsibility Contract Or Parent's Ineligibility For TAFI Due To Use Of Lifetime TAFI Benefits 108
- Parole Violation 31
- Participant 27
- Participation In Subdivision Unused Sick Leave Pool 187
- Particulate Matter -- Process Equipment Emission Limitations On Or After July 1, 2000 154
- Particulate Matter Emission Limitations 154
- Particulate Matter--Process Weight Limitations 154
- Parties And Persons With Similar Interests, Presiding Officer May Limit Witnesses 179
- Parties To Contested Cases Listed, Board Of Medicine 113
- Party 169
- Payment - Group Foster Care 80
- Payment - Intensive Care, Family And Children's Services 81
- Payment By Department, Drivers' Licenses For Children In Alternate Care 78
- Payment By Parents, Drivers' Licenses For Children In Alternate Care 78
- Payment For Shelter Care, Providing Care For Children 79
- Payment For Treatment, Access To Services 89
- Payment In The Home Of A Relative 81
- Payment Of Insurance Premiums 187
- Payment To Family Foster Care Providers, Providing Care For Children 79
- Payment, Professional Foster Care 80
- Period Of Ineligibility 30
- Period Of Support Supervision, Services To Be Provided In Adoptions 92
- Periodic Review Of Benefits From Bureau Of Indian Affairs (BIA) 77
- Permanency Hearings 65
- Permanency Planning 53
- Permit Revocation 139, 145
- Permit To Construct Procedures For Tier I Sources 152
- Permit To Construct Required 158
- Personal Care Services (PCS) 53
- Personal Responsibility Contract (PRC) 27
- Persons Defined, Persons Not Parties, Interested Persons 113
- Persons Who May Appeal, Contested Cases 184
- Petition 169
- Petition Process 137
- Petition To Adopt Under The Adoption Of Children Act 102
- Petition Under The Child Protective Act 86
- Petitioner Has Burden Of Proof 172
- Petitions For Declaratory Rulings To Be Decided By Order 171
- Petitions To Initiate Contested Cases, Petitions, Defined, Form And Contents 173
- Photograph, Adoptive Home Studies 99
- Physician Recommendation, Documentation Prior To Implementing IPP 47
- Placement Services, Family And Children's Services 109
- Placement Supervision - Transfer From Other Public/State Agency 100
- Planning, Group Foster Care 80
- Planning 54
- Planning, Report To The Court--Involuntary Parental Rights Termination 97
- Pleadings In Contested Cases Listed, Miscellaneous 173
- Post Adoption Services, Services To Be Provided In Adoptions 92
- Pre-Placement Child/Family Assessment, Services To Be Provided In Adoptions 92
- Pre-Placement Home Study, Services To Be Provided In Adoptions 92
- Precedence Of Categorical Assistance Programs 24
- Preliminary Department Review 138
- Preliminary Orders, Issued By A Person Other Than The Board 182
- Preliminary Procedure At Hearing 179
- Preparation For Placement, Alternate Care Case Management 67
- Preparation For Placement, Services To Be Provided In Adoptions 92
- Prepared Testimony 180
- Prepared Testimony And Exhibits, Board Of Medicine 114
- Presiding Officer(s) 169
- Preventative Services, Core Family And Children's Services 58
- Prevention 54
- Prior Approval On Decision For Removal, Child From An Adoptive Home 104
- Priority I, Response Priorities Abuse, Abandonment Or Neglect 82
- Priority II, Response Priorities Abuse, Abandonment Or Neglect 82
- Priority III, Response Priorities Abuse, Abandonment Or Neglect 83
- Probation Or Parole Violation, Cannot Receive Career Enhancement Services 32
- Procedure For Issuing Permits, Permit To Construct 150
- Procedure In The Six Month Review, Placement Under The Child Protective Act 64
- Procedure On Prehearing Motions 180
- Procedures Following The Adoptive Placement 100
- Procedures For Categorizing Or Recategorizing An Aquifer 136
- Professional Foster Care 80
- Program Abuse, DME/Medical Supply Items 41
- Program Administration, Family And Children's Services 109
- Program Changes, Standards For DDA's Providing Services To Consumers With Authorized ISP 45
- Program Documentation, Consumer's Participation 47
- Program Documentation, Standards For DDA's Providing Services To Consumers With Authorized ISP 44
- Program Plan Components, Standards For DDA's Providing Services To Consumers Without Targeted Service Coordinators 46
- Progress Reports, Prospective Adopting Parents 101
- Prohibition Against Cash Option, Convert Unused Sick Leave To Cash 187
- Proof Of Service 175
- Protections And Safeguards For Children And Families 60

- Protective Orders, Presiding Officer 178  
Protective Services 54  
Psychological Evaluation, Adoptive Parents 99  
Public Participation 144  
Publish 127  
Purchase Of Service Generally, Purchase Of Service 188  
Purchase Of Services 54  
Purpose Of Section 710, 58.01.01 154  
Purposes Of Prehearing Conferences 177
- Q**
- Qualifications, Professional Foster Care 80  
Qualified Expert Witness--ICWA 54  
Qualified Individual Requirements, Family Service Workers 105
- R**
- Racial Backgrounds Other Than Caucasian, Adoption Assistance 107  
Reapplication Process, Applicants Who Wish To Adopt Another Child 104  
Reasonable Efforts To Reunify The Family Are Not Required, Involuntary Termination Of Parental Rights 96  
Reasonable Efforts/Active Efforts, Protections And Safeguards For Children And Families 60  
Recertification, Family Service Workers 105  
Recognition 122  
Recommendations And Conclusions Of Six Month Review Panel, Placement Under The Child Protective Act 65  
Record For Decision, Contested Cases 181  
Record Of Conference, Prehearing 177  
Record Of Request For Services, Family And Children's Services Programs 56  
Recording Of Hearings, Contested Cases 182  
Records Of The Qualified Individual 106  
Records Review Is Requested, Board Of Medicine Will Define Focus/Scope/Depth 119  
Records, Accurate, Current, And Complete Consumer/Administrative Records 48  
Records, Standards For DDA's Providing Services To Consumers With Authorized ISP 45  
Referral - Group Foster Care 80  
Referral - Intensive Treatment, Family And Children's Services 80  
Referral Criteria, Placement Of Unwed Mothers At Booth Memorial Home 68  
Referral To Child Support Services 77  
Refugee Medical Assistance Program 22  
Refund Of Cost-Share Payments 140  
Regional Notification, IPP Shall Be Submitted To The Regional ACCESS Units 47  
Registration And Acknowledgment, Petition To Adopt Under The Adoption Of Children Act 102  
Regulation 127  
Reinstatement Of Suspended Grant 134  
Reinstatement Of Suspended Loan 139, 148  
Reinstatement Of Terminated Grant 134  
Reinstatement Of Terminated Loan 139, 148  
Removal Of A Child From An Adoptive Home 104  
Removal Of Identifying Information From The Department's Central Registry Of Valid Child Protection Referral Dispositions 85  
Renewals Of Tier I Operating Permits 161  
Report Of Abuse Or Neglect, Emergency Assistance Requirements 109  
Report Of Investigation, QAS Shall Prepare A Report 119  
Report To Court, Child Custody Investigations 86  
Report To The Court - Involuntary Termination, Parental Rights 97  
Reportable Income, Specialized Foster Care 80  
Reporting Abuse, Abandonment Or Neglect 82  
Reporting System, Reporting Abuse, Abandonment Or Neglect 82  
Reports Involving Indian Children, Reporting Abuse, Abandonment Or Neglect 83  
Reports Involving Military Families, Reporting Abuse, Abandonment Or Neglect 83  
Representation Of Parties At Hearing 172  
Representation Of Parties At Hearing, Board Of Medicine 113  
Representatives, Board Of Medicine Hearings 113  
Request For Statement, Child Abuse And Neglect Reports 85  
Requests From Private Attorney, Child Custody Investigations For The District Court 86  
Requirement To Obtain Tier I Operating Permit 158  
Requirement, Initiation Of RuleMaking 170  
Resealing Records, Adoption Records 105  
Reservation 54  
Residence 30  
Residence Exception To Time Limit 28  
Residence, Adoptive Home Studies 99  
Residence, Individual 32  
Residence, One-Time Cash Payment Eligibility Criteria 30  
Respite Care 54  
Response Priorities, Reporting Abuse, Abandonment Or Neglect 82  
Response To Inquiries, Services To Be Provided In Adoptions 92  
Responses In Contested Cases, Answers, Defined, Form And Contents, Time For Filing 173  
Retirement Delayed Or Negated After Purchase, Purchase Of Service 188  
Return To Alternate Care, Benefits And Savings Of Children In Foster Care 77  
Review After Six Months, Benefits And Savings Of Children In Foster Care 77  
Review And Evaluation Of Local Nutrient Management Programs And Findings Of Fact 142

Revisions Of Permits To Construct 152  
Revocation Hearing 139  
Rights Of Parties And Of Agency Staff, Board Of Medicine 113  
Risk Assessment 55  
Role Of Law Enforcement, Child Protection Risk Assessment 84  
Rule 127  
Rule-Drafter 127  
Rule-Making 127  
Rules Of Evidence, Evaluation Of Evidence 180

**S**

SSI (Supplemental Security Income) 55  
SSN, At-Risk Eligibility Criteria 32  
SSN, Each Adult Family Member 30  
Sack Type Containers -- Fifty Pounds (50 Lbs) Or Over 123  
Sack Type Containers -- Less Than Fifty Pounds (50 Lbs) 124  
Sanctions For Failure To Obey Order Compelling Discovery 178  
Sanctions For Failure To Obey Order Compelling Discovery, Board Of Medicine 114  
School 186  
School Fees, Payment To Family Foster Care Providers 79  
Scope Of Authority Of Hearing Officers 176  
Screening Of Adoptive Applicants 98  
Section, Subsection, Paragraph, And Subparagraph 127  
Self-Support Services 55  
Separation By Reason Of Retirement, Unused Sick Leave Credited 187  
Serious Emotional Disturbance (SED) 55  
Service Management, Core Family And Children's Services 57  
Service On Parties And Other Persons 174  
Service On Representatives Of Parties And Other Persons, Contested Case 172  
Services To Be Provided In Adoptions 92  
Settlement Not Binding, Presiding Officer Is Not Bound By Settlement 181

Seven Days To Challenge Proposed Default Order 182  
Sick Leave Funding Rates--State Employees--School Employees 186  
Six Month Review, Placement Under The Child Protective Act 64  
Size, Certification Mark 122  
Sliding Scale Fee Table 644, Services Provided To A Child In Home 89  
Social Security Number (SSN) 29  
Social Service Block Grant 55  
Specialized Foster Care 79  
Specific Skill Assessments, Standards For DDA's Providing Services To Consumers With Authorized ISP 43  
Standard Requirements Of Style 128  
Standards For DDA's Providing Services To Consumers With Authorized Individual Support Plans 43  
Standards For DDA's Providing Services To Consumers Without Targeted Service Coordinators 45  
State Agencies And Junior College Districts 186  
Statutory Inspection, Examination, Investigation, Etc. -- Contrasted With Other Discovery, Board Of Medicine 114  
Stay Of Orders 183  
Stay Of Orders, Department Action Not Stayed 172  
Stipulations, Parties 179  
Storage Of Records, Family Case Records 63  
Style 128  
Sublevels 130  
Subpoenas, Board Of Medicine 114  
Subpoenas, Presiding Officer 178  
Substitution Of Representative, Withdrawal Of Representative 173  
Suggestion For Or Inquiry About Settlements 181  
Supervisory Review - Certain Priority I And II Cases, Response Priorities Abuse, Abandonment Or Neglect 83  
Support Agreement For Voluntary Placements, Family And Children's Services 77  
Support Documentation, Included In The Consumer's Record 47  
Support In Court-Ordered Placement,

Family And Children's Services 77  
Supportive Services Excluded, TANF 29  
Surface Water Exemptions 135  
Surface Water Variances 135  
Suspension Or Termination Of Adoption Assistance 108  
Suspension Or Termination Of Grant 133  
Suspension Or Termination Of Loan Contracts 138, 147

**T**

TAFI 55  
TAFI Family 30  
TANF Funds Must Not Be Used For 29  
TANF Restrictions 32  
Target Population 55  
Technical Assistance, Services To Be Provided In Adoptions 92  
Temporary Re-Placement After Disruption, Removal Of A Child From An Adoptive Home 104  
Test Methods And Procedures, Particulate Matter-Process Weight Limitations 154  
Test Methods and Procedures, Particulate Matter Emission 155  
Testimony Under Oath 179  
Time Frame For Investigation, Investigation Of Petition To Adopt 103  
Time Limit, Eligibility For Adults Is Limited 28  
Time Limitation, Refugee Medical Assistance 22  
Time Of Payment, Fee Determination For Services Other Than Out-Of-Home Care 91  
Time Of Retirement, Purchase Of Service 188  
Time Period For Filing Petition To Initiate Contested Case 171  
Timely Application 159  
Timely Filing Of Petitions To Intervene 175  
Title IV-A 55  
Title IV-B 55  
Title IV-E 55  
Title XIX - Medicaid Coverage, Types And Amounts Of Adoption Assistance 107

Title XIX (Medicaid) 56  
Title XIX Foster Child 76  
Title XXI 56  
Tote Bin Type, Potato Container 123  
Toxic Air Pollutants Carcinogenic  
  Increments 161  
Tracking, Complaints To The Board Of  
  Medicine 119  
Transfer Of Cases, Refugee Medical  
  Assistance 24  
Transition Plan 44  
Transition Planning, Alternate Care  
  Case Management 68  
Transition To New Particulate Matter  
  Standard For Permitted Sources,  
  Process Equipment 154  
Transition To Refugee Medical  
  Assistance, From Medicaid 24  
Transitional Services 30  
Transitional Services Criteria 30  
Treatment Of Purchase Of Service  
  Contributions, Purchase Of  
  Service 189  
Treatment Plan, Professional Foster  
  Care 80  
Tribal Court 56  
Types And Amounts Of Assistance,  
  Adoption 107

**U**

Unable To Determine, Child Abuse And  
  Neglect Reports 85  
Unearned Income 28  
Uniform Format Requirements 128  
Uniform Numbering Of Rules 130  
Uniform Style And Format Of  
  Rules 128  
Unmarried Parents' Services 56  
Unmet Service Need, Emergency  
  Assistance Requirements 109  
Update Of Adoption Study, Applicants  
  Who Wish To Adopt Another  
  Child 104  
Use Of Public Funds And Benefits,  
  Access To Services 89

**V**

Valid Reports, Child Abuse And  
  Neglect Reports 85  
Valid, Child Abuse And Neglect  
  Reports 84  
Verifiable, Child Abuse And Neglect  
  Reports 85

Verification Of Ages Of Adopting  
  Parents 99  
Verification Of Career Enhancement  
  Eligibility 31  
Visitation For Birth Parents, Protections  
  And Safeguards For Children And  
  Families 61  
Voluntary Agreement, Authority For  
  Alternate Care Services 66  
Voluntary Consent, Terminate Parental  
  Rights 94  
Voluntary Quit 30  
Voluntary Services Agreement 56  
Voluntary Termination, Parental  
  Rights 94

**W**

Withdrawal Of Parties 173  
Words Printed, Potato Container 123