

IDAHO ADMINISTRATIVE BULLETIN

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August 1, 2001 -- Volume 01-8

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Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative 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 00-1 refers to the first Bulletin issued in calendar year 2000, Bulletin 01-1 refers to the first Bulletin issued in calendar year 2001, 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 2001 is cited as Volume 01-1, the December 1999 Bulletin is cited as Volume 99-12. 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.

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://www2.state.id.us/adm/adminrules/>

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 Paragraph 060.02.c.

"ii." refers to Subparagraph 060.02.c.ii.

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 "-", (38-0501-0101). 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. 38-0501-0101"

"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).

"0101" 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 2001.

*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 2001

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
01-1	January, 2001	*November 15, 2000	January 3, 2001	January 24, 2001
01-2	February, 2001	December 20, 2000	February 7, 2001	February 28, 2001
01-3	March, 2001	January 24, 2001	March 7, 2001	March 28, 2001
01-4	April, 2001	February 21, 2001	April 4, 2001	April 25, 2001
01-5	May, 2001	March 21, 2001	May 2, 2001	May 23, 2001
01-6	June, 2001	April 18, 2001	June 6, 2001	June 27, 2001
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01-8	August, 2001	June 20, 2001	August 1, 2001	August 22, 2001
01-9	September, 2001	July 18, 2001	September 5, 2001	September 27, 2001
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01-11	November, 2001	September 19, 2001	November 7, 2001	November 28, 2001
01-12	December, 2001	October 24, 2001	December 5, 2001	December 26, 2001

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2002

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
02-1	January, 2002	*November 14, 2001	January 2, 2002	January 23, 2002
02-2	February, 2002	December 19, 2001	February 6, 2002	February 27, 2002
02-3	March, 2002	January 23, 2002	March 6, 2002	March 27, 2002
02-4	April, 2002	February 20, 2002	April 3, 2002	April 24, 2002
02-5	May, 2002	March 20, 2002	May 1, 2002	May 22, 2002
02-6	June, 2002	April 17, 2002	June 5, 2002	June 26, 2002
02-7	July, 2002	May 22, 2002	July 3, 2002	July 24, 2002
02-8	August, 2002	June 19, 2002	August 7, 2002	August 28, 2002
02-9	September, 2002	July 24, 2002	September 4, 2002	September 25, 2002
02-10	October, 2002	**August 21, 2002	October 2, 2002	October 23, 2002
02-11	November, 2002	September 18, 2002	November 6, 2002	November 27, 2002
02-12	December, 2002	October 23, 2002	December 4, 2002	December 25, 2002

**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.*

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IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.02.12 - BONDED WAREHOUSE RULES

DOCKET NO. 02-0212-0101

NOTICE OF TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2001.

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 Title 69, Chapter 2, Section 69-231, 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 15, 2001.

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: 1. Clarification of definitions; 2. Clarification of when assessments are collected; 3. CIFP ownership clarification; 4. Clarification of how market value is determined; 5. Clarification of the process by which assessments are collected; 6. Failure to pay or late payment of assessments provisions; and 7. Development of formula for additional security when determined that licensee does not appear to have the ability to pay producers for commodities purchased or does not have a sufficient net worth to outstanding financial obligations ratio.

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

Compliance with deadlines in amendments to governing law or federal programs. This rule is needed to implement the provisions of House Bill 366 passed by the 2001 Legislature and signed into law by the Governor on April 2, 2001. HB 366 amends the Bonded Warehouse Law.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Due to Commodity Indemnity Fund (CIF current balance of \$3.3 million, with outstanding claims in excess of \$2.3 Million, it imperative that the department resume collection of assessments at the statutory rate of two-tenths of one percent (.2%) of the total value at the time of sale of the commodities. HB 366 increases the CIF cap to \$10 million and requires a minimum balance of \$1 million pursuant to Sections 69-259 and 69-264, Idaho Code, Respectively.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the short timeframe of implementation of the rules to comply with the statute as passed by the 2001 Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dennis Doshier at 208-332-8674.

Anyone may submit written comments regarding the temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2001.

DATED this 18th day of June, 2001.

Patrick A. Takasugi, Director
Idaho State Dept. of Agriculture
2270 Old Penitentiary Road
PO Box 790
Boise, ID 83701
(208) 332-8305

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0212-0101

430. AMOUNT OF BOND.

01. Bonding Requirement. The amount of bond to be furnished for each warehouse shall be fixed at a rate of twenty cents (\$.20) per bushel of licensed capacity or six percent (6%) of the total value of the agricultural commodities stored, whichever is greater. ~~(9-1-92)~~(7-1-01)T

02. Additional Bonding Requirements. ~~If it appears the licensee does not have the ability to pay producers for commodities purchased, or when it appears the licensee does not have a sufficient net worth to outstanding financial obligations ratio, the department may require the licensee to post a bond or other additional acceptable security in the amount of two thousand dollars (\$2,000) for each one thousand dollars (\$1,000) or fraction thereof of deficiency.~~ (7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

480. COMMODITY INDEMNITY ~~ACCOUNT FUND~~ PROGRAM.

~~The Commodity Indemnity Fund Program shall apply to entities governed by Chapter 2, Title 69, Idaho Code, and Chapter 5, title 69, Idaho Code, warehouses and dealers, respectively, unless otherwise specified.~~ (7-1-01)T

01. Rate Of Assessment. The rate of assessment shall be two-tenths of one per cent (.2%) of the total value at the time of sale of the commodities pursuant to Section 69-257(2), Idaho Code, of the total value at the time of sale of the commodities. The maximum rate of assessment shall not exceed two-tenths of one percent (.2%). The Director may establish a lower rate of assessment whenever he deems it advisable or as recommended by the advisory committee established by Section 69-261, Idaho Code. ~~Total value of an agricultural commodity shall mean the gross dollar amount due the producer at the time of sale of the commodities before any charges are deducted. Transportation costs shall not be assessed, provided that these costs have been clearly identified and segregated on the purchase contract or agreement and on the settlement sheet.~~ (5-20-98)(7-1-01)T

a. ~~The rate of assessment on commodity withdrawn by its producer from open storage shall be one cent (\$.01) per hundredweight (CWT) of commodity at the time of withdrawal.~~ (7-1-01)T

b. ~~If the amount of the assessment for a producer on all deposits made in a calendar year is calculated to be less than fifty cents (\$.50), no assessment will be collected. If deposits exceed the fifty cent (\$.50) limit, all assessments will be collected.~~ (7-1-01)T

02. Collection Of Assessment Fees. ~~The assessment shall be based on the purchase price and shall be collected by the warehouseman from the producer when the commodity is delivered and title passes to the warehouseman. Commodities purchased by a no price established contract shall be assessed when a price is established.~~ **Exemptions.** Non-producers and persons depositing commodities under arrangements excluded from participation in the CIF pursuant to Section 69-256, Idaho Code do not pay assessments. Depositors for service do not pay assessments nor participate in the CIF. ~~(9-1-92)~~(7-1-01)T

03. Payment Of Assessment Fees. ~~The assessment collected under this Act shall be submitted to the Department of Agriculture on forms prescribed and provided by the Department and shall reflect the total of all assessments collected by the warehouseman during a calendar year quarter. A calendar year begins January 1 and ends December 31, with quarters ending March 31; June 30; September 30; and December 31.~~ (9-1-92)

a. ~~The quarterly reports and payments collected for a quarter shall be submitted to the Director no later than thirty (30) days following the just ended quarter. The report shall contain such information as the Director requires and shall be accompanied by a check payable to the Idaho Department of Agriculture in an amount of the total assessments collected from producers for agricultural commodities purchased by the warehouseman for that~~

~~quarter.~~ (9-1-92)

~~b. Failure to submit the quarterly report and assessments within the prescribed time may result in the suspension, revocation or denial of a license for the warehouseman.~~ (9-1-92)

~~04. Accelerated Payment. If a warehouse license is suspended, the quarterly report and assessments for that quarter are due fifteen (15) days after the date of license suspension.~~ (9-1-92)

481. DEFINITIONS.

Words that are defined in Chapter 2, Title 69, Idaho Code, and that are used in Section 481, will have the same meaning when used in Section 481 except when specifically redefined by these rules. (7-1-01)T

01. Warehouse. Is limited to warehouses licensed by the state of Idaho. (7-1-01)T

02. Dealer. Is limited to dealers licensed by the state of Idaho. (7-1-01)T

03. Commodity Indemnity Fund. Commodity Indemnity Fund is a trust fund and will be referred to herein as CIF. (7-1-01)T

04. Cash Sale. Payment to the producer by the warehouse or dealer contemporaneously with the transfer of commodity to the warehouse or dealer. (7-1-01)T

05. Credit-Sale Contract. An agreement in writing containing the provisions of Section 69-249 Idaho Code, and where the producer transfers a specific quantity of commodity to a warehouse or dealer with a price or payment to the producer by the warehouse or dealer to be made at a later date or on the occurrence of a specific event expressed in the agreement. (7-1-01)T

06. Open Storage. The deposit of commodity by the producer for a period of time with the subsequent disposition of the same commodity or a fungible commodity as agreed to by the parties. (7-1-01)T

07. Deposit For Service. Deposit of a commodity by a person for cleaning, processing, reconditioning or the rendering of other similar services by a warehouse, but does not include either a cash sale, credit-sale, or open storage. (7-1-01)T

482. HOW ASSESSMENTS ARE TO BE CALCULATED.

Assessments shall be collected by all warehouses and dealers from all producers who deposit commodities for storage or sale. Assessments are calculated as follows: (7-1-01)T

01. Cash Sale Or Credit Sale Contract. In a cash sale or credit sale contract on the contract price of the commodity at the time of sale. (7-1-01)T

02. Open Storage. When commodity is withdrawn from open storage by the producer, the assessment will be one cent (\$.01) per hundred weight (CWT) at the time of withdrawal. (7-1-01)T

03. Unpaid Assessments. If any assessment is unpaid and a failure occurs, the amount of the unpaid assessment will be deducted from any CIF recovery paid to the producer. (7-1-01)T

04. Incidental Costs And Expenses. All incidental costs and expenses including, but not limited to transportation, cleaning, in and out charges, insurance, taxes or additional services or charges are not included in the calculation to determine the assessment. (7-1-01)T

483. RECORDKEEPING AND PAYMENT SCHEDULE.

01. Permanent Record. Each warehouse and dealer shall maintain a permanent record showing producer's name and address, lot or identification number, date assessment collected, amount of assessment, commodity assessed, quantity of commodity, gross dollars of settlement and check number issued to producer. (7-1-01)T

02. Payment Due Dates. On or before the twentieth day of the month following the close of the quarter, on a form prescribed by the Department, the assessments imposed by Chapters 2 and 5 of Title 69, Idaho Code, collected by warehouses and dealers, are due and payable to the Department. A quarter (1/4) will consist of three (3) months beginning on the first day of January, April, July, and October. (7-1-01)T

03. Notice. The notice and rate of assessment or a copy of the official notice of suspension of assessment shall be posted in a conspicuous place in the warehouse or dealer facility. (7-1-01)T

484. TRUST FUNDS.

All assessments collected by warehouses and dealers in compliance with Chapters 2 and 5, Title 69, Idaho Code, shall, immediately upon payment to and collection by the warehouse or dealer, be trust fund money and held for payment to the Department for the CIF. Such money shall not, for any purpose, be considered to be a part of the proceeds of any transaction between a depositor and warehouse or dealer for which the collection and payment of the assessment was related and shall not be subject to an encumbrance, security interest, execution or seizure on account of any debt owed by the warehouse or dealer to any of their creditors. (7-1-01)T

485. PENALTIES FOR FAILURE TO COLLECT, ACCOUNT FOR, OR REMIT ASSESSMENTS.

Failure to collect, account for, or remit assessments, or to violate in any way the statutory requirements of Chapters 2 and 5, Title 69, Idaho Code, as it relates to the CIF are grounds for the immediate call on the warehouse or dealer bond and the undertaking by the Director of any other remedy provided by law. (7-1-01)T

486. RETURN OF COMMODITY DUE TO FAILURE.

In the event of failure the Department may: (7-1-01)T

01. Identifiable Commodity. Return specifically identifiable commodity or as much as is available to its producer in full or partial satisfaction of indebtedness; or (7-1-01)T

02. Fungible Commodity. If the commodity is fungible, an amount equal to the producer's original deposit or if insufficient fungible commodity is available, a pro-rata share to all producers of the commodity; and (7-1-01)T

03. Shortfall In Commodity Distribution. Any shortfall in commodity distribution may be submitted as a claim against the CIF. (7-1-01)T

487. -- 999. (RESERVED).

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.02.13 - COMMODITY DEALERS' RULES
DOCKET NO. 02-0213-0101
NOTICE OF TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2001.

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 Title 69, Chapter 2, Section 69-524, 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 15, 2001.

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: Clarification of definitions; Clarification of when assessments are collected; CIFP ownership clarification; Clarification of how market value is determined; Clarification of the process by which assessments are collected; Failure to pay or late payment of assessments provisions; and Development of formula for additional security if determined that licensee does not appear to have the ability to pay producers for commodities purchased or does not have a sufficient net worth to outstanding financial obligations ratio.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadlines in amendments to governing law or federal programs. This rule is needed to implement the provisions of House Bill 366 passed by the 2001 Legislature and signed into law by the Governor on April 2, 2001. HB 366 amends the Bonded Warehouse Law.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Due to a Commodity Indemnity Fund (CIF) current balance of \$3.3 million, with outstanding claims in excess of \$2.3 million, it is imperative that the department resume collection of assessments at the statutory rate of two-tenths of one percent (.2%) of the total value at the time of sale of the commodities. HB 366 increases the CIF cap to \$10 million and requires a minimum balance of \$1 million pursuant to Sections 69-259 and 69-264 Idaho Code, respectively.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the short timeframe for implementation of the rules to comply with the statute as passed by the 2001 Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dennis Doshier at 208-332-8674.

Anyone may submit written comments regarding the temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2001.

DATED this 18th day of June, 2001

Patrick A. Takasugi, Director
Idaho State Dept. of Agriculture
2270 Old Penitentiary Road
PO Box 790
Boise, ID 83701
(208) 332-8305

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0213-0101

451. AMOUNT OF BOND.

01. Bonding Requirement. The amount of bond to be furnished for each class 1 dealer shall be fixed at a rate of twenty-five thousand dollars (\$25,000). For each class 2 dealer shall be fixed at a rate of fifteen thousand dollars (\$15,000). (7-1-01)T

02. Additional Bonding Requirements. If it appears the licensee does not have the ability to pay producers for commodities purchased, or when it appears the licensee does not have a sufficient net worth to outstanding financial obligations ratio, the licensee may be required to post a bond or other additional acceptable security in the amount of two thousand dollars (\$2,000) for each one thousand dollars (\$1,000) or fraction thereof of deficiency. (7-1-01)T

~~452. -- 499. (RESERVED).~~

500. RATE OF ASSESSMENT COMMODITY INDEMNITY FUND PROGRAM.

The Commodity Indemnity Fund Program shall apply to entities governed by Chapter 2, Title 69, Idaho Code, and Chapter 5, Title 69, Idaho Code, warehouses and dealers, respectively, unless otherwise specified. (7-1-01)T

01. Rate Of Assessment. The rate of assessment shall be two-tenths of one percent (.2%) of the total value at the time of sale of the commodities pursuant to Idaho Code 69-257(2). The maximum rate of assessment shall not exceed two-tenths of one percent (.2%) of the total value at the time of sale of the commodities. The Director may establish a lower rate of assessment whenever he deems it advisable or as recommended by the advisory committee established by Idaho Code 69-261. *Total value of an agricultural commodity shall mean the gross dollar amount due the producer at the time of sale of the commodities before any charges are deducted. Transportation costs shall not be assessed, provided that these costs have been clearly identified and segregated on the purchase contract or agreement and on the settlement sheet.* (5-20-98)(7-1-01)T

02. Exemptions To Assessment. Non-producers and persons depositing commodities under arrangements excluded from participation in the CIF pursuant to Section 69-256, Idaho Code do not pay assessments. (7-1-01)T

~~501. -- 549. (RESERVED).~~

501. DEFINITIONS.

Words that are defined in Chapter 5, Title 69, Idaho Code, and that are used in Section 501, will have the same meaning when used in Section 501 except when specifically redefined by these rules. (7-1-01)T

01. Warehouse. Is limited to warehouses licensed by the state of Idaho. (7-1-01)T

02. Dealer. Is limited to dealers licensed by the state of Idaho. (7-1-01)T

03. Commodity Indemnity Fund. Commodity Indemnity Fund is a trust fund and will be referred to herein as CIF. (7-1-01)T

04. Cash Sale. Payment to the producer by the warehouse or dealer contemporaneously with the transfer of commodity to the warehouse or dealer. (7-1-01)T

05. Credit-Sale Contract. An agreement in writing containing the provisions of Section 69-514 Idaho Code, and where the producer transfers a specific quantity of commodity to a warehouse or dealer with a price or payment to the producer by the warehouse or dealer to be made at a later date or on the occurrence of a specific event expressed in the agreement. (7-1-01)T

502. HOW ASSESSMENTS ARE TO BE CALCULATED.

Assessments shall be collected by all warehouses and dealers from all producers who deposit commodities for storage or sale. Assessments are calculated as follows: (7-1-01)T

01. Cash Sale Or Credit Sale Contract. In a cash sale or credit sale contract on the contract price of the commodity at the time of sale. (7-1-01)T

02. Unpaid Assessments. If any assessment is unpaid and a failure occurs, the amount of the unpaid assessment will be deducted from any CIF recovery paid to the producer. (7-1-01)T

03. Incidental Costs And Expenses. All incidental costs and expenses including, but not limited to transportation, cleaning, in and out charges, insurance, taxes or additional services or charges are not included in the calculation to determine the assessment. (7-1-01)T

503. RECORDKEEPING AND PAYMENT SCHEDULE.

01. Permanent Record. Each warehouse and dealer shall maintain a permanent record showing producer's name and address, lot or identification number, date assessment collected, amount of assessment, commodity assessed, quantity of commodity, gross dollars of settlement and check number issued to producer. (7-1-01)T

02. Payment Due Dates. On or before the twentieth day of the month following the close of the quarter, on a form prescribed by the Department, the assessments imposed by Chapters 2 and 5 of Title 69, Idaho Code, collected by warehouses and dealers, are due and payable to the Department. A quarter (1/4) will consist of three (3) months beginning on the first day of January, April, July, and October. (7-1-01)T

03. Notice. The notice and rate of assessment or a copy of the official notice of suspension of assessment shall be posted in a conspicuous place in the warehouse or dealer facility. (7-1-01)T

504. TRUST FUNDS.

All assessments collected by warehouses and dealers in compliance with Chapters 2 and 5, Title 69, Idaho Code, shall, immediately upon payment to and collection by the warehouse or dealer, be trust fund money and held for payment to the Department for the CIF. Such money shall not, for any purpose, be considered to be a part of the proceeds of any transaction between a depositor and warehouse or dealer for which the collection and payment of the assessment was related and shall not be subject to an encumbrance, security interest, execution or seizure on account of any debt owed by the warehouse or dealer to any of their creditors. (7-1-01)T

505. PENALTIES FOR FAILURE TO COLLECT, ACCOUNT FOR, OR REMIT ASSESSMENTS.

Failure to collect, account for, or remit assessments, or to violate in any way the statutory requirements of Chapters 2 and 5, Title 69, Idaho Code, as it relates to the CIF are grounds for the immediate call on the warehouse or dealer bond and the undertaking by the Director of any other remedy provided by law. (7-1-01)T

506. RETURN OF COMMODITY DUE TO FAILURE.

In the event of failure the Department may:

01. Identifiable Commodity. Return specifically identifiable commodity or as much as is available to its producer in full or partial satisfaction of indebtedness; or (7-1-01)T

02. Fungible Commodity. If the commodity is fungible, an amount equal to the producer's original deposit or if insufficient fungible commodity is available, a pro-rata share to all producers of the commodity; and (7-1-01)T

03. Shortfall In Commodity Distribution. Any shortfall in commodity distribution may be submitted as a claim against the CIF. (7-1-01)T

550. ASSESSMENT OF FEES.

~~01. **Collection Of Assessment Fees.** The assessment shall be based on the purchase price and shall be collected by the commodity dealer from the producer when the commodity is delivered and title passes to the commodity dealer. Commodities purchased by a no price established contract shall be assessed when a price is established. (7-1-93)~~

~~02. **Payment Of Commodity Indemnity Account Program Assessment Fees.** The assessment collected under this Act shall be submitted to the Department of Agriculture on forms prescribed and provided by the Department and shall reflect the total of all assessments collected by the commodity dealer during a calendar year quarter. A calendar year begins January 1 and ends December 31, with quarters ending March 31; June 30; September 30; and December 31. (7-1-93)~~

~~a. The quarterly reports and payments collected for a quarter shall be submitted to the Director no later than thirty (30) days following the just ended quarter. The report shall contain such information as the Director requires and shall be accompanied by a check payable to the Idaho Department of Agriculture in an amount of the total assessments collected from producers for agricultural commodities purchased by the commodity dealer for that quarter. (7-1-93)~~

~~b. Failure to submit the quarterly report and assessments within the prescribed time may result in the suspension, revocation or denial of a license for the commodity dealer. (7-1-93)~~

~~03. **Accelerated Payment.** If a commodity dealer's license is suspended, the quarterly report and assessments for that quarter are due fifteen (15) days after the date of license suspension. (7-1-93)~~

55407. -- 599. (RESERVED).

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.03.02 - SOIL AND PLANT AMENDMENT RULES
DOCKET NO. 02-0302-0101 (REPEAL)
NOTICE OF TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2001.

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 22-2204, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 15, 2001.

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 repeal the rule in its entirety.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: The temporary rule confers a benefit. The authority for this rule has been transferred to the Division of Plant Industries. A new revised rule will be promulgated as IDAPA 02.06.41. Without this repeal, the final rules will be in conflict with the Soil and Plant Amendment Act of 2001 that is effective July 1, 2001.

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. Informal meetings were conducted through the industry and the Fertilizer, Soil and Plant Amendment Advisory Committee. The advisory committee, ISDA, industry and general public met on several occasions to discuss the proposed rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dr. Roger Vega, Administrator, Division of Plant Industries, at 332-8620 or Michael E, Cooper, Bureau chief, Division of Plant Industries, at 332-8620.

Anyone may submit written comments regarding the temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2001.

DATED this 20th day of June, 2001.

Patrick A. Takasugi, Director
Idaho State Dept. of Agriculture
2270 Old Penitentiary Road
PO Box 790, Boise, ID 83701
(208) 332-8305

THIS CHAPTER IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.04.03 - RULES OF THE DEPARTMENT OF AGRICULTURE
GOVERNING ANIMAL INDUSTRY

DOCKET NO. 02-0403-0001

NOTICE OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is August 1, 2001. These rules have been adopted by the agency and are now pending review by the 2002 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 67-5221(1) 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 Title 25, Chapter [37] 35, Idaho Code (Section [25-3704] 25-3504, 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 pending rule amends the following definitions: 365.08. Certified Chronic Wasting Disease (CWD) Cervid Herd; 365.10. Cervid Dealer; 365.12. Cervid Herd; 365.15. Chronic Wasting Disease (CWD); 365.16. CWD Positive Cervid Herd; 365.17. CWD-Exposed Cervid Animal or Herd; 365.19. CWD-Positive Cervid Animal; 365.20. CWD-Suspect Cervid Animal; 365.26. Domestic Cervidae Licenses; 365.27. Herd Status; 365.29. Individual Herd Plan; 365.31. Mandatory Cervid CWD Monitoring Program, (MCCWDMP); 365.40. Source Herd; 365.41. State or Zone; 365.43. State Chronic Wasting Disease Voluntary Oversight Committee; 365.47. Traceback; 365.50. Voluntary Cervid CWD Certification Program, (VCCWDMP). The pending rule also adds the following definitions: 365.28. High Risk Animal; 365.46. Trace Forward; 365.48. Traceback Herd; and deletes the definition of United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service- Veterinary Services (VS). Additionally, amendments were made to the following sections: 377. Imported Domestic Cervidae; 378. Intrastate Movement of Domestic Cervidae; 385. Surveillance Procedures for the MCCWDMP and VCCWDMP; 387. Investigation of Cervid CWD Affected Animals; 388. Duration of Quarantine; 390. Herd Plan; 391. Identification and Disposal Requirements; 392. Cleaning and Disinfection; 401. Movement Into a Certified CWD Cervid Herd; 403. Recognition of Monitored CWD Cervid Herds; 404. Recognition of Certified CWD Cervid Herds; and 405. Penalty for Violations.

The proposed rules have been amended in response to amendment of Section 25-3706, Idaho Code by the 2001 Legislature, to testimony received at a public hearing, public comments and to make typographical, transcriptional, and clerical corrections to the rule, 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 Department of Agriculture 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 October 4, 2000 Idaho Administrative Bulletin, Volume 00-10, page(s) 32 through 58.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Dr. Phil Mamer, or Dr. Bob Hillman, Idaho Department of Agriculture, at (208)332-8540.

DATED this 18th day of June, 2001.

Patrick A. Takasugi, Director
Idaho Department of Agriculture
2270 Old Penitentiary Road

P.O. Box 790
Boise, ID 83701-0790
Phone No. (208)332-8500
Fax No. (208)334-4623

IDAPA 02, TITLE 04, Chapter 03

RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING ANIMAL INDUSTRY

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 00-10, October 2, 2000, pages 32 through 58.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and adoption by the 2002 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 02-0403-0001

365. DEFINITIONS FOR DOMESTIC CERVIDAE FARMING.

01. Accredited Veterinarian. A veterinarian approved by the Deputy Administrator of United State Department of Agriculture (USDA), Animal and Plant Health Inspection Services (APHIS), Veterinary Services (VS), and the state veterinarian in accordance with 9 C.F.R. Part 161 (January 1, 1997) to perform functions required by cooperative state-federal animal disease control and eradication programs. (8-22-00)T

02. Adjacent Herd. Any or all of the following: (8-22-00)T

a. A herd of cervidae occupying premises that border a premise occupied by an affected herd, including herds separated by roads or streams; (8-22-00)T

b. A herd of cervidae occupying premises that were previously occupied by an affected herd within the past five (5) years as determined by the designated epidemiologist; (8-22-00)T

c. Two (2) herds that are maintained on a single premise even if they are managed separately, have no commingling, and have separate herd records. (8-22-00)T

03. Administrator. Administrator of the division of animal industries or his designee. (3-20-97)

04. Approved Laboratory. An American Association of Veterinary Laboratory Diagnosticians (AAVLD) accredited laboratory or a laboratory designated by the Administrator to perform the Program-required Chronic Wasting Disease diagnostic procedures. Designated laboratories include Colorado State University,

Wyoming State Veterinary Diagnostic Laboratory, National Veterinary Services Laboratory (NVSL), Ames, Iowa or other laboratories designated by the Administrator. (8-22-00)T

05. Area Veterinarian In Charge (AVIC). The veterinary official of Veterinary Services, APHIS, United States Department of Agriculture. (8-22-00)T

06. Breed Associations And Registries. Organizations maintaining permanent records of ancestry or pedigrees of animals, individual animal identification records and records of ownership. (8-22-00)T

07. Certificate. An official document issued by a state or federal animal health official or an accredited veterinarian at the point of origin of a shipment of cervidae, which contains information documenting the age, sex, species, individual identification of the animals, the number of animals, the purpose of the movement, the points of origin and destination, the consignor, the consignee, the status of the animals relative to official diseases, test results and any other information required by the state animal health official for importation or translocation. (8-22-00)T

08. Certified Chronic Wasting Disease (CWD) Cervid Herd. (8-1-01)T

a. A herd of cervidae that has qualified for and has been issued a certified CWD cervid herd certificate signed by the administrator; (8-1-01)T

b. A herd of cervidae that has qualified for and has been issued a CWD Certificate by the animal health official of the state of origin and the herd status has been approved by the administrator in writing. ~~(8-22-00)T~~(8-1-01)T

09. Cervidae. Deer, elk, moose, caribou, reindeer, and related species and hybrids including all members of the cervidae family and hybrids. (8-22-00)T

10. Cervid Dealer. Any individual or legal entity who engages in the business of buying, selling, trading, or negotiating the transfer of Cervidae, ~~but not persons who purchase Cervidae exclusively for slaughter on their own premises.~~ (8-22-00)T(8-1-01)T

11. Cervidae Farms Or Ranches. A location where domestic cervidae are held, raised, propagated or otherwise controlled. (3-20-97)

12. Cervid Herd. One (1) or more groups of Cervidae maintained on common ground or under common ownership or supervision that may be geographically separated but can have interchange or movement. Herds of different status may be maintained on a single premise if they are managed separately, have no commingling, or interchange, have separate working facilities, have ~~thirty (30) yards~~ one (1) mile physical separation, have separate herd records and there is complete disinfection using best available technology as directed by the administrator, before people or implements or vehicles move between herds. Changes in ownership of a cervid herd does not change the status of the herd or the applicable regulatory requirements. ~~(8-22-00)T~~(8-1-01)T

13. Cervid Herd Of Origin. A cervid herd, on any farm or other premises, where the animals were born, or where they were kept for at least one (1) year prior to date of shipment. (8-22-00)T

14. Commingling. Animals having less than thirty (30) yards physical separation. (8-22-00)T

15. Chronic Wasting Disease (CWD). A transmissible spongiform encephalopathy of cervids, which is a nonfebrile, transmissible, insidious, and degenerative disease affecting the central nervous system of cervidae. CWD is a reportable disease as described in Section 25-211, Idaho Code, and is a reportable emergency disease as defined in Section 25-212, Idaho Code. CWD may cause one (1) or more of the following signs or symptoms in affected animals: (8-22-00)T

a. Weight loss despite retention of appetite; (8-22-00)T

b. Behavioral abnormalities; (8-22-00)T

- c. Motor abnormalities including, but not limited to, incoordination; (8-22-00)T
- d. Tremor; (8-22-00)T
- e. Star gazing; (8-22-00)T
- f. Recumbency; (8-22-00)T
- g. Drooling; (8-22-00)T
- h. Aspiration pneumonia; ~~and or~~ ~~(8-22-00)T~~(8-1-01)T
- i. Death. (8-22-00)T

16. CWD-Affected Positive Cervid Herd. A cervid herd ~~from in~~ in which any animal(s) has been diagnosed as affected with CWD, based on ~~the following:~~ CWD positive laboratory results; ~~clinical signs and symptoms; or epidemiological investigations; and for which an individual herd plan has not been developed; and which has not been enrolled in the Mandatory Cervid Chronic Wasting Disease Monitoring Program (MCCWDMP confirmed at NVSL.~~ ~~(8-22-00)T~~(8-1-01)T

17. CWD-Exposed Cervid Animal Or Herd. A designation applied to Cervidae that are not exhibiting symptoms of CWD and are either part of ~~an affected CWD positive~~ herd, adjacent herd, or a herd from which an epidemiological investigation indicates that contact with CWD ~~affected positive~~ animals or contact with animals from a CWD ~~affected positive~~ herd has occurred in the previous five (5) years. ~~(8-22-00)T~~(8-1-01)T

18. CWD-Monitored Cervid Herd. A herd of cervidae for which the requirements of the MCCWDMP have been complied with. (8-22-00)T

19. CWD-Positive Cervid Animal. An animal, which has had a clinical diagnosis of CWD confirmed through positive test results on any official cervid CWD test by an approved laboratory or has been declared by state or federal animal health officials to be infected with CWD based on clinical symptoms or other evidence of infection. A positive diagnosis at any approved laboratory other than NVSL must be confirmed by the NVSL. ~~(8-22-00)T~~(8-1-01)T

20. CWD-Suspect Cervid Animal. A designation applied to Cervidae for which laboratory evidence or clinical signs suggests a diagnosis of CWD, but for which laboratory results are inconclusive ~~and will be quarantined until confirmed CWD positive or negative.~~ The herd and the suspect animal or its carcass will be quarantined until a diagnosis is completed through laboratory testing. The owner of any suspect cervid destroyed at the direction of the administrator may be compensated in accordance with Section 25-212, Idaho Code. ~~(8-22-00)T~~(8-1-01)T

21. Department Of Agriculture. The Idaho Department of Agriculture. (3-20-97)

22. Designated Epidemiologist. A state or federal veterinarian who has demonstrated the knowledge and ability to perform the functions required under these rules and who has been selected by the state veterinarian to fulfill the epidemiology duties relative to the state CWD program. (8-22-00)T

23. Disposal. Any cervidae condemned, appraised, and slaughtered or destroyed by direction of the administrator in accordance with Section 25-212, Idaho Code, shall be disposed of as directed by the administrator. (8-22-00)T

24. Division. Division of Animal Industries. (3-20-97)

25. Domestic Cervidae. Domestically raised, owned or controlled fallow deer (*Dama dama*), elk (*Cervus elaphus*) or reindeer (*Rangifer tarandus*). (3-20-97)

26. Domestic Cervidae License.

a. Annual License. A license issued by the Division of Animal Industries, Idaho Department of Agriculture, that allows raising of domestic cervidae on a cervidae farm. (3-20-97)

26. Domestic Cervidae Licenses. (8-1-01)T

a. Annual License. A license issued by the Division of Animal Industries, Idaho Department of Agriculture, that allows raising of domestic cervidae on a cervidae farm. ~~(3-20-97)~~(8-1-01)T

b. Conditional Cervidae License. A temporary license, issued by the administrator for a cervidae farm which specifies corrective measures necessary to gain compliance with these rules and provide a specified time frame for compliance in order to be eligible for an annual license. (8-1-01)T

c. Inactive Cervidae License. A license for cervidae farms that have not met the facility requirements of these rules and for those farms that do not contain cervidae. (8-1-01)T

d. Cervid Dealer License. A license for any individual or legal entity who engages in the business of buying, selling, trading, obtaining, controlling, or negotiating the transfer of cervidae. (8-1-01)T

27. Herd Status. Classification of a cervidae herd with regard to CWD including the Mandatory Cervid Chronic Wasting Disease Monitoring Program (MCCWDMP) or Voluntary Cervidae Chronic Wasting Disease Certification Program (VCCWDMP). The VCCWDMP herd's status and enrollment time may remain with the herd when a change of ownership, management or premises occurs, if there is no contact with cervidae of lesser status, and no previous history of CWD on the premises. The possible statuses include Monitored Category, Certified, Exposed, ~~Infected~~ CWD positive, affected, Trace, Source, Suspect, and Pending adjacent, and nonparticipating. ~~(8-22-00)T~~(8-1-01)T

28. High Risk Animal. All cervids having greater than limited contact with a CWD positive cervid. (8-1-01)T

289. Individual Herd Plan. A written herd management agreement and testing plan approved by the administrator to identify and eradicate CWD from ~~an affected~~ positive, source, suspect, exposed, or adjacent herd. The herd plan shall be developed by the herd owner, a designated epidemiologist, the owner's accredited veterinarian, if requested, APHIS ~~R~~representative and state animal health official. ~~(8-22-00)T~~(8-1-01)T

2930. Limited Contact. Incidental contacts between animals of different herds, in separate pens off of the herd's premises at fairs, shows, exhibitions and sales. (8-22-00)T

301. Mandatory Cervid CWD Monitoring Program (MCCWDMP). A CWD monitoring and surveillance program requiring all owners of licensed domestic cervid herds to perform individual identification of all cervids, maintenance of records showing all cervid identification numbers, sex, age, source and disposition for all cervidae on the premises, and laboratory diagnosis at owners expense. MCCWDMP requires examination of brain tissue or other tissues as directed by the administrator, on all deaths of cervids ~~eighteen~~ sixteen (186) months of age or older. Where samples are not submitted for evaluation due to postmortem changes or unavailability, the administrator shall conduct an investigation to determine compliance with MCCWDMP. Owners may collect and submit samples as directed by the administrator to be in compliance with the Mandatory Chronic Cervid Wasting Disease Monitoring Program. Fallow deer and Reindeer are exempt from the requirements of this program unless part of an elk herd, or a CWD affected positive, exposed, trace, source, or suspect herd. ~~(8-22-00)T~~(8-1-01)T

312. Nonparticipating Herd. A herd that is not enrolled in the MCCWDMP or VCCWDMP Programs. Nonparticipating herds shall be placed and held under quarantine until the herd has qualified for and has been enrolled in either the MCCWDMP or VCCWDMP Programs. (8-22-00)T

323. Official Cervid CWD Test. A test approved by the administrator and conducted at an approved laboratory to diagnose CWD. (8-22-00)T

334. Official Cervid Identification. A USDA, APHIS, VS approved identification eartag that conforms

to the alphanumeric National Uniform Eartagging System as defined in 9 C.F.R. Part 71.1 (January 1, 1997) or other identification device, approved by the administrator, which uniquely and permanently identifies each cervid.

(8-22-00)T

345. Owner. An individual, partnership, company, corporation, or other legal entity that has legal or rightful title to an animal (cervidae) or a herd of animals (cervidae).

(8-22-00)T

356. Premises. The ground, area, buildings, and equipment communally shared by a herd or herds of animals.

(8-22-00)T

367. Quarantine. An order issued on authority of the administrator by a state or federal animal health official or accredited veterinarian prohibiting movement of cervids from any location without a written restricted movement permit.

(8-22-00)T

378. Quarantine Facility. A confined area where selected domestic cervidae can be secured and isolated from all other cervidae and livestock.

(3-20-97)

389. Restricted Movement Permit. An official document that is issued by the administrator or Area Veterinarian-in-Charge or an accredited veterinarian for movement of affected, suspect, or exposed animals.

(8-22-00)T

3940. Source Herd. A herd from which at least one (1) ~~animal~~ cervid has originated within the previous five (5) years and that cervid has been diagnosed CWD positive. A herd will no longer be considered a source herd after it has completed the "Mandatory Cervid CWD Monitoring or Voluntary Cervid CWD Certification Program" herd plan requirements or an epidemiologic investigation determines that there is no evidence CWD infection exists and that the herd is not the source of infection as determined by the administrator. Methods for identification of a source herd include, but are not limited to, the following:

~~(8-22-00)T~~(8-1-01)T

a. DNA identification; (8-22-00)T

b. Movement, production, or registry records; and (8-22-00)T

c. Possessing the original ear-tag ~~applied in herd of origin~~, or tamper-resistant ear-tag, or skin tattoo in ear or butt tissue, that was applied in herd of origin. ~~(8-22-00)T~~(8-1-01)T

401. State Or Zone. Any state or zone of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Guam or other province or country. ~~(8-22-00)T~~(8-1-01)T

442. State Animal Health Official. A state or federal employee working in animal health activities who is authorized by the administrator to perform VCCWDPC and MCCWDMD duties or other CWD control duties.

(8-22-00)T

423. State Chronic Wasting Disease Voluntary Oversight Committee. A voluntary committee composed of ~~seven~~ (67) members including the administrator or his designee, two (2) accredited veterinarians appointed by the administrator, and three (3) cervidae ranchers ~~appointed~~ nominated by the cervidae industry and appointed by the administrator and one (1) representative nominated by Idaho Fish & Game Director and appointed by the administrator. The ~~advisory board oversight committee~~ shall ~~elect~~ select its own chairman and ~~may~~ advise the administrator regarding management of the chronic wasting disease programs. ~~(8-22-00)T~~(8-1-01)T

434. Status Date. The date on which the administrator approves in writing a herd status change with regard to CWD. (8-22-00)T

445. Trace Herd. A herd in which one (1) CWD positive animal originated within the previous five (5) years but does not meet the requirements outlined under the "Source Herd" definition. (8-22-00)T

46. Trace Forward. A trace forward herd is any herd that has received high risk animals from a positive herd within thirty-six (36) months prior to the death of the positive animal. (8-1-01)T

~~457.~~ **Traceback.** The process of identifying the movements and the herd of origin of CWD positive high risk, or exposed animals, including herds that were sold for slaughter. ~~(8-22-00)T~~(8-1-01)T

~~46.~~ *United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) Veterinary Services (VS).* ~~(8-22-00)T~~

48. Traceback Herd. A traceback herd is any herd where a positive animal has resided prior to death within the previous five (5) years but does not meet the requirements under the "Source Herd" definition. (8-1-01)T

479. Ungulate. Hoofed animal. (3-20-97)

~~4850.~~ **Voluntary Cervid CWD Certification Program (VCCWDCP).** A voluntary CWD certification program requiring monitoring, individual identification of all cervids, maintenance of records showing all cervid identification numbers, sex, age, source, and disposition for all cervidae on the premises, and laboratory diagnosis at owners expense. The program requires examination of brain tissue or other tissues, as directed by the administrator, on all deaths of cervids ~~eighteen sixteen~~ (186) months of age or greater. In case of death loss where samples are not submitted for evaluation due to postmortem changes or unavailability, the administrator shall conduct an investigation to determine compliance. Owners may collect and submit samples as directed by the Administrator to be in compliance with the VCCWDCP. ~~Animals imported into a VCCWDCP herd must come only from herds of equal or greater CWD Certification program status.~~ ~~(8-22-00)T~~(8-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

377. IMPORTED DOMESTIC CERVIDAE.

01. Inspection And Certification Of Domestic Cervidae. Domestic cervidae may enter the state of Idaho provided that they are accompanied by a Certificate of Veterinary Inspection attesting to the fact that they have been inspected within thirty (30) days of date of shipment, that they are free from evidence of infectious, contagious, or communicable diseases, or known exposure thereto during the preceding sixty (60) days and that they meet the following requirements: (8-22-00)T

a. The animals must have tested negative for brucellosis if six (6) months of age or older, by at least two (2) types of official brucellosis tests, one (1) of which shall be the rivanol, the PCFIA or the CITE test, within thirty (30) days prior to entry; and (8-22-00)T

b. If animals originate from an accredited herd in an accredited free state or zone, a modified accredited advanced state or zone, or a modified accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, they may be imported without further tuberculosis testing provided that they are accompanied by a certificate stating that such domestic cervidae originated from an accredited herd; or (8-22-00)T

c. If the animals originate in an accredited free state or zone, as defined by USDA in Title 9, Part 77, CFR, they may be imported without tuberculosis testing provided that they are accompanied by a certificate stating that such domestic cervidae originated from an accredited free state or zone; or (8-22-00)T

d. If the animals originate in a modified accredited advanced state or zone, as defined by USDA in Title 9, Part 77, CFR, they may be imported if they are not known to be infected with or exposed to tuberculosis and have been subjected to an official tuberculosis test, with negative results, within ninety (90) days of entry into Idaho, and are accompanied by a certificate stating such, or the domestic cervidae are consigned directly to an approved slaughter establishment for immediate slaughter; or (8-22-00)T

e. If the animals originate in a modified accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, they may be imported if they are not known to be infected with or exposed to tuberculosis and have been subjected to two (2) official tuberculosis tests, with negative results and which have been conducted at least ninety

(90) days and not more than six (6) months apart, the second test of which was conducted not more than ninety (90) days prior to entry into Idaho, or the domestic cervidae are consigned directly to an approved slaughter establishment for immediate slaughter; or (8-22-00)T

f. If the animals originate in an accredited preparatory state or zone, as defined by USDA in Title 9, Part 77, CFR, are not known to be infected with or exposed to tuberculosis, the animals being imported must meet one (1) of the following conditions: (8-22-00)T

i. The animals are from an accredited free herd and have been subjected to an official tuberculosis test, with negative results, within ninety (90) days of importation; or (8-22-00)T

ii. The animals have been subjected to an official whole herd test conducted within twelve (12) months of the date of importation and have been subjected to two (2) additional official tuberculosis tests, with negative results, which have been conducted at least ninety (90) days and no more than six (6) months apart, the second test of which was conducted within ninety (90) days prior to the date of importation; or (8-22-00)T

g. If the animals originate in a non-accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, they may only be imported into Idaho under a permit issued by the administrator and under such conditions that the administrator may impose at the time the permit is issued; or (8-22-00)T

h. If animals originate from a qualified herd, in an accredited free state or zone or a modified accredited advanced state or zone, they may be imported if accompanied by a certificate stating that such domestic cervidae originated from a qualified herd and have been classified negative to an official tuberculosis test that was conducted within ninety (90) days prior to the movement date. If the qualifying test was administered within ninety (90) days of movement, the animals to be moved do not require an additional test. If the qualified herd is located in a modified accredited state or zone, an accredited preparatory state or zone, or a non-accredited state or zone, the animals shall be tested as indicated in Subsections 377.01.e. through 377.01.g., respectively, in this section; or (8-22-00)T

i. If animals originate from a monitored herd in an accredited free state or zone or a modified accredited advanced state or zone, they may be imported if accompanied by a certificate stating that such domestic cervidae originated from a monitored herd and have been classified negative to an official tuberculosis test that was conducted within ninety (90) days prior to the date of movement. If the monitored herd originates in a modified accredited state or zone, an accredited preparatory state or zone or a nonaccredited state or zone, the animals shall meet the requirements provided in Subsections 377.01.e. through 377.01.g., respectively, in this section. (8-22-00)T

j. Elk shall be tested negative for red deer genetic factor by a lab approved by the Division of Animal Industries; and (3-20-97)

k. Be from a region not known to be endemic with *Parelaphostrongylus tenuis* (meningeal worm), as reported by the Southeastern Cooperative Wildlife Disease Study; and (3-20-97)

l. Be individually identified, by an official USDA identification tag or microchip, on a Certificate of Veterinary Inspection issued by the veterinarian who conducted the tests, and one (1) of the following notices shall appear on the certificate of veterinary inspection: (8-22-00)T

i. "These cervidae originate from a herd in which they have resided for at least one (1) year or into which they were born and none of the cervidae identified on this certificate are from a CWD exposed, suspect, affected, source, positive, pending, trace or adjacent herd. There has been no diagnosis, signs, or epidemiological evidence of CWD in this herd. The herd of origin has been in a CWD monitoring program for the past year on January 1, 2002, for the past two (2) years on January 1, 2003, and for the past three (3) years from January 1, 2004, as certified by the State animal health official Records and causes of death for the past five (5) years in this herd shall be made available to the State animal health official"; or (8-22-00)T

ii. "These cervidae originate from a herd which has been determined to have certified CWD cervid herd status by the animal health official of the state of origin. Records and causes of death for the past five (5) years in

this herd shall be made available to the State animal health official.” (8-22-00)T

m. Be destined for a domestic cervidae farm currently licensed by the division; and (3-20-97)

n. Enter on an import permit issued by the Idaho Division of Animal Industries. (3-20-97)

02. Movement Of Cervidae Between Accredited American Zoological Association (AAZPA) Facilities. Movement of cervidae between accredited ~~American Association of Zoological Parks and Aquariums (AAZPA)~~ facilities is exempt from the tuberculosis testing requirements of this rule. All other movement from AAZPA-accredited facilities shall comply with the tuberculosis requirements. ~~(8-22-00)T~~(8-1-01)T

378. INTRASTATE MOVEMENT OF DOMESTIC CERVIDAE.

01. Movement of Domestic Cervidae From One Premise To Another. All live domestic cervidae six (6) months of age or older moving from one (1) premise to another premise within the state of Idaho, except those consigned directly to an approved slaughter facility, shall be accompanied by an official negative test for tuberculosis conducted within the last ninety (90) days or written permission from the administrator. Animals originating from an accredited, qualified or monitored herds, as described in “Bovine Tuberculosis Eradication, Uniform Methods and Rules”, effective January 22, 1999, as amended, shall be exempted from test requirements, if they are accompanied by a certificate signed by an accredited veterinarian or the administrator stating such domestic cervidae have originated directly from such herd; and (8-22-00)T

02. Intrastate Movement Of Domestic Cervidae. All intrastate movements of cervidae in the MCCWDMP and the VCCWDCP ~~other than to a state or federally inspected slaughter establishment~~ shall be accompanied by an intrastate movement certificate which shall be provided by the Division of Animal Industry, and which is signed by the consignor and consignee of the cervidae. ~~(8-22-00)T~~(8-1-01)T

03. Intrastate Movement Certificate. The intrastate movement certificate shall include the following: (8-22-00)T

a. Consignor's name, address, phone number; (8-22-00)T

b. Consignee's name, address, phone number; (8-22-00)T

c. Individual animal identification and premise identification numbers; (8-22-00)T

d. Age, sex and species of the animal(s); and (8-22-00)T

e. One (1) of the following notices shall appear on the certificate of veterinary inspection: (8-22-00)T

i. “These cervidae originate from a herd in which they have resided for at least one (1) year or into which they were born and none of the cervidae identified on this certificate are from a CWD exposed, suspect, affected, source, positive, pending, trace or adjacent herd. There has been no diagnosis, signs, or epidemiological evidence of CWD in this herd. The herd of origin ~~has been~~ must be in a CWD monitoring program for the past year on January 1, 2002, for the past two (2) years on January 1, 2003, and for the past three (3) years from January 1, 2004, as certified by the State animal health official. Records and causes of death for the past five (5) years in this herd shall be made available to the State animal health official”; or ~~(8-22-00)T~~(8-1-01)T

ii. “These cervidae originate from a herd which has been determined to have certified CWD cervid herd status by the State animal health official. Records and causes of death for the past five (5) years in this herd shall be made available to the State animal health official.” (8-22-00)T

f. The intrastate movement certificate shall be mailed to the Division of Animal Industry within five (5) business days of date of shipment. (8-22-00)T

(BREAK IN CONTINUITY OF SECTIONS)

385. SURVEILLANCE PROCEDURES FOR THE MCCWDMP AND VCCWDMP.

01. MCCWDMP Surveillance Procedures. MCCWDMP Surveillance procedures shall include the following: (8-22-00)T

a. Cervid Slaughter Surveillance. Brain or other tissues from ~~twenty-five~~ one hundred percent (25~~100~~%) of all cervidae sixteen (16) months or older that are slaughtered ~~on a hunting ranch or slaughter establishment, or~~ and not less than ninety percent (90%) of all cervidae killed during hunts shall be submitted to official laboratories and tested or examined for CWD, as provided for in these rules. (~~8-22-00~~)T(8-1-01)T

b. Cervid Herd Surveillance. Surveillance for CWD as defined by examination of brain tissue or other tissues as directed by the Administrator, on all deaths of cervids ~~eighteen~~ sixteen (18~~6~~) months of age or older must be maintained for all cervid herds. Reindeer and fallow deer are exempt from this program unless part of a CWD ~~affected~~ positive, exposed, trace, source or suspect herd or part of an elk herd. (~~8-22-00~~)T(8-1-01)T

c. Annual Inspection. Annual inspection, verification of individual animal identification, herd inventory records, movement records by a representative of the Division of Animal Industry. (8-1-01)T

02. VCCWDMP Surveillance Procedures. VCCWDMP Surveillance procedures shall include the following: (8-22-00)T

a. Surveillance for CWD as defined by examination of brain tissue or other tissues as directed by the Administrator, on all deaths of cervids ~~eighteen~~ sixteen (18~~6~~) months of age or greater must be maintained for all cervid herds. (~~8-22-00~~)T(8-1-01)T

b. Annual inspection, verification of individual animal identification, herd inventory records, movement records by a representative of the Division of Animal Industry. (8-1-01)T

b. Surveillance at one hundred percent (100%) level shall continue until certification is granted by the Administrator, at which time the ~~Administrator may allow for the cessation level~~ of surveillance testing in CWD certified herds may be reduced upon the recommendation of the CWD Advisory Committee and with approval of the administrator. (~~8-22-00~~)T(8-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

387. INVESTIGATION OF CERVID CWD AFFECTED ANIMALS.

01. Traceback. Traceback and traceforward investigations shall be performed for all animals diagnosed as affected with CWD as provided in Subsections 365.456 and 365.47. An epidemiological investigation shall be conducted on all herds of origin, ~~and~~ all adjacent herds, all exposed animals or herds, all CWD suspect animals, and all trace herds as determined by the administrator. All herds of origin, adjacent herds, and herds having contact with ~~affected~~ positive or exposed animals shall be quarantined. (~~8-22-00~~)T(8-1-01)T

02. Quarantine Of ~~Affected~~ CWD Positive Herds And Herds Not Participating In The CWD Certification Program. Nonparticipating herds, CWD ~~affected~~ positive herds, source and trace herds, suspect herds, exposed animals or herds, or herds that have received high risk animals shall be placed and held under quarantine until the affected or infected or high risk animals have been slaughtered or depopulated in accordance with Section 25-212, Idaho Code, ~~or~~ and the owner has developed an individual herd plan and the herd has qualified for and has been enrolled in the MCCWDMD or the VCCWDMP. Premises containing CWD positive herds that are not depopulated shall have double exterior fencing with a minimum of six (6) feet spacing between the exterior fences. Affected Positive herds not participating in the monitoring or certification program shall remain under quarantine until the entire herd has been depopulated in accordance with Section 25-212, Idaho Code. (~~8-22-00~~)T(8-1-01)T

388. DURATION OF QUARANTINE.

Quarantines imposed in accordance with this chapter shall remain in effect until one (1) of the following criteria is met: (8-22-00)T

01. Source Herds And Herds Of Origin. The quarantine may be released after a minimum of five (5) years of compliance with all provisions of these rules, during which there was no evidence of CWD or an epidemiologic investigation determines that there is no evidence CWD exists in the herd and that the herd is not the source of infection as determined by the administrator. ~~(8-22-00)T~~(8-1-01)T

02. Herds Having Contact With Affected Or Exposed Animals. The quarantine may be released after a minimum of five (5) years of compliance with all provisions of these rules and during which there was no evidence of CWD or an epidemiologic investigation determines that there is no evidence CWD exists in the herd and that the herd is not the source of infection as determined by the administrator. ~~(8-22-00)T~~(8-1-01)T

03. Adjacent Herds. As directed by the Administrator in consultation with the epidemiologist. (8-22-00)T

04. Quarantine May Be Released After Complete Depopulation. The quarantine may be released after: (8-22-00)T

a. Complete depopulation of all cervidae on the premises in accordance with Section 25-212, Idaho Code; ~~and~~ ~~(8-22-00)T~~(8-1-01)T

b. The premises has been free of all ungulates for at least ~~one~~ five (5) years; ~~and~~ ~~(8-22-00)T~~(8-1-01)T

c. The soil and facilities have been treated or disinfected as recommended by the administrator; and (8-22-00)T

d. The premises is repopulated in complete compliance with the MCCWDMP. (8-22-00)T

05. Nonparticipating Herds. Nonparticipating herds will be placed and held under quarantine until the herd has qualified for and has been enrolled in either the MCCWDMP or VCCWDMP for five years. (8-22-00)T

(BREAK IN CONTINUITY OF SECTIONS)

390. HERD PLAN.

The owner (of any CWD exposed, CWD suspect, CWD Positive, CWD affected, CWD source, CWD trace, high risk or CWD adjacent herd that is not depopulated as described in Subsection 388.04, a designated epidemiologist, the owner's accredited veterinarian, if requested, APHIS Representative and state animal health official shall develop a plan for monitoring and eradication of CWD in each affected, exposed, suspect, source, trace or adjacent herd. The plan must be designed to reduce and eliminate CWD from the herd, to prevent spread of the disease to other herds, and to prevent reintroduction of CWD after the herd becomes a certified CWD cervid herd. The herd plan shall be developed and signed within sixty (60) days after completion of the epidemiological evaluation of the herd. The herd plan shall address herd management and adherence to all provisions of this chapter. The plan shall be formalized as a memorandum of agreement between the owner and program officials, shall be approved by the administrator, and shall include plans to obtain certified CWD cervid herd status. ~~(8-22-00)T~~(8-1-01)T

391. IDENTIFICATION AND DISPOSAL REQUIREMENTS.

~~Affected~~ Positive, high risk, suspect and exposed animals shall be identified and remain on the premises where they are found until they are identified and disposed of at the direction of the administrator in accordance with Section 25-212, Idaho Code. ~~(8-22-00)T~~(8-1-01)T

392. CLEANING AND DISINFECTION.

Premises shall be cleaned and disinfected under state or federal supervision as directed by the administrator within fifteen (15) days after ~~affected~~ CWD positive, high risk, suspect animals have been removed. ~~(8-22-00)T~~(8-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

401. MOVEMENT INTO A CERTIFIED CWD CERVID HERD.

01. Imported Cervids. To achieve or maintain certified CWD cervid herd status only animals from herds of equal or higher status in the CWD program may be imported. (8-1-01)T

~~02.~~ **Animals Originating From Certified CWD Cervid Herds.** Animals originating from certified CWD cervid herds may move into another certified CWD cervid herd without affecting the status of the destination herd. (8-22-00)T

023. Animals Originating From Non-Certified CWD Cervid Herds. Animals originating from non-certified CWD cervid herds and moved into certified CWD cervid herds will reduce the status of the destination herd to that of the herd of origin. (8-22-00)T

(BREAK IN CONTINUITY OF SECTIONS)

403. RECOGNITION OF MONITORED CWD CERVID HERDS.

Herds that meet or exceed the surveillance, recordkeeping, and herd inspection requirements of these rules may be granted monitored herd status by the administrator. The administrator shall issue a monitored CWD cervid herd certificate indicating the number of years of CWD monitoring. ~~(8-22-00)T~~(8-1-01)T

404. RECOGNITION OF CERTIFIED CWD CERVID HERDS.

Herds that meet or exceed the surveillance, recordkeeping, and herd inspection requirements of these rules may be granted certified herd status by the administrator. The administrator shall issue a certified CWD cervid herd certificate when the herd first qualifies and the owner has made application for certification. For re-certification, the administrator shall issue a renewal certificate annually so long as the herd continues to meet all the certification requirements. ~~(8-22-00)T~~(8-1-01)T

405. PENALTY FOR VIOLATIONS.

Pursuant to the provisions of Title 25, Section 3706, Idaho Code, the following penalties are authorized:

01. Civil Penalty. Any person, ~~firm, or corporation~~ violating ~~any of~~ the provisions of Title 25, Chapters 2, 3, 4, and 6 ~~or [37] 35, Title 25,~~ Idaho Code, applicable to domestic cervidae, or ~~these rules promulgated by the Division of Animal Industries for the enforcement thereof shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not less than one hundred dollars (\$100) nor more than~~ may be assessed a civil penalty by the department or its duly authorized agent not to exceed five thousand dollars (\$5,000) for each offense, as authorized by Section(s) [25-3706] 25-3506, Idaho Code. Each day of a continuing violation may be assessed as a separate offense. ~~(8-22-00)T~~(8-1-01)T

a. Civil penalties may be assessed in conjunction with any other department administrative action. No civil penalty may be assessed against a person unless the person was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act as set forth in Chapter 52, Title 67, Idaho Code. If the department is unable to collect an assessed civil penalty, or if a person fails to pay all or a set portion of an assessed civil penalty as determined by the department, the department may file an action to recover the civil penalty in the district court of the county in which the violation is alleged to have occurred. In addition to the assessed penalty, the department shall be entitled to recover reasonable attorney's fees and costs incurred in such action or on appeal from such action.

(8-1-01)T

b. A person against whom the department has assessed a civil penalty under these rules may, within thirty (30) days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred. (8-1-01)T

c. Moneys collected pursuant to these rules shall be deposited in the state treasury and credited to the livestock disease control and T.B. indemnity fund. (8-1-01)T

d. The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator and such other matters as justice requires. (8-1-01)T

02. Criminal Penalty. Any person, firm, or corporation violating any of the provisions of Title 25, Chapters 2, 3, 4, and 6 or [37] 35, Idaho Code, applicable to domestic cervidae, or these rules shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not less than one hundred dollars (\$100) and not more than five thousand dollars (\$5,000) for each offense. (8-1-01)T

03. Minor Violations. Nothing in these rules shall be construed as requiring the director to report minor violations when the director believes that the public interest will be best served by suitable warnings or other administrative action. (8-1-01)T

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.04.15 - RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING
BEEF CATTLE ANIMAL FEEDING OPERATIONS

DOCKET NO. 02-0415-0101

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2002 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 is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending and temporary rule. The action is authorized pursuant to Sections 22-101 and 22-4903, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for any change. This pending rule is being adopted to facilitate enforcement of Title 22, Chapter 49, Idaho Code, the "Beef Cattle Environmental Control Act". The Department received no comments on the proposed rule and is not making any changes between the text of the proposed rule and the text of the pending rule.

The pending and temporary rules are being adopted as proposed. The original text of the proposed rule was published in May 2, 2001 Idaho Administrative Bulletin, Volume 01-5, pages 32 through 35.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule or temporary rule, contact John Chatburn, Idaho Department of Agriculture, at (208) 332-8540.

DATED this 11th day of June, 2001.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
P.O. Box 790
Boise, Idaho 83701-0790
(208) 332-8500 / (208) 334-4062 FAX

IDAPA 02, TITLE 04, Chapter 15

RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING
BEEF CATTLE ANIMAL FEEDING OPERATIONS

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 00-5, May 2, 2001, pages 32 through 35.

This rule has been adopted as a pending rule by the Agency and is now pending review and adoption by the 2002 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.04.18 - RULES GOVERNING CAFO SITE ADVISORY TEAM

DOCKET NO. 02-0418-0101

NOTICE OF INTENT TO PROMULGATE RULES
NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency intends to propose rules and desires public participation prior to initiating formal rulemaking procedures. This action is authorized by Title 67, Chapter 65, Idaho Code, Section 67-6529F.

MEETING SCHEDULE: Persons interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting:

August 7, 2001 - 9:00 a.m. to 12:00 pm
Department of Agriculture
Lower Conference Rooms 1 & 2
2270 Old Penitentiary Road
Boise, Idaho 83712

The meeting site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting. For arrangements, contact the undersigned at (208) 332-8540.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to develop rules for the CAFO Site Advisory Team. The rules will be developed by the Idaho Department of Agriculture, Division of Animal Industries in conjunction with an advisory committee made up of persons having interests in the CAFO Site Advisory Team process.

The goal of the negotiated rulemaking process will be to develop by consensus the text of recommended rules. If a consensus is reached, a draft of the rules, incorporating the consensus and any other appropriate information, recommendations, or materials, will be transmitted to the Division of Animal Industries for consideration and use in the formal rulemaking process. If a consensus is not attained on particular issues, the negotiated rulemaking process may result in a report specifying those areas on which consensus was and was not reached which will be forwarded to the Division of Animal Industries. At the conclusion of the negotiated rulemaking process, the Division of Animal Industries intends to commence formal rulemaking with the publication of a proposed rule in October of 2001, taking into consideration the results of the negotiated rulemaking process. The final rule is expected to be in place and effective upon the conclusion of the 2002 session of the Idaho Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact John Chatburn at (208) 332-8540.

Anyone may submit written comments by mail or fax at the address below regarding this proposal to initiate negotiated rulemaking. All written comments must be received by the undersigned on or before August 22, 2001.

DATED this 19th day of June, 2001.

Patrick A. Takasugi, Director
Idaho Department of Agriculture
P.O. Box 790
Boise, Idaho 83701
Phone No. (208) 332-8540
Fax No. (208) 334-4062

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.06.16 - CROP RESIDUE DISPOSAL RULES
DOCKET NO. 02-0616-0101
NOTICE OF TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rules is July 1, 2001.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rule-making procedures have been initiated. The action is authorized pursuant to Title 22, Chapter 48, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 15, 2001.

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: Establish definitions, establish general provisions for disposing crop residue through burning, determination of burn or no burn days, registration of fields to be burned, crop residue burning time frame, authority for the director to declare additional burn days.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a) 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 needed to implement the provisions of Title 22, Chapter 48, Idaho Code, Smoke Management and Crop Residue Disposal Law.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dr. Roger Vega, Administrator, Division of Plant Industries. Phone number: 332-8620 or Curtis Thornburg, Program Manager, Division of Plant Industries. Phone number: 332-8620.

Anyone may submit written comments regarding this temporary and proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2001.

DATED this 19th day of June, 2001.

Patrick A. Takasugi
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0616-0101

IDAPA 02
TITLE 06
Chapter 16

02.06.16 - CROP RESIDUE DISPOSAL RULES

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authority of Section 22-4801, Idaho Code. (7-1-01)T

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.16, "Crop Residue Disposal Rules". (7-1-01)T

02. Scope. These rules provide procedures for: (7-1-01)T

a. Disposing of crop residue through burning; (7-1-01)T

b. Determination of burn or no burn days; (7-1-01)T

c. The registration of fields to be burned; (7-1-01)T

d. Crop residue burning time frame; and (7-1-01)T

e. Authority for the director to declare additional burn days. (7-1-01)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (7-1-01)T

003. ADMINISTRATIVE APPEAL.

There is no provision for administrative appeal before the Idaho State Department of Agriculture under this chapter. Hearing and appeal rights are pursuant to Title 67, Chapter 52, Idaho Code. (7-1-01)T

004. INCORPORATION BY REFERENCE.

IDAPA 02.06.16 does not incorporate any material by reference. (7-1-01)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (7-1-01)T

02. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701. (7-1-01)T

03. Street Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. (7-1-01)T

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records available for inspection and copying at the department. (7-1-01)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

The Idaho State Department of Agriculture adopts the definitions set forth in Section 22-4802, Idaho Code. In addition as used in this chapter: (7-1-01)T

01. Airshed. An area covered by a volume of air that has similar meteorological and air quality characteristics is separated from other volumes of air by weather patterns and topography. (7-10-01)T

02. Burn Day. A period of time when meteorological conditions are conducive to adequate smoke dispersion and when the burning of crop residue would not likely violate ambient air quality standards established by the USEPA, the IDEQ, or an Indian tribe authorized by federal law to establish air quality standards. (7-1-01)T

011. ABBREVIATIONS.

- 01. IASGA.** Idaho Alfalfa Seed Growers Association. (7-1-01)T
- 02. IDEQ.** Idaho Department of Environmental Quality. (7-1-01)T
- 03. IEOSA.** Idaho Eastern Oregon Seed Association. (7-1-01)T
- 04. IGP.** Idaho Grain Producers. (7-1-01)T
- 05. IMGA.** Idaho Mint Growers Association. (7-1-01)T
- 06. ISDA.** Idaho State Department of Agriculture. (7-1-01)T
- 07. NIFA.** North Idaho Farmers' Association. (7-1-01)T
- 08. NPGGA.** Nez Perce Prairie Grass Growers Association. (7-1-01)T
- 09. USEPA.** United States Environmental Protection Agency. (7-1-01)T

012. FINDINGS.

NIFA, NPGGA, IGP, IMGA, IEOSA and IASGA have asked the ISDA and IDEQ to address the issue of crop residue disposal and smoke management. Idaho growers may lose fire as an essential tool in their best management practices if these rules are not adopted. The adoption of IDAPA 02.06.16, "Crop Residue Disposal Rules," will allow Idaho farmers to maintain the essential tool of fire, while minimizing the impact on the citizens of Idaho of smoke generated by crop residue burning. (7-1-01)T

013. -- 099. (RESERVED).

100. REGISTRATION OF FIELDS TO BE BURNED.

01. Fields Larger Than Five Acres. All persons in Idaho except in Benewah and Kootenai Counties shall register each field larger than five (5) acres with ISDA each year field burning is conducted. (7-1-01)T

02. Registration Forms. Approved forms for registering fields may be obtained from offices of ISDA, IDEQ, County Extension Educators or Soil Conservation District offices. A single form is required for each person, however, more than one (1) field may be listed on a single form. (7-1-01)T

03. Deadlines For Registration. Completed and signed registration forms shall be received by ISDA one (1) month prior to the burning of the crop residue. (7-1-01)T

101. -- 199. (RESERVED).

200. DETERMINATION OF BURN OR NO BURN DAYS.

01. Recommendation Of IDEQ. The director or his designee shall designate for a given airshed burn or no burn days, the hours that burning shall be permitted, and the number of acres to be burned based on the recommendation of IDEQ. (7-1-01)T

02. Daily Postings On Website. The department shall post daily on their website whether a given day is a burn or no burn day, the hours that burning shall be permitted and the number of acres persons can burn in a given airshed. (7-1-01)T

03. Toll Free Number. (7-1-01)T

a. The department shall make available a toll free number to receive incoming complaints, requests for information, and will include an updated message designating a burn or no burn day. (7-1-01)T

b. All persons in Idaho except in Benewah and Kootenai Counties shall report to ISDA via the toll free number the date of burning and acres burned. (7-1-01)T

201. -- 299. (RESERVED).

300. CROP RESIDUE BURNING TIME FRAME.

01. Spring Burning. Burning of crop residue shall be allowed for a maximum of fourteen (14) days within a forty-five (45) day time period during the spring within each airshed. (7-1-01)T

02. Fall Burning. Burning of crop residue shall be allowed for a maximum of fourteen (14) days within a forty-five (45) day period during the fall within each airshed. (7-1-01)T

301. -- 499. (RESERVED).

500. GENERAL PROVISIONS.

All persons in Idaho except those in Benewah and Kootenai Counties disposing of crop residue through burning shall abide by the following provisions: (7-1-01)T

01. Violation Of Ambient Air Quality. Burning of crop residue shall not be conducted if it would result in a violation of ambient air quality standards as established by USEPA and IDEQ. (7-1-01)T

02. Burning Prohibitions. Burning of crop residue shall not be conducted on weekends or federal or state holidays. (7-1-01)T

03. Designated Burn Day. Burning of crop residue shall not be conducted unless the department has designated that day a burn day. (7-1-01)T

04. Setback From Structures. Burning of crop residue shall not be conducted within fifty (50) feet of any school or structure. (7-1-01)T

05. Adequate Fire Suppression Equipment. Adequate fire suppression equipment shall be on site prior to any burning of crop residue. (7-1-01)T

06. Location Of Field Burning. Disposal of crop residue through burning shall be conducted in the field where it was generated. (7-1-01)T

07. Training Session. All persons intending to burn crop residue shall attend a crop residue burning training session provided by ISDA. (7-1-01)T

08. Air Stagnation Advisory. All field burning shall be prohibited during an IDEQ air stagnation advisory. (7-1-01)T

09. Airsheds. ISDA shall designate for each airshed the names of persons and the number of acres to burn. (7-1-01)T

501. -- 799. (RESERVED).

800. ADDITIONAL BURN DAYS.

The director may declare additional burn days under special situations provided the burning of crop residue would not result in a violation of ambient air quality standards established by USEPA and IDEQ. (7-1-01)T

801. -- 999. (RESERVED).

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.06.41 - RULES PERTAINING TO THE SOIL AND PLANT AMENDMENT ACT OF 2001
DOCKET NO. 02-0641-0101
NOTICE OF TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2001.

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 22-2204, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 15, 2001.

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

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

The rules are being revised to reflect that the authority for this rule has been transferred to the Division of Plant Industries. The revised rules incorporate by reference the Soil and Plant Amendment Act of 2001, Title 22, Chapter 22, Idaho Code, Sections 22-2201 through 22-2225; prescribes definitions not covered by the law; lists abbreviations; requires registration and provides for polyacrylamide (PAM) product registration; prescribes proper labeling; allows for certain nutrient claims on soil and plant amendment labels; provides for sampling; deficiencies; penalties and violations.

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

The temporary rule confers a benefit. The rule allows registrants to make certain nutrient claims to better market their products to the public; provides the public with more information regarding the soil and plant amendment products; and sets standards for PAM products to deter environmental pollution resulting from PAM products. The authority for this rule has been transferred to the Division of Plant Industries and the rule is being rewritten and revised.

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. Informal meetings were conducted through the industry and the Fertilizer, Soil and Plant Amendment Advisory Committee. The advisory committee, ISDA, industry and the general public met on several occasions to discuss the proposed rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dr. Roger Vega, Administrator, Division of Plant Industries, at 332-8620 or Michael E. Cooper, Bureau Chief, Division of Plant Industries, at 332-8620

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 22, 2001

DATED this 20th day of June, 2001.

Patrick A. Takasugi
Idaho State Department of Agriculture
2270 Old Penitentiary Road

P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0641-0101

IDAPA 02
TITLE 06
Chapter 41

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

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-2204, Idaho Code. (7-1-01)T

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.41, "Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001". (7-1-01)T

02. Scope. These rules specify general registration and label requirements, sampling methods and analysis, and the necessity for warning or caution statements. (7-1-01)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (7-1-01)T

003. ADMINISTRATIVE APPEAL.

There is no provision for administrative appeals before the Idaho State Department of Agriculture under this chapter. Hearing and appeal rights are pursuant to Title 67, Chapter 52, Idaho Code. (7-1-01)T

004. (RESERVED).

005. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records and are available for inspection and copying at the department. (7-1-01)T

006. ADDRESS, OFFICE HOURS, TELEPHONE AND FAX NUMBERS.

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. (7-1-01)T

02. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (7-1-01)T

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, PO Box 790, Boise, Idaho 83701. (7-1-01)T

04. Telephone Number. The telephone number of the central office is (208) 332-8500. (7-1-01)T

- 05. Fax Number.** The fax number of the central office is (208) 334-2170. (7-1-01)T

007. DEFINITIONS.

The Idaho State Department of Agriculture adopts the definitions set forth in Section 22-2203, Idaho Code. In addition as used in this chapter: (7-1-01)T

- 01. Animal Manure.** The excreta of animals together with whatever bedding material is present. (7-1-01)T

02. Dried Animal Manure. Animal manure resulting from confined animal feeding operations manipulated only to reduce the moisture content. (7-1-01)T

008. ABBREVIATIONS.

- 01. AAPFCO.** Association of American Plant Food Control Officials. (7-1-01)T

- 02. AOAC.** Association of Official Analytical Chemists, International. (7-1-01)T

- 03. ISDA.** Idaho State Department of Agriculture. (7-1-01)T

- 04. PAM.** Polyacrylamide. (7-1-01)T

009. FINDINGS.

These rules are promulgated pursuant to Title 22, Chapter 22, Idaho Code. The adoption of these rules will update and replace outdated soil and plant amendment label requirements, sampling methods and analysis, investigational allowances, and add warning or caution statements. (7-1-01)T

010. SOIL AMENDMENT AND PLANT AMENDMENT REGISTRATION.

Each separately identifiable soil amendment or plant amendment product shall be registered pursuant to Section 22-2205, Idaho Code. (7-1-01)T

01. Product Registration. All soil amendment and plant amendment companies, including companies engaged in custom-formula mixing of dry or liquid soil amendments or plant amendments, shall comply with the product registration requirements of the Idaho Soil and Plant Amendment Act of 2001, Section 22-2205, Idaho Code, subject to the provisions of this chapter. (7-1-01)T

- 02. Exemptions From Registration.** (7-1-01)T

- a. Dried animal manure without nutrient claims and not commercially packaged or labeled. (7-1-01)T

- b. Horticultural growing media containing live plant material. (7-1-01)T

03. Alteration From Original State. When a soil amendment or plant amendment is mixed, added to, or in any way changed from its original content, it is a different product, and must be registered as provided under Section 22-2205, Idaho Code. (7-1-01)T

04. Sale Of Soil Amendment Or Plant Amendment. When a commercial soil amendment or plant amendment is removed from the package or container in which it was placed by the original registrant and then offered for sale by a person other than the original registrant, it is a different product and shall be registered in accordance with Section 22-2205, Idaho Code, except that it shall not be subject to an additional inspection fee as provided under Section 22-2208, Idaho Code, provided that said fee was paid on the product by the original or prior registrant. (7-1-01)T

05. PAM Products. PAM polymers must have residual acrylamide monomer limits of no greater than five hundredths percent (0.05%). The following information must be submitted to register PAM products: (7-1-01)T

- a. Percent of residual acrylamide monomer; (7-1-01)T
- b. Charge of polymer (cationic, anionic, nonionic); (7-1-01)T
- c. Branching characteristic of polymer (linear, cross-linked); and (7-1-01)T
- d. Molecular weight of polymer. (7-1-01)T

011. -- 029. (RESERVED).

030. SOIL AMENDMENT AND PLANT AMENDMENT LABELS.

01. Ingredient List. The label shall state the name of each ingredient in decreasing amounts present. (7-1-01)T

02. Declaration Of Ingredient Percentage Exemptions. The labeling requirements of the Idaho Soil and Plant Amendments Act of 2001, Section 22-2207(c), Idaho Code, requiring that soil and plant amending ingredients and other ingredients shall be stated in terms of percentage is required except in the following cases: (7-1-01)T

- a. Horticultural growing media. (7-1-01)T
- b. Compost. (7-1-01)T

03. Nutrient Claims And The Use Of The Term "Fertilizer". (7-1-01)T

a. The term "fertilizer" and like terms shall not be used in labeling or literature to describe a soil amendment or plant amendment. (7-1-01)T

b. Nutrient claims do not change the primary intended use of a soil or plant amendment product. Any nutrient claim shall be provided on the labeling and literature as an estimated range and shall be stated as a percentage. Nutrient claims and estimates must be supported by lab analysis or documentation acceptable by the ISDA. (7-1-01)T

c. Labeling or literature that makes nutrient claims or estimates is required to contain the following statement: "This product is recognized for its soil amendment characteristics. It is recognized that it has nutrient value. Any nutrient claims, verbal or written, are estimates and not guaranteed." (7-1-01)T

d. At the discretion of the registrant, labeling or literature that does not make nutrient claims or estimates may contain the following statement: "This product is recognized for its soil amendment characteristics. It is recognized that it has nutrient value. Any nutrient claims, verbal or written, are estimates and not guaranteed." (7-1-01)T

04. Microbiological Product. If the soil amendment or plant amendment is a microbiological product intended as an inoculum, the product label shall include an expiration date and state the number and kind of viable organisms per milliliter or, if the product is other than liquid, state the number and kind of viable organisms per gram. However, if the soil amendment or plant amendment is derived from a microbiological process or culture but is not intended as an inoculum, then the product label shall state that the product is not a viable culture. (7-1-01)T

05. Ninety-Five Percent Rule. When a soil amendment or plant amendment is labeled as a specific material, such as peat moss or leaf mold, the product shall consist of not less than ninety-five percent (95%) of that specific material. (7-1-01)T

06. Other Ingredients. When the name of an ingredient(s) appears on the label of a soil amendment or plant amendment and is not one of the ingredients required to be listed, the percentage of that ingredient(s) shall appear prominently in print of the same size and color. (7-1-01)T

07. Warning Or Caution Statements. The ISDA may require a registrant to include a warning or caution statement to ensure safety to handlers, crops, and the environment. (7-1-01)T

031. MULTI-LABELING.

The labeling of a soil amendment or plant amendment as an amendment and as a product appropriate for another use, as well as including directions for use and guarantees for other than the contents of the container, a practice known as “multi-labeling,” is prohibited. (7-1-01)T

032. -- 048. (RESERVED).

049. SAMPLING AND ANALYSIS.

The methods of sampling and analysis shall be those of AAPFCO, AOAC, or other methods as approved by the ISDA. (7-1-01)T

050. DEFICIENCIES AND PENALTIES.

01. Deficiency. Soil amendments or plant amendments are deemed deficient according to Section 22-2212, Idaho Code, and are subject to penalty. (7-1-01)T

02. Penalties. Penalties will be assessed on deficient soil amendments or plant amendments according to Sections 22-2212 through 22-2213, Idaho Code. (7-1-01)T

051. VIOLATIONS.

Violations and remedies for violations are stated in Sections 22-2218 and 22-2219, Idaho Code. (7-1-01)T

052. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,
BLIND AND DISABLED (AABD)

DOCKET NO. 16-0305-0103

NOTICE OF TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: These temporary rules are effective July 1, 2001.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-1004(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 15, 2001.

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

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

This rulemaking increases the nursing home personal needs allowance to forty dollars (\$40) and provides a supplement for patients whose income is less than the personal needs allowance; implements full Medicaid coverage for women screened and diagnosed for breast or cervical cancer through the Health Districts; provides for participants to request continued benefits pending a fair hearing, increases the disabled student income exclusion; adds exceptions for attributing income and resources to sponsored aliens who are battered or indigent; and provides for Medicaid coverage for inmates of ineligible institutions who are hospital inpatients.

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 rule changes is to comply with deadlines in amendments to governing law and federal programs.

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 rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 22, 2001.

DATED this 8th day of June, 2001.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
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P.O. Box 83720
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0103

107. INSTITUTIONAL STATUS.

An institution provides treatment, services, food, and shelter to four (4) or more people, not related to the owner. A participant living in an ineligible institution an entire calendar month is not eligible for AABD cash, unless he qualifies for the institution payment exception. (7-1-99)

01. Eligible Institutions. Eligible institutions for AABD and Medicaid are defined in Subsections 107.01.a. through 107.01.c. (7-1-99)

a. Medical institution. A public or private medical institution, including a hospital, nursing care facility, or an intermediate care facility for the mentally retarded is an eligible institution. A participant is not eligible for AABD cash if he is a resident of a medical institution the full month. (7-1-99)

b. Child care institution. A non-profit private child care institution is an eligible institution. A public child care institution with no more than twenty-five (25) beds is an eligible institution. A child care institution must be licensed or approved by the Department. A detention facility for delinquent children is not a child care institution. A child care institution for mental diseases (IMD) is an eligible institution if it has sixteen (16) beds or less. A participant is not eligible for AABD cash if he is a resident of a child care institution the full month. (7-1-99)

c. Community residence. A community residence is a facility providing food, shelter, and services to residents. A privately operated community residence is an eligible institution. A publicly operated community residence serving no more than sixteen (16) residents is an eligible institution. The Community Restorium in Bonners Ferry, Idaho, is an eligible institution even though more than sixteen (16) residents are served. (7-1-99)

02. Ineligible Institutions. Ineligible institutions for AABD and Medicaid are defined in Subsections 107.02.a. through 107.02.d. (7-1-99)

a. Public institution. Public institutions are ineligible institutions unless listed in Subsection 108.01. (7-1-99)

b. Institution for mental diseases. An institution for mental diseases for adults is an ineligible institution. A facility is an institution for mental diseases if it is maintained primarily for the care and treatment of persons with mental diseases. (7-1-99)

c. Institution for tuberculosis. An institution for tuberculosis is an ineligible institution. A facility is an institution for tuberculosis if it is maintained primarily for the care and treatment of persons with tuberculosis. (7-1-99)

d. Correctional institution. A correctional institution is an ineligible institution. A correctional institution is a facility for prisoners, persons detained pending disposition of charges, or held under court order as material witnesses or juveniles. (7-1-99)

03. Medicaid Exception For Inmates. An inmate of an ineligible public institution can receive Medicaid while he is an inpatient in a medical institution. He must meet all Medicaid eligibility requirements. Medicaid begins the day he is admitted and ends the day he is discharged from the medical institution. (7-1-01)T

a. A person is an inmate when under age sixty-five (65) in an institution for tuberculosis, when age twenty-one (21) up to age sixty-five (65) in an institution for mental diseases, or when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jails, detention facilities, or other penal facilities. (7-1-01)T

b. An inmate is an inpatient when he is admitted to a hospital, nursing facility, ICF/MR, or if under age twenty-one (21), is admitted to a psychiatric facility. (7-1-01)T

- c. An inmate is not an inpatient when receiving care on the premises of a correctional institution. (7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

215. DEEMING RESOURCES.

Resources are deemed from a spouse to a participant, from a parent or spouse of a parent to a child participant, from an essential person to a participant, or from a sponsor to a legal non-citizen participant. Resource deeming is determined by the participant's circumstances the first moment of the month. Deeming starts the first full calendar month the participant is in a deeming situation. Deeming ends the first full calendar month the participant is not in a deeming situation. Deeming to a child ends the month after the child's eighteenth birthday. (7-1-99)

01. Spouse Of Adult Participant. When a participant lives with a spouse, his resources include those of the spouse. The resource limit is for a couple, when the spouse was a member of the household as of the first moment of the benefit month. The AABD resource exclusions are subtracted. Pension funds the ineligible spouse has on deposit are excluded. (7-1-99)

02. Resources Of Parent(s) Of Child Under Age Eighteen. When a child participant, under age eighteen (18), is living with his parent or the spouse of his parent, their resources are deemed to the child. When there is more than one (1) child participant in the household, deemed parental resources are divided equally among the child AABD cash participants. When the child lives with one (1) parent, resources over the single person resource limit are deemed to the child. When the child lives with both parents, resources over the couple limit are deemed to the child. A stepparent's resources are not deemed to the child for Medicaid eligibility. A stepparent's resources are deemed to the child for AABD cash. Resources and exclusions of the child participant, and the parents, are computed separately. Pension funds owned by an ineligible parent or parent's spouse are excluded from resources for deeming. (4-5-00)

03. Resources Of Essential Person Of Participant. When a participant lives with an essential person, the resources of the essential person are deemed to the participant. The essential person's countable resources are combined with the participant's countable resources. When the essential person is not the participant's spouse, the single person resource limit is used. When the essential person is the participant's ineligible spouse, the couple resource limit is used. (7-1-99)

04. Resources Of Legal Non-Citizen's Sponsor - No INS Form I-864 Signed. A legal non-citizen's resources include those of his sponsor and of the sponsor's spouse. When the sponsor has not signed an I-864 affidavit of support, the resources deeming period is three (3) years after the legal non-citizen's admission to the U.S. A sponsor's resources are not deemed to the legal non-citizen for Medicaid eligibility. ~~(7-1-99)~~(7-1-01)T

a. If the sponsor does not have a spouse living with him, the sponsor's countable resources over the single person resource limit are deemed to the legal non-citizen participant. (7-1-99)

b. If the sponsor's spouse lives with him, the sponsor couple's resources over the couple resource limit are deemed to the legal non-citizen participant. (7-1-99)

c. If a person sponsors two (2) or more legal non-citizen participants, the sponsor's deemed resources are divided and deemed equally to the legal non-citizen participants. (7-1-99)

05. Resources Of Legal Non-Citizen's Sponsor - INS Form I-864 Signed. For a legal non-citizen admitted to the U.S. on or after August 22, 1996, whose sponsor has signed an INS form I-864 affidavit of support, all resources of the sponsor and sponsor's spouse are deemed to the legal non-citizen for AABD cash and Medicaid eligibility. Exceptions are listed in Subsections 215.05.a. and 215.05.b. of these rules. ~~(7-1-99)~~(7-1-01)T

- a. The legal non-citizen, or the legal non-citizen child's parent, was battered or subjected to extreme

cruelty in the U.S. There is a substantial connection between the battery and the participant's need for assistance. The person subjected to the battery or cruelty no longer lives with the person responsible for the battery or cruelty.

(7-1-01)T

b. Alien sponsor deeming is suspended for twelve (12) months, if the legal non-citizen is not able to get food and shelter without AABD cash.

(7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

316. BLIND OR DISABLED STUDENT CHILD EARNED INCOME.

To qualify for this exclusion, the child must be blind or disabled. The child must be under age twenty-two (22). The child must not be married or the head of a household. The child must be a student regularly attending high school, college, university or course of vocational or technical training, designed to prepare him for gainful employment. Up to ~~four~~ one thousand two hundred ninety dollars (\$4001,290) per month of earned income, is excluded. The maximum exclusion is ~~one~~ five thousand six hundred twenty dollars (\$1,6205,200) in a calendar year.

~~(7-1-99)~~(7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

457. DEEMING INCOME FROM SPONSOR TO LEGAL NON-CITIZEN - SPONSOR SIGNED INS FORM I-864 AFFIDAVIT OF SUPPORT.

If the legal non-citizen's sponsor has signed an INS form I-864 affidavit of support, all income of the sponsor and the sponsor's spouse is deemed to the legal non-citizen for AABD cash and Medicaid eligibility. Deeming continues until the legal non-citizen becomes a naturalized citizen or has forty (40) quarters of work. Exceptions are listed in Subsections 457.01 and 457.02.

~~(7-1-99)~~(7-1-01)T

01. Battery Exception. The legal non-citizen, or the legal non-citizen child's parent, was battered or subjected to extreme cruelty in the U.S. There is a substantial connection between the battery and the participant's need for assistance. The person subjected to the battery or cruelty no longer lives with the person responsible for the battery or cruelty.

(7-1-01)T

02. Indigence. Alien sponsor deeming is suspended for twelve (12) months, if the legal non-citizen is not able to get food and shelter without AABD cash.

(7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

513. LICENSED RESIDENTIAL AND ASSISTED LIVING FACILITY AND CERTIFIED FAMILY HOME ALLOWANCES.

Each participant living in a residential and assisted living facility (RALF), (see IDAPA 16.03.22, "Rules Governing Licensed Residential and Assisted Living Facilities in Idaho") or certified family home (CFH), (see IDAPA 16.03.19, "Rules Governing Certified Family Homes") is budgeted a basic allowance of sixty-seven dollars (\$67) monthly. A participant is also budgeted a monthly allowance for care based on his level of care. If the participant gets a lower level of care than his assessed level, his allowance is for the lower level of care.

(7-1-01)T

01. Care Levels And Monthly Allowances. Through December 31, 2000, care levels and monthly allowances are those listed in Table 513, ~~Subsections 513.01 through 513.03.~~ Beginning January 1, 2001, through December 31, 2001, the RALF and CFH care allowances and the basic allowance increase by one-half (1/2) the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person. Beginning January 1, 2002, the RALF and CFH allowances increase by the full dollar amount of the annual cost-of-living increase in the

federal SSI benefit rate for a single person.

	Level Of Care	Monthly Allowance
a.	<u>Level I</u>	Seven hundred and seventy-four dollars (\$774)
b.	<u>Level II</u>	Eight hundred and forty-one dollars (\$841)
c.	<u>Level III</u>	Nine hundred and nine dollars (\$909)

(7-1-01)T

02. CFH Operated By Relative. A participant living in a Certified Family Home (CFH) operated by his parent, child or sibling is not entitled to the CFH allowances. He may receive the allowance for a person living with a relative. A relative for this purpose is the participant's parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent or grandchild by birth, marriage, or adoption. ~~(7-1-01)T~~(7-1-01)T

03. RALF Participant In RALF Not On A&D Waiver. A participant living in a RALF and receiving personal care services, but not A&D Waiver services, gets the same allowances as a participant in room and board with a non-relative. (7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

611. -- 6196. (RESERVED).

617. HEARING REQUEST.

A participant may request a hearing to contest a Department decision. The participant must make the request within thirty (30) days of the date the Department mailed the notice of decision. Hearings will be conducted according to IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (7-1-01)T

618. CONTINUED BENEFITS PENDING A HEARING DECISION.

The participant may continue to receive assistance, pending the hearing decision. The Department must receive the request for continued benefits within ten (10) days of mailing the notice of decision. (7-1-01)T

01. Amount of Assistance. The Department will continue the participant's assistance at the current month's level while the hearing decision is pending, unless another change affecting assistance occurs. (7-1-01)T

02. Continued Eligibility. The participant must continue to meet all eligibility requirements not related to the hearing issue. (7-1-01)T

03. Overpayment. When the hearing decision is in the Department's favor, the participant must repay assistance received while the hearing decision was pending. (7-1-01)T

619. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

723. PATIENT LIABILITY FOR PERSON WITH NO COMMUNITY SPOUSE.

For a participant with no community spouse, patient liability is computed as described in Subsections 723.01 through 723.03. (7-1-99)

01. Income Of Participants In Long-Term Care. For a single participant, or participant whose spouse is also in long-term care and chooses the SSI method of calculating the amount of income and resources, the patient liability is his total income less the deductions in Subsection 723.03. (7-1-99)

02. Community Property Income Of Long-Term Care Participant With Long-Term Care Spouse. Patient liability income for a participant, whose spouse is also in long-term care, choosing the community property method, is one-half (1/2) his share of the couple's community income, plus his own separate income. The deductions in Table 723.03 are subtracted from his income. (7-1-99)

03. Income Of Participant In Facility. A participant residing in the long-term care facility at least one (1) full calendar month, beginning with his most recent admission, must have the deductions in Subsection 723.03 ~~through 723.03.n.~~ subtracted from his income, after the AABD exclusions are subtracted from the income. Total monthly income includes income paid into an income (Miller) trust that month. The income deductions must be subtracted in the order listed. Remaining income is patient liability. ~~(7-1-99)~~(7-1-01)T

- a. AABD income exclusions. Subtract income excluded in determining eligibility for AABD cash. (7-1-99)
- b. Aid and attendance and UME allowances. Subtract a VA Aid and Attendance allowance and Unusual Medical Expense (UME) allowance for a veteran or surviving spouse, unless the veteran lives in a state operated veterans' home. (3-30-01)
- c. SSI payment two (2) months. Subtract the SSI payment for a participant entitled to receive SSI at his at-home rate for up to two (2) months, while temporarily in a long-term care facility. (7-1-99)
- d. AABD payment. Subtract the AABD payment, and income used to compute the AABD payment, for a participant paid continued AABD payments up to three (3) months in long-term care. (7-1-99)
- e. Protected VA pension. Subtract a protected VA pension for a veteran with no spouse or dependents or for a surviving spouse with no dependents. (7-1-99)
- f. Personal needs. Subtract ~~thirty~~ forty dollars (\$~~340~~) for the participant's personal needs. For a veteran or surviving spouse with a protected VA pension, the protected pension substitutes for the ~~thirty~~ forty dollar (\$~~340~~) personal needs deduction. ~~(7-1-99)~~(7-1-01)T
- g. Employed and sheltered workshop activity personal needs. For an employed participant or participant engaged in sheltered workshop or work activity center activities, subtract the lower of the personal needs deduction of two hundred dollars (\$200) or his gross earned income. The participant's total personal needs allowance must not exceed two hundred and thirty dollars (\$230). For a veteran or surviving spouse with sheltered workshop or earned income, and a protected VA pension, the total must not exceed two hundred dollars (\$200). This is a deduction only. No actual payment can be made to provide for personal needs. (3-30-01)
- h. Home maintenance. Subtract two hundred and twelve dollars (\$212) for home maintenance cost if the participant had an independent living situation, before his admission for long-term care. His physician must certify in writing the participant is likely to return home within six (6) months, after the month of admission to a long-term care facility. This is a deduction only. No actual payment can be made to maintain the participant's home. (7-1-99)
- i. Maintenance need. Subtract a maintenance need deduction for a family member, living in the long-term care participant's home. A family member is claimed, or could be claimed, as a dependent on the Federal Income Tax return of the long-term care participant. The family member must be a minor or dependent child, dependent parent, or dependent sibling of the long-term care participant. The maintenance need deduction is the AFDC payment standard for the dependents, computed according to the AFDC State Plan in effect before July 16, 1996. (7-1-99)
- j. Medicare and health insurance premiums. Subtract expenses for Medicare and other health

insurance premiums, and deductibles or coinsurance charges, not subject to payment by a third party. Deduction of Medicare Part B premiums is limited to the first two (2) months of Medicaid eligibility. Medicare Part B premiums must not be subtracted, if the participant got SSI or AABD cash the month prior to the month for which patient liability is being computed. (7-1-99)

k. Mandatory income taxes. Subtract taxes mandatorily withheld from unearned income for income tax purposes. To qualify for deduction of mandatory taxes, the tax must be withheld from income before the participant receives the income. (7-1-99)

l. Guardian fees. Subtract court-ordered guardianship fees of the lesser of ten percent (10%) of the monthly benefit handled by the guardian, or twenty-five dollars (\$25). Where the guardian and trustee are the same person, the total deduction for guardian and trust fees must not exceed twenty-five dollars (\$25) monthly. (7-1-99)

m. Trust fees. Subtract up to twenty-five dollars (\$25) monthly paid to the trustee for administering the participant's trust. (7-1-99)

n. Impairment related work expenses. Subtract impairment-related work expenses for an employed participant who is blind or disabled under AABD criteria. Impairment-related work expenses are purchased or rented items and services, purchased or rented to perform work. The items must be needed because of the participant's impairment. The actual monthly expense of the impairment-related items is subtracted. Expenses must not be averaged. (7-1-99)

o. Income Garnished for Child Support. Subtract income garnished for child support to the extent the expense is not already accounted for in computing the maintenance need standard. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

726. PERSONAL NEEDS SUPPLEMENT (PNS).

A nursing home participant may receive a PNS to bring his gross income up to forty dollars (\$40). Gross income is income after exclusions and before disregards. Gross income includes money withheld to recover an AABD overpayment. The PNS is the difference between the participant's gross income and forty dollars (\$40). If not in an even dollar amount, the PNS is rounded up to the next dollar. The participant's income including the PNS must not exceed forty dollars (\$40). (7-1-01)T

7267. FAIR HEARING ON CSA DECISION.

Either spouse may ask for a fair hearing, to show the community spouse needs a higher CSA. The hearing officer must consider if, due to unusual conditions, using the computed CSA causes significant financial hardship for the community spouse. If the fair hearing decision finds the community spouse needs more income than the CSA, the CSA must include the additional income. (7-1-99)

7278. -- 730. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

802. WOMAN DIAGNOSED WITH BREAST OR CERVICAL CANCER.

A woman not otherwise eligible for Medicaid and meeting the conditions in Subsections 802.01 through 802.06 is eligible for Medicaid for the duration of her cancer treatment. Medicaid income and resource limits do not apply to this coverage group. (7-1-01)T

01. Diagnosis. The participant is diagnosed with breast or cervical cancer through the Centers for Disease Control and Prevention's National Breast and Cervical Cancer Early detection Program. (7-1-01)T

02. Age. The participant is under age sixty-five (65). (7-1-01)T

03. Creditable Health Insurance. The participant is uninsured or, if insured, the plan does not cover her type of cancer. (7-1-01)T

04. Non-Financial Eligibility. The participant meets the Medicaid non-financial eligibility requirements in Sections 100 through 108 and Sections 166 and 167 of these rules. (7-1-01)T

05. Medical Support Cooperation. The participant meets the medical support cooperation requirement in Sections 702 through 706 of these rules. (7-1-01)T

06. Group Health Plan Enrollment. The participant meets the requirement to enroll in available cost-effective employer group health insurance. (7-1-01)T

07. Presumptive Eligibility. The Department can presume the participant is eligible for Medicaid, before a formal Medicaid determination. A clinic authorized to screen for breast or cervical cancer by the National Breast and Cervical Cancer Early Detection Program makes the presumptive eligibility determination. The clinic tells the participant how to complete the formal Medicaid determination process. The Medicaid notice and hearing rights do not apply to presumptive eligibility. No overpayment occurs if the formal Medicaid determination finds the participant is not eligible. (7-1-01)T

8023. -- 805. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

810. QUALIFIED MEDICARE BENEFICIARY (QMB).

A person meeting all requirements in Subsections ~~672810.01~~ through ~~672810.067~~ is eligible for QMB. QMB Medicaid pays Medicare premiums, coinsurance, and deductibles. ~~(7-1-99)~~(8-1-01)T

01. Medicare Part A. The participant must be entitled to hospital insurance under Part A of Medicare at the time of his application. (7-1-99)

02. Nonfinancial Requirements. The participant must meet the Medicaid residence, citizenship, support cooperation, and SSN requirements. (7-1-99)

03. Income. Monthly income must not exceed one hundred percent (100%) of the official poverty line defined by the Federal Office of Management and Budget (OMB). The single person income limit is the poverty line for a family of one (1) person. The couple income limit is the poverty line for a family of two (2) persons. The annual Social Security cost of living increase is disregarded from income, until the month after the month the annual Federal poverty line revision is published. AABD cash is not counted as income. (7-1-99)

04. Dependent Income. Income of the dependent child, parent, or sibling is not counted. (7-1-99)

05. QMB Dependent Family Member Disregard. A dependent family member is a minor child, adult child meeting SSA disability criteria, parent or sibling of the participant or spouse living with the participant. The family member is or could be claimed on the Federal tax return of the participant or spouse. A participant with a dependent family member has an income disregard based on family size. The spouse is included in family size, whether or not the spouse is also participant. The disregard is based on the official poverty line income as defined by the OMB. The disregard is the difference between the poverty line for one (1) person, or two (2) persons if the participant has a spouse, and the poverty line for the family size including the participant, spouse, and dependent. (7-1-99)

06. Resource Limit. The resource limit for a single participant is four thousand dollars (\$4,000). The resource limit for a couple is six thousand dollars (\$6,000). (7-1-99)

07. Effective Dates. The effective date of QMB coverage is no earlier than the first day of the month after the approval month. A QMB participant is not entitled to backdated Medicaid. (7-1-99)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM
DOCKET NO. 16-0309-0105
NOTICE OF TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: These temporary rules are effective March 15, 2001.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(f), 39-5601 through 39-5608, 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 15, 2001.

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

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

The rule change clarifies the criteria for determining the functional level of persons who qualify for nursing facility care. Extensive assistance with meal preparation is moved to the high indicator category from the critical category, and moderate assistance with meal preparation is added to the medium indicator category.

TEMPORARY RULE JUSTIFICATION: Temporary rules have 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 conducted through client and provider comments, a Notice of Negotiated had not been published.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Christine Cuellar at (208) 364-1891.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 22, 2001.

DATED this 25th day of June, 2001.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 06-0309-0105

506. CRITERIA FOR DETERMINING NEED FOR NF CARE.

The recipient requires NF level of care when ~~the following conditions exist~~ an adult meets or exceeds the functional level described in Subsection 506.06, or when a child meets one (1) or more of the criteria described in Subsections 506.07, 506.08, 506.09 or 506.10. A child is an individual from age zero (0) through eighteen (18) years; an adult is an individual more than eighteen (18) years. ~~(3-30-01)(3-15-01)T~~

01. Required Assessment, Adults. A standard assessment will be administered by the Department or its designee to all adults requesting services with requirements for Nursing Facility (NF) level of care. The Department will specify the instrument to be used. (3-30-01)

02. Functional Level, Adults. Based on the results of the assessment, the level of impairment of the individual will be established by the Department or its designee. In determining need for NF care ~~a person~~ an adult must require the level of assistance listed in Subsections 506.03 through 506.05, according to the formula described in Subsection 506.06: ~~(3-30-01)(3-15-01)T~~

03. Critical Indicator (Twelve (12) Points Each). (3-30-01)

- a. Total ~~or extensive~~ assistance with preparing or eating meals. ~~(3-30-01)(3-15-01)T~~
- b. Total or extensive assistance in toileting. (3-30-01)
- c. Total or extensive assistance with medications which require decision making prior to taking, or assessment of efficacy after taking. (3-30-01)

04. High Indicator (Six (6) Points Each). (3-30-01)

~~a.~~ Extensive assistance with preparing or eating meals. (3-15-01)T

~~b.~~ Total or extensive assistance with routine medications. (3-30-01)

~~c.~~ Total, extensive or moderate assistance with transferring. (3-30-01)

~~d.~~ Total or extensive assistance with mobility. (3-30-01)

~~e.~~ Total or extensive assistance with personal hygiene. (3-30-01)

~~f.~~ Total assistance with supervision from Section II of the Uniform Assessment Instrument (UAI). (3-30-01)

05. Medium Indicator (Three (3) points each). (3-30-01)

a. Moderate assistance with personal hygiene. (3-30-01)

b. Moderate assistance with preparing or eating meals. ~~(3-30-01)(3-15-01)T~~

c. Moderate assistance with mobility. (3-30-01)

d. Moderate assistance with medications. (3-30-01)

e. Moderate assistance with toileting. (3-30-01)

f. Total, extensive, or moderate assistance with dressing. (3-30-01)

g. Total, extensive or moderate assistance with bathing. (3-30-01)

h. Frequent or continuous supervision in one (1) or more of the following cognitive areas from

- Section IV of the UAI: (3-30-01)
- i. Orientation; (3-30-01)
 - ii. Memory; (3-30-01)
 - iii. Judgement; (3-30-01)
 - iv. Wandering; (3-30-01)
 - v. Disruptive/socially inappropriate behavior; (3-30-01)
 - vi. Assaultive/destructive behavior; (3-30-01)
 - vii. Self preservation; or (3-30-01)
 - viii. Danger to self. (3-30-01)

06. NF Level Of Care, Adults. In order to qualify for NF level of care, the individual must score twelve (12) or more points in one (1) of the following ways. ~~(3-30-01)~~(3-15-01)T

- a. One (1) or more critical indicators = Twelve (12) points (3-30-01)
- b. Two (2) or more high indicators = Twelve (12) points (3-30-01)
- c. One (1) high and two (2) medium indicators = Twelve (12) points (3-30-01)
- d. Four (4) or more medium indicators = Twelve (12) points (3-30-01)

07. Supervision Required, Children. Where the inherent complexity of a service prescribed by the physician is such that it can be safely and effectively performed only by or under the supervision of a licensed nurse or licensed physical or occupational therapist. (3-30-01)

08. Preventing Deterioration, Children. Skilled care is needed to prevent, to the extent possible, deterioration of the child's condition or to sustain current capacities, regardless of the restoration potential of a child, even where full recovery or medical improvement is not possible. (3-30-01)

09. Specific Needs, Children. When the plan of care, risk factors, and aggregate of health care needs is such that the assessments, interventions, or supervision of the child necessitates the skills of a licensed nurse or a licensed physical therapist or licensed occupational therapist. In such cases, the specific needs or activities must be documented by the physician's orders, progress notes, plan of care, and nursing and therapy notes. (3-30-01)

10. NF Level Of Care, Children. Using the criteria found in Subsections 506.07, 506.08, and 506.09, plus consideration of the developmental milestones, based on the age of the child, the Department's RMU will determine NF level of care. (3-30-01)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO
DOCKET NO. 16-0310-0101
NOTICE OF TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: These temporary rules are effective July 1, 2001.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 15, 2001.

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: These rules add legislative intent language to cap ICF/MR and special rates to contain Medicaid costs.

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.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rulemaking was necessary to comply with legislative intent.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Jean Christensen at (208) 334-5795.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 22, 2001.

DATED this 18th day of June, 2001.

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. 16-0310-0101

240. PROSPECTIVE RATES FOR ICF/MR.

Sections 240 through 247 of these rules provide procedures and specifications necessary to implement the provisions and accomplish the objectives of the payment system for ICF/MR providers. Total payment will include the following components: Property reimbursement, capped costs, an efficiency increment, exempt costs, excluded costs. Notwithstanding the provisions of Section 56-113, Idaho Code, it is the intent of the Idaho Legislature that for the period July 1, 2000, through June 30, 2002, rates, including special rates of private intermediate care facilities for the mentally retarded, shall not exceed the rates in effect in state fiscal year 2000 (July 1, 1999, through June 30, 2000).

~~(4-5-00)(7-1-01)T~~

IDAPA 18 - DEPARTMENT OF INSURANCE
18.01.25 - TITLE INSURANCE AND TITLE INSURANCE AGENTS
AND ESCROW OFFICERS

DOCKET NO. 18-0125-0101

NOTICE OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to authority granted Sections 41-211 and 41-2705, 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 15, 2001.

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

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

The rule simplifies the 3-year audit requirement for title agents providing escrow services and allows an alternative method to comply with the escrow audit requirement. The proposed rule also brings the escrow accounting requirements applicable to title agents in line with current marketplace procedures and new technology.

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 Director worked closely with the title industry in developing this proposed rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Robert Meunier, Financial Examiner, Sr., (208) 334-4250.

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 22, 2001.

DATED this 19th day of June, 2001.

Mary L. Hartung, Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
PO Box 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4250

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0125-0101

011. TITLE INSURANCE AGENTS AND EMPLOYEES ACTING AS ESCROW AGENTS.

01. Written Instructions. An escrow agent shall not accept funds or papers in escrow without a dated, written instruction signed by the parties or their authorized representatives adequate to administer the escrow account and without receiving at the time provided in the escrow instructions sufficient funds and documents to carry out terms of the escrow instructions. Funds and documents deposited shall be used only in accordance with such written instruction; and if additional specific instructions are needed, the agent shall obtain the consent of both parties or such representatives to the escrow or an order of a court of competent jurisdiction at the expense of the escrow parties. (7-1-93)

02. Notice Of Conflict Of Interest. An escrow agent shall act without partiality to any of the parties to the escrow. An escrow agent may not close a transaction where he has, directly or indirectly, a monetary interest in the subject property either as buyer or seller. If an escrow agent has a business interest in the escrow transaction other than as escrow agent, the relationship or interest must be disclosed in the written escrow instructions. After noting such interest, an additional statement shall appear as follows: "We call this interest to your attention for disclosure purposes. This interest will not, in our opinion, prevent us from being a fair and impartial escrow agent in this transaction, but you are, nevertheless, free to request the transaction be closed by some other escrow agent." (7-1-93)

03. Closing Statement. On completion of an escrow transaction the agent shall deliver to each principal a written closing statement signed by the agent of each principal's account. The same shall show all receipts and disbursements and any charge made by and disbursements to the escrow agent shall be clearly noted. A copy shall be retained. (7-1-93)

04. Control Of Funds. An escrow agent shall maintain one or more "trust accounts" in a federally insured financial institution into which all escrow funds received shall be deposited and from which there shall be drawn escrow payments. No other funds shall be commingled with such trust account. Escrow fees shall not be drawn until the escrow is completely ready to close in accordance with the escrow instructions and must be withdrawn not later than the day on which the final disbursements are made for the escrow closing. (7-1-93)

05. Escrow Accounting Procedures. An escrow agent shall maintain on a current basis (a) an escrow ledger with a separate numbered sheet for each escrow agreement and (b) an escrow liability control account. Disbursements shall be posted from checks or other vouchers and each item, not the total of items, must be entered. Escrow liability control account shall balance with the escrow ledger at all times and shall equal the balance of funds in the "trust accounts" for escrows at the bank. Checks may not be drawn against an escrow account without sufficient credit balance for the particular escrow existing at the time. Funds shall not be transferred between escrow agents except by writing checks and receipts which are charged and credited respectively to accounts with the reason noted and the authority therefor. All services must be performed and the escrow account ready to close before any service or escrow fees may be charged and drawn from an escrow account (unless an escrow is a long term collection, and fees are payable monthly or annually). The escrow funds will be placed in the "trust accounts" for escrows and no other funds commingled therewith. All entries in any escrow account shall be posted the date of the entry without regard of the date of posting, but all entries should be posted daily. (7-1-93)

06. Escrow Records. Each escrow agent shall maintain in each escrow transaction: ()

~~(a). Evidence of all funds received including copies of all instruments, which shall include prenumbered receipt forms used in numerical sequence with all numbers accounted for, (b) all canceled checks in numerical order with all checks accounted for, (c) all prenumbered voucher or prenumbered check stubs used in numerical order with all numbers accounted for, and (d) copies of all instruments pursuant to which collected funds were received by the escrow agent (including cash receipts, copies of cashier's checks, wire transfer confirmations or evidence of unconditional payment of checks, as the case may be). Such record shall cover applicable:~~ ()

~~b. Complete evidence of all funds received and disbursed. No funds shall be received or disbursed without the use of such numbered records. Such records shall also include the closed which shall include check stubs or check copies, and wire instructions for all disbursements as applicable; and~~ ()

~~c. A final ledger sheet for the particular each escrows covered by the items transaction listing all items~~

~~received and disbursed.~~ All records shall be ~~maintained in the place of business of the escrow agent, shall be freely accessible and made~~ available for audit, inspection and examination by the ~~Insurance~~ Director ~~at all reasonable times upon demand~~, and all records shall be preserved for not less than six (6) years from the closing date of the escrow.

(7-1-93)()

07. Escrow Audit. Each escrow agent shall submit to the Director ~~of Insurance~~ not less often than the end of every third year an audit by an independent public accountant of ~~the its~~ escrow ~~accounts of the agent.~~ ~~The scope of the audit shall be limited to a limited sampling check of closed escrow~~ transactions, a verification of open escrows and whether the escrow agent's records are maintained in a manner to permit such audit. The audit report shall include a balance sheet ~~as~~ of the close of the audit period, which will be June 30th of the particular year, ~~a statement of receipts and disbursements of escrow funds showing reconciliation between the beginning and ending balances,~~ a list of all bank accounts of the escrow agent containing escrow funds showing the name, address and account number, a list of any closing escrows ~~accounts~~ which have been open for more than one (1) year at the end of the audit period, showing the ~~name, number and amount of such escrow liability, an explanation of the method used to verify the escrow account liabilities together with the number of escrows,~~ number of confirmations requested, number of discrepancies and approximate percentage of escrow accounts ~~checked~~ verified, and a statement that the escrow agent has complied with the rules of the ~~Insurance~~ Director as to escrow accounts listing any exceptions. As an alternative, the escrow agent may submit with the prior approval of the Department, a signed certification of review, in a standard format as approved by the Director, by its underwriter that it has been subjected to an escrow review performed by the title insurer. The scope of the escrow review shall include a limited review of escrow transactions and files. This signed certification must be received no later than December 31 of every third year. If the certification is not deemed adequate by the Director, he may require an escrow audit by an independent public accountant.

(7-1-93)()

08. Bond. Before a license shall be issued to a title insurance agent pursuant to Section 41-2710, Idaho Code, such agent must comply with the requirements for a bond for the title insurance agent, escrow officer and any of the employees of said agent thereof engaged in handling escrow accounts and funds or countersigning and issuing title insurance policies, except such employees whose duties are wholly clerical in relation thereto. Such bond need not be renewed each year, but may be in the form that continues from year to year until canceled. Such bond may be for more than one county if the title insurance agent is licensed to do business in more than one county, but the liability under such bond shall be limited to the amount per county as required by Section 41-2711, Idaho Code. Such bond shall be for the benefit of all persons who have suffered any loss because of the breach of the terms of said bond and shall be enforceable on finding of the Director of Insurance upon hearing that the terms of the bond have been violated. Deposits in Lieu of Bonds: In lieu of such bond, cash or securities as herein defined may be deposited with the Director of Insurance. The Director of Insurance does hereby approve the following securities which are eligible for deposit in place of the bond required: Cash in the form of a cashier's check, any public obligation as defined in Section 41-707 and Section 41-708, Idaho Code, and the assignment of any savings deposits or certificates of deposit as defined in Section 41-720, Idaho Code. In each case, such deposit shall be accompanied by a statement that such deposit is made to meet the compliance of Section 41-2710, Idaho Code, and may be liquidated to meet the obligations of said section. Said cash or security in lieu of the bond shall be deposited with the director pursuant to Section 41-804, Idaho Code, except that the cash shall be deposited with the state treasurer for the account of the bond of said depositing agent.

(7-1-93)

09. Cancellation Of Bond -- Cancellation Of License. A title insurance agent's bond may provide for cancellation thereof upon notice of not less than thirty days to the Insurance Director and to the licensed agent. Upon such notice being received, the licensed title insurance agent must provide a new bond in place thereof before the cancellation of the current bond, and in the event of failure to do so, the license of the title insurance agent shall be deemed suspended on the date of the expiration of such bond, and until a replacement bond has been issued and delivered to the Director of Insurance.

(7-1-93)

10. Disbursement Of Funds Or Documents From Escrow - Requirement For Collected Funds.

(7-1-93)

a. Definitions.

(7-1-93)

i. "Business Day" means a calendar day other than Saturday or Sunday, and also excluding most major holidays. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is also

excluded from the definition of a business day. (7-1-93)

ii. "Collected Funds" means (a) cash (currency); (b) wired funds when unconditionally received by the escrow agent; (c) when identified as such, (1) cashier's check; (2) certified check; or (3) teller's check (official check) when any of the above are unconditionally received by the escrow agent; (d) U.S. Treasury checks, postal money orders, federal reserve bank checks, federal home loan bank checks, State of Idaho and local government checks, local or Idaho on-us checks, or local third party checks on the next business day after deposit; (e) local personal or corporate checks on the second business day after deposit; and (f) non-local State and government checks, non-local on-us checks, non-local personal or corporate checks or non-local third party checks on the fifth business day after deposit. For purposes of this section a deposit is considered made on (1) the same day the item is delivered in person to an employee of a federally insured financial institution, or (2) the first business day following an after business hours deposit of an item to a federally insured financial institution. (7-1-93)

iii. "Cashier's Check, Certified Check and Teller's Check (Official Check)" as identified above in Subsection 011.10.a.ii. means "checks" issued by a federally insured financial institution. (7-1-93)

iv. "Collection or Long-Term Escrow" means an escrow established for the purpose of receiving two (2) or more periodic payments over a total period of time after establishment in excess of thirty (30) days. (7-1-93)

v. "Escrow" includes any agreement (express, implied in fact or implied at law) pursuant to which funds or documents are delivered to an escrow agent to be held by the escrow agent until the happening of a contingency or until the performance of a condition, and then delivered by the escrow agent to another or recorded by the escrow agent. (7-1-93)

vi. "Escrow Agent" includes any person or entity described in Section 41-2704 (and the rules promulgated thereunder), which accepts funds or documents for the purpose described in Subsection 011.10.a.v. (7-1-93)

vii. "Incidental Expenses" means direct expenses that are the obligation of one or more of the parties to an escrow transaction but are not the purchaser's principal obligation. Incidental expenses would include, but not be limited to, advances to cover unexpected recording fees and additional interest occasioned by delays in closings or miscalculations. (7-1-93)

viii. "Local Checks" as identified above in Subsection 011.10.a.ii. means checks drawn against a federally insured financial institution located in the same check processing region as the title agent's depository federally insured financial institution. (7-1-93)

ix. "On-Us Checks" as identified above in Subsection 011.10.a.ii. means checks drawn against the same federally insured financial institution or branch as the title agent's own depository federally insured financial institution. (7-1-93)

b. Requirement of Collected Funds. (7-1-93)

i. Notwithstanding any agreement to the contrary, no disbursement of funds or delivery of documents from an escrow for recording or otherwise may be made unless the escrow contains a credit balance consisting of collected funds, other than funds of the escrow agent or its affiliates, sufficient to discharge all monetary conditions of the escrow. The requirement of collected funds does not apply to collection or long term escrows. (7-1-93)

ii. Notwithstanding any other provision of Section 011, an escrow agent may advance its own funds in an aggregate amount not to exceed one thousand dollars (\$1000) to pay incidental expenses incurred with respect to the escrow. (7-1-93)

IDAPA 18 - DEPARTMENT OF INSURANCE
18.01.56 - REBATES AND ILLEGAL INDUCEMENTS TO OBTAINING
TITLE INSURANCE BUSINESS

DOCKET NO. 18-0156-0101

NOTICE OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to authority granted by Sections 41-211 and 41-2705, 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 15, 2001.

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:

Clarifies to whom a title agent may distribute a free listing package. Changes the number of items from 4 to 6 that may be included in the free listing package. Adds item (5) Tax Information and (6) Property Characteristics, with specific limitations.

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 Director worked closely with the title industry in developing this proposed rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Robert Meunier, Financial Examiner, Sr., (208) 334-4250.

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 22, 2001.

DATED this 19th day of June, 2001.

Mary L. Hartung, Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
PO Box 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4250

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0156-0101

012. PERMITTED CONSUMER INFORMATION.

01. Information That May Be Provided. To facilitate the listing and sale of Idaho property, ~~certain~~ consumer information may be provided without charge to ~~a producer of title business, consumer, or member of the general public,~~ licensed real estate agents and brokers or to a person who owns the property for which the request is made, but is limited to the following information: (7-1-93)()

02. Listing Package. A single copy of a “listing package,” “property profile,” or similarly named packet of information. (7-1-93)

a. A “listing package” shall consist of information relating to the ownership and status of title to real property, and may include a single copy of only the following ~~four~~ six (6) items: (7-1-93)()

i. The last deed appearing of record; (7-1-93)

ii. Deeds of trust or mortgages which appear to be in full force and effect; (7-1-93)

iii. A plat map reproduction and/or a locator map; and (7-1-93)()

iv. A copy of applicable restrictive covenants; (7-1-93)()

v. Tax information; and ()

vi. Property characteristics such as number of rooms, square footage and year built. ()

b. A “listing package” may include no more than the ~~four~~ six (6) above described items of information and shall ~~specifically~~ not include ~~tax information, parcel information, or~~ market value information, demographics, or additions, addenda, or attachments which may be construed as conclusions reached by the title entity regarding matters of marketable ownership or encumbrances. A generic cover letter with the printed standard letterhead of the title entity may be attached to the “listing package”. The cover letter may include a brief statement identifying by name only, which of the ~~four~~ six (6) permitted items of information are attached thereto. The cover letter may also contain a disclaimer as to conclusions of marketable ownership or encumbrances. The content of the cover letter or “listing package” is strictly limited to the foregoing and shall specifically not include any advertising or marketing for the benefit of the recipient. (7-1-93)()

c. ~~Tax information, parcel information, or m~~Market value information, demographics, or additions, addenda, or attachments which may be construed as conclusions reached by the title entity regarding matters of marketable ownership or encumbrances may be provided, but only upon receipt of a charge commensurate with the actual cost of the work performed and the material furnished (See Exhibit 1, #1). (7-1-93)()

IDAPA 23 - BOARD OF NURSING
23.01.01 - RULES OF THE IDAHO BOARD OF NURSING
DOCKET NO. 23-0101-0101
NOTICE OF TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rules is July 1, 2001.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-1404, 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 15, 2001.

The hearings 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 non-technical explanation of the substance and purpose of the proposed rulemaking:

The proposed rules are necessary for the implementation of multistate licensure, which becomes effective July 1, 2001. The rules define terms, clarify the steps to be taken to obtain licensure, and address multistate discipline and license renewal.

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 change is necessary 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:

The rule change does not impose or increase a fee or charge.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule changes are necessary under the multistate licensure compact adopted by the Idaho Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sandra Evans, MAEd., R.N., Executive Director, (208) 334-3110 ext. 26.

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 22, 2001.

DATED this 12th day of June, 2001.

Sandra Evans, MAEd., R.N.
Executive Director
Idaho Board of Nursing
280 N. 8th St., Ste. 210
P. O. Box 83720
Boise, ID 83720-0061
Telephone: (208) 334-3110 ext. 26
Facsimile: (208) 334-3262

THE FOLLOWING IS THE TEXT OF DOCKET NO. 23-0101-0101

077. MULTISTATE LICENSURE.

- 01. Definitions.** In Section 077, the following terms have the meanings indicated. (7-1-01)T
- a. Board means the regulatory body responsible for issuing nurse licenses. (7-1-01)T
- b. Compact means the Nurse Multistate Licensing Compact. (7-1-01)T
- c. Coordinated Licensure Information System (CLIS) means an integrated process for collecting, storing, and sharing information on nurse licensing and enforcement activities related to nurse licensing laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards. (7-1-01)T
- d. Home state means the party state that is the nurse's primary state of residence. (7-1-01)T
- e. Party state means a state that is a signatory on the compact. (7-1-01)T
- f. Primary state of residence means the state of an individual's declared, fixed, and permanent residence. (7-1-01)T
- g. Public means an individual or entity other than designated staff or representatives of party state boards or the National Council of State Boards of Nursing, Inc. (7-1-01)T
- 02. Issuance Of License In Compact Party State.** (7-1-01)T
- a. A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. This evidence shall include a declaration signed by the licensee. Further evidence that may be requested includes, but is not limited to: (7-1-01)T
- i. Driver's license with a home address; (7-1-01)T
- ii. Voter registration card displaying a home address; or (7-1-01)T
- iii. Federal income tax return declaring the primary state of residence. (7-1-01)T
- b. A nurse changing primary state of residence, from one (1) party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed thirty (30) days. (7-1-01)T
- c. The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance, and the thirty (30) day period in Subsection 077.02.b. shall be stayed until resolution of the pending investigation. (7-1-01)T
- d. The former home state license is not valid upon the issuance of a new home state license.(7-1-01)T
- e. If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days, and the former home state will take action in accordance with that state's laws and regulations. (7-1-01)T
- 03. Multistate Licensure Privilege Limitations.** (7-1-01)T
- a. Home state boards shall include, in all disciplinary orders or agreements that limit practice or require monitoring, the requirement that the licensee subject to the order or agreement shall limit the licensee's

practice to the home state during pendency of the disciplinary order or agreement. (7-1-01)T

b. The requirement referred to in Subsection 077.03.a. may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and other party state boards. (7-1-01)T

04. Information System. (7-1-01)T

a. Levels of access. (7-1-01)T

i. Public access to nurse licensure information shall be limited to: (7-1-01)T

(1) The licensee's name; (7-1-01)T

(2) Jurisdictions of licensure; (7-1-01)T

(3) Licensure expiration date; (7-1-01)T

(4) Licensure classification and status; (7-1-01)T

(5) Public emergency, summary, and final disciplinary actions, as defined by contributing state authority; and (7-1-01)T

(6) The status of multistate licensure privileges. (7-1-01)T

ii. Non-party state boards shall have access to all CLIS data except current significant investigative information and other information as limited by contributing party state authority. (7-1-01)T

iii. Party state boards shall have access to all CLIS data contributed by the party states and other information as allowed by contributing non-party state authority. (7-1-01)T

b. Right to review. (7-1-01)T

i. The licensee may request, in writing, to the home state board to review data relating to the licensee in the CLIS. (7-1-01)T

ii. If a licensee asserts that any data relating to the licensee is inaccurate, the burden of proof is on the licensee to provide evidence substantiating that claim. (7-1-01)T

iii. Within ten (10) business days, the Board shall correct information that it finds to be inaccurate in the CLIS. (7-1-01)T

c. Changes in disciplinary data. (7-1-01)T

i. Within ten (10) business days, the Board shall report to CLIS: (7-1-01)T

(1) Disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring unless the agreement or order relating to participation in alternative programs is required to remain nonpublic by the contributing state authority; (7-1-01)T

(2) Dismissal of the complaint; and (7-1-01)T

(3) Changes in status of disciplinary action, or licensure encumbrance. (7-1-01)T

ii. The Board shall delete current significant investigative information from the CLIS within ten (10) business days after: (7-1-01)T

- (1) A disciplinary action: (7-1-01)T
- (2) An agreement or order requiring participation in alternative programs: (7-1-01)T
- (3) An agreement or agreements, which limit practice or require monitoring; or (7-1-01)T
- (4) Dismissal of a complaint. (7-1-01)T
- iii. The CLIS administrator shall make changes to licensure information in the CLIS within ten (10) business days upon notification by a board. (7-1-01)T

0778. -- 089. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

300. RENEWAL AND REINSTATEMENT OF ADVANCED PRACTICE PROFESSIONAL NURSE LICENSE.

The advanced practice professional nurse license may be renewed every two (2) years as prescribed in the Section 54-1411, Idaho Code, provided that the advanced practice professional nurse: (7-1-99)

01. Current Professional License. Maintains a current professional nurse license, or privilege, to practice in Idaho. ~~(7-1-99)~~(7-1-01)T

02. Evidence Of Certification. Submits evidence of current certification by a national organization recognized by the Board; and (7-1-99)

03. Evidence Of Continuing Education. Provides documentation of thirty (30) contact hours of continuing education during the renewal period. Continuing education completed may be that required for renewal of national certification if documentation is submitted confirming the certifying organization's requirement is for at least thirty (30) contact hours. These contact hours may include the requirements identified in IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsection 315.02.b. in a two (2) year period. (7-1-99)

04. Hours Of Practice. Attests, on forms provided by the board, to a minimum of two hundred (200) hours of advanced professional nursing practice within the preceding two (2) year period. (7-1-99)

05. Fee. Remits a non-refundable renewal fee of fifty dollars (\$50). (7-1-99)

06. Exemption From Requirements. Nurse practitioners not certified by a national organization recognized by the board and approved prior to July 1, 1998 shall be exempt from the requirement set forth in IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsection 300.02. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

305. PERSONS EXEMPTED FROM ADVANCED PRACTICE PROFESSIONAL NURSING LICENSE REQUIREMENTS.

Nothing in these rules shall prohibit a ~~licensed~~ professional nurse who holds a current ~~Idaho~~ license, or privilege, to practice in Idaho and who is enrolled as a matriculated student in an educational program for advanced practice professional nursing from practicing as an advanced practice professional nurse when such practice is an integral part of the advanced practice professional nurse curriculum. ~~(7-1-99)~~(7-1-01)T

IDAPA 23 - BOARD OF NURSING
23.01.01 - RULES OF THE BOARD OF NURSING
DOCKET NO. 23-0101-0102
NOTICE OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-1404, 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 15, 2001.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: The proposed rules consolidate and renumber existing rules. The proposal is generally housekeeping in nature. Some further clarification and structure has been added to the disciplinary rules and standards of practice, as well as the rules regarding conditional or limited licensure. Definitions of the terms "professionalism" and "failure to make timely inquiry" have been added.

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 rule is non-controversial.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sandra Evans, MAEd., R.N., Executive Director, (208) 334-3110 ext. 26.

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 22, 2001.

DATED this 28th day of June, 2001.

Sandra Evans, MAEd., R.N.
Executive Director
Idaho Board of Nursing
280 N. 8th St., Ste. 210
P. O. Box 83720
Boise, ID 83720-0061
Telephone: (208) 334-3110 ext. 26
Facsimile: (208) 334-3262

THE FOLLOWING IS THE TEXT OF DOCKET NO. 23-0101-0102

090. ~~GROUNDS FOR DENIAL OF LICENSE.~~

The following will be deemed to be grounds for denial of license:

(6-1-78)

01. Grounds For Denial Of License. ()

~~01a. Failure To Meet Requirement.~~ Failure to meet any requirement or standard established by law or by rules ~~and regulations~~ adopted by the Board; or (7-1-93)()

~~02b. Failure To Pass Examination.~~ Failure to pass the licensing examination; or (7-1-93)()

~~03c. False Representation.~~ False representation of facts on an application for licensure; or (7-1-93)()

~~04d. Having Person Appear For Examination.~~ Having another person appear in his place for the licensing examination; or (7-1-93)()

~~05e. Course Of Conduct.~~ A course of Engaging in any conduct which would be grounds for discipline under Nursing Practice Act, Section 54-14123 (~~1~~), Idaho Code or Sections 100 or 101, of these rules. (7-1-93)()

~~06f. Disciplinary Action In Any Jurisdiction.~~ Being subject to any proceeding or order in any jurisdiction. Revocation, suspension, limitation, reprimand, voluntary surrender or any other disciplinary action or proceeding, including investigation against a license, certificate or privilege to practice by another state or jurisdiction. (7-1-93)()

~~001. NOTIFICATION OF DENIAL.~~

02. Notification Of Denial.

~~01. Order Of Denial.~~ The Board of Nursing shall give any applicant whose application for licensure is denied written notice containing a statement: (6-1-78)()

a. That the applicant has failed to qualify to be examined or licensed; and (6-1-78)

b. A description of the reason(s) for ~~disqualification~~ denial; and (6-1-78)()

c. Directing the applicant's attention to his rights under Proceedings, Section 54-14123(2)(a), Idaho Code, ~~and Proceedings for Hearing, Section 150, of these rules.~~ (7-1-93)()

~~002. CONSIDERATION OF REAPPLICATION FOR A LICENSE AFTER PREVIOUS DENIAL.~~

03. Reapplication For A License After Previous Denial. ()

~~01a. Reapplication.~~ Reapplication for a license previously denied must include evidence, satisfactory to the Board, of rehabilitation, or elimination or cure of the conditions for denial. (6-1-78)()

~~02b. Evaluation Of Reapplication.~~ Evaluation of reapplication for a license denied under Section 54-14123, Idaho Code, ~~will be based upon.~~ shall include consideration of at least the following factors: (6-1-78)()

~~a~~i. The nature and severity of the act or omission which resulted in the denial of license; and (7-1-93)

~~b~~ii. The conduct of the applicant subsequent to the denial of license; and (7-1-93)

~~c~~iii. The lapse of time since denial of license; and (7-1-93)

~~d~~iv. Compliance with any conditions the Board may have stipulated as a prerequisite for reapplication; and (7-1-93)

~~e~~v. The degree of rehabilitation attained by the applicant as evidenced by statements sent directly to the

Board from qualified people who have professional knowledge of the applicant; and (7-1-93)

~~f~~vi. Personal interview by the Board, at ~~their~~ its discretion. (6-1-78)()

c. Reapplication files will remain open and active for a period of twelve (12) months from date of receipt. After expiration of the twelve (12) months, the file will be closed and any subsequent reapplication will require submission of a new application form and payment of required fees. ()

~~093. ACTION ON REAPPLICATION OF A PREVIOUSLY DENIED LICENSE.~~

~~01. **After Evaluation By Board.** After evaluation the Board may deny a license, grant a license or issue a limited license to practice nursing under specified terms and conditions.~~ (7-1-91)

~~02. **Expired Limited License.** Prior to expiration of the limited license, a decision will be made to deny a license, grant a license or extend the limited license.~~ (7-1-91)

~~094~~1. -- 099. (RESERVED).

100. GROUND~~S~~ FOR ~~SUSPENSION OR REVOCATION OF A LICENSE~~ DISCIPLINE.

01. False Statement. A false, fraudulent or forged statement or misrepresentation in procuring a license to practice nursing shall mean, but need not be limited to: (6-1-78)

a. Procuring or attempting to procure a license to practice nursing by filing forged or altered documents or credentials; or ()

b. ~~f~~Falsifying, ~~or~~ misrepresenting facts or failing to verify and accurately report any and all facts submitted on any application for licensure, examination, relicensure, or reinstatement of licensure by making timely and appropriate inquiry of all jurisdictions in which licensee has made application for, or obtained, licensure or certification or engaged in the practice of nursing; or (7-1-93)()

~~b~~c. Impersonating any applicant or acting as proxy for the applicant in any examination for nurse licensure. (6-1-78)

02. Conviction Of A Felony. Conviction of, or entry of a withheld judgment or a plea of nolo contendere to, conduct constituting a felony. (6-1-78)()

03. False Or Assumed Name. Practicing nursing under a false or assumed name shall mean, but need not be limited to, carrying out licensed nursing functions while using other than the individual's given or legal name. (6-1-78)()

04. Offense Involving Moral Turpitude. An offense involving moral turpitude shall mean, but need not be limited to, an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. (6-1-78)

05. Gross Negligence Or Recklessness. Gross negligence or recklessness in performing nursing functions shall mean, but need not be limited to, a substantial departure from established and customary standards of care which, under similar circumstances, would have been exercised by a licensed peer; an act or an omission where there is a legal duty to act or to refrain from acting that a reasonable and prudent practitioner of nursing under same or similar facts and circumstances would have done, would have refrained from doing or would have done in a different manner and which did or could have resulted in harm or injury to a patient/client. An exercise of so slight a degree of care as to justify the belief that there was a conscious or overt disregard or indifference for the health, safety, well-being, or welfare of the public shall be considered a substantial departure from the accepted standard of care. (6-1-78)

06. Habitual Use Of Alcohol Or Drugs. Habitual use of alcoholic beverages or narcotic, hypnotic, or

hallucinogenic drugs shall mean, but need not be limited to, the use of such substances to the extent that the nurse's judgment, skills, or abilities to provide safe and competent nursing care are impaired; or that the individual is unable to care for himself or his property or his family members because of such use; or it is determined by a qualified person that the individual is in need of medical or psychiatric care, treatment or rehabilitation or counseling because of drug or alcohol use. (7-1-91)

07. Physical Or Mental Unfitness. Physical or mental unfitness to practice nursing shall mean, but need not be limited to, a court order adjudging that a licensee is mentally incompetent, or an evaluation by a qualified professional person indicating that the licensee is mentally or physically incapable of engaging in professional or practical nursing in a manner consistent with sound patient care; or uncorrected physical defect that precludes the safe performance of nursing functions. (6-1-78)

08. Violations Of Standards Of Conduct. Violations of standards of conduct and practice adopted by the Board shall mean, but need not be limited to: any violation of those standards of conduct described in Section 101 of these rules. (6-1-78)(____)

- a. Discrimination in the rendering of nursing services; or* (6-1-78)
- b. Performing acts beyond the scope of practice of professional or practical nursing; or* (6-1-78)
- c. Assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained; or* (6-1-78)
- d. Disclosing the contents of the licensing examination, or soliciting, accepting, or compiling information regarding the contents of the examination before, during, or after its administration; or* (11-28-84)
- e. Assigning unqualified persons to perform functions of licensed persons or delegating nursing care functions and tasks or responsibilities to others contrary to the Nursing Practice Act or rules to the detriment of patient safety; or* (7-1-93)
- f. Failing to supervise persons to whom nursing functions are delegated or assigned; or* (6-1-78)
- g. Failing to take appropriate action in safeguarding the patient from incompetent, abusive or illegal practice of any person; or* (8-31-82)
- h. Practicing professional or practical nursing in this state on a lapsed Idaho license or beyond the period of a valid temporary license; or* (6-1-78)
- i. Practicing nursing while the physical or mental or emotional ability to practice is impaired by alcoholic beverages or drugs; or* (11-28-84)
- j. Failing to respect the patient's right to privacy; or* (11-28-84)
- k. Failing to report gross negligence or recklessness in performing nursing functions or a violation of the Nursing Practice Act or the Board of Nursing's Rules to the Board of Nursing; or* (7-1-93)
- l. Signing any record as a witness attesting to the wastage of controlled substance medication when the wastage was not personally witnessed.* (11-28-84)

09. Conduct To Deceive, Defraud Or Endanger. Conduct of a character likely to deceive, defraud, or endanger patients or the public shall mean include, but need not be limited to: (6-1-78)(____)

- a. Soliciting or borrowing money, materials and property from patients; or Violating the standards of conduct and practice adopted by the Board.* (6-1-78)(____)
- b. Diverting supplies, equipment, or drugs for personal use or unauthorized use; or* (6-1-78)

- ~~e. Aiding, abetting, or assisting any person in performing acts prohibited by law; or (6-1-78)~~
- ~~d. Inaccurate recording, falsifying or otherwise altering or destroying patient or employee or employer records; or (11-28-84)~~
- ~~e. Obtaining, possessing, or furnishing or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs; or (5-1-79)~~
- ~~f. Permitting or allowing his license to be used by another person for any purpose; or (7-1-93)~~
- ~~g. Leaving an assignment without properly reporting and notifying appropriate personnel or abandoning a patient in need of care; or (7-1-93)~~
- ~~h. Exploiting the patient for financial gain or offering, giving, soliciting or receiving fees for the referral of a patient or client; or (11-28-84)~~
- ~~i. Failing to collaborate with other health team members as necessary to meet the patient's health needs; or (11-28-84)~~
- ~~j. Failing to observe the condition, signs and symptoms of a patient, to record the information or to report significant changes to appropriate persons. (11-28-84)~~
- ~~k. Being convicted of any crimes or acts substantially related to nursing practice and including but not limited to sex crimes, drug violations, acts of violence and child or adult abuse. (7-1-93)()~~
- ~~l. Placing the patient/client at risk for the transmission of infectious disease by failing to carry out principles of asepsis and infection control or to adhere to universal precautions. (6-11-93)~~

~~10. **Suspension Or Revocation Of Action Against A License.** Suspension or revocation of Action against a license in any jurisdiction shall mean entry of any order restricting, limiting, revoking or suspending or otherwise disciplining a license or privilege to practice nursing by any jurisdiction. A certified copy of an order entered in any jurisdiction shall be prima facie evidence of the matters contained therein. (11-28-84)()~~

~~11. **Failure To Make Timely And Appropriate Inquiry.** Failing to make timely and appropriate inquiry verifying licensure status in all jurisdictions in which the applicant has ever applied for licensure, certification or privilege to practice, including those jurisdictions in which the applicant is currently or was ever licensed, or in which applicant has practiced, prior to filing any application, verification or other statement regarding licensure status with the Board. ()~~

~~370101. STANDARDS OF CONDUCT.~~

~~01. **Violations.** Any ~~Violations~~ of these Standards of Conduct shall be grounds for disciplinary action in accordance with Section 54-14123(1), Idaho Code, of the Idaho Nursing Practice Act and Section 090 or 100, of the Rules of the Board of Nursing. Disciplinary actions may range from based on the violation of any standard of conduct may include, but are not limited to, monitoring, or issuance of letters of concern, caution or reprimand, to and suspension or revocation of license. (7-1-93)()~~

~~02. **Purpose.** Each individual, upon entering the practice of professional or practical nursing, assumes a measure of responsibility and trust and the corresponding obligation to adhere to standards of conduct, which include, but are not limited to, the following: **Classification.** For purposes of convenience only, the standards of conduct are grouped generally into one (1) of three (3) categories: license, practice, and professional responsibility. The fact that any particular standard is so classified in any particular category will not be relevant for any purpose other than ease of use. (7-1-91)()~~

~~03. **License.** ()~~

~~03a. **Period of practice.** The nurse shall practice professional or practical nursing in Idaho only with a~~

current Idaho license or during the period of valid temporary licensure or as otherwise allowed by law.
(11-28-84)()

~~05~~**b.** Aiding in violation of law. The nurse shall not aid, abet, or assist any other person to violate or circumvent laws or rules pertaining to the conduct and practice of nursing. (11-28-84)

~~11~~**c.** Reporting grossly negligent or reckless practice. The nurse shall report to the Board of Nursing any licensed nurse who is grossly negligent or reckless in performing nursing functions or who otherwise violates the Nursing Practice Act or the Board of Nursing's Rules. (7-1-93)

~~12~~**d.** Unlawful use of license. The nurse shall not permit his license to be used by another person for any purpose or permit unlicensed persons under his jurisdiction or supervision to indicate in any way that they are licensed to perform functions restricted to licensed persons. (7-1-93)

~~18~~**e.** Impairment of ability. The nurse shall not practice nursing while the ability to practice is impaired by alcohol or drugs or physical, mental or emotional disability. (11-28-84)

04. Practice. ()

~~04~~**a.** Perform acts. The nurse shall have knowledge of the statutes and rules governing nursing and shall function within the defined legal scope of nursing practice. The nurse shall not assume any duty or responsibility within the practice of nursing without adequate training or where competency has not been maintained.
(7-1-93)()

~~08~~**b.** Delegating activities to others. The nurse shall delegate activities only to persons who are competent and qualified to undertake and perform the delegated activities and shall not delegate to non-licensed persons functions that are to be performed only by licensed nurses, to the detriment of patient safety. (11-28-84)

~~09~~**c.** Supervision. The nurse delegating functions shall supervise the persons to whom the functions have been assigned or delegated. (11-28-84)

~~10~~**d.** Safeguarding patient. The nurse shall act to safeguard the patient from the incompetent practice, verbal or physical abusive acts or illegal practice of any person. (7-1-93)

~~14~~**e.** Prescription drugs. The nurse shall not obtain, possess, furnish or administer prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs. (11-28-84)

~~19~~**f.** Leaving assignment. The nurse shall not abandon patients in need of nursing care in a negligent or wanton manner. The nurse shall leave a nursing assignment only after properly reporting and notifying appropriate personnel and shall transfer responsibilities to appropriate personnel or care giver when continued care is required by the patient's condition. (7-1-91)

~~20~~**g.** Respecting patient's privacy. The nurse shall respect the patient's privacy. (7-1-91)

~~21~~**h.** Confidentiality. The nurse shall not disseminate information about the patient to individuals not entitled to such information except where such information is required by law or for the protection of the patient. (7-1-91)

~~22~~**i.** Observe and report. The nurse shall observe the condition and signs and symptoms of a patient, record the information, and report to appropriate persons any significant changes. (7-1-91)

~~24~~**j.** Collaboration. The nurse shall function as a member of the health team and shall collaborate with other health team members as necessary to meet the patient's health needs. (7-1-91)

~~25~~**k.** Universal ~~Precautions~~ standards. The nurse shall adhere to universal ~~precautions~~ standards and to ~~carry out~~ principles of asepsis and infection control and shall not place the patient ~~client~~, the patient's family or the nurse's coworkers at risk for the transmission of infectious diseases. (6-11-93)()

05. Professional Responsibility. ()

~~17~~a. Disclosing contents of licensing examination. The nurse shall not disclose contents of any licensing examination, or solicit, accept, or compile information regarding the contents of any examination before, during, or after its administration. (11-28-84)

~~06~~b. Considerations in providing care. In providing nursing care, the nurse shall respect and consider the individual's human dignity, health problems, personal attributes, national origin, and handicaps and shall not discriminate on the basis of age, sex, race, religion, economic or social status or sexual preferences in the rendering of nursing services. (11-28-84)

~~07~~c. Responsibility and accountability assumed. The nurse shall be responsible and accountable for his nursing judgments, actions and competence. (7-1-93)

~~15~~d. Witnessing wastage of controlled substances medication. The nurse shall not sign any record as a witness attesting to the wastage of controlled substance medications unless the wastage was personally witnessed. The nurse shall not solicit the signatures on any record of a person as a witness to the wastage of controlled substance when that person did not witness the wastage. The nurse shall solicit signatures of individuals who witnessed the wastage in a timely manner. (~~7-1-91~~)()

~~16~~e. Record-keeping. The nurse shall make or keep accurate, intelligible entries into records required by law, employment or customary practice of nursing, and shall not falsify, destroy, alter or knowingly make incorrect or unintelligible entries into patients' records or employer or employee records. (11-28-84)

~~13~~f. Diverting or soliciting. The nurse shall respect the property of the patient and employer and shall not take or divert equipment, materials, property, or drugs without prior consent or authorization, nor shall the nurse solicit or borrow money, materials or property from patients. (~~11-28-84~~)()

~~23~~g. Exploit, solicit, or receive fees. The nurse shall not exploit the patient or the patient's family for personal or financial gain or offer, give, solicit, or receive any fee or other consideration for the referral of a patient or client. (~~7-1-91~~)()

h. Professionalism. The nurse must not abuse the patient's trust. The nurse shall respect the dignity of the profession and maintain appropriate professional boundaries with respect to patients, the patients' families, and the nurse's coworkers. The nurse will not engage in violent, threatening or abusive behavior towards patients, patients' families or the nurse's coworkers. The nurse must be aware of the potential imbalance of power in professional relationships with patients, based on their need for care, assistance, guidance, and support, and ensure that all aspects of that relationship focus exclusively upon the needs of the patient. ()

~~1042~~. -- 119. (RESERVED).

120. REINSTATEMENT ~~OF A SUSPENDED LICENSE.~~

01. Application. ~~The a~~Applicants ~~may~~ must for reinstatement of revoked licenses must apply on forms provided by the Board ~~to have the suspension order withdrawn, reversed, modified, or amended~~ and must pay any required fees. (~~6-1-78~~)()

02. Appearance Before Board. ~~The a~~Applicants ~~of a suspended license~~ may be ~~requested~~ required to appear before the Board. (~~8-31-82~~)()

SUBSECTION 121.02 HAS BEEN RENUMBERED TO 120.03

023. Evaluation Of Applications. In considering applications for reinstatement of a revoked license, the Board will evaluate: (~~6-1-78~~)()

a. The nature and severity of the act which resulted in revocation of the license; and (7-1-91)

- b. The conduct of the applicant subsequent to the revocation of license; and (6-1-78)
- c. The lapse of time since revocation; and (6-1-78)
- d. The degree of compliance with all terms and conditions the Board may have ~~stipulated~~ set forth as a prerequisite for reinstatement; and (6-1-78)()
- e. Any intervening circumstances that may have altered the need for compliance; and ()
- ef. The degree of rehabilitation attained by the applicant as evidenced by statements sent directly to the Board from qualified people who have professional knowledge of the applicant; and (11-28-84)
- fg. ~~Whether~~ The applicant's ~~has~~ adherence to or violated ~~tion of~~ any applicable law or rule regulating the practice of nursing. (11-28-84)()

034. Board Action Possible. After evaluation, the Board may deny a reinstatement, grant a reinstatement, or issue a *limited* license for permitting the applicant to practice nursing under specified terms and conditions. (11-28-84)()

~~**04. Board Decision.** Prior to expiration of a limited license, the Board shall evaluate the applicant's status. A decision will be made to grant a license, to extend the limited license, or to deny a license. (11-28-84)~~

~~**05. Reinstated At Termination Of Suspension.** A suspended license may be reinstated at the termination of the suspension only if there is evidence that all terms and conditions set forth in the suspension order have been met or when, at the discretion of the Board, it is determined that intervening circumstances have altered the condition leading to the suspension. (8-31-82)~~

065. Assessment Of Costs. As a condition of withdrawing, reversing, modifying or amending ~~the a~~ suspension or revocation order, the applicant may be ~~assessed~~ required to pay all or any part of the costs incurred by the Board in the proceedings for license suspension in which the order was entered. (8-31-82)()

06. Application For Reinstatement After Revocation. Unless otherwise provided in the order of revocation, applicants for reinstatement of revoked licenses may not apply for reinstatement for a period of two (2) years after entry of the order. ()

~~**121. REINSTATEMENT OF A REVOKED LICENSE.**~~

~~**01. Time For Application.** One (1) year after revocation of a license, the applicant may apply, on forms provided by the Board, to have the revocation order withdrawn, reversed, modified or amended. (7-1-93)~~

SUBSECTION 121.02 HAS BEEN RENUMBERED TO 120.03

~~**03. Appearance Before Board.** The applicant for reinstatement of a revoked license may be requested to appear before the Board. (6-1-78)~~

~~**04. Board Action Possible.** After evaluation the Board may deny a license, grant a license, or issue a limited license for the applicant to practice nursing under specific terms and conditions. (11-28-84)~~

~~**05. Board Decision.** Prior to expiration of a limited license, the Board shall evaluate the applicant's status. A decision will be made to grant a license, to extend the limited license, or to deny a license. (11-28-84)~~

~~**06. Assessment Of Costs.** As a condition of reinstating a revoked license, the applicant may be assessed all or part of the costs incurred by the Board in proceedings for license revocation. (6-1-78)~~

~~**1221. -- 12931. (RESERVED).**~~

~~130. INVESTIGATION.~~

~~01. **Receipt Of Information.** Upon receipt of information alleging that a holder of or an applicant for a license has engaged in acts or is engaging in conduct constituting grounds for disciplinary action as provided in Section 54-1412, Idaho Code, the executive director shall investigate to determine whether sufficient evidence exists to warrant disciplinary proceedings and shall maintain a written record of such investigation. (11-28-84)~~

~~02. **Confidential Information.** Information or documents obtained by or provided to the Board of Nursing in any investigation of a person's qualifications for licensure or of a licensee's right to retain a license, including disciplinary investigation, shall be exempt from disclosure, except to the extent that such information or documents may be the basis of any allegation in a formal hearing in disciplinary proceedings. Idaho Code, 9-340, 15. (7-1-91)~~

~~03. **Investigational File Closed.** When an investigation discloses that disciplinary action is not necessary or warranted for the protection of public health, safety, and welfare, the investigational file will be closed. The matter may at any time be reopened and reinvestigated if circumstances so warrant. (5-21-89)~~

~~04. **Informal Proceedings.** Complaints or controversies that may not justify or require formal proceedings may be considered and resolved by the Board staff through informal conferences, meetings, agreements, or other informal action as may be appropriate under the circumstances. Such action shall be held without prejudice and the Board may thereafter institute formal proceedings covering the same or related matters. (7-1-93)~~

~~131. ACTION ON INVESTIGATION.~~

~~The executive director shall have the power to act upon any investigative report as follows: (5-21-89)~~

~~01. **Dismiss Complaint.** Dismiss any complaint and notify accordingly the complainant, the applicant, or licensee complained against and any other affected parties, stating the reason thereof; or (5-21-89)~~

~~02. **Informal Disposition.** Enter into informal disposition through stipulation, agreed settlement, consent order or default; or (11-28-84)~~

~~03. **Petition For Action.** Petition the Board for disciplinary action; or (5-21-89)~~

~~04. **Voluntary Surrender.** Accept the voluntary surrender of a license. Unless the person surrendering his license seeks to qualify for Conditional Limited License for Disability as hereinafter provided, the executive director shall refer the surrendered license to the Board. The Board shall enter its order of suspension or revocation of a surrendered license referred in accordance with this section. (7-1-93)~~

~~05. **Letter Of Reprimand.** On motion of the Board, send a letter of reprimand to the licensee. (11-28-84)~~

~~06. **Conditional Limited License For Disability.** Issue and, where appropriate, terminate, a conditional limited license in accordance with Section 132 below. (5-21-89)~~

~~132. **CONDITIONAL LIMITED LICENSES FOR DISABILITY.**~~

~~Individuals disabled due to alcohol or drug use or to emotional or mental impairment may be eligible to participate in the Temporary Voluntary Surrender of Licensure program, an alternative to formal disciplinary action. Eligible persons must sign a statement of voluntary surrender of licensure, enter treatment, agree to monitoring and resume practice only after a conditional limited license is issued. Limited licenses may be issued to qualified individuals in four (4) categories: post-discipline, non-practicing status, restricted status, and impairment-related disability. Failure to comply with the terms and conditions of a limited license will be cause for immediate discipline, including suspension or revocation of licensure. (7-1-96)()~~

~~01. **Reinstatement After Disciplinary Action.** ()~~

~~a. After evaluation of an application for licensure reinstatement, the Board may issue a limited license to a nurse whose license has been revoked. ()~~

b. The Board shall specify the conditions of issuance of the limited license in writing. The conditions may be stated on the license. ()

02. Non-Practicing Status. ()

a. Individuals who are prevented from engaging in the active practice of nursing may be issued a limited license. ()

b. The Board shall specify that the license being issued does not entitle the licensee to engage in the active practice of nursing. The non-practicing status shall be noted on the license. ()

c. The non-practicing limitation may be removed by the Board following receipt and evaluation of evidence satisfactory to the Board confirming that the licensee's physical or mental health status no longer prevents the individual from engaging in the active practice of nursing. ()

03. Restricted Status. ()

a. Individuals whose disabilities restrict or inhibit their ability to provide a full range of nursing services may be issued a limited license. ()

b. In order to determine the appropriate limitations, the Board may evaluate statements from qualified professional persons who have personal knowledge of the applicant or licensee. The Board may also evaluate job descriptions and statements from potential employers and consider input from the applicant for the limited license. ()

c. The Board shall specify the conditions of issuance of the limited license in writing. The conditions may be stated on the license. The conditions may include, but are not limited to: ()

i. Notifying the Board of changes in employment status. ()

ii. Submission of regular reports by the employer or by such other entities or individuals as the Board may desire. ()

iii. Meeting with Board representatives. ()

iv. Specific parameters of practice, excluding the performance of specific nursing functions. ()

d. The conditions of limited practice may be removed by the Board following receipt and evaluation of satisfactory evidence confirming that the health status of the licensee no longer restricts or inhibits the person's ability to provide a full range of nursing services. ()

04. Disability Due To Alcohol Or Drug Use Or Emotional Or Mental Impairment. ()

a. Individuals disabled due to alcohol or drug use or to emotional or mental impairment may qualify for issuance of a limited license as an alternative to discipline. ()

~~01b.~~ **Qualifications.** The executive director may issue a ~~conditional~~ limited license for a period not to exceed five (5) years to ~~a licensee~~ an individual who ~~shall have~~ voluntarily surrendered ~~his~~ ~~or her~~ license by reason of a disability relating to alcohol or drug use or relating to emotional or mental impairment ~~if such person meets all of the following qualifications~~ and who: (7-1-96)()

~~a~~i. Such person ~~h~~ Holds a current Idaho license to practice as a professional or practical nurse or is otherwise eligible and is in the process of applying for licensure; and (7-1-96)()

~~b~~ii. Such person ~~a~~ Abused drugs and/or alcohol or demonstrated mental disability such that ability to safely practice is/ may be impaired; and (7-1-96)()

- ~~02~~iii. ~~Written Statement.~~ Such person ~~s~~ Signs a written statement ~~which includes:~~ (5-21-89)
- ~~a.~~ ~~An admission~~ admitting to all facts which may constitute grounds for disciplinary action or demonstrate impairment of the safe practice of nursing, and (5-21-89)
- ~~b.~~ ~~A waiver of~~ waiving the right to a hearing and all other rights to due process in a contested case under the Idaho Administrative Procedures Act and the Nursing Practice Act; and (5-21-89)()
- ~~iv.~~ Submit reliable evidence, satisfactory to the executive director, that he is competent to safely practice nursing. ()
- ~~03~~c. ~~Completion Of Treatment Program.~~ Such person ~~If required, the applicant~~ shall satisfactorily complete ~~an in-patient or out-patient~~ Board approved treatment program ~~approved by the Board of Nursing.~~ (7-1-96)()
- ~~04~~d. ~~Voluntary Participation In Monitoring Program.~~ Such person ~~The applicant~~ must agrees to participation in the Board's monitoring program to include: (7-1-96)()
- ~~a~~i. Evaluation of disability; (5-21-89)
- ~~b~~ii. Approval of treatment program regimen; (5-21-89)
- ~~e~~iii. Monitoring of progress; (5-21-89)
- ~~d~~iv. Determination of when return to the workplace will be allowed. (7-1-96)
- ~~05.~~ ~~Submission Of Evidence.~~ Such person ~~shall submit reliable evidence that he is competent to safely practice nursing.~~ (7-1-93)
- ~~06~~e. ~~Admission to Program Denied.~~ Admission to the ~~p~~Program for Recovering Nurses and/or issuance of a limited license may be denied ~~if the applicant~~ for any reason including, but not limited to the following: (7-1-96)()
- ~~a~~i. ~~The applicant~~ Diverted controlled substances for other than self administration; or (7-1-96)()
- ~~b~~ii. ~~The applicant~~ Creates too great a safety risk for the health care consumer; or (7-1-96)()
- ~~e~~iii. ~~The applicant~~ Hhas been terminated from this, or any other, alternative program for non-compliance. (7-1-96)()
- ~~07~~f. ~~Failure To Qualify For Conditional Limited License.~~ In the event ~~any person seeking to qualify for conditional limited licensure~~ an applicant is determined to be ineligible for a limited license, the executive director shall ~~thereupon~~ refer ~~such person's~~ the applicant's surrendered license to the Board for action ~~in accordance with Subsection 131.04 above.~~ (5-21-89)()
- ~~08~~g. ~~Conditions Of Limited License.~~ ~~Conditional~~ Limited licensure shall be conditioned upon the individual's prompt and faithful compliance with the following: (7-1-96)()
- ~~a~~i. Satisfactory progress in any required continuing treatment or rehabilitation program ~~prescribed.~~ (7-1-93)()
- ~~b~~ii. Regular and prompt notification to the Board of changes in name and address of self or any employer. (7-1-96)
- ~~e~~iii. Obtaining of performance evaluations prepared by the employer to be submitted at specified intervals and at any time upon request. (7-1-96)

~~dv.~~ Continuing participation in, and compliance with all recommendations and requirements of, the approved treatment or rehabilitation program, and obtaining of reports of progress submitted by the person directing the treatment or rehabilitation program at specified intervals and at any time upon request. (7-1-96)

~~ev.~~ Submission of written self-evaluations and personal progress reports at specified intervals and at any time upon request. (7-1-93)

~~fv.~~ Submission of reports of supervised random alcohol/drug screens at specified intervals and at any time upon request. Participant is responsible for reporting as directed, submitting a sufficient quantity of sample to be tested, and payment for the screening. (7-1-96)

~~gvi.~~ Meeting with the Board's professional staff at any time upon request. (7-1-93)

~~hvi.~~ Working only in approved practice settings. (7-1-96)

~~ix.~~ Authorization by licensee of the release of applicable records pertaining to assessment, diagnostic evaluation, treatment recommendations, treatment and progress, performance evaluations, counseling, random chemical screens, and after-care at periodic intervals as requested. (7-1-93)

~~ix.~~ Obedience to all laws pertaining to nursing practice, all nursing standards, and all standards, policies and procedures of licensee's employer(s) relating to any of the admitted misconduct or facts as set out in the written statement signed by licensee, or relating to the providing of safe, competent or proper nursing service. (7-1-93)

~~xi.~~ Compliance with other specific terms and conditions ~~of the conditional limited license fixed as may be required~~ by the executive director. (7-1-96)(____)

~~09h.~~ **~~Withdrawal Of Conditional Limited License.~~** ~~Because the conditional limited license is issued based upon a written statement admitting misconduct or facts evidencing impairment of the licensee's ability to safely practice nursing by reason of drug, alcohol or other disability, the Board hereby declares that, in the interest of public health, safety and welfare, a~~Any failure of a person to comply with the terms and conditions of a conditional limited license issued based upon an admission of misconduct or facts evidencing impairment of the licensee's ability to safely practice nursing by reason of drug, alcohol or other disability, shall be deemed to be an immediate threat to the health, and safety, and welfare of the public and the executive director shall, upon receiving evidence of any such failure ~~to comply with terms of such conditional limited license,~~ immediately withdraw ~~such conditional~~ the limited license and refer to the advisory committee for re-evaluation. (7-1-96)(____)

~~10.~~ **~~Termination Of Conditional Limited License.~~** (7-1-96)

~~ai.~~ Termination of ~~conditional~~ a limited license may occur if, during participation in the program, information is received which, after investigation, indicates the individual may have violated a provision of the law or Board Rules governing the practice of nursing. (7-1-96)(____)

~~bi.~~ Upon termination of a ~~conditional~~ limited license, the executive director shall provide prompt written notice to ~~such person~~ the licensee stating the reason for the termination, setting forth the evidence relied upon and notifying the ~~person~~ licensee of his right to a hearing upon request at the earliest possible date in accordance with Section 54-14123(2)(a) and (b), Idaho Code. (7-1-96)(____)

~~eii.~~ ~~A person~~ An individual whose ~~conditional~~ limited license has been terminated by the executive director may request a hearing regarding the termination by certified letter addressed to the Board. If ~~such person~~ the individual fails to so request a hearing within twenty (20) days after notice of termination by the executive director, or if upon hearing a determination is made that is unfavorable to ~~such person~~ him, the Board shall enter its order confirming termination of the ~~conditional~~ limited license and enter ~~its~~ further order of ~~revocation~~ or suspension ~~of~~ the surrendered nursing license. (7-1-96)(____)

~~11j.~~ **~~Stay Or Modification Order.~~** The Board may, for good cause, stay any order of the executive

director or may modify the terms and conditions of a ~~conditional~~ limited license as deemed appropriate to regulate, monitor or supervise the practice of any licensee. (7-1-93)(____)

~~12k. **Reinstatement Of Surrendered License.** Upon satisfactory compliance with all of the terms of the conditional limited license for the term thereof, the executive director shall reinstate the renewable nursing license voluntarily surrendered, and provided that the licensee demonstrates that he is qualified and competent to practice nursing, the executive director shall reinstate the renewable nursing license voluntarily surrendered. (7-1-96)(____)~~

(BREAK IN CONTINUITY OF SECTIONS)

134. EMERGENCY ACTION.

If the Board finds that public health, safety, and welfare requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. Such proceedings shall be promptly instituted and determined as authorized in Title 67, Chapter 52, Idaho Code. (5-21-89)(____)

(BREAK IN CONTINUITY OF SECTIONS)

~~166.—199. (RESERVED).~~

~~200. **RESTRICTED LICENSE (NON PRACTICING STATUS).**~~

~~A person who has a physical or mental disability that prevents active engagement in nursing practice may be issued a non-practicing license. The non-practicing status may be removed by Board action following receipt and evaluation of satisfactory evidence confirming that the physical or mental health status of the licensee will not impair or interfere with the ability to practice nursing. (7-1-93)~~

~~201. **LIMITED LICENSE FOR PHYSICAL OR MENTAL DISABILITY.**~~

~~01. **Issuance Of A Limited License.** The Board may issue a limited license to: (11-28-84)~~

~~a. An applicant for licensure or a licensee who has a physical or mental disability that restricts or impairs the person's ability to practice the full scope of nursing; or (11-28-84)~~

~~b. An applicant who holds a limited license by reason of an identified physical or mental disability in another jurisdiction and who, except for the identified physical or mental disability, meets the requirements for licensure by endorsement. (11-28-84)~~

~~02. **Determination Of Limitation.** (7-1-93)~~

~~a. The Board shall evaluate statements from qualified professional persons who have personal knowledge of the applicant or licensee. The Board may also evaluate job descriptions and statements from potential employers. (7-1-91)~~

~~b. The specific limitations of practice shall be noted on the license. (7-1-91)~~

~~03. **Conditions Of A Limited License.** When conditions of practice are stated on the limited license, the conditions may include, but need not be limited to: (7-1-91)~~

~~a. Notifying the Board in writing of any change in employment status. (11-28-84)~~

~~b. Requesting the employer to submit written reports of performance to the Board as directed. (11-28-84)~~

- e. ~~Meeting with representatives of the Board as requested. (11-28-84)~~
- d. ~~Submitting such other reports to the Board as requested. (11-28-84)~~
- e. ~~Specific parameters of practice, excluding the performance of specific nursing functions. (7-1-91)~~

~~**04. Compliance With Conditions Of Limited License.** In the event that the licensee violates or fails to comply with any condition, the Board, after notice to the licensee and an opportunity for hearing, may revoke or suspend the license of such licensee, or take such additional action as it deems necessary and reasonable. (11-28-84)~~

~~**05. Removal Of Limited License Status.** The limited license status may be removed by Board action upon receipt of satisfactory evidence that the health status of the licensee will not impair or interfere with the ability to practice nursing. (11-28-84)~~

~~**202. LIMITED LICENSE FOR DISCIPLINARY ACTION.**~~

~~**01. Issuance Of A Limited License.** After evaluation of an application for licensure reinstatement, the Board may issue a limited license, refer to Sections 120 and 121 to a nurse found guilty of any of the grounds for discipline set forth in the Nursing Practice Act, Section 54-1412 (a),(1-9). (7-1-93)~~

~~**02. Conditions Of A Limited License.** The Board shall define the specific conditions of the limited license in writing. The conditions shall be stated on the license. (11-28-84)~~

~~**03. Board Action.** The Board shall: (7-1-93)~~

~~a. Grant a renewable license without restrictions based upon evidence of satisfactory compliance with the terms and conditions as set forth by the Board. (7-1-91)~~

~~b. Take appropriate action in the event that an individual fails to comply with the terms and conditions of the limited license, including suspension or revocation of the license of such person. (11-28-84)~~

~~203166. -- 219. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

~~321. -- 369. (RESERVED).~~

SECTION 370 HAS BEEN RENUMBERED TO SECTION 101.

~~3721. -- 389. (RESERVED).~~

IDAPA 23 - BOARD OF NURSING
23.01.01 - RULES OF THE IDAHO STATE BOARD OF NURSING
DOCKET NO. 23-0101-0103
NOTICE OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-1404, 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 15, 2001.

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

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

The proposed rules are necessary to clarify the requirements for licensure by examination. The rules clarify equivalency education requirements, eliminate out-of-date language regarding exam eligibility, provide for remedial measures for applicants who do not take the exam within one (1) year of completion of education, and clarify existing fee provisions.

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 rule is non-controversial.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sandra Evans, MAEd., R.N., Executive Director, (208) 334-3110 ext. 26.

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 22, 2001.

DATED this 12th day of June, 2001.

Sandra Evans, MAEd., R.N.
Executive Director
Idaho Board of Nursing
280 N. 8th St., Ste. 210
P. O. Box 83720
Boise, ID 83720-0061
Telephone: (208) 334-3110 ext. 26
Facsimile: (208) 334-3262

THE FOLLOWING IS THE TEXT OF DOCKET NO. 23-0101-0103

220. QUALIFICATIONS FOR LICENSURE BY EXAMINATION.

01. In-State. Individuals who have successfully completed all requirements for graduation from an Idaho nursing education program approved by the Board shall be eligible to make application to the Board to take the licensing examination. (6-11-93)

02. Out-Of-State. Individuals who hold a certificate of ~~graduation completion~~ from a nursing education program having board of nursing approval in another state or territory of the United States shall be eligible to make application to the Board to take the licensing examination, providing they meet substantially the same basic educational requirements as graduates of Idaho nursing education programs at the time of application. (6-11-93)(____)

03. Practical Nurse Equivalency Requirement. An applicant for practical nurse licensure by examination who has not completed an approved practical nurse program, must ~~establish~~ provide satisfactory evidence (i.e. official transcripts) of successful completion of nursing and related courses at an approved school preparing persons for licensure as registered nurses to include a course(s) in personal and vocational relationships of the practical nurse. ~~Additional Related~~ courses must be equivalent to those same courses included in a practical nursing program approved by the ~~b~~Board ~~and must have been completed within the two (2) years immediately preceding the initial application to take the licensing examination.~~ (7-1-93)(____)

~~**04. Time Period For Taking Examination.** Applicants who do not write the examination for the first time within eighteen (18) months following establishment of eligibility will not be eligible for further consideration. (7-1-93)~~

~~**054. Time Limit For Writing Examinations.** Graduates who do not take the examination within ~~eighteen~~ twelve (182) months following ~~graduation from completion of~~ the nursing education program may be required to follow specific remedial measures as prescribed by the Board ~~before being scheduled to take the examination.~~ (6-11-93)(____)~~

221. EXAMINATION APPLICATION.

~~**01. Application For Licensure.** A completed application for licensure by examination shall consist of: (6-1-78)(____)~~

~~**a01. Application.** Completed, notarized application form provided by the Board; and (6-1-78)(____)~~

~~**b02. Affidavit.** Notarized affidavit of graduation signed by the nursing education administrator, or designee; and (6-11-93)(____)~~

~~**e03. Fees.** Fee for licensure by examination as prescribed in Subsection 901.01 of these rules Payment of all required fees. (7-1-93)(____)~~

~~**02. Filing Before Deadline Date.** All required credentials must be received or post marked on or before the specified deadline date for the desired examination. (11-28-84)~~

222. EXAMINATION AND RE-EXAMINATION.

01. Applicants For Professional Or Practical Nurse Licensure. Applicants must successfully take the National Council Licensure Examination for professional nurse licensure or for practical nurse licensure, as applied for and approved. (6-11-93)

02. Passing Score. The passing score for each examination series or form will be determined by the Board. (6-1-78)

03. Retaking Examination. Candidates who do not pass an examination will be notified of the procedure for applying to retake. (6-11-93)

~~04. **Retake Fee.** The retake fee as prescribed in Subsection 901.01 of these rules, must be received or post marked on or before the specified dates. (7-1-93)~~

(BREAK IN CONTINUITY OF SECTIONS)

242. APPLICATION FOR LICENSURE BY ENDORSEMENT.

A completed application for licensure by interstate endorsement must include all of the following: (7-1-93)

- 01. Application Form.** Completed, notarized application form provided by the Board; and (6-1-78)
- 02. Verification.** Verification and documentation of licensure status from state of applicant's original licensure; and ~~(6-1-78)~~(____)
- 03. Employment Reference.** One (1) satisfactory nursing employment reference from the ~~past five~~ three (3) year period immediately preceding the application; and ~~(7-1-91)~~(____)
- 04. Census Questionnaire.** Completed Census Questionnaire; and (6-1-78)
- 05. Fee.** ~~Fee for licensure by endorsement as prescribed in Subsection 901.02 of these rules~~ Payment of all required fees. ~~(7-1-93)~~(____)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.08.01 - RULES OF THE STATE BOARD OF MORTICIANS
DOCKET NO. 24-0801-0101
NOTICE OF TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2001.

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 54-1106 and 54-1107, 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 15, 2001.

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:

Increases the Funeral Director and Mortician fees to \$85; increases the funeral establishment fee to \$125; increases the application fee to \$100; increases the Mortician Resident Trainee and Certificate of Authority fees to \$50; and increases the reinstatement fee to \$250.

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: An emergency exists as the Board is currently operating with a negative cash balance and this would allow the Board to be self-supporting within the Bureau.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: The fee increases are being established as stated above in the descriptive summary. Statute authorizing this fee is Section 54-1107, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Budd A. Hetrick, Jr., (208) 334-3233.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2001.

DATED this 11th day of June, 2001.

Budd A. Hetrick, Jr.
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0801-0101

~~002. (RESERVED).~~

0032. WRITTEN INTERPRETATIONS (Rule 32).

The board may have written statements ~~which~~ that pertain to the interpretation of the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of Occupational Licenses. (7-1-93)(7-1-01)T

003. ADMINISTRATIVE APPEALS (Rule 3).

Administrative appeals shall be governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (7-1-01)T

004. INCORPORATION BY REFERENCE (Rule 4).

These rules do not incorporate by reference any document other than those sections of Idaho Code so referenced. (7-1-01)T

005. ADDRESS OF IDAHO BOARD OF MORTICIANS (Rule 5).

The office of the Board of Morticians is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ibol@ibol.state.id.us. The Board's official web site is at www2.state.id.us/ibol/mor. (7-1-01)T

006. PUBLIC RECORDS (Rule 6).

The records associated with the Board of Morticians are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (7-1-01)T

~~0047. -- 009. (RESERVED).~~

010. DEFINITIONS (Rule 10).

01. Board. The State Board of Morticians as prescribed in Section 54-1102, Idaho Code. (7-1-93)

02. Bureau. The Bureau of Occupational Licenses as prescribed in Sections 54-1106 and 67-2602, Idaho Code. (7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

200. APPLICATION AND PHOTOGRAPH (Rule 200).

Application must be postmarked sixty (60) days prior to the date of examination, and must be accompanied by an unmounted passport-type photograph of the applicant, ~~size three inches by three inches (3" x 3"), head and shoulders only;~~ taken within three (3) months preceding the date of ~~examination and attesting before a Notary Public with the signature of the applicant, being careful not to mar the features~~ application. (7-1-93)(7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

250. MORTICIAN RESIDENT TRAINEE (Rule 250).

01. Definition. The term "Mortician Resident Trainee" as herein used is a person who is engaged in learning the practice of embalming and/or the profession of mortuary science. Training shall be understood to mean diligent attention to the subject matter in the course of regular and full-time paid employment. Full-time employment shall mean a minimum of thirty-six (36) hours per week for fifty (50) weeks per year within the mortuary where the sponsoring resident mortician is practicing. It shall be further required that at least three-fourths (3/4) of the training

period consists of a sponsoring licensed mortician instructing and demonstrating practices and procedures to increase knowledge of the service performed by a mortician as defined in Chapter 11, Title 54-1102 Section A., Idaho Code. A Mortician Resident Trainee shall not sign a death certificate as provided under Idaho law. For the balance of the required hours it would be the responsibility of the sponsoring mortician, or his licensed appointee, to be immediately available for consultation with the trainee. All training must be served in the state of Idaho. (3-18-99)

02. Sponsoring Mortician. A practicing mortician within the state of Idaho who is duly registered as such with the Bureau of Occupational Licenses and assumes responsibility for the proper supervision and instruction of a "Resident Mortician Trainee". (7-1-93)

03. Eligibility To Be Licensed. No person shall be eligible to be licensed as a "Mortician Resident Trainee" who has practiced as a resident trainee or apprentice for a total cumulative period of more than two (2) years in the state of Idaho. For purposes of accounting for total cumulative training as a "Mortician Resident Trainee" the sponsoring mortician is required to notify the bureau at the beginning and termination of the training period. When a "Mortician Resident Trainee" has completed his training, he must proceed to qualify as a licensed "Mortician" within the following three (3) year period or show good reason for further delay. (7-1-93)

04. Resident Trainee Applicants To Qualify. (7-1-93)

- a. Must be at least eighteen (18) years of age. (7-1-93)
- b. Must be of good moral character. (7-1-93)
- c. Must have graduated from an accredited high school or have received an equivalent education as determined by the standards set and established by the state board of education. (7-1-93)
- d. A ~~signed and notarized~~ photo as specified in Section 200 above. (~~7-1-93~~)(7-1-01)T
- e. The effective date of the resident training shall be determined by the board at its next meeting. In no case shall it be prior to the date the application, together with the required fees, are received in the office of Occupational License Bureau. (7-1-93)
- f. Resident mortician training must be served under the direction of a qualified full time resident mortician licensed and practicing in Idaho. (7-1-93)
- g. Complete resident training affidavits showing time served, the number of bodies embalmed. (7-1-93)
- h. The applicant must appear in person before the board before licensure may be completed. (7-1-93)

~~05. Temporary Permits. Temporary permits may be issued to applicants for "Mortician Resident Trainee" licenses. (7-1-93)~~

065. Interruption In Training. An interruption in training of sixty (60) days or more constitutes termination of training. (7-1-93)

~~251-274. (RESERVED).~~

~~275. TEMPORARY PERMIT (Rule 275).~~

~~An individual shall be eligible for a temporary permit to practice as a licensed mortician if such individual meets all other requirements for a mortician license under the Mortician Act or the Board's rules except successful passage of the required examination. An individual shall only be eligible for one (1) temporary permit which shall only be effective from application and its issuance until the results of the next scheduled examination are released. An individual shall only perform those services of a mortician under a temporary permit under the direct and immediate personal supervision of a licensed mortician. (3-10-00)~~

~~276~~51. -- 299. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

500. FEES (Rule 500).

- 01. Funeral Director.** Funeral Director - ~~Forty~~ Eighty-five dollars (~~\$40~~85). ~~(7-1-93)~~(7-1-01)T
- 02. Funeral Establishment.** Funeral Establishment - ~~Fifty~~ One hundred twenty-five dollars (~~\$50~~125) (original license/annual renewal). ~~(7-1-93)~~(7-1-01)T
- 03. Mortician.** Mortician - ~~Forty~~ Eighty-five dollars (~~\$40~~85) (original license/annual renewal). ~~(7-1-93)~~(7-1-01)T
- 04. Mortician Resident Trainee.** Mortician Resident Trainee - ~~Thirty-five~~ Fifty dollars (~~\$35~~50) (original license/annual renewal). ~~(7-1-93)~~(7-1-01)T
- ~~05. Temporary Permit Fee.~~ ~~Thirty-five dollars (\$35).~~ ~~(3-10-00)~~
- 06. Application Fee.** Application Fee - ~~Fifty~~ One hundred dollars (~~\$50~~100). ~~(7-1-93)~~(7-1-01)T
- ~~07. Examination Fee.~~ ~~Examination Fee - Fifty dollars (\$50) (in addition to application fee).~~ ~~(7-1-93)~~
- 08. Certificate Of Authority.** Certificate of Authority - ~~Twenty-five~~ Fifty dollars (~~\$250~~) (original certificate/annual renewal). ~~(7-1-93)~~(7-1-01)T
- ~~09. Application For Reinstatement.~~ ~~Application for reinstatement within five (5) years: Twenty-five~~ Two hundred fifty dollars (~~\$250~~) reinstatement fee and annual renewal fees for back years (Reference Section ~~67-~~ 54-1115A, Idaho Code). ~~(7-1-93)~~(7-1-01)T
- 10. Maintenance Of Pre-Need Trust Accounts Fee.** Pursuant to Section 54-1134 D., Idaho Code, a fee not to exceed ten percent (10%) of the annual earned interest income may be charged for maintenance of pre-need trust accounts. (7-1-93)

IDAPA24 - BUREAU OF OCCUPATIONAL LICENSES
24.11.01 - RULES OF THE STATE BOARD OF PODIATRY
DOCKET NO. 24-1101-0101
NOTICE OF TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2001.

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 54-605, 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 15, 2001.

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:

Insert rules for Administrative Appeals, Incorporation by Reference, providing for reference in the Rules to the American Podiatric Medical Association's Code of Ethics; add Bureau contact information; add Public Records section; clarify citizenship requirement; increase original license fee and annual renewal fee to \$300; delete reference to oral examination; clarify examination subjects shall consist of those subjects outlined in Section 54-606, Idaho Code; add licensure without written examination requires the filing of a complete application and a \$200 fee.

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: An emergency exists as the Board is currently operating with a negative cash balance and this would allow the Board to be self-supporting within the Bureau.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: The fee increases are being established as stated above in the descriptive summary. Statute authorizing this fee is Section 54-606, 54-607 and 54-613, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Budd A. Hetrick, Jr., (208) 334-3233.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2001.

DATED this 11th day of June, 2001.

Budd A. Hetrick, Jr.
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1101-0101

~~002. (RESERVED).~~

0032. WRITTEN INTERPRETATIONS (Rule 32).

The board may have written statements ~~which~~ that pertain to the interpretation of the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of Occupational Licenses. ~~(7-1-93)~~(7-1-01)T

003. ADMINISTRATIVE APPEALS (Rule 3).

Administrative Appeals shall be governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (7-1-01)T

004. INCORPORATION BY REFERENCE (Rule 4).

The document titled American Podiatric Medical Association's Code of Ethics as published by the American Podiatric Medical Association, referenced in Section 500, is herein incorporated by reference and is available from the Board's office and on the Board web site. (7-1-01)T

005. ADDRESS OF THE IDAHO BOARD OF PODIATRY (Rule 5).

The office of the Board of Podiatry is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ibol@ibol.state.id.us. The Board's official web site is at www2.state.id.us/ibol/pod. (7-1-01)T

006. PUBLIC RECORDS (Rule 6).

The records associated with the Board of Podiatry are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (7-1-01)T

~~0047. -- 009. (RESERVED).~~

010. DEFINITIONS AND STANDARDS (Rule 10).

01. Act. The Act means Chapter 143 Idaho session Laws of 1957 codified as Chapter 6, Title 54, Idaho Code, and any amendments thereto. (7-1-93)

02. Board. The Board means the State Board of Podiatry, as prescribed in Section 54-604, Idaho Code. (7-1-93)

03. Licensure. Licensure means ~~the act of acquiring~~ a license to practice podiatry in Idaho. ~~(7-1-93)~~(7-1-01)T

04. Reputable School. A "reputable school" of podiatry is, ~~and the term as used in these rules shall mean,~~ defined as an approved podiatry school located within the United States or Canada and designated as such by the council on Education and the American Podiatric Medical Association. ~~(4-5-00)~~(7-1-01)T

05. Bureau. The Bureau means the Bureau of Occupational Licenses, as prescribed in Sections 54-605 and 67-2602, Idaho Code. (7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

100. GENERAL QUALIFICATIONS OF LICENSURE (Rule 100).

- 01. Residence.** ~~No period of~~ Residence in Idaho shall not be ~~required of any applicant~~ an eligibility requirement for licensure. (7-1-93)(7-1-01)T
- 02. Age.** ~~All~~ applicants shall be at least twenty-one (21) years of age. (7-1-93)(7-1-01)T
- 03. Character.** ~~All~~ applicants shall be of good moral character. (7-1-93)(7-1-01)T
- 04. Citizenship Requirement For Exam.** Citizenship ~~is~~ shall not ~~required of an applicant~~ be an eligibility requirement for the Idaho podiatry examination or licensure. All persons making application for licensure are required to be legally eligible to reside and obtain employment in the United States. (7-1-93)(7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

150. PRE-PROFESSIONAL EDUCATION.

~~All~~ applicants shall ~~possess evidence~~ provide official documentation of graduation from an accredited high school, or its equivalent, and ~~possess evidence~~ provide official documentation of credits granted for at least two (2) full years of general college study in a college or university of recognized standing. (7-1-93)(7-1-01)T

151. PROFESSIONAL EDUCATION.

~~All~~ applicants shall possess evidence of graduation from four (4) full years of study in a reputable school of podiatry, as defined in Subsection 010.04 of these rules. (7-1-93)(7-1-01)T

152. PODIATRIC RESIDENCY (Rule 152).

01. Residency Required For Licensure. A candidate may not apply for licensure until completion of a podiatric surgical residency of a minimum of twelve (12) months or more as approved by the Council on Podiatric Medical Education or completion of equivalent surgical training as approved by the Board. (7-1-98)

02. Submission Of Verification Of Residency Curriculum. Notwithstanding the provisions of Subsection 152.01, a candidate ~~must submit verification~~ shall provide official documentation of completion of the entire curriculum. Any deviation of this requirement must be approved by the Board. (7-1-98)(7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

200. CREDENTIALS TO BE FILED BY ALL APPLICANTS (Rule 200).

01. Application. An application for licensure shall be completed ~~by all applicants for licensure upon~~ a form ~~prescribed~~ approved by the ~~state board of podiatry which must be~~ and submitted to the bureau ninety (90) days before the date of the Idaho board examination, ~~and is not returnable.~~ (7-1-98)(7-1-01)T

02. Certified Copy Of National Board Results. A copy of the applicable National Board results which has been certified as true and correct by the examining entity. (7-1-97)

03. Photograph Requirement. All applications shall be accompanied by an unmounted passport ~~type~~ photograph, ~~head and shoulders only,~~ of the applicant taken not more than one (1) year prior to the date of application, ~~which fact shall be attested to by the applicant's signature across the bottom of the picture and attested to before a public officer authorized to administer oaths. Informal pictures or snapshots are NOT acceptable.~~ (7-1-97)(7-1-01)T

04. Educational Certificate Requirement. Each applicant ~~may~~ shall be required to ~~furnish a~~

~~certificate executed by proper authority proving that he or she~~ provide official documentation of graduation from a four (4) year high school, or ~~school of the equivalent standing~~, and ~~a certificate proving the extent of his official documentation of a collegiate education to be of~~ not less than two (2) years in an accredited college or university giving instruction in letters and sciences. (7-1-93)(7-1-01)T

05. Diploma. Certified photostatic copy of diploma granted by any college of podiatry and ~~copy of~~ official certified transcripts indicating graduation from the program. (7-1-97)(7-1-01)T

06. Residency Certification Requirement. All applications shall include certification of completion of a residency as defined in Rule 152. (7-1-98)(7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

300. FEES (Rule 300).

01. Application Fee. A fee shall accompany all applications. The fee shall be two hundred dollars (\$200). (7-1-97)

02. Original License Fee. The original license fee shall be ~~one~~ three hundred ~~fifty~~ dollars (~~\$15300~~). (7-1-98)(7-1-01)T

03. Written Exam Fee. The fee for examination shall be equal to that charged by the national examining entity, together with an additional twenty-five (\$25) dollar administrative fee. (7-1-97)(7-1-01)T

04. Annual Renewal Fee. Fee for annual renewal of licenses, ~~one~~ three hundred ~~fifty~~ dollars (~~\$15300~~) on or before the first day of July of each year. (7-1-98)(7-1-01)T

05. Re-Exam Fee. For candidates re-examining for the written and ~~oral~~ practical examinations or written examination only, the fee for re-examination will be four hundred dollars (\$400). For candidates re-examining for the ~~oral~~ practical only, the fee shall be two hundred dollars (\$200). (7-1-97)(7-1-01)T

06. Fee Non-Refundable. ~~No~~ All fees shall be returnable are non-refundable. (7-1-93)(7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

400. LICENSURE BY EXAMINATION (Rule 400).

01. Examination Of Applicants. Examination of applicants shall be conducted by the whole board or by its designated agents or representatives. (7-1-97)

02. Exam Required For Licensure. No person shall be granted a license to practice podiatry ~~unless he or she shall have passed~~ without first receiving a passing grade on an examination given by the board and consisting of those subjects outlined in Section 54-606, Idaho Code. (7-1-98)(7-1-01)T

03. Exam Dates. ~~Written~~ Examinations shall be held at Boise, Idaho, the third Monday of July and at such other times as the board shall direct. (4-5-00)(7-1-01)T

04. Passing Grade. ~~No applicant shall be granted a license unless he attains a~~ A passing grade ~~as determined by the board~~ in all subjects examined and shall be a general average of not less than seventy-five percent (75%) ~~as established in Section 54-606, Idaho Code.~~ (9-28-94)(7-1-01)T

05. Failure Of Exam. An applicant failing ~~in~~ the examination shall be entitled within six (6) months to

a reexamination upon the payment of an additional fee as established in Section 300. ~~(9-28-94)~~(7-1-01)T

06. Failure Of Reexam. An applicant who fails the examination on two (2) such reexaminations shall exhaust his privilege under his original application. (9-28-94)

07. Original Application. The original application will be considered null and void after a period of two (2) years from date of original application if no license has been issued. (7-1-97)

401. LICENSURE WITHOUT WRITTEN EXAMINATION (Rule 401).

Applicants for licensure under this section shall file a complete application together with a fee of two hundred dollars (\$200) and all the credentials as provided in Section 200 and ~~in addition shall provide~~ a certified copy of the subjects and the grades obtained by written examination in ~~some~~ another state or territory or through the national board of podiatry examiners. Such examination must have been taken and passed within the preceding five (5) years from date of this application. Proof must be submitted documenting that ~~he or she meets~~ each applicant has met the requirements of this section. ~~Applicants must appear in person before the whole board or a quorum of the whole board and shall accompany their application with a fee of two hundred dollars (\$200), which fee shall be not returned if for any reason license is not granted.~~ (7-1-98)(7-1-01)T

402. TEMPORARY LICENSES (Rule 402).

No temporary licenses ~~may~~ shall be granted for the practice of podiatry in Idaho. (7-1-93)(7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

500. STANDARDS OF THE ETHICAL PRACTICE OF PODIATRY (Rule 500).

The standards of the Ethical Practice of Podiatry are prescribed in Section 54-609, Idaho Code, ~~and~~ in the American Podiatric Medical Association's Code of Ethics as ~~the same~~ may be amended from time to time; and are hereby adopted and shall apply to all practitioners of podiatry. (7-1-98)(7-1-01)T

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.14.01 - RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS

DOCKET NO. 24-1401-0101

NOTICE OF TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2001.

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 54-3204, 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 15, 2001.

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:

Insert rules for Administrative Appeals, Incorporation by Reference, Address of the Board, update Bureau contact information, Public Records; define Bureau; increase application and original license fee for certified social worker, private and Independent Practice, and social worker to \$50; increase temporary permit fee to \$35; increase endorsement and license fee for certified social worker, social worker and private and independent practice to \$55; increase renewal fee for certified social worker, and social worker to \$50, and certified social worker with private and independent practice to \$60.

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: An emergency exists as the Board is currently operating with a negative cash balance and this would allow the Board to be self-supporting within the Bureau.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: The fee increases are being established as stated above in the descriptive summary. Statute authorizing this fee is Section 54-3209, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Budd A. Hetrick, Jr., (208) 334-3233.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2001.

DATED this 11th day of June, 2001.

Budd A. Hetrick, Jr.
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1401-0101

~~002. (RESERVED).~~

003. WRITTEN INTERPRETATIONS (Rule 3).

The board may have written statements which pertain to the interpretation of the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of Occupational Licenses. (7-1-93)

003. ADMINISTRATIVE APPEALS (Rule 3).

Administrative Appeals shall be governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (7-1-01)T

004. INCORPORATION BY REFERENCE (Rule 4).

These rules do not incorporate by reference any document other than those sections of Idaho Code so referenced. (7-1-01)T

005. ADDRESS OF THE STATE BOARD OF SOCIAL WORK EXAMINERS (Rule 5).

The office of the State Board of Social Work Examiners is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ibol@ibol.state.id.us. The Board's official web site is at www2.state.id.us/ibol/sw. (7-1-01)T

006. PUBLIC RECORDS (Rule 6).

The records associated with the State Board of Social Work Examiners are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (7-1-01)T

~~007. – 009. (RESERVED).~~

010. DEFINITIONS (Rule 10).

01. Board. The State Board of Social Work Examiners as prescribed in Section 54-3202, Idaho Code. (7-1-93)

02. Bureau. The Bureau means the Bureau of Occupational Licenses, as prescribed in Sections 54-3204 and 67-2602, Idaho Code. (7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

300. FEES (Rule 300).

To administer and carry out the provisions of this Act, the following fees are established: (7-1-93)

01. Application And Original License Fee. Application and Original License Fee: (7-1-93)

a. Certified Social Worker - ~~Forty~~ Fifty dollars (\$~~40~~50). (7-1-93)(7-1-01)T

b. Private and Independent Practice - ~~Forty~~ Fifty dollars (\$~~40~~50). (7-1-98)(7-1-01)T

c. Social Worker - ~~Forty~~ Fifty dollars (\$~~40~~50). (7-1-98)(7-1-01)T

d. Temporary permit, Social Worker or Certified Social Worker - ~~Twenty~~ thirty-five dollars (\$~~20~~35).

- ~~(7-1-93)~~(7-1-01)T
- fees.
- 02. Examination Fee.** Examination fee will be set by the Board in concordance with the testing service
(7-1-93)
- 03. Endorsement And License Fee.** Endorsement and License Fee: (Reference to Subsection 300.06)
(7-1-93)
- a. Certified Social Worker - ~~Forty~~ Fifty-five dollars (\$455). ~~(7-1-93)~~(7-1-01)T
- b. Social Worker -- ~~Forty~~ Fifty-five dollars (\$455). ~~(7-1-93)~~(7-1-01)T
- c. Private and Independent Practice - ~~Forty~~ Fifty-five dollars (\$455). ~~(7-1-98)~~(7-1-01)T
- 04. Renewal Fee.** Renewal Fee: (7-1-93)
- a. Certified Social Worker - ~~Forty~~ Fifty dollars (\$450). ~~(7-1-98)~~(7-1-01)T
- b. Certified Social Worker with Private and Independent Practice - ~~Fifty~~ Sixty dollars (\$560).
~~(7-1-98)~~(7-1-01)T
- c. Social Worker - ~~Forty~~ Fifty dollars (\$450). ~~(7-1-98)~~(7-1-01)T
- 05. Reinstatement Fee.** Reinstatement fees in accordance with Section 67-2614, Idaho Code. (7-1-93)
- 06. All Fees Under This Act Are Non-Refundable.** All fees under this Act are non-refundable.
(7-1-93)

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-0103
NOTICE OF TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: This temporary rule is effective June 15, 2001.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and regular proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 63-105A and 63-3624, 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 15, 2001.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

Property Tax Rule 803 - Budget Certification - Dollar Certification Form (L-2 Form) is being amended as a temporary and proposed rule because of legislation passed by the 2001 Legislature. House Bill 378 is retroactive to January 1, 2001 and adds Section 63-602EE, Idaho Code, exempting certain tangible personal property that is agricultural machinery, tools, and equipment used exclusively in agriculture.

Rule 803 gives clarification and guidance to counties on how to report this exempted equipment for replacement money to be distributed by the State pursuant to Section 63-3067, Idaho Code, as amended in 2001.

Property Tax Rule 990 - Certification Of The Tax Charge On Farm Machinery, Tools And Equipment for Replacement Fund Distribution is being promulgated to implement requirements of House Bill 378, describing what tax charges are to be certified with 2000 property taxes levied, which tangible personal property is exempted, and to cross reference Property Tax Rule 803 on budget certification.

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:

Statutory timing of the program requires the rule be adopted as a temporary rule.

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 nature of the rule is conferring a benefit and the time constraints of having the benefits in effect for the year 2001.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest, at (208) 334-7530.

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 22, 2001.

DATED this 15th day of June, 2001.

Alan Dornfest, Tax Policy Specialist Supervisor
 State Tax Commission
 800 Park, Plaza IV, P.O. Box 36
 Boise, ID 83722
 (208) 334-7530 FAX (208) 334-7844

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0103

803. BUDGET CERTIFICATION -- DOLLAR CERTIFICATION FORM (L-2 FORM) (Rule 803).
 Sections 63-803 and 63-3067, Idaho Code. ~~(4-5-00)~~(6-15-01)T

01. Definitions. (4-5-00)

a. "Dollar Certification Form" (L-2 Form). The Dollar Certification Form (L-2 Form) is the form used to submit to the State Tax Commission the budget request from each Board of County Commissioners for each taxing district. This form shall be presumed a true and correct representation of the budget previously prepared and approved by a taxing district. The budget will be presumed adopted in accordance with pertinent statutory provisions unless clear and convincing documentary evidence establishes that a budget results in an unauthorized levy provided in Section 63-809, Idaho Code. (4-5-00)

b. "Prior Year's Market Value for Assessment Purposes." Prior year's market value for assessment purposes shall mean the value used to calculate levies during the immediate prior year. This value shall be used for calculating the permanent budget increase permitted for cities, pursuant to Section 63-802(1)(f), Idaho Code, and for fire districts, pursuant to Section 31-1420(3), Idaho Code. (4-5-00)

c. Annual Budget. For the purpose of calculating dollar amount increases permitted pursuant to Section 63-802(1), Idaho Code, the annual budget shall include any amount approved as a result of an election held pursuant to Sections 63-802(1)(f), 63-802(1)(g), or 31-1420(3), Idaho Code, provided that said amount is certified on the L-2 Form as part of the budget request. If the amount certified does not include the entire amount approved as a result of the election held pursuant to Sections 63-802(1)(f), 63-802(1)(g), and 31-1420(3), then the amount not used shall be added to the foregone increase amount determined for the taxing district. See the following example.

CERTIFIED PROPERTY TAX BUDGET LIBRARY DISTRICT*				
	FY 1999	FY 2000	FY 2001	FY 2002
Annual Budget	\$10,000	\$10,000	\$10,700	\$11,621
3% Increase	\$0	\$300	\$321	\$349
Subtotal	\$10,000	\$10,300	\$11,021	\$11,970
1999 Election Amount	\$0	\$400 of \$1000	\$600 of \$1000	\$0
Certified Budget	\$10,000	\$10,700	\$11,621	\$11,970

*The Library District with zero (\$0) new construction and annexation approves an additional budget amount of one thousand dollars (\$1000) in 1999, but only certifies six hundred dollars (\$600) for the year 2000. Note the example does not account for any foregone amount resulting from the district's decision to not increase its budget by three percent (3%) in 1997, 1998 or 1999. (3-30-01)

02. Budget Certification. The required budget certification shall be made to each Board of County Commissioners representing each county in which the district is located. The certification shall be on a form

prescribed by the State Tax Commission.

(4-5-00)

03. Budget Requested Documents. Each Board of County Commissioners shall submit to the State Tax Commission a budget request for each taxing district in the county that certifies a budget request to finance the ad valorem portion of its annual budget. The Board shall not submit other documents unless requested to do so by the State Tax Commission. Documents not to be submitted to the State Tax Commission unless requested include newspaper advertisements, school district budget books, entire budget documents, other than the budget request, and similar documents. Each taxing district certifying a budget request to finance the ad valorem portion of its annual budget shall complete the State Tax Commission's L-2 Form.

(4-5-00)

04. L-2 Form Contents. Each taxing district or unit completing an L-2 Form shall include the following information on this form.

(4-5-00)

a. "Department or fund." Identify the department or fund for which the taxing district is requesting a budget for the current tax year.

(4-5-00)

b. "Total approved budget." List the dollar amount of the total budget for each department or fund identified. The amounts must include all money that a taxing district has a potential to spend at the time the budget is set, regardless of whether funds are to be raised from property tax.

(4-5-00)

c. "Cash forward balance." List any money brought forward from a prior year to help fund the approved budget. Cash forward balance (Column 3) is the difference between the total approved budget (Column 2) and the sum of amounts reported as "~~state and~~ other funds" revenue not shown in Column 5 (Column 4), agricultural equipment property tax replacement (Column 5), and "balance to be levied, ~~on~~ (Column 6)".

~~(4-5-00)~~(6-15-01)T

d. "~~State and o~~Other funds revenue not shown in Column 5." List the revenue included in the total approved budget to be derived from sources other than property tax or money brought forward from a prior year. For example, sales tax revenue is included.

~~(4-5-00)~~(6-15-01)T

e. "Agricultural equipment property tax replacement." Report the amount of money to be received under Section 63-3067, Idaho Code.

(6-15-01)T

ef. "Balance to be levied~~on~~." Report the amount of money included in the total approved budget to be derived from property tax.

~~(4-5-00)~~(6-15-01)T

fg. Other information. Provide the following additional information.

(4-5-00)

i. The name of the taxing district or authority;

(4-5-00)

ii. The date of voter approval (if required by statute) and effective period for any new or increased fund which is exempt from the budget limitations in Section 63-802, Idaho Code;

(4-5-00)

iii. The signature, date signed, printed name, address, and phone number of an authorized representative of the taxing district;

(4-5-00)

iv. For a fire district with a population greater than twenty-five hundred (2500), a signature certifying such.

(4-5-00)

v. For a hospital district which has held a public hearing, a signature certifying such action.

(4-5-00)

05. Special Provisions For Fire Districts Levying Against Operating Property. To prevent double counting of public utility property values, for any year following the first year in which any fire district increases its budget using the provision of Section 63-802(2), Idaho Code, such fire district shall not be permitted further increases under this provision unless the following conditions are met:

(3-30-01)

a. The fire district and public utility have entered into a new agreement of consent to provide fire protection to the public utility; and

(3-30-01)

b. Said new agreement succeeds the original agreement; and (3-30-01)

c. In the first year in which levies are certified following the new agreement, the difference between the current year's taxable value of the consenting public utility and public utility value used in previous budget calculations made pursuant to this section is used in place of the current year's taxable value of the consenting public utility. (3-30-01)

06. Special Provisions For Property Tax Replacement Pursuant To Section 63-3067, Idaho Code.
Property tax replacement monies received pursuant to Section 63-3067, Idaho Code, must be subtracted from the "balance to be levied". The reduced balance shall be used to compute levies, but the maximum amount permitted pursuant to Sections 63-802 and 33-802, Idaho Code, shall be based on the sum of these property tax replacement monies and the amount actually levied. (6-15-01)T

a. After receipt from the counties of the year 2000 tax charges on property exempted in Section 63-602EE, Idaho Code, but no later than July 23, 2001, the State Tax Commission shall notify each county clerk of the amount of property tax replacement money to be paid to each taxing district in that county. Beginning in 2002 and thereafter, the State Tax Commission shall, by the fourth Monday of July, notify each county clerk if the amount of property tax replacement money to be paid a taxing district changes from the amount paid in the preceding year. (6-15-01)T

b. By no later than the first Monday of August of each year, each county clerk shall notify each appropriate taxing district or unit of the total amount of property tax replacement monies that will be received. (6-15-01)T

c. The subtraction required in Subsection 803.06 may be from any fund(s) subject to the limitations of Section 63-802, Idaho Code, and from school district maintenance and operation funds made pursuant to Section 33-802, Idaho Code. (6-15-01)T

d. Levy limits shall be tested against the amount actually levied. (6-15-01)T

(BREAK IN CONTINUITY OF SECTIONS)

983. -- 99489. (RESERVED).

990. CERTIFICATION OF THE TAX CHARGE ON FARM MACHINERY, TOOLS AND EQUIPMENT FOR REPLACEMENT FUND DISTRIBUTION (Rule 990).
Sections 63-3067 and 63-602EE, Idaho Code. (6-15-01)T

01. Tax Charge Described. Tax charges to be certified are year 2000 property taxes levied against farm machinery, tools and equipment formerly categorized as Category 58. (6-15-01)T

02. Category 58 Described. Rule 130 of these rules formerly described Category 58 as unlicensed farm or ranch machinery, shop tools, or equipment not assessed as real property. (6-15-01)T

03. Cross Reference. Board of county commissioners and county clerks need to refer to Rule 803 of these rules for special directions relating to certifying the year 2000 tax charge on farm machinery, tools and equipment to the State Tax Commission. (6-15-01)T

991. -- 994. (RESERVED).

IDAPA 54 - OFFICE OF THE STATE TREASURER
54.02.01 - RULES GOVERNING THE COLLEGE SAVINGS PROGRAM
DOCKET NO. 54-0201-0101
NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2002 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 67-6291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 33-5402, Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the May 2, 2001 Idaho Administrative Bulletin, Volume 01-5, pages 56 through 62.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Judy Comstock, Chair, at (208) 334-3200.

DATED this 12th day of June, 2001.

Judy Comstock, Chair
College Savings Program
Office of the State Treasurer
State Capitol Building, Room 101
P. O. Box 83720
Boise, Idaho 83720-0091
Telephone: (208) 334-3200
Facsimile: (208) 332-2960

IDAPA 54, TITLE 02, Chapter 01

RULES GOVERNING THE COLLEGE SAVINGS PROGRAM

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 00-5, May 2, 2001, pages 56 through 62.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and adoption by the 2002 Idaho State Legislature as a final rule.

**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 RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2002 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-sixth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapters 1, 36, 44, 58, 72, 76, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for commencing the proposed rulemaking is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 00-8, August 2, 2000, pages 131 through 148.

The Department of Environmental Quality (DEQ) received a comment requesting that the Rules and Standards for Hazardous Waste, IDAPA 58.01.05, be revised to provide a right to appeal hazardous waste permit decisions to the Board of Environmental Quality rather than the Director. To make this change it would be necessary to change the definition of the Environmental Appeals Board found at IDAPA 58.01.05.003.05 to mean the Idaho Board of Environmental Quality rather than the Director of the Idaho Department of Environmental Quality when used in context of 40 CFR, except where noted. This request is beyond the scope of this rulemaking and the change has not been made. However, DEQ intends to address this issue during its 2001 annual rulemaking.

DEQ revised the proposed rule by adding IDAPA 58.01.22 Sections 003 and 070 for the purpose of referring to the recently adopted IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality," (Docket No. 58-0123-0001). The remaining sections have been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit its web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact Paula Gradwohl at (208)373-0418, pgradwoh@deq.state.id.us.

Dated this 20th day of June, 2001.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

LEGISLATIVE CHANGES AFFECTING THE ADMINISTRATIVE RULES
OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

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 00-8, August 2, 2000, pages 131 through 148.

This rule has been adopted as a pending rule by the Agency and is now pending review and adoption by the 2002 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0100-0002

58.01.22 - RULES FOR ADMINISTRATION OF PLANNING GRANTS
FOR DRINKING WATER FACILITIES

003. ADMINISTRATIVE PROCEDURES.

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". (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

070. 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 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: (3-30-01)

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 (3-30-01)

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 (3-30-01)

c. Violation(s) of any term of agreement of the grant offer or contract agreement; or (3-30-01)

d. Any willful or serious failure to perform within the scope of the project, plan of operation and

project schedule, terms of engineering subagreements, or contracts for construction; or (3-30-01)

e. Debarment of an engineering firm, contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-30-01)

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: (3-30-01)

a. Specific acts or omissions which form the basis for suspension or termination; and (3-30-01)

b. That the grantee may be entitled to appeal the suspension or termination 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"*.
(3-30-01)()

03. Determination. A determination will be made by the Board 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"*. (3-30-01)()

04. Reinstatement Of Suspended Grant. Upon written request by the grantee and evidence that the cause(s) for suspension no longer exist, the Director may, if funds are available reinstate the grant. (3-30-01)

05. Reinstatement Of Terminated Grant. No terminated grant shall be reinstated. (3-30-01)

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 TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The temporary rule was effective June 15, 2001.

AUTHORITY: In compliance with Sections 67-5226(1) and 67-5221(1), Idaho Code, notice is hereby given that the Board of Environmental Quality (Board) 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:

September 5, 2001, 7 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: Portable equipment, such as rock crushers and asphalt plants, is currently permitted under the stationary source permit to construct program. The current permitting program requires that every rock crusher obtain a permit to construct prior to operating equipment in the state of Idaho. Although the permits follow a general permit outline, processing the large number of rock crusher permits requires considerable DEQ and applicant resources and necessitates a time delay for the permittees. With the rate of growth in the State, a method of streamlining general permits is needed. This temporary rule focuses on establishing the general operating equipment requirements for rock crushers in a rule and is designed to provide resource relief during the 2001 construction season. The rule specifies the requirements for registration and operation to meet the applicable standards. It is estimated that approximately 75 to 80% of rock crushers could opt to register and operate within the specified parameters in lieu of obtaining an individual permit.

The rule establishes the registration process and specifies the operating parameters and requirements that are normally specified in a general permit for rock crushers. The parameters include best management practices for the control of fugitive dust, limitations on the hours of operation or fuel consumption rates for different sizes and types of generators, and general provisions to ensure compliance with the National Ambient Air Quality Standards and other applicable requirements. The rule also specifies the length of time equipment may be operating at a single location before additional requirements apply.

The 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 in November 2001 for adoption of a pending rule. The rule is expected to be final upon the conclusion of the 2002 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: This temporary rule is a subpart of the ongoing negotiated rulemaking for permit program streamlining and 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. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 00-8, August 2, 2000, page 165.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit to DEQ and portable sources such as rock crushers and asphalt plants in that the permitting process for those sources would be streamlined and specifically suited to those sources.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Marjorie MartzEmerson or Bill Rogers at (208)373-0502, mmartzem@deq.state.id.us, or wrogers@deq.state.id.us.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. All written comments must be received by the undersigned on or before September 7, 2001.

Dated this 20th day of June, 2001.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-0002

011. DEFINITIONS FOR THE PURPOSES OF SECTIONS 790 THROUGH 799.

01. Best Management Practice. The best management practice (BMP) employed within an industry to control fugitive emissions. (6-15-01)T

02. Control Strategy Trigger. An event or condition that indicates that a control action is needed to prevent violation of a standard or a provision of the rule. (6-15-01)T

03. Nonmetallic Mineral Processing Plant. Any combination of equipment that is used to crush or grind any nonmetallic mineral or rock wherever it may be located, including equipment located at lime plants, power plants, steel mills, asphalt concrete plants, portland cement plants, or any other facility or location processing nonmetallic minerals. (6-15-01)T

04. NSPS Regulated Facility Or Plant. A facility or processing plant that is subject to a standard, limitation, or other requirement of 40 CFR 60, Standards for the Performance of New Stationary Sources. (6-15-01)T

05. Permit By Rule. A provision of the rules under which a facility or source registers with the Department and meets the specific requirements for that type of source. The source is then deemed to have a permit, thereby authorizing construction and operation without first obtaining a "Permit to Construct" as required in Section 201. Operating in accordance with a "Permit by Rule" (PBR) does not relieve the owner or operator from complying with all applicable federal, state, and local rules and regulations. (6-15-01)T

06. Progressive Control Strategy. A sequence of control actions that when progressively employed can reduce the potential for violation of a standard or a provision of the rules. Control actions, beginning with those early in the sequence, shall be progressively applied until an adequate level of control is achieved. (6-15-01)T

07. Site Of Operations. The specific operating location of a nonmetallic mineral processing plant. (6-15-01)T

~~0142.~~ -- 105. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

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, or the source operates in accordance with all of the applicable provisions of a permit by rule. (~~3-30-01~~)(6-15-01)T

(BREAK IN CONTINUITY OF SECTIONS)

788. -- ~~804~~789. (RESERVED).

790. RULES FOR THE CONTROL OF NONMETALLIC MINERAL PROCESSING PLANTS.

The purpose of Sections 790 through 799 is to set forth the requirements for nonmetallic mineral processing plants, frequently referred to as rock crushers. Definitions specific to nonmetallic mineral processing permits are located in Section 011 while other general terms may be defined in Sections 006 through 008. Compliance with Section 790 does not relieve the owner or operator of a nonmetallic mineral processing plant from the responsibility of complying with other federal, state, and local applicable laws, regulations, and requirements. (6-15-01)T

791. GENERAL CONTROL REQUIREMENTS.

01. Prohibition. No owner or operator of a nonmetallic mineral processing plant shall allow, suffer, or cause the emissions of any air pollutant to the atmosphere in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property. (6-15-01)T

02. Control of Fugitive Dust. In accordance with Sections 650 and 651, owners and operators of nonmetallic mineral processing plants shall take all reasonable precautions to prevent the generation of fugitive dust. In determining what is reasonable, consideration will be given to factors such as the proximity to human habitations and/or activities and atmospheric conditions which might affect the movement of particulate matter. (6-15-01)T

792. EMISSIONS STANDARDS FOR NONMETALLIC MINERAL PROCESSING PLANTS SUBJECT TO 40 CFR 60, SUBPART OOO.

Owners and operators of nonmetallic mineral processing plants subject to a requirement of the New Source Performance Standards (NSPS) in 40 CFR 60, Subpart OOO shall comply with the emissions standards set forth in this section. (6-15-01)T

01. NSPS Regulated Processing Plants. Affected facilities in fixed or portable plants that commence construction, reconstruction, or modification after August 31, 1983, except that the standards do not apply to the following operations: (6-15-01)T

a. All facilities located in underground mines; and stand-alone screening operations at plants without crushers or grinding mills. (6-15-01)T

b. An affected facility that is subject to the provisions of 40 CFR 60, Subpart F (Standards of Performance for Portland Cement Plants) or Subpart I (Standards of Performance for Hot Mix Asphalt Plants). (6-15-01)T

- c. Facilities with capacities as defined in 40 CFR 60.671 of: (6-15-01)T
- i. Fixed sand and gravel plants and crushed stone plants with capacities of twenty-three (23) megagrams per hour (twenty-five (25) tons per hour) or less; (6-15-01)T
- ii. Portable sand and gravel plants and crushed stone plants with capacities of one hundred thirty-six (136) megagrams per hour (one hundred fifty (150) tons per hour) or less; (6-15-01)T
- iii. Common clay plants and pumice plants with capacities of nine (9) megagrams per hour (ten (10) tons per hour) or less. (6-15-01)T
- 02. Affected Facilities.** The following components in fixed or portable nonmetallic mineral processing plants, except as provided in Subsections 792.01.a., 792.01.b., and 792.01.c. are defined as affected facilities under the 40 CFR 60, Subpart OOO requirements: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, and enclosed truck or railcar loading station. (6-15-01)T
- 03. NSPS Particulate Matter Emissions Standards.** The standard for particulate matter is set forth in 40 CFR 60.672, which states: (6-15-01)T
- a. On and after the date on which the performance test required to be conducted by 40 CFR 60.8 is completed, no owner or operator subject to the provisions of 40 CFR 60, Subpart OOO shall cause to be discharged into the atmosphere from any transfer point on belt conveyors or from any other affected facility any stack emissions which: (6-15-01)T
- i. Contain particulate matter in excess of five one-hundredths (0.05) grams per dry standard cubic meter (G/dscm); and (6-15-01)T
- ii. Exhibit greater than seven percent (7%) opacity, unless the stack emissions are discharged from an affected facility using a wet scrubbing control device. Facilities using a wet scrubber must comply with the reporting provisions of 40 CFR 60.676 (c), (d), and (e). (6-15-01)T
- b. On and after the sixtieth day after achieving the maximum production rate at which the affected facility will be operated, but not later than one hundred eighty (180) days after initial startup as required under 40 CFR 60.11, no owner or operator subject to the provisions of 40 CFR Part 60, Subpart OOO shall cause to be discharged into the atmosphere from any transfer point on belt conveyors or from any other affected facility any fugitive emissions which exhibit greater than ten percent (10%) opacity, except as provided in Subsections 792.03.c., 792.03.d. and 792.03.e. (6-15-01)T
- c. On and after the sixtieth day after achieving the maximum production rate at which the affected facility will be operated, but not later than one hundred eighty (180) days after initial startup as required under 40 CFR 60.11, no owner or operator shall cause to be discharged into the atmosphere from any crusher, at which a capture system is not used, fugitive emissions which exhibit greater than fifteen percent (15%) opacity. (6-15-01)T
- d. Truck dumping of nonmetallic minerals into any screening operation, feed hopper, or crusher is exempt from the requirements of this section. (6-15-01)T
- e. If any transfer point on a conveyor belt or any other affected facility is enclosed in a building, then each enclosed affected facility must comply with the emissions limits in Subsections 792.03.a., 792.03.b. and 792.03.c., or the building enclosing the affected facility or facilities must comply with the following emission limits: (6-15-01)T
- i. No owner or operator shall cause to be discharged into the atmosphere from any building enclosing any transfer point on a conveyor belt or any other affected facility any visible fugitive emissions except emissions from a vent as defined in 40 CFR 60.671. (6-15-01)T

ii. No owner or operator shall cause to be discharged into the atmosphere from any vent of any building enclosing any transfer point on a conveyor belt or any other affected facility emissions which exceed the stack emissions limits in Subsection 792.03.a. (6-15-01)T

f. On and after the sixtieth day after achieving the maximum production rate at which the affected facility will be operated, but not later than one hundred eighty (180) days after initial startup as required under 40 CFR 60.11, no owner or operator shall cause to be discharged into the atmosphere from any baghouse that controls emissions from only an individual, enclosed storage bin, stack emissions which exhibit greater than seven percent (7%) opacity. (6-15-01)T

g. Owners or operators of multiple storage bins with combined stack emissions shall comply with the emission limits in Subsections 792.03.a.i. and 792.03.ii. of Section 792. (6-15-01)T

h. On and after the sixtieth day after achieving the maximum production rate at which the affected facility will be operated, but not later than one hundred eighty (180) days after initial startup, no owner or operator shall cause to be discharged into the atmosphere any visible emissions from: (6-15-01)T

i. Wet screening operations and subsequent screening operations, bucket elevators, and belt conveyors that process saturated material in the production line up to the next crusher, grinding mill or storage bin. (6-15-01)T

ii. Screening operations, bucket elevators, and belt conveyors in the production line downstream of wet mining operations, where such screening operations, bucket elevators, and belt conveyors process saturated materials up to the first crusher, grinding mill, or storage bin in the production line. (6-15-01)T

i. Opacity determinations for NSPS required emissions standards shall be in accordance with 40 CFR 60 as required in Subsection 625.04.c. (6-15-01)T

04. Visible Emissions Standards for Roads and Stockpiles. Visible fugitive emissions from vehicle traffic on an affected paved public roadway; vehicle traffic on, or wind erosion of, an unpaved haul road; and wind erosion of any stockpile shall not exceed twenty percent (20%) opacity for a period or periods aggregating more than three (3) minutes in any sixty (60) minute period. Opacity shall be determined using the test methods and procedures contained in Section 625. The plant is not required to have a certified opacity reader. (6-15-01)T

05. Performance Testing. Performance testing shall be conducted in accordance with all applicable requirements set forth in 40 CFR 60, Subpart OOO. A written report of the results of the performance test shall be submitted to the Environmental Protection Agency (EPA) in accordance with 40 CFR 60 and a copy submitted to the Department. If performance testing has already been conducted, test documentation shall be kept at the site of operations or at another accessible location and shall be made available to Department representatives upon request. (6-15-01)T

793. EMISSIONS STANDARDS FOR NONMETALLIC MINERAL PROCESSING PLANTS NOT SUBJECT TO 40 CFR 60, SUBPART OOO.

Owners and operators of nonmetallic mineral processing plants that are not subject to a NSPS requirement shall comply with the emissions standards set forth in Section 793. (6-15-01)T

01. Processing Plants Not Regulated by NSPS. Fixed or portable plants that commenced construction, reconstruction, or modification before August 31, 1983 are not subject to 40 CFR 60, Subpart OOO. (6-15-01)T

02. Emissions Standards for Fugitive Emissions. No owner or operator shall cause to be discharged into the atmosphere emissions which exhibit greater than twenty percent (20%) opacity from any crusher, grinding mill, screening operation, bucket elevator, belt conveyor, conveying system, transfer point, vent, capture system, storage bin, stockpile, truck dumping operation, vehicle traffic on an affected paved public roadway, vehicle traffic on or wind erosion of an unpaved haul road, or other source of fugitive emissions. Opacity shall be determined using the test methods and procedures in Section 625. The plant is not required to have a certified opacity reader. (6-15-01)T

794. PERMIT REQUIREMENTS.

No owner or operator may commence construction, modification or operation of any source at a nonmetallic mineral processing plant without first obtaining a permit or complying with Sections 795 through 799. The owner or operator shall comply with the permitting requirements of Subsection 794.01 or Subsection 794.02 and the applicable portions of Subsection 794.03 and/or Subsection 794.04. (6-15-01)T

01. Permit By Rule. Owners and operators of nonmetallic mineral processing plants that meet all of the applicable requirements set forth in Sections 795 through 799 shall be deemed to have a permit by rule (PBR) and shall not be required to obtain a permit to construct under Sections 200 through 223. (6-15-01)T

02. Permit To Construct. Owners and operators of nonmetallic mineral processing plants that do not meet all of the requirements set forth in Sections 795 through 799, or that operate or intend to operate a nonmetallic mineral processing plant at a single site of operations for more than twelve (12) consecutive months, or that choose to construct and operate under specific permit requirements rather than the provisions of the permit by rule shall obtain a permit to construct pursuant to Sections 200 through 223. An existing permit to construct shall be considered valid until the permit is modified, incorporated into a Tier II operating permit, or terminated by the Department. Existing permits to construct may be terminated by the Department by registering the source under the permit by rule provisions in accordance with Section 797 after June 15, 2001. (6-15-01)T

03. Tier I Operating Permits. Owners and operators of nonmetallic mineral processing plants that are affected facilities subject to a requirement of the New Source Performance Standards (NSPS) in 40 CFR 60 are Tier I sources as defined in Section 006. Tier I sources must comply with the applicable permitting requirements of Sections 300 through 386. Sources that are not located at major facilities may request deferral in accordance with Subsection 301.02.b.iv. and Subsection 313.01.e. (6-15-01)T

04. Tier II Operating Permits. Owners and operators of nonmetallic mineral processing plants that are required by the Department or choose to obtain a Tier II operating permit pursuant to Sections 400 through 406 shall operate in accordance with the specific provisions of the Tier II operating permit until such time as the operating permit is terminated in writing by the Department. The Department may require owners and operators of nonmetallic mineral processing plants to obtain a Tier II operating permit whenever the Department determines that: (6-15-01)T

a. Emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increment; or (6-15-01)T

b. Specific emissions standards, or requirements on operation or maintenance are necessary to ensure compliance with any applicable emission standard or rule. (6-15-01)T

795. PERMIT BY RULE REQUIREMENTS.

The purpose of Sections 795 through 799 is to establish the requirements for a permit by rule for nonmetallic mineral processing plants. (6-15-01)T

796. APPLICABILITY.

01. Permit By Rule. Owners and operators of nonmetallic mineral processing plants shall be deemed to have a permit by rule if they comply with all of the applicable provisions of Sections 795 through 799. Nothing in Sections 795 through 799 shall preclude any owner or operator from obtaining a permit. Sources that operate in a single location for more than twelve (12) consecutive months must obtain a permit to construct or a Tier II operating permit. (6-15-01)T

02. Permit Option. Owners and operators of nonmetallic mineral processing plants that hold a valid permit to construct or a Tier II operating permit must comply with the terms and conditions of the permit and are not subject to the requirements of the permit by rule in Sections 795 through 799. (6-15-01)T

797. REGISTRATION FOR PERMIT BY RULE.

01. Registration Process. Any owner or operator of a nonmetallic mineral processing plant that opts to operate under the permit by rule shall register in the following manner: (6-15-01)T

a. Any new or modified processing plant shall register fifteen (15) days prior to commencing operation or modification. The Department shall acknowledge registration in writing within fifteen (15) days. (6-15-01)T

b. Any permitted processing plant shall register with the Department and request termination of the current permit to construct or Tier II operating permit. The Department shall normally act on the request within fifteen (15) days and notify the registrant in writing. (6-15-01)T

Registration for permit by rule does not relieve the owner or operator of portable equipment from the registration and relocation requirements of Section 500. (6-15-01)T

02. Registration Information. The following information shall be provided by the registrant to the Department: (6-15-01)T

a. For all crushers and grinding mills, the registrant shall supply information on the manufacturer, crusher type (such as jaw, cone), serial number, date of manufacture, and maximum throughput capacity; (6-15-01)T

b. For all screen decks, the registrant shall supply manufacturer name, physical size of screen, number of decks, serial number, and date of manufacture; and (6-15-01)T

c. For all electrical generators, the registrant shall supply manufacturer name, rated output, and fuel. (6-15-01)T

798. ELECTRICAL GENERATORS.

The following requirements apply to all electrical generators used to provide electrical power to any nonmetallic mineral processing plant. The requirements apply to each site of operations. (6-15-01)T

01. Fuel Type. Only ASTM (American Society of Testing and Materials) Grade 1 or 2 fuel oil shall be used. The sulfur content of the fuel used shall not exceed the percentages of sulfur given in Section 728. (6-15-01)T

02. Generator Operating Requirements. For the purposes of Sections 790 through 799, the following apply to all electrical generators.

<u>Rated Output Capacities (kW)</u>	<u>Allowable Operating Hours (hr/day)</u>		<u>Allowable Operating Hours (hr/yr)</u>	
	<u>Attainment Unclassifiable Areas</u>	<u>PM-10 Nonattainment Areas</u>	<u>Attainment Unclassifiable Areas</u>	<u>PM-10 Nonattainment Areas</u>
<u>0 – 454</u>	<u>24</u>	<u>8</u>	<u>8760</u>	<u>2880</u>
<u>455 – 1000</u>	<u>24</u>	<u>24</u>	<u>8760</u>	<u>8760</u>
<u>1001 – 2000</u>	<u>24</u>	<u>24</u>	<u>5200</u>	<u>5200</u>

kW = kilowatts

hr/day = hours per day

hr/yr = hours per year

(6-15-01)T

03. Generator Opacity Limit. Visible emissions from any generator stack, vent, or other functionally equivalent opening shall not exceed twenty percent (20%) opacity for a period or periods aggregating more than three (3) minutes in any sixty (60) minute period. Opacity shall be determined using the test methods and procedures contained in Section 625. (6-15-01)T

- 04. Monitoring And Recordkeeping Requirements.** (6-15-01)T
- a. The owner or operator shall monitor and record the following information. (6-15-01)T
- i. The rated output capacity, in kilowatts (kW), of the electrical generator(s) used; (6-15-01)T
- ii. Operating hours on a monthly and annual basis so compliance can be continuously determined for the previous twelve (12) month period; and (6-15-01)T
- iii. Vendor receipts of the fuel oil purchased clearly identifying the ASTM Grade. (6-15-01)T
- b. Records of monitoring and recordkeeping requirements for current operations shall be maintained at the site of operations for the duration of operations at that location and shall be available to Department representatives upon request. Records for previous sites of operation shall be kept for the most recent two (2) year period at a location where they can be reasonably accessed and shall be made available to the Department upon request. (6-15-01)T

799. NONMETALLIC MINERAL PROCESSING PLANT FUGITIVE DUST BEST MANAGEMENT PRACTICE.

The owner or operator of a nonmetallic mineral processing plant shall use the Best Management Practices (BMP) contained in Section 799 to control the emissions of fugitive dust. Fugitive dust emissions shall be reasonably controlled as required by Sections 650 and 651. It shall be the responsibility of the owner or operator to reasonably control fugitive emissions at each site of operations but only for the duration of operations at each site under the control of the owner or operator. (6-15-01)T

01. Generally Applicable Requirements. All reasonable precautions shall be taken to prevent particulate matter from becoming airborne. The following requirements apply generally to this Fugitive Dust BMP. (6-15-01)T

a. Control strategy triggers. The owner or operator of a nonmetallic mineral processing plant shall monitor all sources of fugitive dust emissions at least once per day when operating. When fugitive dust emissions exceed any control strategy trigger specified in Subsections 799.02 through 799.06, that event shall trigger initiation of the prescribed control strategy or control strategies to control the fugitive dust emissions. (6-15-01)T

b. Control strategies. A progressive control strategy shall be used to reasonably control the emissions of fugitive dust. Progressive control strategy means that if the initial control strategy or strategies chosen do not adequately control fugitive dust emissions, the owner or operator shall employ successive control strategies as listed until fugitive dust control is achieved. Fugitive dust control shall be applied on a frequency such that visible emissions do not exceed any emission standard specified in Sections 790 through 799. (6-15-01)T

c. Monitoring and recordkeeping. The owner or operator shall maintain a record of each event where a control strategy is triggered. The trigger shall be recorded with a summary of the control strategy employed. If the trigger is a citizen complaint, the owner or operator shall record the complaint, an evaluation of whether the complaint has merit, and a summary of the corrective action taken. The record shall be maintained on forms provided by the Department or other forms that contain similar information. Records for current operations shall be maintained at the site of operations for the duration of operations at that location and shall be available to Department representatives upon request. Records for previous sites of operation shall be kept for the most recent two (2) year period at a location where they can be reasonably accessed and shall be made available to the Department upon request. (6-15-01)T

02. Requirements For Paved Public Roadways. (6-15-01)T

a. Definitions. (6-15-01)T

i. Paved public roadway. A paved public roadway means a roadway accessible to the general public having a surface of asphalt or concrete. (6-15-01)T

ii. Track-out. Track-out means the deposition of mud, dirt, or similar debris onto the surface of a paved public roadway from the tires and/or undercarriage of any vehicle associated with the operation of a nonmetallic mineral processing plant. (6-15-01)T

b. Control strategy triggers. Triggers that require initiation of a strategy or strategies to control fugitive dust emissions from track-out include, but are not limited to: (6-15-01)T

i. Visible deposition of mud, dirt, or similar debris on the surface of a paved public roadway. (6-15-01)T

ii. Visible fugitive emissions from vehicle traffic on an affected paved public roadway that approach twenty percent (20%) opacity for a period or periods aggregating more than one (1) minute in any sixty (60) minute period. (6-15-01)T

iii. Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. (6-15-01)T

c. Control strategies. The following are control strategies for track-out. (6-15-01)T

i. Prompt removal of mud, dirt, or similar debris from the affected surface of a paved public roadway. (6-15-01)T

ii. Water flush, and/or water flush and vacuum sweep, the affected surface of the paved public roadway. Runoff shall be controlled so it does not saturate the surface of the adjacent unpaved haul road such that track-out is enhanced. If runoff is not, or cannot be controlled, gravel shall be applied to the surface of the adjacent unpaved haul road over an area sufficient to control track-out. (6-15-01)T

iii. Apply gravel to the surface of the adjacent unpaved haul road. The area of application shall be sufficient to control track-out. (6-15-01)T

iv. Apply an environmentally safe chemical soil stabilizer or chemical dust suppressant to the surface of the adjacent unpaved haul road. The area of application shall be sufficient to control track-out. (6-15-01)T

v. Other control strategy or strategies as approved by the Department. (6-15-01)T

03. Requirements For Unpaved Haul Roads. (6-15-01)T

a. Definition of "unpaved haul roads". Any unsurfaced roadway within the physical boundary of a nonmetallic mineral processing facility that is used as a haul road, access road, or similar. (6-15-01)T

b. Control strategy triggers. Triggers that require initiation of a strategy or strategies to control fugitive dust emissions from unpaved haul roads include, but are not limited to: (6-15-01)T

i. Visible fugitive emissions from vehicle traffic on an affected paved public roadway that approach twenty percent (20%) opacity for a period or periods aggregating more than one (1) minute in any sixty (60) minute period. (6-15-01)T

ii. Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. (6-15-01)T

c. Control strategies. The following are control strategies for fugitive dust emissions from unpaved

- haul roads. (6-15-01)T
- i. Limit vehicle traffic on unpaved haul roads. (6-15-01)T
 - ii. Limit vehicle speeds on unpaved haul roads. If a speed limit is imposed, signs shall be posted along the haul road route and clearly indicate the speed limit. Signs shall be placed so they are visible to vehicles entering and leaving the site of operations. (6-15-01)T
 - iii. Apply water to the surface of the unpaved haul road. Runoff shall be controlled so it does not saturate the surface of the unpaved haul road such that it causes track-out. If runoff is not, or cannot be controlled, gravel shall be applied to the surface of the unpaved haul road over an area sufficient to control track-out. (6-15-01)T
 - iv. Apply gravel to the surface of the unpaved haul road. (6-15-01)T
 - v. Apply an environmentally safe chemical soil stabilizer or chemical dust suppressant to the surface of the unpaved haul road. (6-15-01)T
 - vi. Other control strategy or strategies as approved by the Department. (6-15-01)T
- 04. Requirements For Transfer Points, Screening Operations, And Stacks And Vents.** (6-15-01)T
- a. Definitions. (6-15-01)T
 - i. Transfer point. Transfer point means a point in a conveying operation where the nonmetallic mineral is transferred to or from a belt conveyor except where the nonmetallic mineral is being transferred to a stockpile. (6-15-01)T
 - ii. Belt conveyor. Belt conveyor means a conveying device that transports material from one (1) location to another by means of an endless belt that is carried on a series of idlers and routed around a pulley at each end. (6-15-01)T
 - iii. Conveying system. Conveying system means a device for transporting materials from one (1) piece of equipment or location to another location within a plant. Conveying systems include but are not limited to the following: feeders, belt conveyors, bucket elevators and pneumatic systems. (6-15-01)T
 - iv. Bucket elevator. Bucket elevator means a conveying device of nonmetallic minerals consisting of a head and foot assembly which supports and drives an endless single or double strand chain or belt to which buckets are attached. (6-15-01)T
 - v. Screening operation. Screening operation means a device for separating material according to size by passing undersize material through one (1) or more mesh surfaces (screens) in series, and retaining oversize material on the mesh surfaces (screens). (6-15-01)T
 - vi. Capture system. Capture system means the equipment (including enclosures, hoods, ducts, fans, dampers, etc.) used to capture and transport particulate matter generated by one (1) or more process operations to a control device. (6-15-01)T
 - vii. Control device. Control device means the air pollution control equipment used to reduce particulate matter emissions released to the atmosphere from one (1) or more process operations at a nonmetallic mineral processing plant. (6-15-01)T
 - viii. Vent. Vent means an opening through which there is mechanically induced air flow for the purpose of exhausting from a building air carrying particulate matter emissions from one (1) or more affected facilities. (6-15-01)T
 - b. Control strategy triggers. Triggers that require initiation of a strategy or strategies to control fugitive dust emissions from transfer points, belt conveyors, bucket elevators, screening operations, conveying

systems, capture systems, and building vents include, but are not limited to, the following: (6-15-01)T

i. NSPS regulated processing plants. (6-15-01)T

(1) Opacity greater than ten percent (10%) from any transfer point on a belt conveyor, conveying system, bucket elevator, or screening operation. (6-15-01)T

(2) For any transfer point on a belt conveyor, conveying system, bucket elevator, or screening operation located within a building, opacity greater than seven percent (7%) from any building vent. (6-15-01)T

(3) Opacity greater than seven percent (7%) from any capture system stack. (6-15-01)T

(4) Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. (6-15-01)T

ii. Processing plants not regulated by NSPS. (6-15-01)T

(1) Opacity greater than twenty percent (20%) from any transfer point on a belt conveyor, conveying system, bucket elevator, or screening operation. (6-15-01)T

(2) For any transfer point on a belt conveyor, conveying system, bucket elevator, or screening operation located within a building, opacity greater than twenty percent (20%) from any building vent. (6-15-01)T

(3) Opacity greater than twenty percent (20%) from any capture system stack. (6-15-01)T

(4) Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. (6-15-01)T

c. Control Strategies. The following are control strategies for transfer points, belt conveyors, bucket elevators, screening operations, conveying systems, capture systems, and building vents. Controls shall be applied on a frequency such that visible fugitive emissions do not exceed any applicable opacity limit. (6-15-01)T

i. Limit drop heights of materials such that there is a homogeneous flow of material. (6-15-01)T

ii. Install, operate, and maintain water spray bars to control fugitive dust emissions at transfer points on belt conveyors, conveying systems, bucket elevators, and screening operations as necessary. (6-15-01)T

iii. Other control strategy or strategies as approved by the Department. (6-15-01)T

05. Requirements For Crushers And Grinding Mills. (6-15-01)T

a. Definitions. (6-15-01)T

i. Crusher. Crusher means a machine used to crush any nonmetallic mineral, and includes, but is not limited to, the following types: jaw, gyratory, cone, roll, rod mill, hammermill, and impactor. (6-15-01)T

ii. Grinding mill. Grinding mill means a machine used for the wet or dry fine crushing of any nonmetallic mineral. Grinding mills include, but are not limited to, the following types: hammer, roller, rod, pebble and ball, and fluid energy. The grinding mill includes the air conveying system, air separator, or air classifier, where such systems are used. (6-15-01)T

iii. Initial crusher. Initial crusher means any crusher into which nonmetallic minerals can be fed without prior crushing in the plant. (6-15-01)T

b. Control strategy triggers. Triggers that require initiation of a strategy or strategies to control fugitive dust emissions from any crusher, grinding mill, building vent, or capture system stack include, but are not limited to, the following. (6-15-01)T

i. NSPS regulated processing plants. (6-15-01)T

(1) Opacity greater than fifteen percent (15%) from any crusher or grinding mill at which capture system is not used. (6-15-01)T

(2) For any crusher or grinding mill located within a building, opacity greater than seven percent (7%) from any building vent. (6-15-01)T

(3) Opacity greater than seven percent (7%) from any capture system stack. (6-15-01)T

(4) Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. (6-15-01)T

ii. Processing plants not regulated by NSPS. (6-15-01)T

(1) Opacity greater than twenty percent (20%) from any crusher or grinding mill at which capture system is not used. (6-15-01)T

(2) For any crusher or grinding mill located within a building, opacity greater than twenty percent (20%) from any building vent. (6-15-01)T

(3) Opacity greater than twenty percent (20%) from any capture system stack. (6-15-01)T

(4) Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. (6-15-01)T

c. Control strategies. The following are control strategies for any crusher, grinding mill, building vent, or capture system stack. Controls shall be applied on a frequency such that visible fugitive emissions do not exceed any applicable opacity limit. (6-15-01)T

i. Limit drop heights of materials such that there is a homogeneous flow of material. (6-15-01)T

ii. Install, operate, and maintain water spray bars to control fugitive dust emissions at crusher drop points as necessary. (6-15-01)T

iii. Other control strategy or strategies as approved by the Department. (6-15-01)T

06. Requirements For Stockpiles. (6-15-01)T

a. Definitions. (6-15-01)T

i. Stockpile. Stockpile means any nonmetallic mineral storage pile, reserve supply, or similar. Nonmetallic minerals shall have the meaning given in 40 CFR Part 60, Subpart OOO. Nonmetallic minerals may be stockpiled by belt conveyor, truck dumping, or similar. (6-15-01)T

ii. Truck dumping. Truck dumping means the unloading of nonmetallic minerals from movable vehicles designed to transport nonmetallic minerals from one (1) location to another. Movable vehicles include but are not limited to: trucks, front-end loaders, skip hoists, and railcars. (6-15-01)T

b. Control strategy triggers. Triggers that require immediate initiation of a strategy or strategies to control fugitive dust emissions from stockpiles include, but are not limited to: (6-15-01)T

i. Visible fugitive emissions from wind erosion of any stockpile that approaches twenty percent (20%) opacity for a period or periods aggregating more than one (1) minute in any sixty (60) minute period. (6-15-01)T

ii. Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. (6-15-01)T

c. Control strategies. The following are control strategies for stockpiles. (6-15-01)T

i. Limit the height of the stockpiles. (6-15-01)T

ii. Limit the disturbance of the stockpiles. (6-15-01)T

iii. Apply water onto the surface of the stockpile. (6-15-01)T

iv. Other control strategy or strategies as approved by the Department. (6-15-01)T

800. -- 804. (RESERVED).

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0101

NOTICE OF PROPOSED RULEMAKING

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:

September 5, 2001, 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 Air Pollution Emergency Rule, found at Sections 550 through 562 of the Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01, is a required part of the State Implementation Plan adopted by the Department of Environmental Quality (DEQ) under the federal Clean Air Act. The purpose of the Air Pollution Emergency Rule is to provide a mechanism for the State to respond to and provide notice of unhealthful levels of various criteria pollutants. The rule has four stages corresponding to increasing levels of pollutants. Each of the four stages has progressively more stringent response requirements.

This rulemaking has resulted from DEQ concerns about potentially unhealthful levels of ambient particulates (PM-2.5 and PM-10) during smoke-related events. The purpose of this proposed rule is to add specific particulate action levels and criteria to Stage 1 of the Air Pollution Emergency Rule based on both 24-hour and one-hour averaging times. Although the authority already exists to declare a Stage 1 at the levels set forth, putting the numerical criteria in the rule provides (1) some predictability to those who open burn and (2) notification and relief to those who suffer from smoke related health problems. The rule is applicable where high atmospheric particulate loading combined with atmospheric stagnation threaten the public health. Under the rule where Stage 1 levels are imminent, a temporary ban on new ignition of open burning will be called by the Director of DEQ. The Director may require, if practicable, or in an emergency situation, the cessation of any open burning. The levels set by the rule are not enforceable ambient standards. The levels are instead focused on appropriate notice and response in emergency situations where human health is threatened because of rising atmospheric particulate loading and inadequate dispersion and ventilation. This rulemaking should be of interest to anyone who engages in open burning and those considered to be members of a sensitive sub-population such as the elderly and those with heart or lung disease.

In November 2000, the Board of Environmental Quality adopted a temporary rule to revise the Air Pollution Emergency Rule. The temporary rule has been in effect since that time. In January 2001, negotiated rulemaking was initiated using the temporary rule as the preliminary draft of the negotiated rule. This proposed rule is the product of public input received by DEQ during the negotiations. The language DEQ proposes for final adoption has been prepared in legislative format. Proposed additions are underlined; proposed deletions have been struck out. It is these additions and deletions to which public comment should be addressed. The portion of the proposed rule text resulting from the negotiations has been italicized. DEQ is specifically seeking public comment on the appropriateness of the one and 24 hour PM-2.5 action levels in this proposed rule, but will accept comments on the proposed changes as a whole.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2001 for adoption of a pending and temporary rule. The pending rule is expected to be final and effective upon the conclusion of the 2002 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during a series of five negotiated rulemaking meetings held throughout Idaho and conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812 -815. The meetings were open to the public. Participants in the negotiation included industry and government representatives. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 01-1, January 3, 2001, pages 272 through 273.

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.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact Tim Teater (208)373-0502, 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 7, 2001.

Dated this 25th day of June, 2001.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
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Pursuant to Section 67-5221(1), Idaho Code, this docket is being published as a Proposed Rule.

**This docket has been previously published as a Temporary Rule.
The temporary effective date is November 10, 2000.**

There are substantive changes from the Temporary Rule text.

[The original text of the Temporary Rule was published in the Idaho Administrative Bulletin, Volume 01-1, January 3, 2001, pages 274 through 279.](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-0101

552. STAGES.

The Department has defined four (4) stages of atmospheric stagnation and/or degraded air quality. (5-1-94)

01. Stage 1 - Air Pollution Forecast And Caution. An internal watch by the Department shall be actuated by a National Weather Service report that an Atmospheric Stagnation Advisory has been issued, or the equivalent local forecast of stagnant atmospheric conditions. (~~5-1-94~~)()

02. Stage 2 - Alert. This is the first stage at which air pollution control actions by industrial sources are to begin. (5-1-94)

03. Stage 3 - Warning. The warning stage indicates that air quality is further degraded and that control actions are necessary to maintain or improve air quality. (5-1-94)

04. **Stage 4 - Emergency.** The emergency stage indicates that air quality has degraded to a level that will substantially endanger the public health and that the most stringent control actions are necessary. (5-1-94)

553. **EFFECT OF STAGES.**

Once an episode stage is reached or the Department determines that reaching a particular stage is imminent, emergency action corresponding to that stage will remain in effect until air quality measurements indicate that another stage (either lower or higher) has been attained or the Department determines that reaching another stage (either lower or higher) is imminent. At such time, actions corresponding to the next stage will go into effect. This procedure will continue until the episode is terminated. The air quality criteria used to define each of the episode stages for carbon monoxide, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide are specified in Section 556. The levels will be determined by the Department through its analysis of meteorological and ambient air quality monitoring data. (4-5-00)()

(BREAK IN CONTINUITY OF SECTIONS)

556. **CRITERIA FOR DEFINING LEVELS WITHIN STAGES.**

The air quality criteria defining each of these levels for carbon monoxide (CO), nitrogen dioxide (NO₂), ozone (O₃), particles with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers (PM-10), particles with an aerodynamic diameter less than or equal to a nominal two point five (2.5) micrometers (PM-2.5), and sulfur dioxide (SO₂) are: (4-5-00)()

01. **Stage 1 - Forecast And Caution.** ~~None.~~ A Stage 1 Forecast and Caution shall be declared by the Department when particulate concentrations reach, or are forecasted to reach, and continue, at or above the levels listed below. The Department may call a Stage 1 Forecast and Caution, if it determines, after evaluating the pertinent meteorology and weather conditions and source parameters such as source type, strength, location and projected duration, that a Stage 1 Forecast and Caution is required to protect the public health. (5-1-94)()

<u>CO</u>	<u>NA</u>
<u>NO₂</u>	<u>NA</u>
<u>O₃</u>	<u>NA</u>
<u>SO₂</u>	<u>NA</u>
<u>PM-2.5</u>	<u>80 ug/m3 1 hour average</u>
<u>PM-2.5</u>	<u>50 ug/m3 24 hour average</u>
<u>PM-10</u>	<u>385 ug/m3 1 hour average</u>
<u>PM-10</u>	<u>150 mg/m3 24 hour average</u>

()

02. **Stage 2 - Alert.**

CO - 17 mg/m3 (15 ppm)	8-hour average
NO ₂ - 1130 ug/m3 (0.6 ppm)	1-hour average
- 282 ug/m3 (0.15 ppm)	24-hour average
O ₃ - 400 ug/m3 (0.2 ppm)	1-hour average
PM-10 - 350 ug/m3	24-hour average

SO ₂ - 800 ug/m ³ (0.3 ppm)	24-hour average
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(4-5-00)

03. Stage 3 - Warning.

CO - 34 mg/m ³ (30 ppm)	8-hour average
NO ₂ - 2260 ug/m ³ (1.2 ppm),	1-hour average
- 565 ug/m ³ (0.3 ppm)	24-hour average
O ₃ - 800 ug/m ³ (0.4 ppm)	1-hour average
PM-10 - 420 ug/m ³	24-hour average
SO ₂ - 1600 ug/m ³ (0.6 ppm)	24-hour average

(4-5-00)

04. Stage 4 - Emergency.

CO - 46 mg/m ³ (40 ppm)	8-hour average
NO ₂ - 3000 ug/m ³ (1.6 ppm)	1-hour average
- 750 ug/m ³ (0.4 ppm)	24-hour average
O ₃ - 1000 ug/m ³ (0.5 ppm)	1-hour average
PM-10 - 500 ug/m ³	24-hour average
SO ₂ - 2100 ug/m ³ (0.8 ppm)	24-hour average

(4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

558. INFORMATION TO BE GIVEN.

01. Information To Be Given. On the basis of degrading air quality as determined by the Director, and the criteria for emergency episode stages as shown in Section 556, the Director will utilize appropriate ~~news~~ media and techniques including, but not limited to, print, electronic and internet, to insure that the following information is announced to the public, affected government, and commercial, industrial institutional and agricultural entities as practicable: (5-1-94)()

- a. Definition of the extent of the problem; (5-1-94)
- b. Indication of the action taken by the Director; (5-1-94)
- c. Air pollution forecast for next few days; (5-1-94)
- d. Notice of when the next statement from the Department will be issued; (5-1-94)
- e. Listing of all general procedures which the public, commercial, institutional and industrial sectors are required to follow; (5-1-94)

- f. Specific warnings and advice to those persons who because of acute or chronic health problems, may be most susceptible to the effects of the episode. (5-1-94)()
- g. Location and description of the affected area. ()

(BREAK IN CONTINUITY OF SECTIONS)

561. GENERAL RULES.

All persons in the designated stricken area shall be governed by the following rules for each emergency episode stage. The Director may waive one (1) or more of the required measures at each episode stage if, on the basis of information available to him, he judges that a measure is an inappropriate response to the specific episode conditions which then exist. (5-1-94)

01. Stage 1 - Air Pollution Forecast And Caution. There shall be no new ignition of open burning of any kind. The Director may require, if practicable, or in an emergency situation, the cessation of any open burning. (5-1-94)()

02. Stage 2 - Alert. (5-1-94)

- a. There shall be no open burning of any kind. (5-1-94)
- b. The use of ~~wigwan~~ burners and incinerators for the disposal of any form of solid waste shall be prohibited. (5-1-94)()
- c. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of 12:00 pm (noon) and 4:00 p.m. (5-1-94)
- d. Commercial, industrial and institutional facilities utilizing coal or residual fuel oil are required to switch to natural gas or distillate oil if available. (5-1-94)

03. Stage 3 - Warning. (5-1-94)

- a. There shall be no open burning of any kind. (5-1-94)
- b. The use of ~~wigwan~~ burners and incinerators for the disposal of any form of solid waste or liquid waste shall be prohibited. (5-1-94)()
- c. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of 12:00 pm (noon) and 4:00 p.m. (5-1-94)
- d. Commercial, industrial and institutional facilities utilizing coal or residual fuel are required to either:
- i. Switch completely to natural gas or distillate oil; or (5-1-94)
- ii. If these low sulfur fuels are not available, curtail the use of existing fuels to the extent possible without causing injury to persons or damage to equipment. (5-1-94)

04. Stage 4 - Emergency. This will be called only with specific concurrence of Governor. (5-1-94)

- a. There shall be no open burning of any kind. (5-1-94)
- b. The use of ~~wigwan~~ burners and incinerators for the disposal of any form of solid or liquid waste

- shall be prohibited. ~~(5-1-94)~~()
- c. All places of employment described below shall immediately cease operations: (5-1-94)
 - i. All mining and quarrying operations; (5-1-94)
 - ii. All construction work except that which must proceed to avoid injury to persons; (5-1-94)
 - iii. All manufacturing establishments except those required to have in force an air pollution emergency plan; (5-1-94)
 - iv. All wholesale trade establishments, i.e. places of business primarily engaged in selling merchandise to retailers or industrial, commercial, institutional or professional users, or to other wholesalers, or acting as agents in buying merchandise for or selling merchandise to such persons or companies except those engaged in the distribution of drugs, surgical supplies and food; (5-1-94)
 - v. All offices of local, county and State government including authorities, joint meetings, and other public bodies excepting such agencies which are determined by the chief administrative officer of local, county, or State government authorities, joint meetings and other public bodies to be vital for public safety and welfare and the enforcement of the provisions of this order; (5-1-94)
 - vi. All retail trade establishments except pharmacies, surgical supply distributors, and stores primarily engaged in the sale of food; (5-1-94)
 - vii. Banks, credit agencies other than banks, securities and commodities brokers, dealers, exchanges and services; offices of insurance carriers, agents and brokers, real estate offices; (5-1-94)
 - viii. Wholesale and retail laundries, laundry services and cleaning and dyeing establishments; photographic studios; beauty shops, barber shops, shoe repair shops; (5-1-94)
 - ix. Advertising offices, consumer credit reporting, adjustment and collection agencies; duplicating, addressing, blueprinting; photocopying, mailing, mailing list and stenographic services; equipment rental services, commercial testing laboratories; (5-1-94)
 - x. Automobile repair, automobile services, garages except those located adjacent to state or interstate highways; (5-1-94)
 - xi. Establishments rendering amusement and recreational services including motion picture theaters; (5-1-94)
 - xii. Elementary and secondary schools, colleges, universities, professional schools, junior colleges, vocational schools, and public and private libraries. (5-1-94)
- d. All commercial and manufacturing establishments not included in this order will institute such actions as will result in maximum reduction of regulated air pollutant(s) from their operation by ceasing, curtailing, or postponing operations which emit regulated air pollutants to the extent possible without causing injury to persons or damage to equipment. These actions include limiting boiler lancing or soot blowing operations for fuel burning equipment to between the hours of 12:00 pm (noon) and 4:00 p.m. (4-5-00)
- e. When the emergency episode is declared for carbon monoxide, the use of motor vehicles is prohibited except in emergencies or with the approval of local or state police or the Department. (5-1-94)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0101

NOTICE OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code. In addition, this rulemaking is in response to a federally originated and mandated TMDL schedule.

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rulemaking will be held as follows:

August 14, 2001, 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 intends to make a brief presentation and 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 rulemaking is to make the following changes to IDAPA 58.01.02, Water Quality Standards and Wastewater Treatment Requirements (Water Quality Standards):

This rule would establish or revise use designations for several tributaries to the lower Boise River, and for Bucktail Creek, a small stream located in the Salmon River basin. Where attainable, all state waters are to be protected for at least an aquatic life use and a recreational use. These use designations in turn determine which water quality criteria apply for such things as temperature or dissolved oxygen. Based upon analyses of attainable uses, new or revised use designations are proposed. The use designations in turn affect plans to reduce pollution, called total maximum daily load (TMDL) plans, or "Superfund" cleanup work.

To better reflect reasonably attainable conditions, several use designations are proposed for tributaries to the lower Boise River which have been modified as irrigation conveyances or drains. Indian Creek Reservoir is a shallow agricultural supply reservoir stocked by IDFG with warm water fish species; it is proposed for warm water aquatic life use. Other segments of Indian Creek, Five Mile, and Ten Mile Creek are proposed for seasonal cold water aquatic life, where either a mix of cold and coolwater species may be present, or coldwater species such as trout may be seasonally absent. Another portion of Indian Creek, and portions of Mason Creek and Sand Hollow Creek are proposed for modified aquatic life use designations because of the significant hydrologic modifications to convey irrigation waters through these channels. All are proposed for recreational use designations, except for Five and Ten Mile Creek. Because DEQ understands that Five and Ten Mile Creeks are operated as agricultural drains, and that the applicable irrigation districts do not allow recreational use of the drains, no recreational uses are proposed for these waters.

Bucktail Creek is located about 40 miles west of Salmon, Idaho. It is a tiny lifeless water body consisting mostly of drainage from the Blackbird Mine. Engineering studies and cleanup projects have greatly reduced contamination and are resulting in substantial improvement in water quality downstream of Bucktail Creek. However, it appears infeasible to attain aquatic life uses in Buckskin itself. It is proposed for designation without aquatic life uses.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2001 for adoption of pending and temporary rules. These rules are proposed for temporary adoption to avoid conflict with a judicially approved schedule. The target effective date for the temporary rule is December 1, 2001. The pending rule is expected to be final and effective upon the conclusion of the 2002 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: Due to time constraints, formal rulemaking negotiations were not held. Informal discussions through the applicable watershed advisory group were held.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rule, contact Chris Mebane at (208)373-0502 or cmebane@deq.state.id.us.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 24, 2001.

DATED this 25th day of June, 2001.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-0101

130. SALMON BASIN.

Surface waters found within the Salmon basin total twelve (12) subbasins and are designated as follows: (4-5-00)

THERE ARE NO CHANGES TO SUBSECTIONS 130.01 THROUGH 130.04.

05. Middle Salmon-Panther Subbasin. The Middle Salmon-Panther Subbasin, HUC 17060203, is comprised of eighty-eight (88) water body units.

05. **Middle Salmon-Panther Subbasin.** The Middle Salmon-Panther Subbasin, HUC 17060203, is comprised of eighty-eight (88) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
S-1	Salmon River - Panther Creek to Middle Fork Salmon River	COLD SS	PCR	DWS SRW
S-2	Panther Creek - Big Deer Creek to mouth	COLD SS	SCR	
S-3	Garden Creek - source to mouth			
S-4	Clear Creek - source to mouth			
S-5	Big Deer Creek - South Fork Big Deer Creek to mouth			
S-6	Big Deer Creek - source to South Fork Big Deer Creek			
S-7	South Fork Big Deer Creek - Bucktail Creek to mouth			

Unit	Waters	Aquatic Life	Recreation	Other
S-8	South Fork Big Deer Creek -source to Bucktail Creek			
S-9	Bucktail Creek - source to mouth	<u>NONE</u>	<u>NONE</u>	
S-10	Panther Creek - Napias Creek to Big Deer Creek	COLD SS	SCR	
S-11	Panther Creek - Blackbird Creek to Napias Creek	COLD SS	SCR	
S-12a	Blackbird Creek - source to Blackbird Reservoir Dam	COLD SS	SCR	
S-12b	Blackbird Creek - Blackbird Reservoir Dam to mouth	NONE	SCR	
S-13a	West Fork Blackbird Creek - source to concrete channel	COLD SS	SCR	
S-13b	West Fork Blackbird Creek - concrete channel to mouth only	NONE	SCR	
S-14	Panther Creek - Porphyry Creek to Blackbird Creek	COLD SS	PCR	DWS SRW
S-15	Musgrove Creek - source to mouth			
S-16	Porphyry Creek - source to mouth			
S-17	Panther Creek - source to Porphyry Creek	COLD SS	PCR	DWS SRW
S-18	Moyer Creek - source to mouth			
S-19	Woodtick Creek - source to mouth			
S-20	Deep Creek - Little Deep Creek to mouth			
S-21	Little Deep Creek - source to mouth			
S-22	Deep Creek - source to Little Deep Creek			
S-23	Napias Creek - Moccasin Creek to mouth			
S-24	Napias Creek - Arnett Creek to and including Moccasin Creek			
S-25	Napias Creek - source to Arnett Creek			
S-26	Arnett Creek - source to mouth			
S-27	Trail Creek - source to mouth			
S-28	Beaver Creek - source to mouth			
S-29	Salmon River - Indian Creek to Panther Creek	COLD SS	PCR	DWS SRW
S-30	Pine Creek - source to mouth			
S-31	East Boulder Creek - source to mouth			
S-32	Salmon River - North Fork Sheep Creek to Indian Creek	COLD SS	PCR	DWS SRW
S-33	Moose Creek - Little Moose Creek to mouth			
S-34	Little Moose Creek - source to mouth			

Unit	Waters	Aquatic Life	Recreation	Other
S-35	Moose Creek - Dolly Creek to Little Moose Creek			
S-36	Moose Creek - source to Dolly Creek			
S-37	Dolly Creek - source to mouth			
S-38	Dump Creek - Moose Creek to mouth			
S-39	Salmon River - Carmen Creek to North Fork Salmon River	COLD SS	PCR	DWS SRW
S-40	Wallace Creek - source to mouth			
S-41	Salmon River - Pollard Creek to Carmen Creek	COLD SS	PCR	DWS SRW
S-42	Salmon River - Williams Creek to Pollard Creek	COLD SS	PCR	DWS SRW
S-43	Williams Creek - confluence of North and South Fork Williams Creek to mouth			
S-44	North Fork Williams Creek - source to mouth			
S-45	South Fork Williams Creek - source to mouth			
S-46	Salmon River - Twelvemile Creek to Williams Creek	COLD SS	PCR	DWS SRW
S-47	Salmon River - Iron Creek to Twelvemile Creek	COLD SS	PCR	DWS SRW
S-48	Iron Creek - North Fork Iron Creek to mouth			
S-49	North Fork Iron Creek - source to mouth			
S-50	Iron Creek - source to North Fork Iron Creek			
S-51	West Fork Iron Creek - source to mouth			
S-52	South Fork Iron Creek - source to mouth			
S-53	Salmon River - Pahsimeroi River to Iron Creek	COLD SS	PCR	DWS SRW
S-54	Hot Creek - source to mouth			
S-55	Cow Creek - source to mouth			
S-56	Allison Creek - source to mouth			
S-57	McKim Creek - source to mouth			
S-58	Poison Creek - source to mouth			
S-59	Warm Springs Creek - source to mouth			
S-60	Twelvemile Creek - source to mouth			
S-61	Carmen Creek - Freeman Creek to mouth			
S-62	Freeman Creek - source to mouth			
S-63	Carmen Creek - source to Freeman Creek			

Unit	Waters	Aquatic Life	Recreation	Other
S-64	Tower Creek - source to mouth			
S-65	Fourth of July Creek - Little Fourth of July Creek to mouth			
S-66	Fourth of July Creek - source to Little Fourth of July Creek			
S-67	Little Fourth of July Creek - source to mouth			
S-68	North Fork Salmon River - Hughes Creek to mouth	COLD SS	PCR	DWS SRW
S-69	Big Silverlead Creek - source to mouth			
S-70	North Fork Salmon River - Sheep Creek to Hughes Creek	COLD SS	PCR	DWS SRW
S-71	Sheep Creek - source to mouth			
S-72	North Fork Salmon River - Dahlonge Creek to Sheep Creek	COLD SS	PCR	DWS SRW
S-73	Dahlonge Creek - Nez Perce Creek to mouth			
S-74	Dahlonge Creek - source to Nez Perce Creek			
S-75	Nez Perce Creek - source to mouth			
S-76	Anderson Creek - source to mouth			
S-77	North Fork Salmon River - Twin Creek to Dahlonge Creek	COLD SS	PCR	DWS SRW
S-78	North Fork Salmon River - source to Twin Creek	COLD SS	PCR	DWS SRW
S-79	Pierce Creek - source to mouth			
S-80	Twin Creek - source to mouth			
S-81	Hughes Creek - source to mouth			
S-82	Hull Creek - source to mouth			
S-83	Indian Creek - source to mouth			
S-84	Squaw Creek - source to mouth			
S-85	Spring Creek - source to mouth			
S-86	Boulder Creek - source to mouth			
S-87	Owl Creek - East Fork Owl Creek to mouth			
S-88	East Fork Owl Creek - source to mouth			
S-89	Owl Creek - source to East Fork Owl Creek			
S-90	Colson Creek - source to mouth			

(3-30-01)()

(BREAK IN CONTINUITY OF SECTIONS)

140. SOUTHWEST IDAHO BASIN.

Surface waters found within the Southwest basin total nineteen (19) subbasins and are designated as follows:

(4-5-00)

THERE ARE NO CHANGES TO SUBSECTIONS 140.01 THROUGH 140.11.

12. Lower Boise Subbasin. The Lower Boise Subbasin, HUC 17050114, is comprised of seventeen (17) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
SW-1	Boise River- Indian Creek to mouth	COLD	PCR	
SW-2	Indian Creek - Sugar Ave. (T03N, R02W, Sec. 15) to mouth	COLD	SCR	
<u>SW-3a</u>	<u>Split between New York Canal and historic creek bed to Sugar Ave. (T03N, R02W, Sec. 15)</u>	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
<u>SW-3b</u>	<u>Indian Creek Reservoir to split between New York Canal and historic creek bed</u>	<u>MOD</u>	<u>SCR</u>	
<u>SW-3c</u>	<u>Indian Creek Reservoir</u>	<u>WARM</u>	<u>PCR</u>	
<u>SW-3d</u>	<u>Indian Creek - source to Sugar Ave. (T03N, R02W, Sec. 15) Indian Creek Reservoir</u>	COLD <u>SS SC</u>	PCR <u>SCR</u>	
SW-4	Lake Lowell	WARM	PCR	SRW
SW-5	Boise River - river mile 50 (T04N, R02W, Sec. 32) to Indian Creek	COLD SS	PCR	
SW-6	Mason Creek - source <u>New York Canal</u> to mouth	<u>MOD</u>	<u>SCR</u>	
SW-7	Fifteenmile Creek - Miller Canal to mouth			
SW-8	Tenmile Creek - Blacks Creek Reservoir Dam to Miller Canal	COLD <u>SC</u>	SCR <u>NONE</u>	
SW-9	Blacks Creek - source to and including Blacks Creek Reservoir			
SW-10	Fivemile Creek - source to Miller Canal	COLD <u>SC</u>	SCR <u>NONE</u>	
SW-11a	Boise River - Diversion Dam to river mile 50 (T04N, R02W, Sec. 32)	COLD SS	PCR	DWS SRW
SW-11b	Boise River - Lucky Peak Dam to Diversion Dam	COLD	PCR	DWS SRW
SW-12	Stewart Gulch, Cottonwood and Crane Creeks -source to mouth			
SW-13	Dry Creek - source to mouth			
SW-14	Big/Little Gulch Creek complex			
SW-15	Willow Creek - source to mouth			
SW-16	Langley/Graveyard Gulch complex			
SW-17	Sand Hollow Creek - source to mouth	<u>MOD</u>	<u>SCR</u>	

(4-5-00)()

(BREAK IN CONTINUITY OF SECTIONS)

278. ~~LOWER BOISE RIVER SUBBASIN, HUC 17050114 SUBSECTION 150.12--SW-1 AND SW-5--
SALMONID SPAWNING AND DISSOLVED OXYGEN.~~

01. Boise River, SW-1 And SW-5 – Salmonid Spawning And Dissolved Oxygen. The waters of the Boise River from Veterans State Park to its mouth will have dissolved oxygen concentrations of six (6) mg/l or seventy-five percent (75%) of saturation, whichever is greater, during the spawning period of salmonid fishes inhabiting those waters. (7-1-93)(____)

02. Indian Creek, SW-3b, Mason Creek, SW-6, And Sand Hollow Creek, SW-17 - Modified Aquatic Life Use. All numeric criteria applicable to the seasonal cold water aquatic life use apply with the exception of dissolved oxygen. Dissolved oxygen concentrations are to exceed four (4) mg/l at all times. (____)

03. Tenmile Creek, SW-8, And Five Mile Creek, SW-10 - Seasonal Cold Aquatic Life Use And Agricultural Water Supply. To protect aquatic life communities that have become established incidentally to agricultural conveyances, and would not exist but for the operation of agricultural conveyances, all numeric criteria listed in Subsection 250.03 for the seasonal cold water aquatic life use apply. For the protection of irrigation maintenance personnel from the potential ingestion of raw water while operating the agricultural water supplies and maintaining the canal structures, bacteria criteria values given in Subsection 251.02 apply. (____)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS
DOCKET NO. 58-0102-0102
NOTICE OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this proposed rulemaking will be held as follows:

August 14, 2001, 7:00 p.m.
Department of Environmental Quality Conference Center
1410 N. Hilton, Boise, Idaho.

August 16, 2001, 7:00 p.m.
Shilo Inn, Coeur d'Alene Room
702 W. Appleway, Coeur d'Alene, Idaho

Before opening the record to receive oral comments, DEQ staff intends to make a brief presentation and 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 rulemaking is to make the following changes to IDAPA 58.01.02, Water Quality Standards and Wastewater Treatment Requirements (Water Quality Standards):

The rulemaking will designate aquatic life beneficial uses for portions of the South Fork Coeur d'Alene River (SFCDA) and establish site-specific criteria (SSC) to protect those uses for cadmium, lead, and zinc. Cold water aquatic life use designations are proposed for the SFCDA from Canyon Creek upstream to Daisy Gulch. No aquatic life uses are designated by the State of Idaho for this segment, although the EPA has established identical uses through federal rules.

Site specific criteria are proposed to improve water quality management for metals in the segment South Fork Coeur d'Alene River upstream of Canyon Creek (Wallace). The criteria have been developed to be protective of aquatic species resident to the SFCDA, rather than relying on the nationally derived existing criteria, which Idaho and most other states have adopted. Many species used to develop the national criteria do not occur in the SFCDA; testing was focused on the coldwater fish and invertebrate species that presently occur in the area. The SSC were developed based upon extensive toxicity testing conducted from 1995 to 2000 using species resident to the segment and using test water from the site. In DEQ's judgment, the testing and analysis conducted to date are sufficient to base decisions upon, and to establish SSC.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2001 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2002 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rule, contact Chris Mebane at (208)373-0502 or cmebane@deq.state.id.us.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ

will consider all written comments received by the undersigned on or before September 24, 2001.

DATED this 25th day of June, 2001.

Paula J. Gradwohl
 Environmental Quality Section
 Attorney General's Office
 1410 N. Hilton
 Boise, Idaho 83706-1255
 (208)373-0418/Fax No. (208)373-0481
 pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-0102

110. PANHANDLE BASIN.

Surface waters found within the Panhandle basin total fourteen (14) subbasins and are designated as follows:

09. South Fork Coeur d'Alene Subbasin. The South Fork Coeur d'Alene Subbasin, HUC 17010302, is comprised of twenty (20) water body units. (4-5-00)

Unit	Waters	Aquatic Life	Recreation	Other
P-1	South Fork Coeur d'Alene River - Canyon Creek to mouth		SCR	
P-2	Pine Creek - East Fork Pine Creek to mouth	COLD SS	SCR	
P-3	Pine Creek - source to East Fork Pine Creek	COLD SS	PCR	DWS
P-4	East Fork Pine Creek - source to mouth			
P-5	Hunter Creek - source to mouth			
P-6	Government Gulch - source to mouth	COLD SS	SCR	
P-7a	Big Creek - source to mining impact area	COLD SS	PCR	DWS
P-7b	Big Creek - mining impact area to mouth	COLD SS	SCR	
P-8a	Shields Gulch - source to mining impact area	COLD SS	PCR	DWS
P-8b	Shields Gulch - mining impact area to mouth		SCR	
P-9a	Lake Creek - source to mining impact area	COLD SS	PCR	DWS

Unit	Waters	Aquatic Life	Recreation	Other
P-9b	Lake Creek - mining impact area to mouth	COLD SS	SCR	
P-10	Placer Creek - source to mouth			
P-11	South Fork Coeur d'Alene River - from and including Daisy Gulch to Canyon Creek	<u>COLD</u>	SCR	
P-12	Willow Creek - source to mouth			
P-13	South Fork Coeur d'Alene River - source to Daisy Gulch	COLD SS	PCR	DWS
P-14	Canyon Creek - from and including Gorge Gulch to mouth		SCR	
P-15	Canyon Creek - source to Gorge Gulch	COLD SS	PCR	DWS
P-16	Ninemile Creek - from and including East Fork Ninemile Creek to mouth	COLD SS	SCR	
P-17	Ninemile Creek - source to East Fork Ninemile Creek	COLD SS	PCR	DWS
P-18	Moon Creek - source to mouth			
P-19	West Fork Moon Creek - source to mouth			
P-20	Bear Creek - source to mouth	COLD SS	PCR	DWS

(3-30-01)()

(BREAK IN CONTINUITY OF SECTIONS)

284. SOUTH FORK COEUR D'ALENE SUBBASIN, SUBSECTION 110.09, HUC 17010302, AQUATIC LIFE CRITERIA FOR CADMIUM, LEAD AND ZINC.

The following criteria are to be met dependent upon the hardness, expressed as mg/l of calcium carbonate, of the water. Criterion maximum concentrations (CMC), one (1) hour average concentrations, and criterion continuous concentrations (CCC), four (4) day average concentrations, of the dissolved metals (in µg/l) are not to exceed, more than once every three (3) years, the values calculated using the following equations: ()

01. Cadmium. ()

a. $CMC = 0.973 \times e^{[(1.0166 \times \ln(\text{hardness})) - 3.924]}$ ()

b. $CCC = [1.101672 - (\ln(\text{hardness}) \times 0.041838)] \times e^{[(0.7852 \times \ln(\text{hardness})) - 3.490]}$ ()

02. Lead. ()

a. $CMC = e^{[(0.6244 \times \ln(\text{hardness})) + 2.5242]}$ ()

b. $CCC = e^{[(0.6244 \times \ln(\text{hardness})) + 0.3535]}$ ()

03. Zinc. ()

a. $CMC = e^{(0.6990 \times \ln(\text{hardness})) + 2.1583}$ ()

b. $CCC = e^{(0.6990 \times \ln(\text{hardness})) + 2.1583}$ ()

04. Application. ()

a. The criteria equations for cadmium described in Subsection 284.01 apply over a range of hardness of fifteen (15) mg/l to four hundred (400) mg/l. The minimum hardness allowed for use in those equations shall not be less than fifteen (15) mg/l even if the actual ambient hardness is less than fifteen (15) mg/l. The maximum hardness allowed for use in those equations shall not be greater than four hundred (400) mg/l even if the actual ambient hardness is greater than four hundred (400) mg/l. The criteria equations for lead and zinc described in Subsections 284.02 and 284.03 apply over a range of hardness of ten (10) mg/l to one hundred (100) mg/l. The minimum hardness allowed for use in those equations shall not be less than ten (10) mg/l even if the actual ambient hardness is less than ten (10) mg/l. The maximum hardness allowed for use in those equations shall not be greater than one hundred (100) mg/l even if the actual ambient hardness is greater than one hundred (100) mg/l. ()

b. The criteria described in Subsection 284.01 apply to the South Fork Coeur d'Alene River subbasin, units P-11 and P-13. ()

2845. -- 299. (RESERVED).

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS
DOCKET NO. 58-0102-0103
NOTICE OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rulemaking will be held as follows:

August 14, 2001, 7:00 p.m.
Department of Environmental
Quality Conference Center
1410 N. Hilton, Boise, Idaho

August 16, 2001, 7:00 p.m.
Shilo Inn, Coeur d'Alene Room
702 W. Appleway Ave.
Coeur d'Alene, Idaho

Before opening the record to receive oral comments, DEQ staff intends to make a brief presentation and 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 rulemaking is to make the following changes to IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements" (Water Quality Standards):

The changes affect the following aspects of the surface water quality standards: 1) Further application of site-specific criteria, 2) aquatic life use designations, 3) revisions to ammonia criteria, 4) minor changes regarding temperature, natural background, and variance procedures, 5) time limits for schedules of compliance for point source discharges, and 6) minor corrections or inconsistencies remaining from previous rulemaking. These are further described below. Adopt site specific criteria for cadmium, lead, and zinc for the South Fork Coeur d' Alene River (SFCDA) subbasin and its tributaries, not to include natural lakes (Section 284). Aquatic life SSC are proposed to improve water quality management for metals in the SFCDA subbasin downstream of Canyon Creek (Wallace) to the confluence of the North Fork Coeur d'Alene River and for tributaries to the SFCDA. Based upon an evaluation of the wider applicability of the SSC (which were initially only developed for the segment of the SFCDA upstream of Wallace), it is DEQ's belief that their application to downstream reaches and tributaries is reasonable. The downstream application to the SFCDA of the SSC is proposed separately from the upstream adoption since the upstream criteria development has been ongoing for years with EPA, stakeholder and tribal review. While DEQ believes the downstream application is scientifically reasonable, we recognize that this has not had a similar history of participation and review. Thus, we think separating the two issues into two proposed rules may help the public participation and legislative review process.

Designate the SFCDA from Canyon Creek to mouth, and lower Canyon Creek, for protection of cold water aquatic life (Subsection 110.09) and routine designations for waters in the South Fork Salmon River subbasin (Subsection 130.10). Those waters in the SFCDA subbasin that are not currently designated to protect aquatic life, and which the aquatic life SSC would apply to, are proposed for designation for cold water aquatic life. These include the mainstem SFCDA and Canyon Creek. Other than allowing the adoption of SSC to these waters, this designation will make little practical change to their water quality decision making since EPA has already promulgated an aquatic life use for these waters. Other use designations are standard designations for the SF Salmon River subbasin.

Section 250. Adopt EPA's 1999 recommended ammonia criteria. Federal regulations require the state to periodically review the adequacy of its water quality standards, taking into consideration new statutes, regulations, or guidance; legal decisions, or other necessary clarifications or revisions. The proposed change result from this review. These updated ammonia criteria were adopted in 2000 for the Spokane River only; wider adoption at that time was deferred pending further consideration.

Adds a provision to our temperature rules that if criteria are already exceeded due to natural conditions, only nominal further changes are permissible (limited to 0.3°C). Changes procedures for issuing variances from water quality

standards so that rulemaking is not required, procedures require public notice and opportunity to comment. Clarify that there is no violation of water quality standards where natural background conditions exceed criteria. DEQ experience with these provisions in the total maximum daily load (TMDL) program indicate that these changes could be useful.

Deletes five-year limit from compliance schedules for effluent limitations (Section 400). Current regulations on schedules of compliance for new discharge limits for point source dischargers are limited to five years or the life of the permit. In some cases complying within these time frames may be infeasible for engineering feasibility or cost reasons and longer compliance schedules could be justified.

Minor "housekeeping" changes to address inconsistencies, errors, or omissions identified from previous rulemakings. These include a) changing sewage disinfection bacteria standards to be consistent with stream recreational use bacteria standards, and b) including a bacteria threshold for specified public swimming beaches that was omitted from our 2000 updates of bacteria criteria.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2001 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2002 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rule, contact Chris Mebane at (208)373-0502 or cmebane@deq.state.id.us.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 24, 2001.

DATED this 25th day of June, 2001.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-0103

003. DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," the following definitions apply: (4-5-00)

- 01. Acute.** Involving a stimulus severe enough to rapidly induce a response; in aquatic toxicity tests, a response measuring lethality observed in ninety-six (96) hours or less is typically considered acute. When referring to human health, an acute effect is not always measured in terms of lethality. (3-20-97)
- 02. Acute Criteria.** Unless otherwise specified in these rules, the maximum instantaneous or one (1) hour average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from acute toxicity resulting from exposure to the toxic substance or effluent. Acute criteria will adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. The terms "acute criteria" and "criterion maximum concentration" (CMC) are equivalent. ~~(8-24-94)~~()
- 03. Acute Toxicity.** The existence of mortality or injury to aquatic organisms resulting from a single or short-term (i.e., ninety-six (96) hours or less) exposure to a substance. As applied to toxicity tests, acute toxicity refers to the response of aquatic test organisms to a concentration of a toxic substance or effluent which results in a LC-50. (3-20-97)
- 04. Beneficial Use.** Any of the various uses which may be made of the water of Idaho, including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat, and aesthetics. The beneficial use is dependent upon actual use, the ability of the water to support a non-existing use either now or in the future, and its likelihood of being used in a given manner. The use of water for the purpose of wastewater dilution or as a receiving water for a waste treatment facility effluent is not a beneficial use. (8-24-94)
- 05. Aquatic Species.** Any plant or animal that lives at least part of its life in the water column or benthic portion of waters of the state. (8-24-94)
- 06. Background.** The biological, chemical or physical condition of waters measured at a point immediately upstream (up-gradient) of the influence of an individual point or nonpoint source discharge. If several discharges to the water exist or if an adequate upstream point of measurement is absent, the department will determine where background conditions should be measured. (8-24-94)
- 07. Basin Advisory Group.** No less than one advisory group named by the Director, in consultation with the designated agencies, for each of the state's six (6) major river basins which shall generally advise the Director on water quality objectives for each basin, work in a cooperative manner with the Director to achieve these objectives, and provide general coordination of the water quality programs of all public agencies pertinent to each basin. Each basin advisory group named by the Director shall reflect a balanced representation of the interests in the basin and shall, where appropriate, include representatives from each of the following: agriculture, mining, nonmunicipal point source discharge permittees, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, and environmental interests. (3-20-97)
- 08. Best Management Practice.** A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals. (3-20-97)
- 09. Bioaccumulation.** The process by which a compound is taken up by, and accumulated in the tissues of an aquatic organism from the environment, both from water and through food. (8-24-94)
- 10. Biochemical Oxygen Demand (BOD).** The measure of the amount of oxygen necessary to satisfy the biochemical oxidation requirements of organic materials at the time the sample is collected; unless otherwise specified, this term will mean the five (5) day BOD incubated at twenty (20) degrees C. (8-24-94)
- 11. Biological Monitoring or Biomonitoring.** The use of a biological entity as a detector and its response as a measure to determine environmental conditions. Toxicity tests and biological surveys, including habitat monitoring, are common biomonitoring methods. (8-24-94)
- 12. Board.** The Idaho Board of Environmental Quality. (7-1-93)

13. Chronic. Involving a stimulus that lingers or continues for a relatively long period of time, often one-tenth (.01) of the life span or more. Chronic should be considered a relative term depending on the life span of an organism. The measurement of a chronic effect can be reduced growth, reduced reproduction, etc., in addition to lethality. (8-24-94)

14. Chronic Criteria. Unless otherwise specified in these rules, the four (4) day average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from chronic toxicity resulting from exposure to the toxic substance or effluent. Chronic criteria will adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. The terms "chronic criteria" and "criterion continuous concentration" (CCC) are equivalent. ~~(8-24-94)~~ ()

15. Chronic Toxicity. The existence of mortality, injury, reduced growth, impaired reproduction, or any other adverse effect on aquatic organisms resulting from a long-term (i.e., one-tenth (0.1) or more of the organism's life span) exposure to a substance. As applied to toxicity tests, chronic toxicity refers to the response of aquatic organisms to a concentration of a toxic substance or effluent which results in an IC-25. (8-24-94)

16. Compliance Schedule Or Schedule Of Compliance. A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard. (8-24-94)

17. Criterion Continuous Concentration (CCC). Unless otherwise specified in these rules, the four (4) day average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from chronic toxicity resulting from exposure to the toxic substance or effluent. The CCC will adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. The terms "criterion continuous concentration" and "chronic criteria" are equivalent. ()

18. Criterion Maximum Concentration (CMC). Unless otherwise specified in these rules, the maximum instantaneous or one (1) hour average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from acute toxicity resulting from exposure to the toxic substance or effluent. The CMC will adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. The terms "criterion maximum concentration" and "acute criteria" are equivalent. ()

179. Daily Mean. The average of at least two (2) appropriately spaced measurements, acceptable to the department, calculated over a period of one (1) day: (3-20-97)

a. Confidence bounds around the point estimate of the mean may be required to determine the sample size necessary to calculate a daily mean; (8-24-94)

b. If any measurement is greater or less than five-tenths (0.5) times the average, additional measurements over the one-day period may be needed to obtain a more representative average; (3-20-97)

c. In calculating the daily mean for dissolved oxygen, values used in the calculation shall not exceed the dissolved oxygen saturation value. If a measured value exceeds the dissolved oxygen saturation value, then the dissolved oxygen saturation value will be used in calculating the daily mean. (8-24-94)

180. Deleterious Material. Any nontoxic substance which may cause the tainting of edible species of fish, taste and odors in drinking water supplies, or the reduction of the usability of water without causing physical injury to water users or aquatic and terrestrial organisms. (8-24-94)

1921. Department. The Idaho Department of Environmental Quality. (7-1-93)

202. Design Flow. The critical flow used for steady-state wasteload allocation modeling. (8-24-94)

213. Designated Agency. The department of lands for timber harvest activities, oil and gas exploration and development, and mining activities; the soil conservation commission for grazing and agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the Department's division of environmental quality for all other activities. (3-20-97)

- 224. Designated Beneficial Use Or Designated Use.** Those beneficial uses assigned to identified waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," Sections 110 through 160, whether or not the uses are being attained. (4-5-00)
- 235. Desirable Species.** Species indigenous to the area or those introduced species that are included in the management direction of the area by the Idaho Department of Fish and Game. (~~7-1-93~~)()
- 246. Director.** The Director of the Idaho Department of Environmental Quality or his authorized agent. (7-1-93)
- 257. Discharge.** When used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. (8-24-94)
- 268. Disinfection.** A method of reducing the pathogenic or objectionable organisms by means of chemicals or other acceptable means. (7-1-93)
- 279. Dissolved Oxygen (DO).** The measure of the amount of oxygen dissolved in the water, usually expressed in mg/l. (7-1-93)
- 2830. Dissolved Product.** Petroleum product constituents found in solution with water. (8-24-94)
- 2931. Dynamic Model.** A computer simulation model that uses real or derived time series data to predict a time series of observed or derived receiving water concentrations. Dynamic modeling methods include continuous simulation, Monte Carlo simulations, lognormal probability modeling, or other similar statistical or deterministic techniques. (8-24-94)
- 302. E. coli (Escherichia coli).** A common fecal and intestinal organism of the coliform group of bacteria found in warm-blooded animals. (4-5-00)
- 313. Effluent.** Any wastewater discharged from a treatment facility. (7-1-93)
- 324. Effluent Biomonitoring.** The measurement of the biological effects of effluents (e.g., toxicity, biostimulation, bioaccumulation, etc.). (8-24-94)
- 335. EPA.** The United States Environmental Protection Agency. (7-1-93)
- 346. Ephemeral Waters.** A stream, reach, or water body that flows only in direct response to precipitation in the immediate watershed and whose channel is at all times above the water table. (4-5-00)
- 357. Existing Beneficial Use Or Existing Use.** Those beneficial uses actually attained in waters on or after November 28, 1975, whether or not they are designated for those waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements". (8-24-94)
- 368. Facility.** As used in Section 850 only, any building, structure, installation, equipment, pipe or pipeline, well pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft, area, place or property from which an unauthorized release of hazardous materials has occurred. (8-24-94)
- 379. Fecal Coliform.** The portion of the coliform group of bacteria present in the gut and feces of warm-blooded animals, usually expressed as number of organisms/one hundred (100) ml of sample. (7-1-93)
- 3840. Four Day Average.** The mean of the twenty-four (24) hour average values calculated over a period of ninety-six (96) consecutive hours. (3-20-97)
- 3941. Free Product.** A petroleum product that is present as a nonaqueous phase liquid. Free product includes the presence of petroleum greater than one-tenth (0.1) inch as measured on the water surface for surface water or the water table for ground water. (7-1-93)

402. Full Protection, Full Support, Or Full Maintenance Of Designated Beneficial Uses Of Water. Compliance with those levels of water quality criteria listed in Sections 200, 210, 250, 251, 252, 253, and 275 (if applicable) or ~~with~~ where no major biological group such as fish, macroinvertebrates, or algae have been modified by human activities significantly beyond the natural range of the reference streams or conditions approved by the Director in consultation with the appropriate basin advisory group. (4-5-00)(____)

443. Geometric Mean. The geometric mean of “n” quantities is the “nth” root of the product of the quantities. (7-1-93)

424. Ground Water. Subsurface water comprising the zone of saturation. (8-24-94)

435. Harmonic Mean Flow. The number of daily flow measurements divided by the sum of the reciprocals of the flows (i.e., the reciprocal of the mean of reciprocals). (8-24-94)

446. Hazardous Material. A material or combination of materials which, when discharged in any quantity into state waters, presents a substantial present or potential hazard to human health, the public health, or the environment. Unless otherwise specified, published guides such as Quality Criteria for Water (1976) by EPA, Water Quality Criteria (Second Edition, 1963) by the state of California Water Quality Control Board, their subsequent revisions, and more recent research papers, regulations and guidelines will be used in identifying individual and specific materials and in evaluating the tolerances of the identified materials for the beneficial uses indicated. (7-1-93)

457. Hydrologic Unit Code (HUC). A unique eight (8) digit number identifying a subbasin. A subbasin is a United States Geological Survey cataloging unit comprised of water body units. (4-5-00)

468. Hydrologically-Based Design Flow. A statistically derived receiving water design flow based on the selection and identification of an extreme value (e.g., 1Q10, 7Q10). The underlying assumption is that the design flow will occur X number of times in Y years, and limits the number of years in which one or more excursions below the design flow can occur. (8-24-94)

479. Hypolimnion. The deepest zone in a thermally-stratified body of water. It is fairly uniform in temperature and lies beneath a zone of water which exhibits a rapid temperature drop with depth of at least one (1) degree C per meter. (3-20-97)

4850. Inhibition Concentration-25 (IC-25). A point estimate of the toxicant concentration that would cause a twenty-five percent (25%) reduction in a non-lethal biological measurement of the test organisms, such as reproduction or growth. Determined using curve fitting with an assumption of a continuous dose-response relationship. An IC-25 is approximately the analogue of NOEC. (8-24-94)

4951. Instantaneous Concentration. A concentration of a substance measured at any moment (instant) in time. (8-24-94)

502. Inter-Departmental Coordination. Consultation with those agencies responsible for enforcing or administering the practices listed as approved best management practices in Subsection 350.03. (7-1-93)

543. Intermittent Waters. A stream, reach, or water body which has a period of zero (0) flow for at least one (1) week during most years. Where flow records are available, a stream with a 7Q2 hydrologically-based flow of less than one-tenth (0.1) cfs is considered intermittent. Streams with natural perennial pools containing significant aquatic life uses are not intermittent. (4-5-00)

524. Land Application. A process or activity involving application of wastewater, surface water, or semi-liquid material to the land surface for the purpose of disposal, pollutant removal, or ground water recharge. (8-24-94)

535. LC-50. The toxicant concentration killing fifty percent (50%) of exposed organisms at a specific time of observation (e.g., ninety-six (96) hours). (3-20-97)

546. Load Allocation (LA). The portion of a receiving water's loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources. (8-24-94)

557. Loading Capacity. The greatest amount of pollutant loading that a water can receive without violating water quality standards. (8-24-94)

568. Lower Water Quality. A measurable adverse change in a chemical, physical, or biological parameter of water relevant to a beneficial use, and which can be expressed numerically. Measurable change is determined by a statistically significant difference between sample means using standard methods for analysis and statistical interpretation appropriate to the parameter. Statistical significance is defined as the ninety-five percent (95%) confidence limit when significance is not otherwise defined for the parameter in standard methods or practices. (3-20-97)

579. Lowest Observed Effect Concentration (LOEC). The lowest concentration of a toxicant or an effluent that results in observable adverse effects in the aquatic test population. (8-24-94)

5860. Man-Made Waterways. Canals, flumes, ditches, and similar features, constructed for the purpose of water conveyance. (7-1-93)

61. Maximum Weekly Maximum Temperature (MWMT). The MWMT is the mean of daily maximum temperatures measured over the annual warmest consecutive seven (7) day period occurring during a given year. ()

5962. Milligrams Per Liter (mg/l). Milligrams of solute per liter of solution, equivalent to parts per million, assuming unit density. (7-1-93)

603. Mixing Zone. A defined area or volume of the receiving water surrounding or adjacent to a wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards. It is considered a place where wastewater mixes with receiving water and not as a place where effluents are treated. (7-1-93)

644. National Pollutant Discharge Elimination System (NPDES). Point source permitting program established pursuant to Section 402 of the federal Clean Water Act. (8-24-94)

625. Nephelometric Turbidity Units (NTU). A measure of turbidity based on a comparison of the intensity of the light scattered by the sample under defined conditions with the intensity of the light scattered by a standard reference suspension under the same conditions. (8-24-94)

636. Nonpoint Source Activities. Activities on a geographical area on which pollutants are deposited or dissolved or suspended in water applied to or incident on that area, the resultant mixture being discharged into the waters of the state. Nonpoint source activities on ORWs do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments. Nonpoint sources activities include, but are not limited to: (3-20-97)

- a. Irrigated and nonirrigated lands used for: (7-1-93)
 - i. Grazing; (7-1-93)
 - ii. Crop production; (7-1-93)
 - iii. Silviculture; (7-1-93)
- b. Log storage or rafting; (7-1-93)
- c. Construction sites; (7-1-93)

- d. Recreation sites; (3-20-97)
- e. Septic tank disposal fields. (8-24-94)
- f. Mining; (3-20-97)
- g. Runoff from storms or other weather related events; and (3-20-97)
- h. Other activities not subject to regulation under the federal national pollutant discharge elimination system. (3-20-97)

647. No Observed Adverse Effect Level (NOAEL). A threshold dose of a toxic substance or an effluent below which no adverse biological effects are observed, as identified from chronic or subchronic human epidemiology studies or animal exposure studies. (8-24-94)

658. No Observed Effect Concentration (NOEC). The highest concentration of a toxic substance or an effluent at which no adverse effects are observed on the aquatic test organisms. Determined using hypothesis testing with the assumption of a noncontinuous threshold model of the dose-response relationship. (8-24-94)

669. Nuisance. Anything which is injurious to the public health or an obstruction to the free use, in the customary manner, of any waters of the state. (7-1-93)

670. Nutrients. The major substances necessary for the growth and reproduction of aquatic plant life, consisting of nitrogen, phosphorus, and carbon compounds. (7-1-93)

6871. One Day Minimum. The lowest daily instantaneous value measured. (3-20-97)

6972. One Hour Average. The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of one (1) hour. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the one-hour period may be needed to obtain a more representative mean. (3-20-97)

703. Operator. Any person presently or who was at any time during a release in control of, or having responsibility for, the daily operation of the PST system. (7-1-93)

714. Outstanding Resource Water (ORW). A high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been designated by the legislature and subsequently listed in this chapter. ORW constitutes an outstanding national or state resource that requires protection from point and nonpoint source activities that may lower water quality. (3-20-97)

725. Outstanding Resource Water Mixing Zone. An area or volume of an ORW where pollutants are allowed to mix with the ORW receiving water at a location distinct from the sampling point where compliance with ORW quality standards is measured. An ORW mixing zone will be downstream from the discharge of a tributary or a segment immediately upstream which contains man caused pollutants as a result of nonpoint source activities occurring on that tributary or segment. As a result of the discharge, the mixing zone may not meet all water quality standards applicable to the ORW, but shall still be protected for existing beneficial uses. The Department, after consideration of input from interested parties, will determine the size, configuration and location of mixing zones which are necessary to meet the requirements of this chapter. (7-1-93)

736. Owner. Any person who owns or owned a PST system any time during a release and the current owner of the property where the PST system is or was located. (7-1-93)

747. Person. An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, which is recognized by law as the subject of rights and duties. (3-20-97)

- 758. Petroleum Products.** Products derived from petroleum through various refining processes. (7-1-93)
- 769. Petroleum Storage Tank (PST) System.** Any one or combination of storage tanks or other containers, including pipes connected thereto, dispensing equipment, and other connected ancillary equipment, and stationary or mobile equipment, that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. (7-1-93)
- 7780. Point Source.** Any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (7-1-93)
- 781. Pollutant.** Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged to water in excessive quantities, cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities. (3-20-97)
- 7982. Potable Water.** A water which is free from impurities in such amounts that it is safe for human consumption without treatment. (7-1-93)
- 803. Primary Treatment.** Processes or methods that serve as the first stage treatment of wastewater, intended for removal of suspended and settleable solids by gravity sedimentation; provides no changes in dissolved and colloidal matter in the sewage or wastes flow. (7-1-93)
- 844. Project Plans.** Documents which describe actions to be taken under a proposed activity. These documents include environmental impact statements, environmental assessments, and other land use or resource management plans. (7-1-93)
- 825. Receiving Waters.** Those waters which receive pollutants from point or nonpoint sources. (7-1-93)
- 836. Recharge.** The process of adding water to the zone of saturation. (7-1-93)
- 847. Recharge Water.** Water that is specifically utilized for the purpose of adding water to the zone of saturation. (7-1-93)
- 858. Reference Stream Or Condition.** A water body which represents the minimum conditions necessary to fully support the applicable designated beneficial uses as further specified in these rules, or natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin. In highly mineralized areas or in the absence of such reference streams or water bodies, the Director, in consultation with the basin advisory group and the technical advisors to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported. (3-20-97)
- 869. Release.** Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. (8-24-94)
- 8790. Resident Species.** Those species that commonly occur in a site including those that occur only seasonally or intermittently. This includes the species, genera, families, orders, classes, and phyla that: (8-24-94)
- a. Are usually present at the site; (8-24-94)
 - b. Are present only seasonally due to migration; (8-24-94)

- c. Are present intermittently because they periodically return or extend their ranges into the site; (8-24-94)
- d. Were present at the site in the past but are not currently due to degraded conditions, and are expected to be present at the site when conditions improve; and (8-24-94)
- e. Are present in nearby bodies of water but are not currently present at the site due to degraded conditions, and are expected to be present at the site when conditions improve. (8-24-94)
- 8891. Responsible Persons In Charge.** Any person who: (8-24-94)
- a. By any acts or omissions, caused, contributed to or exacerbated an unauthorized release of hazardous materials; (8-24-94)
- b. Owns or owned the facility from which the unauthorized release occurred and the current owner of the property where the facility is or was located; or (8-24-94)
- c. Presently or who was at any time during an unauthorized release in control of, or had responsibility for, the daily operation of the facility from which an unauthorized release occurred. (8-24-94)
- 892. Saturated Zone.** Zone or layer beneath the earth's surface in which all of the pore spaces of rock or soil are filled with water. (7-1-93)
- 903. Secondary Treatment.** Processes or methods for the supplemental treatment of wastewater, usually following primary treatment, to affect additional improvement in the quality of the treated wastes by biological means of various types which are designed to remove or modify organic matter. (7-1-93)
- 914. Seven Day Mean.** The average of the daily mean values calculated over a period of seven (7) consecutive days. (3-20-97)
- 925. Sewage.** The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. (8-24-94)
- 936. Short-Term Or Temporary Activity.** An activity which is limited in scope and is expected to have only minimal impact on water quality as determined by the Director. Short-term or temporary activities include, but are not limited to, those activities described in Subsection 080.02. (3-20-97)
- 947. Silviculture.** Those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber. (3-20-97)
- 958. Sludge.** The semi-liquid mass produced by partial dewatering of potable or spent process waters or wastewater. (7-1-93)
- 969. Special Resource Water.** Those specific segments or bodies of water which are recognized as needing intensive protection: (7-1-93)
- a. To preserve outstanding or unique characteristics; or (7-1-93)
- b. To maintain current beneficial use. (7-1-93)
- 97100. Specialized Best Management Practices.** Those practices designed with consideration of geology, land type, soil type, erosion hazard, climate and cumulative effects in order to fully protect the beneficial uses of

water, and to prevent or reduce the pollution generated by nonpoint sources. (3-3-87)

~~98~~**101. State.** The state of Idaho. (7-1-93)

~~99~~**102. State Water Quality Management Plan.** The state management plan developed and updated by the Department in accordance with Sections 205, 208, and 303 of the Clean Water Act. (3-20-97)

1093. Steady-State Model. A fate and transport model that uses constant values of input variables to predict constant values of receiving water quality concentrations. (8-24-94)

1044. Subsurface Disposal. Disposal of effluent below ground surface, including, but not limited to, drainfields or sewage beds. (7-1-93)

1025. Suspended Sediment. Organic and inorganic particulate matter which has been removed from its site of origin and measured while suspended in surface water. (7-1-93)

1036. Technology-Based Effluent Limitation. Treatment requirements under Section 301(b) of the Clean Water Act that represent the minimum level of control that must be imposed in a permit issued under Section 402 of the Clean Water Act. (8-24-94)

1047. Total Maximum Daily Load (TMDL). The sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, and natural background. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. (8-24-94)

1058. Toxicity Test. A procedure used to determine the toxicity of a chemical or an effluent using living organisms. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent. (8-24-94)

1069. Toxic Substance. Any substance, material or disease-causing agent, or a combination thereof, which after discharge to waters of the State and upon exposure, ingestion, inhalation or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring. Toxic substances include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA pursuant to Section 307(a) of the federal Clean Water Act. (8-24-94)

~~107~~**10. Treatment.** A process or activity conducted for the purpose of removing pollutants from wastewater. (7-1-93)

~~108~~**11. Treatment System.** Any physical facility or land area for the purpose of collecting, treating, neutralizing or stabilizing pollutants including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishing thereof and their appurtenances. (7-1-93)

~~109~~**12. Trihalomethane (THM).** THM means one of the family of organic compounds named as derivatives of methane, wherein three (3) of the four (4) hydrogen atoms in the molecular structure of methane are substituted by one (1) of the chemical elements chlorine, bromine or iodine. (7-1-93)

1103. Twenty-Four Hour Average. The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of twenty-four (24) consecutive hours. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the twenty-four (24)-hour period may be needed to obtain a more representative mean. (3-20-97)

1144. Unique Ecological Significance. The attribute of any stream or water body which is inhabited or

supports an endangered or threatened species of plant or animal or a species of special concern identified by the Idaho Department of Fish and Game, which provides anadromous fish passage, or which provides spawning or rearing habitat for anadromous or desirable species of lake dwelling fishes. (8-24-94)

1125. Wasteload Allocation (WLA). The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. (8-24-94)

1136. Wastewater. Unless otherwise specified, sewage, industrial waste, agricultural waste, and associated solids or combinations of these, whether treated or untreated, together with such water as is present. (7-1-93)

1147. Water Body Unit. Includes all named and unnamed tributaries within a drainage and is considered a single unit unless designated otherwise. (4-5-00)

1158. Water Pollution. Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the state, or the discharge of any pollutant into the waters of the state, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. (8-24-94)

1162. Water Quality-Based Effluent Limitation. An effluent limitation that refers to specific levels of water quality that are expected to render a body of water suitable for its designated or existing beneficial uses. (8-24-94)

11720. Water Quality Limited Water Body. After monitoring, evaluation of required pollution controls, and consultation with the appropriate basin and watershed advisory groups, a water body identified by the Department, which does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards after the application of required pollution controls. A water body identified as water quality limited shall require the development of a TMDL or other equivalent process in accordance with Section 303 of the Clean Water Act and Sections 39-3601 et seq., Idaho Code. (3-20-97)

11821. Waters And Waters Of The State. All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (7-1-93)

11922. Watershed. The land area from which water flows into a stream or other body of water which drains the area. (3-20-97)

1203. Watershed Advisory Group. An advisory group appointed by the Director, with the advice of the appropriate Basin Advisory Group, which will recommend to the Department those specific actions needed to control point and nonpoint sources of pollution affecting water quality limited water bodies within the watershed. Members of each watershed advisory group shall be representative of the industries and interests affected by the management of that watershed, along with representatives of local government and the land managing or regulatory agencies with an interest in the management of that watershed and the quality of the water bodies within it. (3-20-97)

1214. Whole-Effluent Toxicity. The aggregate toxic effect of an effluent measured directly with a toxicity test. (8-24-94)

(BREAK IN CONTINUITY OF SECTIONS)

070. APPLICATION OF STANDARDS.

01. Multiple Criteria. In the application of the use designation, the most stringent criterion of a multiple criteria applies. (4-5-00)

02. Application Of Standards To Nonpoint Source Activities. The application of water quality standards to nonpoint source activities shall be in accordance with Section 350. (7-1-93)

03. Application Of Standards To Point Source Discharges. The application of water quality standards to point source discharges shall be in accordance with Sections 400 through 402, 420 and 440. (7-1-93)

04. Applicability Of Gas Supersaturation Standard. The application of gas supersaturation standard shall be in accordance with Section 300. (4-5-00)

05. Mixing Zones. The application of water quality standards to mixing zones shall be in accordance with Section 060. (7-1-93)

06. Natural Background Conditions. ~~There is no violation of water quality standards where natural background conditions from natural surface or ground water sources exceed any applicable water quality criteria as determined by the Department, that background level shall become the applicable~~ Where both natural and anthropogenic factors cause exceedences of criteria, anthropogenic sources shall be responsible for that portion of the exceedence caused by the anthropogenic sources. The Department may adopt the natural background level as a site-specific water quality criteria according to procedures established or approved by the Department consistent with 40 CFR 131.11. Natural background means any physical, chemical, biological, or radiological condition existing in a water body due only to non-human sources. ~~Natural background shall be established according to procedures established or approved by the Department consistent with 40 CFR 131.11.~~ The Department may require additional or continuing monitoring of natural conditions. (4-5-00)()

07. Application Of Standards To Intermittent Waters. Numeric water quality standards only apply to intermittent waters during optimum flow periods sufficient to support the uses for which the water body is designated. For recreation, optimum flow is equal to or greater than five (5) cubic feet per second (cfs). For aquatic life uses, optimum flow is equal to or greater than one (1) cfs. (3-30-01)

08. Temperature Criteria. In the application of temperature criteria, the Director may, at his discretion, waive or raise the temperature criteria as they pertain to a specific water body. Any such determination shall be made consistent with 40 CFR 131.11 and shall be based on a finding that the designated aquatic life use is not an existing use in such water body or would be fully supported at a higher temperature criteria. For any determination, the Director shall, prior to making a determination, provide for public notice and comment on the proposed determination. For any such proposed determination, the Director shall prepare and make available to the public a technical support document addressing the proposed modification. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

080. VIOLATION OF WATER QUALITY STANDARDS.

01. Discharges Which Result In Water Quality Standards Violation. No pollutant shall be discharged from a single source or in combination with pollutants discharged from other sources in concentrations or in a manner that: (7-1-93)

a. Will or can be expected to result in violation of the water quality standards applicable to the receiving water body or downstream waters; or (7-1-93)

b. Will injure designated or existing beneficial uses; or (8-24-94)

c. Is not authorized by the appropriate authorizing agency for those discharges that require authorization. (8-24-94)

02. Short Term Activity Exemption. The Department or the Board can authorize, with whatever

conditions deemed necessary, short term activities even though such activities can result in a violation of these rules; (8-24-94)

- a. No activity can be authorized by the provisions of Subsection 080.02 unless: (7-1-93)
 - i. The activity is essential to the protection or promotion of public interest; (7-1-93)
 - ii. No permanent or long term injury of beneficial uses is likely as a result of the activity. (7-1-93)
- b. Activities eligible for authorization by Subsection 080.02 include, but are not limited to: (7-1-93)
 - i. Wastewater treatment facility maintenance; (7-1-93)
 - ii. Fish eradication projects; (7-1-93)
 - iii. Mosquito abatement projects; (7-1-93)
 - iv. Algae and weed control projects; (7-1-93)
 - v. Dredge and fill activities; (3-20-97)
 - vi. Maintenance of existing structures; (3-20-97)
 - vii. Limited road and trail reconstruction; (3-20-97)
 - viii. Soil stabilization measures; (3-20-97)
 - ix. Habitat enhancement structures; and (3-20-97)
 - x. Activities which result in overall enhancement or maintenance of beneficial uses. (7-1-93)

03. E. coli Standard Violation. A single water sample exceeding an E.coli standard does not in itself constitute a violation of water quality standards, however, additional samples shall be taken for the purpose of comparing the results to the geometric mean criteria in Section 251 as follows: (4-5-00)

a. Any discharger responsible for providing samples for E.coli shall take five (5) additional samples in accordance with Section 251. (4-5-00)

b. The Department shall take five (5) additional samples in accordance with Section 251 for ambient E.coli samples unrelated to dischargers' monitoring responsibilities. (4-5-00)

04. Temperature Exemption. Exceeding the temperature criteria in Section 250 will not be considered a water quality standard violation when the air temperature of a given day exceeds the ninetieth percentile of a yearly series of the ~~seven (7) day average daily~~ weekly maximum air temperature (MWMT) calculated ~~in yearly series~~ over the historic record measured at the nearest weather reporting station. (4-5-00)(____)

(BREAK IN CONTINUITY OF SECTIONS)

109. HUC INDEX AND ABBREVIATIONS FOR SECTIONS 110, 120, 130, 140, 150, AND 160.

NO CHANGES TO SUBSECTIONS 109.01 AND 109.02.

- 03. Abbreviations.** (4-5-00)

- a. COLD - Cold Water Communities. (4-5-00)
- b. SS - Salmonid Spawning. (4-5-00)
- c. SC - Seasonal Cold Water Communities. (4-5-00)
- d. WARM - Warm Water Communities. (4-5-00)
- e. MOD - Modified Communities. (4-5-00)
- f. PCR - Primary Contact Recreation. (4-5-00)
- g. SCR - Secondary Contact Recreation. (4-5-00)
- h. DWS - Domestic Water Supply. (4-5-00)
- i. SRW - Special Resource Water. (4-5-00)
- j. NONE - Use Unattainable. (4-5-00)
- k. No entry in the Aquatic Life or Recreation columns - nondesignated waters for those uses. ()

110. PANHANDLE BASIN.

Surface waters found within the Panhandle basin total fourteen (14) subbasins and are designated as follows: (4-5-00)

NO CHANGES TO SUBSECTIONS 110.01 THROUGH 110.08.

09. South Fork Coeur d'Alene Subbasin. The South Fork Coeur d'Alene Subbasin, HUC 17010302, is comprised of twenty (20) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
P-1	South Fork Coeur d'Alene River - Canyon Creek to mouth	COLD	SCR	
P-2	Pine Creek - East Fork Pine Creek to mouth	COLD SS	SCR	
P-3	Pine Creek - source to East Fork Pine Creek	COLD SS	PCR	DWS
P-4	East Fork Pine Creek - source to mouth			
P-5	Hunter Creek - source to mouth			
P-6	Government Gulch - source to mouth	COLD SS	SCR	
P-7a	Big Creek - source to mining impact area	COLD SS	PCR	DWS
P-7b	Big Creek - mining impact area to mouth	COLD SS	SCR	
P-8a	Shields Gulch - source to mining impact area	COLD SS	PCR	DWS

Unit	Waters	Aquatic Life	Recreation	Other
P-8b	Shields Gulch - mining impact area to mouth		SCR	
P-9a	Lake Creek - source to mining impact area	COLD SS	PCR	DWS
P-9b	Lake Creek - mining impact area to mouth	COLD SS	SCR	
P-10	Placer Creek - source to mouth			
P-11	South Fork Coeur d'Alene River - from and including Daisy Gulch to Canyon Creek		SCR	
P-12	Willow Creek - source to mouth			
P-13	South Fork Coeur d'Alene River - source to Daisy Gulch	COLD SS	PCR	DWS
P-14	Canyon Creek - from and including Gorge Gulch to mouth	<u>COLD</u>	SCR	
P-15	Canyon Creek - source to Gorge Gulch	COLD SS	PCR	DWS
P-16	Ninemile Creek - from and including East Fork Ninemile Creek to mouth	COLD SS	SCR	
P-17	Ninemile Creek - source to East Fork Ninemile Creek	COLD SS	PCR	DWS
P-18	Moon Creek - source to mouth			
P-19	West Fork Moon Creek - source to mouth			
P-20	Bear Creek - source to mouth	COLD SS	PCR	DWS

~~(3-30-01)()~~

NO CHANGES TO SUBSECTIONS 110.10 THROUGH 110.14.

(BREAK IN CONTINUITY OF SECTIONS)

130. SALMON BASIN.

Surface waters found within the Salmon basin total twelve (12) subbasins and are designated as follows: (4-5-00)

NO CHANGES TO SUBSECTIONS 130.01 THROUGH 130.09.

10. South Fork Salmon Subbasin. The South Fork Salmon Subbasin, HUC 17060208, is comprised

of thirty-five (35) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
S-1	South Fork Salmon River - East Fork Salmon River to mouth	COLD SS	PCR	DWS SRW
S-2	Raines Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-3	Pony Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-4	Bear Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-5	Secesh River - confluence of Summitt Creek and Lake Creek to mouth	COLD SS	PCR	DWS SRW
S-6	Lake Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-7	Summitt Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-8	Loon Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-9	Lick Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-10	South Fork Salmon River - source to East Fork of the South Fork Salmon River	COLD SS	PCR	DWS SRW
S-11	Fitsum Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-12	Buckhorn Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-13	Cougar Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-14	Blackmare Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-15	Dollar Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-16	Six-bit Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-17	Trail Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-18	Rice Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	

Unit	Waters	Aquatic Life	Recreation	Other
S-19	Cabin Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-20	Warm Lake	<u>COLD</u>	<u>PCR</u>	
S-21	Fourmile Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-22	Camp Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-23	East Fork of the South Fork Salmon River - source to mouth	COLD SS	PCR	DWS SRW
S-24	Caton Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-25	Johnson Creek - source to mouth	COLD SS	PCR	DWS SRW
S-26	Burntlog Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-27	Trapper Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-28	Riordan Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-29	Sugar Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-30	Tamarack Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-31	Profile Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-32	Quartz Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-33	Sheep Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-34	Elk Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
S-35	Porphyry Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	

(4-5-00)()

NO CHANGES TO SUBSECTIONS 130.11 THROUGH 130.12.

(BREAK IN CONTINUITY OF SECTIONS)

210. NUMERIC CRITERIA FOR TOXIC SUBSTANCES FOR WATERS DESIGNATED FOR AQUATIC LIFE, RECREATION, OR DOMESTIC WATER SUPPLY USE.

01. Incorporation Of National Toxic Rule. Toxic substance criteria set forth in 40 CFR 131.36 (b)(1) (National Toxics Rule), as of July 1, 1993, is hereby incorporated by reference in the manner provided in Subsection 210.02, however, the standard for arsenic recreation and domestic water supply uses shall be fifty (50) ug/l:
(4-5-00)()

- a. Columns B1, B2, and D2 are incorporated by reference for waters designated for aquatic life use. (4-5-00)
- b. Column D2 is incorporated by reference for waters designated for recreation use. (4-5-00)
- c. Column D1 is incorporated by reference for waters designated for domestic water supply use. (4-5-00)

02. Exception To Incorporation Of National Toxic Rule. 40 CFR 131.36, as of July 1, 1993, and all subparts and notes are hereby incorporated by reference, except as noted in or amended by Subsections 210.02.a. through 210.02.e. (4-5-00)

- a. The reference to “paragraph (d) of” in 40 CFR 131.36(c)(2)(iii) shall be deleted. (4-5-00)
- b. The second sentence of 40 CFR 131.36(b)(1), footnote C shall be deleted. (4-5-00)
- c. 40 CFR 131.36(c)(1) shall be deleted and replaced with the following: “The criteria in paragraph (b) of this section apply to surface waters of the state as provided in Idaho IDAPA 58.01.02, “Water Quality Standards and Wastewater Treatment Requirements,” Sections 250, through 252. (4-5-00)

d. The first sentence of 40 CFR 131.36(c)(4)(iii) shall be deleted and replaced with the following: “The criteria for metals (compounds #1-9 and 11-13 in paragraph (b) of this section) are expressed as dissolved concentrations with the following conversion factors: Arsenic(III) 1.000; Cadmium 1.136672-(ln hardness x 0.041838 for CMC and 1.101672-(ln hardness x 0.041838) for CCC; Chromium(III) 0.316 for CMC and 0.860 for CCC; Chromium(VI) 0.982 for CMC and 0.962 for CCC; Copper 0.960; Lead 1.46203-(ln hardness x 0.145712); Mercury .85 for CMC only; Nickel 0.998 for CMC and 0.997 for CCC; Silver .85 for CMC only; Zinc 0.978 for CMC and 0.986 for CCC. Compound #10 (Selenium) is expressed as total recoverable concentrations. Compound #14 (Cyanide) is expressed as Weak Acid Dissociable (WAD) concentrations.” (4-5-00)

- e. 40 CFR 131.36(d) shall not be incorporated by reference. (4-5-00)

03. National Pollutant Discharge Elimination System Permitting. For the purposes of NPDES permitting, interpretation and implementation of metals criteria listed in Subsection 210.02 should be governed by the following standards, that are hereby incorporated by reference, in addition to the provisions of 40 CFR 131.36; provided, however, any identified conversion factors within these documents are not incorporated by reference. Metals criteria conversion factors are identified in Subsection 210.02.d of this rule. (4-5-00)

- a. “Guidance Document on Dissolved Criteria -- Expression of Aquatic Life Criteria,” EPA, October 1993. (4-5-00)
- b. “Guidance Document on Dynamic Modeling and Translators,” EPA, August 1993. (4-5-00)
- c. “Guidance Document on Clean Analytical Techniques and Monitoring,” EPA, October 1993. (4-5-00)
- d. “Interim Guidance on Determination and Use of Water-Effect Ratios for Metals,” EPA, February

1994. (4-5-00)
- 04. Development of Toxic Substance Criteria.** (4-5-00)
- a. Aquatic Life Communities Criteria. Numeric criteria for the protection of aquatic life uses not identified in these rules for toxic substances, may be derived by the Department from the following information: (4-5-00)
- i. Site-specific criteria developed pursuant to Section 275; (4-5-00)
- ii. Effluent biomonitoring, toxicity testing and whole-effluent toxicity determinations; (4-5-00)
- iii. The most recent recommended criteria defined in EPA's Aquatic Toxicity Information Retrieval (ACQUIRE) database. When using EPA recommended criteria to derive water quality criteria to protect aquatic life uses, the lowest observed effect concentrations (LOECs) shall be considered; or (4-5-00)
- iv. Scientific studies including, but not limited to, instream benthic assessment or rapid bioassessment. (4-5-00)
- b. Human Health Criteria. (4-5-00)
- i. When numeric criteria for the protection of human health are not identified in these rules for toxic substances, quantifiable criteria may be derived by the Department from the most recent recommended criteria defined in EPA's Integrated Risk Information System (IRIS). When using EPA recommended criteria to derive water quality criteria to protect human health, a fish consumption rate of six point five (6.5) grams/day, a water ingestion rate of two (2) liters/day and a cancer risk level of 10^6 shall be utilized. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

250. SURFACE WATER QUALITY CRITERIA FOR AQUATIC LIFE USE DESIGNATIONS.

- 01. General Criteria.** The following criteria apply to all aquatic life use designations. Surface waters are not to vary from the following characteristics due to human activities: ~~(4-5-00)~~(____)
- a. Hydrogen Ion Concentration (pH) values within the range of six point five (6.5) to nine point zero (9.0); (3-30-01)
- b. The total concentration of dissolved gas not exceeding one hundred and ten percent (110%) of saturation at atmospheric pressure at the point of sample collection; (7-1-93)
- c. Total chlorine residual. (8-24-94)
- i. One (1) hour average concentration not to exceed nineteen (19) ug/l. (8-24-94)
- ii. Four (4) day average concentration not to exceed eleven (11) ug/l. (8-24-94)
- 02. Cold Water.** Waters designated for cold water aquatic life are not to exhibit vary from the following characteristics due to human activities: ~~(4-5-00)~~(____)
- a. Dissolved Oxygen Concentrations exceeding six (6) mg/l at all times. In lakes and reservoirs this standard does not apply to: (7-1-93)
- i. The bottom twenty percent (20%) of water depth in natural lakes and reservoirs where depths are thirty-five (35) meters or less. (7-1-93)

ii. The bottom seven (7) meters of water depth in natural lakes and reservoirs where depths are greater than thirty-five (35) meters. (7-1-93)

iii. Those waters of the hypolimnion in stratified lakes and reservoirs. (7-1-93)

b. Water temperatures of twenty-two (22) degrees C or less with a maximum daily average of no greater than nineteen (19) degrees C. (8-24-94)

c. Temperature in lakes shall have no measurable change from natural background conditions. Reservoirs with mean detention times of greater than fifteen (15) days are considered lakes for this purpose. ()

ed. Ammonia. The following criteria are not to be exceeded dependent upon the temperature, T (degrees C), and pH of the water body: (8-24-94)()

i. ~~One (1) hour average concentration of un-ionized ammonia (as N) is not to exceed (0.43/A/B/2) mg/l, where:~~

~~A = 1 if the water temperature (T) is greater than or equal to 20 degrees C (if T > 30 degrees C site-specific criteria should be defined), or~~

~~A = 10^{power(0.03(20-T))} if T is less than twenty (20) degrees C, and~~

~~B = 1 if the pH is greater than or equal to 8 (if pH > 9.0 site-specific criteria should be defined); or~~

~~B = (1 + 10^{power(7.4-pH)})/1.25 if pH is less than 8 (if pH < 6.5 site-specific criteria should be defined). (8-24-94)~~

ii. ~~Four-day average concentration of un-ionized ammonia (as N) is not to exceed (0.66/A/B/C) mg/l, where:~~

~~A = 1.4 if the water temperature (T) is greater than or equal to 15 degrees C (if T > 30 degrees C site-specific criteria should be defined), or~~

~~A = 10^{power(0.03(20-T))} if T is less than fifteen (15) degrees C, and~~

~~B = 1 if the pH is greater than or equal to 8 (if pH > 9.0 site-specific criteria should be defined), or~~

~~B = (1 + 10^{power(7.4-pH)})/1.25 if pH is less than 8 (if pH < 6.5 site-specific criteria should be defined), and~~

~~C = 13.5 if pH is greater than or equal to 7.7, or~~

~~C = 20(10^{power(7.7-pH)})/(1 + 10^{power(7.4-pH)})) if the pH is less than 7.7. (4-13-95)~~

i. Acute Criterion (Criterion Maximum Concentration (CMC)). The one (1) hour average concentration of total ammonia nitrogen (in mg N/L) is not to exceed, more than once every three (3) years, the value calculated using the following equation:

$$CMC = \frac{0.275}{1 + 10^{7.204 - pH}} + \frac{39.0}{1 + 10^{pH - 7.204}} \quad ()$$

ii. Chronic Criterion (Criterion Continuous Concentration (CCC)). ()

(1) The thirty (30) day average concentration of total ammonia nitrogen (in mg N/L) is not to exceed, more than once every three (3) years, the value calculated using the following equations: ()

(a) When fish early life stages are likely present:

$$CCC = \left(\frac{0.0577}{1+10^{7.688-pH}} + \frac{2.487}{1+10^{pH-7.688}} \right) \bullet MIN(2.85, 1.45 \cdot 10^{0.028(25-T)})$$

()

(b) When fish early life stages are likely absent:

$$CCC = \left(\frac{0.0577}{1+10^{7.688-pH}} + \frac{2.487}{1+10^{pH-7.688}} \right) \bullet 1.45 \cdot 10^{0.028(25-T)}$$

()

(2) The highest four (4) day average within the thirty (30) day period should not exceed two point five (2.5) times the CCC. ()

(3) Because the Department presumes that many waters in the state may have both spring-spawning and fall-spawning species of fish present, early life stages of fish may be present throughout much of the year. Accordingly, the Department will apply the CCC for when fish early life stages are present at all times of the year unless: ()

(a) Time frames during the year are identified when early life stages are unlikely to be present, and ()

(b) The Department is provided all readily available information supporting this finding such as the fish species distributions, spawning periods, nursery periods, and the duration of early life stages found in the water body. ()

d. Turbidity, below any applicable mixing zone set by the Department, shall not exceed background turbidity by more than fifty (50) NTU instantaneously or more than twenty-five (25) NTU for more than ten (10) consecutive days. (8-24-94)

e. Salmonid spawning: waters designated for salmonid spawning are to exhibit the following characteristics during the spawning period and incubation for the particular species inhabiting those waters: (7-1-93)

i. Dissolved Oxygen. (8-24-94)

(1) Intergravel Dissolved Oxygen. (8-24-94)

(a) One (1) day minimum of not less than five point zero (5.0) mg/l. (8-24-94)

(b) Seven (7) day average mean of not less than six point zero (6.0) mg/l. (8-24-94)

(2) Water-Column Dissolved Oxygen. (8-24-94)

(a) One (1) day minimum of not less than six point zero (6.0) mg/l or ninety percent (90%) of saturation, whichever is greater. (8-24-94)

ii. Water temperatures of thirteen (13) degrees C or less with a maximum daily average no greater than nine (9) degrees C. (8-24-94)

~~iii. Ammonia. (8-24-94)~~

~~(1) One (1) hour average concentration of un-ionized ammonia is not to exceed the criteria defined at Subsection 250.02.e.i. (4-5-00)~~

~~(2) Four (4) day average concentration of un-ionized ammonia is not to exceed the criteria defined at Subsection 250.02.e.ii. (3-30-01)~~

f. Bull Trout Temperature Criteria. Water temperatures for the waters identified under Subsection 250.02.f.i. shall not exceed thirteen degrees Celsius (13C) maximum weekly maximum temperature (MWMT) during June, July and August for juvenile bull trout rearing, and nine degrees Celsius (9C) daily average during September and October for bull trout spawning. For the purposes of measuring these criteria, the values shall be generated from a recording device with a minimum of six (6) evenly spaced measurements in a twenty-four (24) hour period. The MWMT is the mean of daily maximum water temperatures measured over the annual warmest consecutive seven (7) day period occurring during a given year. (3-30-01)

i. The bull trout temperature criteria shall apply to all tributary waters, not including fifth order main stem rivers, located within areas above fourteen hundred (1400) meters elevation south of the Salmon River basin-Clearwater River basin divide, and above six hundred (600) meters elevation north of the Salmon River basin-Clearwater River basin divide, in the fifty-nine (59) Key Watersheds listed in Table 6, Appendix F of Governor Batt's State of Idaho Bull Trout Conservation Plan, 1996, or as designated under Sections 110 through 160 of this rule. (3-23-98)

ii. No thermal discharges will be permitted to the waters described under Subsection 250.02.f.i. unless socially and economically justified as determined by the Department, and then only if the resultant increase in stream temperature is less than five-tenths degrees Celsius (0.5C). (4-5-00)

g. Kootenai River sturgeon temperature criteria. Water temperatures within the Kootenai River from Bonners Ferry to Shorty's Island, shall not exceed a seven (7) day moving average of fourteen degrees celsius (14C) based on daily average water temperatures, during May 1 through July 1. (3-23-98)

03. Seasonal Cold Water. Between the summer solstice and autumn equinox, waters designated for seasonal cold water aquatic life are not to exhibit vary from the following characteristics due to human activities. For the period from autumn equinox to summer solstice the cold water criteria will apply: (~~4-5-00~~)()

a. Dissolved Oxygen Concentrations exceeding six (6) mg/l at all times. In lakes and reservoirs this standard does not apply to: (4-5-00)

i. The bottom twenty percent (20%) of water depth in natural lakes and reservoirs where depths are thirty-five (35) meters or less. (4-5-00)

ii. The bottom seven (7) meters of water depth in natural lakes and reservoirs where depths are greater than thirty-five (35) meters. (4-5-00)

iii. Those waters of the hypolimnion in stratified lakes and reservoirs. (4-5-00)

b. Water temperatures of twenty-six (26) degrees C or less as a daily maximum with a daily average of no greater than twenty-three (23) degrees C. (3-30-01)

c. Temperature in lakes shall have no measurable change from natural background conditions. Reservoirs with mean detention times of greater than fifteen (15) days are considered lakes for this purpose. ()

d. Ammonia. (~~4-5-00~~)

~~i. One (1) hour average concentration of un-ionized ammonia is are not to exceed the criteria defined at Subsection 250.02.e.ii.~~ (~~4-5-00~~)()

~~ii. Four (4) day average concentration of un-ionized ammonia is not to exceed the criteria defined at Subsection 250.02.e.ii.~~ (~~4-5-00~~)

04. Warm Water. Waters designated for warm water aquatic life are to exhibit the following characteristics: (4-5-00)

a. Dissolved oxygen concentrations exceeding five (5) mg/l at all times. In lakes and reservoirs this standard does not apply to: (7-1-93)

i. The bottom twenty percent (20%) of the water depth in natural lakes and reservoirs where depths are thirty-five (35) meters or less. (7-1-93)

ii. The bottom seven (7) meters of water depth in natural lakes and reservoirs where depths are greater than thirty-five (35) meters. (7-1-93)

iii. Those waters of the hypolimnion in stratified lakes and reservoirs. (7-1-93)

b. Water temperatures of thirty-three (33) degrees C or less with a maximum daily average not greater than twenty-nine (29) degrees C. (8-24-94)

c. Temperature in lakes shall have no measurable change from natural background conditions. Reservoirs with mean detention times of greater than fifteen (15) days are considered lakes for this purpose. ()

ed. Ammonia. The following criteria are to be met dependent upon the temperature, T (degrees C), and pH of the water body: (8-24-94)()

i. ~~One (1) hour average concentration of un-ionized ammonia (as N) is not to exceed (0.43/A/B/2) mg/l, where:~~

~~A = 0.7 if the water temperature (T) is greater than or equal to 25 degrees C (if T > 30 degrees C site-specific criteria should be defined), or~~

~~A = 10^{power(0.03(20-T))} if T is less than 25 degrees C, and~~

~~B = 1 if the pH is greater than or equal to 8 (if pH > 9.0 site-specific criteria should be defined), or~~

~~B = (1 + 10^{power(7.4-pH)})/1.25 if pH is less than 8 (if pH < 6.5 site-specific criteria should be defined). (8-24-94)~~

ii. ~~Four-day average concentration of un-ionized ammonia (as N) is not to exceed (0.66/A/B/C) mg/l, where:~~

~~A = 1.0 if the water temperature (T) is greater than or equal to 20 degrees C (if T > 30 degrees C site-specific criteria should be defined), or~~

~~A = 10^{power(0.03(20-T))} if T is less than 20 degrees C, and)~~

~~B = 1 if the pH is greater than or equal to 8 (if pH > 9.0 site-specific criteria should be defined), or~~

~~B = (1 + 10^{power(7.4-pH)})/1.25 if pH is less than 8 (if pH < 6.5 site-specific criteria should be defined), and~~

~~C = 13.5 if pH is greater than or equal to 7.7, or~~

~~C = 20(10^{power(7.7-pH)}/(1 + 10^{power(7.4-pH)})) if the pH is less than 7.7. (4-13-95)~~

i. Acute Criterion (Criterion Maximum Concentration (CMC)). The one (1) hour average concentration of total ammonia nitrogen (in mg N/L) is not to exceed, more than once every three (3) years, the value calculated using the following equation:

$$CMC = \frac{0.411}{1 + 10^{7.204 - pH}} + \frac{58.4}{1 + 10^{pH - 7.204}}$$

()

ii. Chronic Criterion (Criterion Continuous Concentration (CCC)). Concentrations of ammonia are not to exceed the criteria defined at Subsection 250.02.d.ii. ()

05. **Modified.** Water quality criteria for modified aquatic life will be determined on a case-by-case basis reflecting the chemical, physical, and biological levels necessary to ~~fully support~~ attain the existing aquatic life community. These criteria, when determined, will be adopted into ~~this rule~~ these rules. (4-5-00)()

251. SURFACE WATER QUALITY CRITERIA FOR RECREATION USE DESIGNATIONS.

01. **Primary Contact Recreation.** Waters designated for primary contact recreation are not to contain E.coli bacteria significant to the public health in concentrations exceeding: (4-5-00)

a. For areas within waters designated for primary contact recreation that are additionally specified as public swimming beaches, a single sample of two hundred thirty-five (235) E. coli organisms per one hundred (100) ml. For the purpose of this subsection, "specified public swimming beaches" are considered to be indicated by features such as signs, swimming docks, diving boards, slides, or the like, boater exclusion zones, map legends, collection of a fee for beach use, or any other unambiguous invitation to public swimming. Privately owned swimming docks or the like which are not open to the general public are not included in this definition. ()

~~a~~b. For all other waters designated for primary contact recreation, A single sample of four hundred six (406) E.coli organisms per one hundred (100) ml; or (4-5-00)()

~~b~~c. A geometric mean of one hundred twenty-six (126) E.coli organisms per one hundred (100) ml based on a minimum of five (5) samples taken every three (3) to five (5) days over a thirty (30) day period. (4-5-00)

02. **Secondary Contact Recreation.** Waters designated for secondary contact recreation are not to contain E.coli bacteria significant to the public health in concentrations exceeding: (4-5-00)

a. A single sample of five hundred seventy-six (576) E.coli organisms per one hundred (100) ml; or (4-5-00)

b. A geometric mean of one hundred twenty-six (126) E.coli organisms per one hundred (100) ml based on a minimum of five (5) samples taken every three (3) to five (5) days over a thirty (30) day period. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

260. VARIANCES FROM WATER QUALITY STANDARDS.

01. **Variations.** Variations from meeting certain water quality standards may be granted by the Department provided they are consistent with the following requirements: (8-24-94)

a. When granted by the Department, individual variations are to be pollutant and discharger specific, and ~~will be included as part of this section.~~ shall be granted pursuant to the following procedure: (8-24-94)()

i. Prior to granting a variance, the Department shall publish notice of the Department's tentative determination to grant a variance and shall receive written comments for not less than thirty (30) days after the date the notice is published. The notice shall contain a clear description of the impacts of the variance upon the receiving stream segment. The Department shall also provide an opportunity for oral presentation of comments, if requested in writing within fourteen (14) days of the notice, by twenty-five (25) persons, a political subdivision, or an agency. ()

ii. The Department's final decision with respect to a variance may be appealed pursuant to IDAPA

58.01.23. "Rules of Administrative Procedure Before the Board of Environmental Quality". The Department shall maintain and make available to the public an updated list of variances. ()

b. In order to obtain a variance from a water quality standard, the discharger must demonstrate that meeting the standard is unattainable based on one or more of the following grounds: (8-24-94)

i. Naturally occurring pollutant concentrations prevent the attainment of the standard; or (8-24-94)

ii. Natural, intermittent, or low flow conditions or water levels prevent the attainment of the standard; or (4-5-00)

iii. Human caused conditions or sources of pollution prevent the attainment of the standard and cannot be remedied or would cause more environmental damage to correct than to leave in place; or (8-24-94)

iv. Dams, diversions or other types of hydrologic modifications preclude the attainment of the standard, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in attainment of the standard; or (8-24-94)

v. Physical conditions related to the natural features of the water body, unrelated to water quality, preclude attainment of the standard; or (8-24-94)

vi. Controls more stringent than technology-based effluent limitations would result in substantial and widespread economic and social impact. (8-24-94)

c. The discharger must submit to the Department documentation that treatment more advanced than required by technology-based effluent limitations have been considered and that alternative effluent control strategies have been evaluated. (8-24-94)

d. Any variance granted by the Department will remain in effect for a period of five (5) years or the life of the permit. (8-24-94)

i. Upon expiration of the five (5) year time period or permit, the discharger must either meet the standard or must re-apply for the variance in accordance with these rules. (8-24-94)

ii. In considering a re-application for a variance, the Department will require the discharger to demonstrate reasonable progress towards meeting the standard. (8-24-94)

02. Specific Variances. In addition to any variances listed separately from these rules as described in Subsection 260.01.a.ii., the following ~~are specific~~ variances have also been granted by the Department in accordance with Subsection 260.01: (~~3-1-95~~)()

~~a. Kinross DeLamar Mining Company is granted variances from meeting water quality standards listed in Subsection 210.02 for Copper, Selenium and Cyanide discharged to Jordan Creek, Subsection 150.08, SW-1 and SW-4. This variance expressly requires effluent limitations to equal zero point sixty nine (0.69) mg/l daily and zero point forty one (0.41) mg/l monthly for Copper, three point nine (3.9) mg/l daily and two point four (2.4) mg/l monthly for WAD Cyanide, and two point eight (2.8) mg/l daily and one point seven (1.7) mg/l monthly for Selenium, all presented on a total recoverable basis. Additionally, this variance is conditioned upon compliance with any terms identified in the state's certification of the discharge.~~ (4-5-00)

~~b.a.~~ The South Fork Coeur d'Alene River Sewer District (Page Wastewater Treatment Facility) is granted variances from meeting water quality standards in Section 250 for ammonia and chlorine, and Section 210 for cadmium, lead, and zinc, discharged to the West Page Swamp, located in T49N, R2E, S32, Boise Prime Meridian. (3-30-01)

~~b.b.~~ The variances provided in Subsection 260.02.b. are conditioned upon the discharges showing reasonable progress toward reducing their discharge of ammonia and chlorine. Reasonable progress shall be measured according to the terms of the state's certification of the discharges. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

284. SOUTH FORK COEUR D'ALENE SUBBASIN, SUBSECTION 110.09, HUC 17010302, AQUATIC LIFE CRITERIA FOR CADMIUM, LEAD AND ZINC.

The following criteria are to be met dependent upon the hardness, expressed as mg/l of calcium carbonate, of the water. Criterion maximum concentrations (CMC), one (1) hour average concentrations, and criterion continuous concentrations (CCC), four (4) day average concentrations, of the dissolved metals (in µg/l) are not to exceed, more than once every three (3) years, the values calculated using the following equations: ()

01. Cadmium. ()

a. $CMC = 0.973 \times e^{[(1.0166 \times \ln(\text{hardness})) - 3.924]}$ ()

b. $CCC = [1.101672 - (\ln(\text{hardness}) \times 0.041838)] \times e^{[(0.7852 \times \ln(\text{hardness})) - 3.490]}$ ()

02. Lead. ()

a. $CMC = e^{[(0.6244 \times \ln(\text{hardness})) + 2.5242]}$ ()

b. $CCC = e^{[(0.6244 \times \ln(\text{hardness})) + 0.3535]}$ ()

03. Zinc. ()

a. $CMC = e^{[(0.6990 \times \ln(\text{hardness})) + 2.1583]}$ ()

b. $CCC = e^{[(0.6990 \times \ln(\text{hardness})) + 2.1583]}$ ()

04. Application. ()

a. The criteria equations for cadmium described in Subsection 284.01 apply over a range of hardness of fifteen (15) mg/l to four hundred (400) mg/l. The minimum hardness allowed for use in those equations shall not be less than fifteen (15) mg/l even if the actual ambient hardness is less than fifteen (15) mg/l. The maximum hardness allowed for use in those equations shall not be greater than four hundred (400) mg/l even if the actual ambient hardness is greater than four hundred (400) mg/l. The criteria equations described for lead and zinc in Subsections 284.02 and 284.03 apply over a range of hardness of ten (10) mg/l to one hundred (100) mg/l. The minimum hardness allowed for use in those equations shall not be less than ten (10) mg/l even if the actual ambient hardness is less than ten (10) mg/l. The maximum hardness allowed for use in those equations shall not be greater than one hundred (100) mg/l even if the actual ambient hardness is greater than one hundred (100) mg/l. ()

b. The criteria described in Subsection 284.01 apply to the South Fork Coeur d'Alene River subbasin, units P-11 and P-13. ()

c. In addition to the waters listed in subsection 284.04.b, the criteria described in Section 284 apply to all surface waters within the subbasin, except for natural lakes, for which the statewide criteria given in Section 210 apply. ()

~~2845~~-- 299. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

400. RULES GOVERNING POINT SOURCE DISCHARGES.

01. Implementation Policy. (7-1-93)

a. As provided for in Subsection 080.01, and Sections 200, 210, 250, 251, 252, 253, 275, and 400 for point source discharges, failure to meet general or specific water quality criteria is a violation of the water quality standards. (4-5-00)

b. Except as noted in Section 400, no new point source can discharge pollutants, and no existing point source can increase its discharge of pollutants above the design capacity of its existing wastewater treatment facility, to any water designated as a special resource water or to a tributary of, or to the upstream segment of a special resource water: if pollutants significant to the designated beneficial uses can or will result in a reduction of the ambient water quality of the receiving special resource water as measured immediately below the applicable mixing zone. (8-24-94)

c. For those point sources that normally require authorization, no unauthorized discharge from a point source shall occur to waters of the state. (8-24-94)

02. Limitations To Point Source Restrictions. (7-1-93)

a. So long as a point source discharge or wastewater treatment facility is regulated by the terms and conditions of an authorization pursuant to Subsection 080.02, a Board order, decree or compliance schedule, a valid NPDES permit issued by the EPA, or is subject to the provisions of Subsection 401.05, the discharge or facility will not be subject to additional restrictions or conditions based on Subsections 080.01, or 400.01.b. and Sections 200, 210, 250, 251, 252, and 253. (4-5-00)

b. The restrictions set forth in Subsection 400.01.b. are modified as follows: New point sources can discharge, and existing point sources can increase its discharge above the design capacity of its existing wastewater treatment facility, resulting in increases in water temperatures and fluoride concentrations up to levels needed to protect designated beneficial uses in the Boise River between the bridge at Broadway Avenue and River Mile 50 (through Veteran's State Park). (4-5-00)

03. Compliance Schedules For Water Quality-Based Effluent Limitations. Discharge permits for point sources may incorporate compliance schedules which allow a discharger to phase in, over time, compliance with water quality-based effluent limitations when new limitations are in the permit for the first time. ~~Compliance schedules for NPDES permits are limited to five years or the life of the permit.~~ (8-24-94)(____)

04. Wetlands Used For Wastewater Treatment. (8-24-94)

a. Waters contained within wetlands intentionally created from non-wetland sites for the purpose of wastewater or stormwater treatment, and operated in compliance with NPDES permit conditions, shall not be subject to the application of general water quality-based or site-specific criteria and standards. (8-24-94)

b. Waters contained within wetlands intentionally created from non-wetland sites for the purpose of treatment of nonpoint sources of pollution, and operated in compliance with best management practices, shall not be subject to the application of general water quality-based or site specific criteria and standards. (8-24-94)

c. Discharges from treatment systems described in Sections 400.04.a. and 400.04.b. to waters of the state are subject to all applicable rules and requirements governing such discharges. (8-24-94)

05. Flow Tiered NPDES Permit Limitations. Discharge permits for point sources discharging to waters exhibiting unidirectional flow may incorporate tiered limitations for conventional and toxic constituents at the discretion of the department. (8-24-94)

401. POINT SOURCE WASTEWATER TREATMENT REQUIREMENTS.

01. Appropriate Control Measures. The Department, through approval or disapproval of plans for

wastewater treatment and disposal facilities, the issuance of wastewater discharge permits, orders, compliance schedules, directives or any of the mechanisms at its disposal, will require persons to apply appropriate control measures necessary to achieve and maintain the water quality standards contained herein. (7-1-93)

02. Degree Of Treatment. The degree of wastewater treatment required to restore and maintain the standards of quality will be determined in each instance by the Department, based upon the following: (7-1-93)

- a. The uses which are made or desired of the receiving water; (7-1-93)
- b. The volume and nature of flow of the receiving water; (7-1-93)
- c. The quantity and quality of the wastewater to be treated; and (7-1-93)
- d. The presence or absence of other sources of water pollution on the same watershed, stream segment or aquifer. (7-1-93)

03. Treatment Requirements. Unless more stringent limitations are necessary to meet the applicable requirements of Sections 200 through 300 or unless specific exemptions are made pursuant to Subsection 080.02 or 401.05, wastewaters discharged into surface waters of the state must have the following characteristics: (7-1-93)

- a. Temperature - the wastewater must not affect the receiving water outside the mixing zone so that: (7-1-93)
 - i. The temperature of the receiving water or of downstream waters will interfere with designated beneficial uses. (7-1-93)
 - ii. Daily and seasonal temperature cycles characteristic of the water body are not maintained. (7-1-93)
 - iii. If the water is designated for warm water ~~biota~~ aquatic life, the induced variation is more than plus two (+2) degrees C. (~~8-24-94~~)(____)
 - iv. If the water is designated for cold water ~~biota~~ aquatic life, seasonal cold water aquatic life, or salmonid spawning, the induced variation is more than plus one (+1) degree C. If temperature criteria for the respective aquatic life designated uses are exceeded in the receiving waters immediately upstream of the discharge due to natural background conditions, no further increase is allowed which will raise the receiving water temperatures by more than three tenths (0.3) degrees C. (~~8-24-94~~)(____)
- b. Turbidity - the wastewater must not increase the turbidity of the receiving water outside the mixing zone by:
 - i. More than five (5) NTU (Nephelometric Turbidity Units) over background turbidity, when background turbidity is fifty (50) NTU or less; or (7-1-93)
 - ii. More than ten percent (10%) increase in turbidity when background turbidity is more than fifty (50) NTU, not to exceed a maximum increase of twenty-five (25) NTU. (7-1-93)
- c. Total Chlorine Residual - the wastewater must not affect the receiving water outside the mixing zone so that its total chlorine residual concentration exceeds eleven one-thousandths (0.011) mg/l. (1-1-89)

04. Limitations On Increased Treatment Requirements. In spite of any other provision and future amendment of these regulations, any point source treatment facility whose construction began after June 28, 1973, which was designed to meet federal and state requirements and which was constructed to the full satisfaction of the Department, will not be subject to any more stringent requirements or limitations as can be imposed by the Department during a ten (10) year period beginning on the date of completion of such construction except: (7-1-93)

- a. In conformance with contractual agreements made with the Department, in which case the date of completion of those agreements would establish the beginning of the ten (10) year period; (7-1-93)

b. When facility expansion, production increase, or process modification would alter the composition of the discharge or exceed the design capacity of the treatment facility; or (7-1-93)

c. When a component or a concentration of a component in the discharge is later found to be causing or to be capable of causing significant injury to a designated beneficial use. (8-24-94)

05. Exceptions To Treatment Requirements. Exceptions to treatment requirements can be granted on a case-by-case basis when it can be demonstrated by the person requesting the exceptions: (7-1-93)

a. That such exceptions will not seriously affect existing water quality and uses are adequately protected; (7-1-93)

b. That the treatment requirement is: (7-1-93)

i. Unreasonable with current applicable technology; or (7-1-93)

ii. Economically prohibitive; or (7-1-93)

c. That treatment to a lesser degree would result in a net improvement in the water quality of the receiving water. (7-1-93)

06. Operation. Any person who owns or operates any sewage or other wastewater treatment facility must at all times: (7-1-93)

a. Insure that such facility is operated under competent supervision and with the highest efficiency that can reasonably be expected; and (7-1-93)

b. Maintain such facility in good repair. (7-1-93)

07. Treatment Records. Any person who owns or operates any facility or carries out any operation which results in the discharge of wastewater must furnish to the Department such information concerning quality and quantity of discharged wastewaters and maintain such treatment records as the Department requires to evaluate the effects of any receiving waters. Required information can include, but is not limited to: (7-1-93)

a. Treated wastewater discharge volumes; and (7-1-93)

b. Treated wastewater discharge BOD; and (7-1-93)

c. Treated wastewater discharge suspended solid concentration; and (7-1-93)

d. Discharge pH; and (7-1-93)

e. Discharge temperatures. (7-1-93)

08. Falsification Of Records. It is a violation of these regulations for any person to falsify or knowingly render inaccurate any treatment record which can be required as provided in these regulations. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

420. POINT SOURCE SEWAGE WASTEWATER DISCHARGE RESTRICTIONS.

All provisions and requirements of Sections 400, 401, and 402 are applicable to sewage wastewater treatment facilities and their discharges. (8-24-94)

01. General Treatment Requirements. Except as provided in Subsections 420.02 and 420.03, sewage wastewater discharges, except those from lagoon or trickling filter facilities, into surface waters of the state must have the following characteristics: (7-1-93)

a. BOD - the equivalent of eighty-five percent (85%) removal of the biochemical oxygen demand, but not more than a thirty (30) day average concentration of thirty (30) mg/l; and (7-1-93)

b. Suspended Solids - the equivalent of eighty-five percent (85%) removal of the suspended solids, but not more than a thirty (30) day average concentration of thirty (30) mg/l. (7-1-93)

02. Alternative Treatment Requirements. The following alternative treatment requirements are established to apply to facilities which provide at least sixty-five percent (65%) BOD removal using a trickling filter or lagoon as the principal treatment process, and which the Department determines cannot consistently achieve requirements of Subsections 420.01.a. and 420.01.b. (7-1-93)

a. Sewage wastewater discharges from facilities using trickling filters as the principal treatment process must have the following characteristics: (7-1-93)

i. BOD - not to exceed a thirty (30) day average concentration of forty-five (45) mg/l; and (7-1-93)

ii. Suspended Solids - at least sixty-five percent (65%) removal and not to exceed a thirty (30) day average concentration of forty-five (45) mg/l. (7-1-93)

b. Sewage wastewater discharges from facilities using lagoons as the principal treatment process must have the following characteristics: (7-1-93)

i. BOD - not to exceed a thirty (30) day average concentration of forty-five (45) mg/l; and (7-1-93)

ii. Suspended Solids - not to exceed a thirty (30) day average concentration of seventy (70) mg/l. (7-1-93)

03. Adjusted Treatment Requirements For Industrial Loading. The Department may proportionally adjust, on a case-by-case basis, the treatment requirements of Subsection 401.03 or 401.05 where industrial waste loadings contribute greater than ten percent (10%) of the design flow or loading into a publicly owned sewage treatment facility. (7-1-93)

04. Determining The Necessity For Disinfection Of Sewage Wastewater Treatment Plant Effluent. (8-24-94)

a. Disinfection of sewage treatment plant effluent shall be required when discharged to a water body under the following conditions: (8-24-94)

i. The water body receiving the effluent flows through a significantly populated area or has a designated or existing beneficial use of primary contact recreation. (8-24-94)

ii. The water body receiving the effluent is a direct tributary to a water body that flows through a significantly populated area or has a designated or existing beneficial use of primary contact recreation and disinfection is necessary to protect public health. (8-24-94)

iii. Site-specific conditions warrant disinfection for the protection of public health. (8-24-94)

b. The need for disinfection of sewage wastewater treatment plant effluent where treatment consists of lagoons with at least thirty (30) day retention time shall be evaluated on a case-by-case basis. (8-24-94)

05. Disinfection Requirements For Sewage Wastewater Treatment Plant Effluent. When disinfection is determined to be required under Subsection 420.04, sewage wastewater treatment plant effluent must receive adequate disinfection by any disinfection process which satisfies the following applicable criteria, prior to

discharge to any receiving water. (8-24-94)

a. ~~Fecal~~ *E. coliform* concentrations in secondary treated effluent (as determined by multiple-tube fermentation or membrane filter procedures) must not exceed a geometric mean of ~~two~~ one hundred ~~and twenty-six~~/one hundred (~~200~~126/100) ml based on no more than one (1) week's data and a minimum of five (5) samples. (7-1-93)()

i. The samples must be representative of all samples collected during the week; and (7-1-93)

ii. Geometric mean computations must be calculated and recorded weekly. (7-1-93)

b. On an interim basis, pending the addition of secondary treatment, primary effluent must contain ~~fecal coliform~~ *E. coli* concentrations (as determined by multiple-tube fermentation or membrane filter procedures) not exceeding a geometric mean of ~~four~~ two hundred ~~and fifty-two~~/one hundred (~~400~~252/100) ml with no more than one (1) sample per week exceeding ~~one thousand six hundred and thirty~~/one hundred (~~1,000~~630/100) ml, based on no more than one (1) week's data and a minimum of five (5) samples. (7-1-93)()

i. The samples must be representative of all samples collected during the week; (7-1-93)

ii. Geometric mean computations must be calculated and recorded weekly; and (7-1-93)

iii. This discharge ~~coliform~~ *bacteria* level will not be permitted even on an interim basis where the ~~coliform~~ *bacteria* receiving water quality standard is not being met. (7-1-93)()

06. Chlorine Contact Tank Requirements. Chlorine contact tanks providing disinfection must be designed and operated so that: (7-1-93)

a. Short circulating is minimized with thorough mixing of chlorine and waste flow; (7-1-93)

b. Floatable and settleable solids are removed without discharging unchlorinated effluent; and (7-1-93)

c. Unit drains are not discharged into the treated wastewater outfall. (7-1-93)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.09 - RULES REGULATING SWINE AND POULTRY FACILITIES

DOCKET NO. 58-0109-0001

NOTICE OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The amendments to the temporary rule were effective June 15, 2001. This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2002 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-sixth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapter 1, Title 39, Idaho Code. Section 39-104A, Idaho Code, (amended by House Bill 696) contains explicit authorization for requiring financial assurances for swine and poultry facilities.

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 for the change.

In October 2000 the Board adopted a temporary rule to implement the provisions of House Bill 696 (codified at Section 39-104A, Idaho Code) which requires permittees of swine and poultry facilities to provide financial assurances for the operation, closure and remediation of their facilities. In December 2000, DEQ published the temporary/proposed rule, inviting the public to comment on the rule. Idaho Administrative Bulletin, Volume 00-12, December 6, 2000, pages 85 through 93. The agency received no public comment on the proposal, but did revise section 205 for clarity and consistency. The remaining sections have been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

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

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit its web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact Susan Burke at (208)373-0502, sburke@deq.state.id.us.

Dated this 20th day of June, 2001.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

IDAPA 58, TITLE 01, Chapter 09

RULES REGULATING SWINE AND POULTRY FACILITIES

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 00-12, December 6, 2000, pages 85 through 93.

This rule has been adopted as a pending rule by the Agency and is now pending review and adoption by the 2002 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0109-0001

205. FINANCIAL ASSURANCE REQUIREMENTS.

Subsection 205.02.c.iii.

02. Financial Assurance Mechanisms. The owner shall submit as part of the permit application evidence of financial assurance to cover the approved remediation and closure cost estimates. However, if the Department has determined, prior to October 19, 2000, that a complete application has been submitted, the owner shall submit the remediation and closure cost estimates and financial assurance mechanism to the Department for approval prior to the issuance of a permit. The mechanism used to demonstrate financial assurance shall be submitted to the Department for approval and shall ensure that the funds necessary to meet the approved costs of remediation and closure will be available whenever they are needed. The financial assurance mechanisms allowed for swine and poultry facilities shall include any mechanism or a combination of mechanisms meeting the criteria set forth below or other mechanism approved by the Department. (10-19-00)T

c. Letter of Credit. (10-19-00)T

i. An owner may satisfy the requirements of Subsection 205.02 by obtaining an irrevocable standby letter of credit and submitting a certified copy of the letter to the Department. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency. (10-19-00)T

ii. The letter of credit must be accompanied by a letter from the owner referring to the letter of credit by number, issuing institution, and date, and providing the following information: the type of facility, name and address of the facility, and the amount of funds assured for remediation and closure of the facility by the letter of credit. (10-19-00)T

iii. The letter of credit must be irrevocable and issued for a period of at least one (1) year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner and the Department by certified mail of a decision not to extend the expiration date. *Under the terms of the*

~~letter of credit, the one hundred twenty (120) days will begin on the date when the Department has received the notice, as evidenced by the return receipt. Cancellation may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by the Department, as evidenced by the return receipt. The issuing institution shall remain liable on the letter of credit for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the Department in accordance with Subsection 205.02.f., that covers both the existing and future costs of remediation and closure.~~ (10-19-00)F(6-15-01)T

Subsection 250.02.e.v.

- e. Corporate Guarantee. (10-19-00)T
- i. An owner may satisfy the requirements of Subsection 205.02 by obtaining a written guarantee and submitting a certified copy of the guarantee and appropriate letter from the guarantor. The guarantor must be the direct or higher-tier parent corporation of the owner, a firm whose parent corporation is also the parent corporation of the owner, or a firm with a “substantial business relationship” with the owner. (10-19-00)T
- ii. If the guarantor’s parent company is also the parent corporation of the owner, a letter from the guarantor’s chief financial officer must describe the value received in consideration of the guarantee. (10-19-00)T
- iii. If the guarantor is a firm with a “substantial business relationship” with the owner, the letter must describe the “substantial business relationship” and the value received in consideration of the guarantee. (10-19-00)T
- iv. The terms of the guarantee shall provide that if the owner fails to perform remediation or closure of a facility covered by the guarantee, the guarantor will: (10-19-00)T
- (1) Perform, or pay a third party to perform, remediation and closure as required (performance guarantee); or (10-19-00)T
- (2) Establish a fully funded trust fund as specified in Subsection 205.02.a. in the name of the owner (payment guarantee). (10-19-00)T
- v. The guarantee shall remain in force for as long as the owner must comply with the applicable financial assurance requirements of Subsection 205.02 unless the guarantor sends notice of cancellation by certified mail to the owner and to the Department one hundred twenty (120) days in advance. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice by the Department, as evidenced by the return receipt. The guarantor shall remain liable on the guarantee for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the Department in accordance with Subsection 205.02.f., that covers both the existing and future costs of remediation and closure. (10-19-00)F(6-15-01)T

Subsection 250.02.f.

f. If a financial assurance mechanism is cancelled by the issuing entity, the owner shall obtain alternate financial assurance, within sixty (60) days of receipt of notice of cancellation by the Department, which shall be submitted to the Department for approval. The alternate financial assurance must become effective not later than the effective date of cancellation or termination of the existing financial assurance. An owner may only cancel a financial assurance mechanism after first obtaining an alternative mechanism approved by the Department. (10-19-00)F(6-15-01)T

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.10 - RULES REGULATING THE DISPOSAL OF RADIOACTIVE MATERIALS NOT
REGULATED UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

DOCKET NO. 58-0110-0101

NOTICE OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Section 39-4405, Idaho Code.

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

Wednesday, August 22, 2001, 7 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: This proposed rule implements the 2001 legislation enacted under House Bill 192 (codified at Sections 39-4403, 39-4405 and 39-4427, Idaho Code) wherein DEQ was directed to develop rules specifying radioactive materials or other radioactive material occurring naturally that may be disposed of at a commercial hazardous waste facility or site. This proposed rule will establish radiation protection standards for the disposal of radioactive materials not subject to regulation under the Atomic Energy Act of 1954, as amended (AEA).

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October or November 2001 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2002 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Dean Ehlert at (208)373-0502 or dehlert@deq.state.id.us.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before August 22, 2001.

DATED this 20th day of June, 2001.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418
Fax No. (208)373-0481
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0110-0101

IDAPA 58
TITLE 01
Chapter 10

**58.01.10 - RULES REGULATING THE DISPOSAL OF RADIOACTIVE MATERIALS NOT
REGULATED UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED**

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Board of Environmental Quality the authority to promulgate these rules pursuant to Section 39-4405, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as Rules of the Department of Environmental Quality, IDAPA 58.01.10, "Rules Regulating the Disposal of Radioactive Materials Not Regulated Under The Atomic Energy Act of 1954, As Amended." ()

02. Scope. These rules regulate the disposal of radioactive materials at facilities licensed and subject to the requirements of the Idaho Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code, and the Idaho Hazardous Waste Facility Siting Act, Chapter 58, Title 39, Idaho Code. These rules do not regulate slag from the production of elemental phosphorus regulated by rules to be adopted by the Board or phospho-gypsum from the production of phosphate fertilizers, which includes the production of phosphoric acid regulated by rules to be adopted by the Board. ()

002. WRITTEN INTERPRETATIONS.

Any written statements pertaining to the interpretation of these rules shall be available for review at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. ()

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under this chapter pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". ()

004. INCORPORATION BY REFERENCE.

These rules do not contain documents incorporated by reference. ()

005. 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. ()

006. -- 009. (RESERVED).

010. DEFINITIONS.

01. Accelerator-Produced Radioactive Material. Any material made radioactive by exposing it to the radiation from a particle accelerator. ()

02. Board. The Idaho Board of Environmental Quality. ()

- 03. Department.** The Idaho Department of Environmental Quality. ()
- 04. Exempt Quantities And Concentrations Of Byproduct Materials.** Radioactive materials defined as byproduct by the U.S. Nuclear Regulatory Commission (10 CFR 30.14 through 30.16, 10 CFR 30.18 through 30.21, 10 CFR 32.11, 10 CFR 32.18 and 10 CFR 40.13) in which the quantity and concentration of radionuclides are considered exempt from regulation. ()
- 05. Naturally Occurring Radioactive Material (NORM).** Any material containing natural radionuclides at natural background concentrations, where human intervention has not concentrated the naturally occurring radioactive material or altered its potential for causing human exposure. NORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954. ()
- 06. Operator.** Any person(s) currently responsible, or responsible at the time of disposal, for the overall operation of a hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. ()
- 07. Owner.** Any person(s) who currently owns, or owned at the time of disposal, a hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. ()
- 08. Person.** Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal government department, agency, or instrumentality, municipality, industry, or any other legal entity which is recognized by law as the subject of rights and duties. ()
- 09. Radioactive Material.** Radioactive Material includes: ()
- a. Naturally Occurring Radioactive Material; ()
 - b. Technologically Enhanced Naturally Occurring Radioactive Material; ()
 - c. Accelerator Produced Radioactive Material; ()
 - d. Exempt Quantities and Concentrations of Byproduct Materials; and ()
 - e. Unimportant Quantities of Source Material. ()
- 10. Reasonably Maximally Exposed Individual.** That individual or member group of individuals who by reason of location has been determined, through the use of environmental transport modeling and dose calculation, to receive the highest total effective dose equivalent from radiation emitted from the site and/or radioactive material transported off-site. ()
- 11. Technologically Enhanced Naturally Occurring Radioactive Material (TENORM).** Any naturally occurring radioactive materials not subject to regulation under the Atomic Energy Act whose radionuclide concentrations or potential for human exposure have been increased above levels encountered in the natural state by human activities. TENORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954. ()
- 12. Unimportant Quantities Of Source Material.** Unimportant Quantities of Source Material are defined as: ()
- a. Uranium or thorium, or any combination thereof, in any physical or chemical form; or ()
 - b. Ores that contain by weight less than five one-hundredths (0.05) percent of uranium, thorium or any combination thereof. Source material does not include special nuclear material. ()
- 011. -- 019. (RESERVED).**

020. RADIATION PROTECTION STANDARDS.

01. General Protection Standards. ()

a. No owner or operator shall conduct operations, create, use or transfer Radioactive Materials in a manner such that any member of the public will receive an annual Total Effective Dose Equivalent (TEDE) in excess of one hundred (100) millirem per year (1 milliseivert/year). ()

b. No person shall release Radioactive Materials for unrestricted use in such a manner that the reasonably maximally exposed individual will receive an annual TEDE from the released Radioactive Materials in excess of twenty-five (25) millirem per year (twenty-five one-hundredths (0.25) milliseivert/year) excluding natural background. ()

02. Protection Of Workers During Operations. All owners and operators shall conduct operations in a manner consistent with the standards for radiation protection contained in 10 CFR 20. ()

03. Disposal Of Radioactive Material. No person, owner, or operator shall dispose of radioactive materials by any method other than: ()

a. At a permitted treatment, storage or disposal facility under the authority of the Idaho Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code, provided that the facility owner or operator complies with each of the following: ()

i. A Department-approved waste acceptance criteria for radioactive material defined in Section 010; ()

ii. A Department-approved closure program that provides reasonable assurance that the radon emanation rate from the closed disposal unit will not exceed twenty (20) picocuries per square meter per second averaged across the entire area of the closed disposal unit and meets the requirements in Subsection 020.01.b.; and ()

iii. A Department-approved environmental monitoring program that monitors air, ground water, surface water and soil for radionuclides and ambient radiation levels in the environs of the facility and which demonstrates that no member of the general public is likely to exceed a radiation dose of one hundred (100) millirem (one (1) milliseivert) per year from operations conducted at the site. ()

b. By transferring wastes for disposal to a facility licensed under requirements for uranium or thorium byproduct materials in either 40 CFR 192 or 10 CFR 40 Appendix A; ()

c. By transferring wastes for disposal to a disposal facility licensed by the USNRC, an agreement state, or a licensing state; or ()

d. In accordance with alternate methods authorized by the Department upon application or upon the Department's initiative, consistent with Section 020.01 and all applicable state statutes and regulations. ()

04. Prohibit Disposal At A Municipal Solid Waste Landfill. No person shall dispose of radioactive material at a municipal solid waste landfill. ()

021. -- 029. (RESERVED).

030. RECORDS.

Records of disposal, including manifest, shall be maintained for three (3) years in accordance with 40 CFR 262.40 and 40 CFR 262.23. ()

031. -- 039. (RESERVED).

040. VIOLATIONS.

01. Failure To Comply. Failure by any person, owner, or operator to comply with the provisions of these rules shall be deemed a violation of these rules. ()

02. Falsification Of Statements And Records. It shall be a violation of these rules for any person, owner, or operator to knowingly make a false statement, representation, or certification in any document or record developed, maintained, or submitted pursuant to these rules. ()

03. Penalties. Any person violating any provision of these rules or order issued thereunder shall be liable for civil penalty in accordance with Chapter 44, Title 39, Idaho Code. ()

041. -- 999. (RESERVED).

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 RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2002 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-sixth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Idaho Code Section 67-5224, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for commencing the proposed rulemaking is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 00-8, August 2, 2000, pages 166 through 184.

DEQ received comments from the public concerning the proposed rule. DEQ's Rulemaking and Public Comment Summary, which contains a complete consideration of the issues raised by the public and an explanation of the reasons for changes between the text of the proposed rule and the text of the pending rule, is included in the rulemaking record, which can be obtained by contacting the undersigned. Sections 000, 003, 004, 007, 013, 103, 300, 304, 350, 351, 417, 500, 541-544, 551-554, 556, 557, 559-562, 601, 603-605, 610, 611, 613, 614, 700, 702, and 780 have been adopted as initially proposed. The remaining sections have been changed or added in response to comment, for clarification purposes, or to achieve consistency with IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General".

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact Paula Gradwohl at (208)373-0418 or pgradwoh@deq.state.id.us.

Dated this 20th day of June, 2001.

Paula J. Gradwohl
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Attorney General's Office
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IDAPA 58, TITLE 01, Chapter 23

RULES OF ADMINISTRATIVE PROCEDURE BEFORE
THE BOARD OF ENVIRONMENTAL QUALITY

There are substantive changes from the proposed rule text.

All sections have some changes, therefore,
the entire docket is being reprinted.

The text of the proposed rule was published in the Idaho Administrative
Bulletin, Volume 00-8, August 2, 2000, pages 166 through 184.

This rule has been adopted as a pending rule by the Agency and is now pending
review and adoption by the 2002 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED 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, *and rulemaking procedures* 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.

The Environmental Protection and Health Act, Title 39, Chapter 1, Idaho Code, provides specific authority for the Board to adopt contested case rules that are consistent with the rules adopted by the Attorney General under Section 67-5206(4), Idaho Code. To the extent possible given the statutory authority of, and the programs administered by, the Department, the contested case provisions in these rules are consistent with the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedures of the Attorney General" (Attorney General Rules). The majority of the Attorney General Rules are adopted; however, certain provisions of the Attorney General Rules are not adopted or are modified to reflect administrative practice before the Board and the Environmental Protection and Health Act. ()

007. RULES OF GENERAL PROCEDURE AND DEFINITIONS.

Sections 007 through 013 establish provisions and definitions applicable to all proceedings governed by these rules. ()

008. FILING AND SERVICE OF DOCUMENTS.

01. Filing of Documents. ()

a. 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. ()

b. Upon receipt of a petition initiating a contested case, rulemaking, or declaratory ruling, the hearing coordinator shall serve the petition upon the Department. In any proceeding involving a permit, the hearing coordinator shall serve upon the permit applicant or permit holder the petition and a notice informing the permit applicant or permit holder that they have twenty-one (21) days after the date of service of the petition to intervene in the proceeding and that they may be bound by any decision rendered in the proceeding. ()

02. Service of Documents. From the time a party files its petition initiating a contested case, rulemaking or declaratory ruling, 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 or representatives designated pursuant to Section 044, unless otherwise directed by order or notice or by the presiding officer. The presiding officer may order parties to serve past documents filed in the case upon those representatives. The parties may serve courtesy copies upon the presiding officer. ()

009. 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. ()

010. DEFINITIONS AND ABBREVIATIONS.

01. Aggrieved Person Or Person Aggrieved. Any person or entity with legal standing to challenge an action or inaction of the Department, including but not limited to permit holders and applicants for permits challenging Department permitting actions. ()

02. Board. The Idaho Board of Environmental Quality. ()

03. Contested Case. A proceeding resulting in an order, in which the legal rights, duties, licenses, 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. Contested case does 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." ()

04. 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. ()

05. Department Or DEQ. The Idaho Department of Environmental Quality. ()

06. Director. The Director of the Department of Environmental Quality. ()

07. 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. ()

08. 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. The hearing officer cannot be an employee of the Department. ()

09. Idaho Administrative Bulletin. The Idaho Administrative Bulletin established in Chapter 52, Title 67, Idaho Code. ()

10. 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. ()

11. 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. ()

12. Person. Any individual, partnership, corporation, association, governmental subdivision, department, agency or instrumentality, or public and private organization or entity of any character. ()

13. **Petition.** Pleadings initiating a contested case, rulemaking, or declaratory ruling, or to intervene filed in accordance with these rules. ()

14. **Pleadings.** All documents filed by any party in a contested case proceeding. ()

15. **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 PLEADINGS.

Parties' pleadings 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. -- 042. (RESERVED).

043. RULES GOVERNING DECLARATORY RULING AND CONTESTED CASE PROCEEDINGS.

Sections 043 through 048 establish provisions governing declaratory ruling and contested case proceedings. ()

044. INITIAL PLEADING BY PARTY -- LISTING OF REPRESENTATIVES.

The initial pleading of each party to a contested case and declaratory ruling 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. ()

045. REPRESENTATION OF PARTIES.

01. Appearances And Representation. Unless otherwise authorized or required by law, appearances and representation of parties or other persons at contested case or declaratory ruling 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 a hearing, and no other persons or parties, are entitled to examine witnesses and make or argue motions. ()

046. -- 047. (RESERVED).

048. 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 must immediately file a motion to withdraw representation and serve that motion on the party represented and all other parties. ()

049. RULES GOVERNING DECLARATORY RULING PROCEEDINGS.

Sections 049 through 052 establish provisions governing declaratory ruling proceedings. ()

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 Department 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.

If the Board determines that the subject matter of a petition for declaratory ruling is of interest to the public, notice of receipt of the petition may be issued by the Board pursuant to the requirements of Chapter 1, Title 60, Idaho Code. ()

052. PETITIONS FOR DECLARATORY RULINGS TO BE DECIDED BY ORDER.

01. Final Agency Action. The Board's decision on a petition for declaratory ruling on the applicability of any statute, rule or order administered by the Department is a declaratory ruling and a final agency action within the meaning of Section 67-5255, Idaho Code. ()

02. Content. The Board's 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 the declaratory ruling. See Section 67-5273, Idaho Code. ()

053. -- 098. (RESERVED).

099. RULES GOVERNING CONTESTED CASE PROCEEDINGS.
Sections 099 through 791 establish provisions governing contested case proceedings. ()

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 *thirty-five (35) days from the date of the action or inaction of the Department* to file a petition initiating a contested case. ()

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. *This section does not apply to Department action governed by Section 67-5254(1), Idaho Code.* ()

102. PETITIONER HAS BURDEN OF PROOF.
Unless otherwise provided by statute, the petitioner in a contested case has the burden of proving *by a preponderance of the evidence, the allegations in the petition.* ()

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. -- 206. (RESERVED).

207. CONDUCT REQUIRED.
Representatives of parties and parties appearing in a proceeding must conduct themselves in an ethical and courteous manner. ()

208. TAKING OF APPEARANCES -- PARTICIPATION BY DEPARTMENT STAFF.
The presiding officer at a formal hearing or prehearing conference will take appearances to identify the representatives of all parties or other persons. In all proceedings in which the department staff will participate, or any report or recommendation of the department staff will be considered or used in reaching a decision, at the timely request of any party the department staff must appear at any hearing and be available for cross-examination. ()

209. RESERVED.

210. PLEADINGS IN CONTESTED CASES LISTED -- MISCELLANEOUS.
Pleadings in contested cases *may include* petitions, responses, motions, and objections. Affidavits may also be filed. A party's initial pleading in any proceeding must comply with Section 044. 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 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. ()
- e. State the basis for the petitioner’s legal standing to initiate the contested case.* ()

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 an 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 Board or presiding officer to take any 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. 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, motions for summary judgment shall be governed by the Idaho Rules of Civil Procedure, including the form, standard for determining, procedure and time frames for filing and responding. For any other motion, unless otherwise provided by the presiding officer, 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. The presiding officer may allow an opportunity for the movant to file a reply brief. ()

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)	(CASENO.)
)	
)	(TITLE OF DOCUMENT)
)	()

301. (RESERVED).

302. PROOF OF SERVICE.

Every document meeting the requirements for service set out in Section 008 must be attached to or accompanied by proof of service by the following or similar certificate:

I hereby certify that on this (insert date), a true and correct copy of the foregoing (insert name of document) was served on the following as indicated below: (insert names and addresses of parties and method of delivery (first class U.S. mail, facsimile, hand-delivery, or overnight express))

(Signature) ()

303. DEFECTIVE, INSUFFICIENT OR UNTIMELY PLEADINGS.

Defective, insufficient or untimely pleadings shall not be considered unless the presiding officer determines otherwise, but the presiding officer shall not consider a petition that is filed outside the time limit set forth in Section 100. ()

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.

01. General. Petitions to intervene must be filed at least fourteen (14) days before the date set for the prehearing conference unless a different time is provided by order or notice. ()

02. Proceedings Involving a Permit. *In any proceeding involving a permit, petitions to intervene by the permit applicant or permit holder must be filed within twenty-one (21) days after service of the initiating petition as provided in Subsection 008.01.b.* ()

03. Petitions Not Timely Filed. 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. *In addition, upon timely filing of a petition in accordance with Subsection 352.02, a permit applicant or permit holder may intervene as a matter of right in any contested case in which the permit is contested.* ()

354. ORDERS GRANTING INTERVENTION -- OBJECTIONS.

No 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. BOARD MEMBERS AS PRESIDING OFFICERS, APPOINTMENT OF HEARING OFFICERS -- NOTICE.

One (1) or more members of the Board may act as the presiding officer in a contested case. The Board may appoint a hearing officer to act as the presiding officer on behalf of the Board. 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 hearing coordinator shall administer the appointment of the hearing officer. Notice of appointment of a hearing officer and notice of those Board members who will act as presiding officers shall be served on all parties. ()

411. (RESERVED).

412. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES.

Presiding officers, including hearing officers appointed by the Board, may be disqualified as provided in Section 67-5252, Idaho Code. ()

413. SCOPE OF AUTHORITY OF PRESIDING OFFICERS.

Unless the Board otherwise provides, presiding officers have the following authority: ()

01. Authority to Schedule Cases. Authority to schedule cases, including authority to issue notices of prehearing conference and of hearing, as appropriate; ()

02. Authority to Schedule and Compel Discovery. Authority to schedule, *limit or* compel discovery and to require advance filing of expert testimony; ()

03. Authority to Preside at Hearings. 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 ()

04. Authority to Issue a Written Decision. 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 *or recommended* orders. ()

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 *or rule* unconstitutional 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 decide the proceeding in accordance with the precedent of the court. ()

416. REVIEW OF RULES.

When an order is issued by the Board in a contested case, the order may consider and decide whether a rule is within the Board's substantive rulemaking authority. The Board may also review whether a rule has been promulgated according to proper procedure, if noncompliance with procedural requirements is raised within the time limits set forth in Section 67-5231, Idaho Code. The Board may delegate to a presiding officer the authority to recommend a decision on issues of whether a rule is within the Board's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure or may retain all such authority itself. ()

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) *and the parties to a contested case may agree to use 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. NEUTRALS.

When alternate dispute resolution (ADR) is agreed by the parties to be used for all or a portion of a contested case, a neutral may be used to assist the parties in resolving their disputed issues. The neutral may be an employee of another state agency or any other individual who is acceptable to the parties to the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. ()

502. -- 509. (RESERVED).

510. PREHEARING CONFERENCE.

01. Prehearing Conference. *As soon as reasonably possible* after the Department files its response to the petition for contested case, the presiding officer *shall*, upon written or other sufficient notice to all parties, hold a prehearing conference for the following purposes: ()

a. To determine deadlines for the information exchange required by Section 540, other discovery if allowed and prehearing motions. The presiding officer shall attempt to set deadlines and a schedule that results in a preliminary or recommended order within one hundred eighty (180) days of the date the petition is filed. ()

b. To determine limits, if any, on other discovery if allowed, including without limitation, limits on the number of depositions or discovery requests and the areas of inquiry. ()

- c. To formulate or simplify the issues; ()
- d. To obtain admissions or stipulations of fact and of documents; ()
- e. To arrange for exchange of proposed exhibits or prepared expert testimony; ()
- f. To limit the number of witnesses; ()
- g. To determine the procedure at the hearing; and ()
- h. To determine any other matters which may expedite the orderly conduct and disposition of the proceeding. ()

02. Additional Prehearing Conferences. *Additional prehearing conferences may be held, to address any of the issues listed in Subsection 510.01, at the request of any party or at the presiding officer's own initiative, if the presiding officer determines additional prehearing conferences would be useful.* ()

511. RECORD OF CONFERENCE.

Prehearing conferences may be held formally (on the record) or informally (off the record). Agreements by the parties to the conference may be put on the record during formal conferences *and shall* be reduced to writing and filed with the hearing coordinator after formal or informal conferences. ()

512. ORDERS RESULTING FROM PREHEARING CONFERENCE.

The presiding officer *shall* 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. -- 528. (RESERVED).

529. EXHIBIT NUMBERS.

The presiding officer assigns exhibit numbers to each party. ()

530. -- 539. (RESERVED).

540. EXCHANGE OF INFORMATION, OTHER DISCOVERY.

01. Information Exchange. In accordance with the prehearing order issued by the presiding officer pursuant to Section 512, each party shall file and serve on all other parties an information exchange document. Documents and exhibits identified in the information exchange document shall be exchanged by the parties in accordance with the prehearing order but, unless otherwise determined by the presiding officer, need not be filed. The information exchange document shall include the following: ()

a. The names of any experts or other witnesses intended to be called at the hearing, together with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called; and ()

b. A description of all documents and exhibits intended to be introduced into evidence at the hearing;
and ()

c. An identification of any expert reports and prepared testimony; and ()

d. A list of all persons with specific knowledge regarding disputed issues of material fact asserted in the petition or the response to the petition. ()

02. Additional Discovery. Discovery in addition to the information exchange provided for in Subsection 540.01 may be allowed by the presiding officer in the prehearing order or in response to a motion by any party. In determining whether to allow additional discovery, the presiding officer shall consider the following: ()

a. Whether the discovery will unreasonably delay the proceeding or unreasonably burden other persons or parties; ()

b. Whether the information sought is most reasonably obtained from the party or person to whom it is directed and that party or person has refused to provide the information voluntarily; ()

c. Whether the information sought has significant probative value on a disputed issue of material fact relevant to the contested case. ()

03. Scope of Additional Discovery Allowed. If additional discovery is allowed, unless 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. ()

04. Supplementation of Information Exchange and Discovery. A party who has made an information exchange or who has exchanged information in response to a request for information or a discovery order, shall promptly supplement or correct the exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated, and the additional or corrected information has not otherwise been disclosed to the other party. ()

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.

01. General Authority. The presiding officer may issue protective orders limiting access to information generated *or requested* during settlement negotiations, discovery, or hearing, including but not limited to orders to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, orders to avoid an unreasonable delay in the proceedings, or orders to limit discovery of information that has no significant probative value on a disputed issue of material fact relevant to the contested case. ()

02. Trade Secrets and Other Confidential Information. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the presiding officer may issue an order to protect trade secrets that are to be held confidential as provided in Section 9-342A, Idaho Code, or other confidential research, development or commercial information. The order may include, but need not be limited to, requirements that the trade secrets or other confidential information not be disclosed or be disclosed only in a designated way. The presiding officer's decision regarding a motion for such a protective order is an interlocutory or intermediate agency action that may be immediately reviewable in district court under Section 790 of these rules and Section 67-5271, Idaho Code. ()

03. In Camera Review. The presiding officer may review information that is the subject of a motion for a protective order without the presence of parties or persons to whom access to the information has been requested to be limited. ()

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 seven (7) days before the date set for hearing. ()

02. Time For Service. The Notice of Hearing shall be served on all parties at least fourteen (14) 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 *presiding officer* 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 *or affirmation*. ()

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. -- 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 *Department'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 authentic. ()

602. OFFICIAL NOTICE -- DEPARTMENT 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 *Department'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.

Unless already provided before the hearing in accordance with these rules, 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 unless otherwise excluded by the presiding officer under Section 600. ()

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 Board'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 Board 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 *Department'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. FOURTEEN DAYS TO RESPOND TO PROPOSED DEFAULT ORDER.

Within *fourteen (14)* 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 *Board* 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 *limiting*, compelling or refusing to compel discovery. ()

711. REVIEW OF INTERLOCUTORY ORDERS.

Any party or person affected by an interlocutory order may petition the presiding officer issuing the order to review the interlocutory order. The presiding officer issuing an interlocutory order may rescind, alter or amend any interlocutory order on the presiding officer's own motion, but will not on the presiding officer's own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment. ()

712. -- 719. (RESERVED).

720. RECOMMENDED ORDERS.

01. Definition. *Recommended orders are orders issued by the presiding officer that will become a final order of the Board only after review by the Board pursuant to Section 67-5244, Idaho Code.* ()

02. Content. *Every recommended order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs:* ()

a. This is a recommended order of the presiding officer. It will not become final without action of the Board. ()

b. Within twenty-one (21) days after the service date of this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's

position on any issue in the proceeding. ()

c. Written briefs in support of or taking exceptions to the recommended order shall be filed with the hearing coordinator. Opposing parties shall have twenty-one (21) days to respond. The Board may schedule oral argument in the matter before issuing a final order. 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. ()

03. No Motions For Reconsideration. Motions for reconsideration of any recommended order shall not be considered. ()

721. -- 729. (RESERVED).

730. PRELIMINARY ORDERS.

01. Definition. Preliminary orders are orders issued by the presiding officer that will become a final order of the Board unless reviewed by the Board pursuant to Section 67-5245, Idaho Code. ()

02. Content. Every preliminary order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ()

a. This is a preliminary order of the presiding officer. It can and will become final without further action of the Board unless any party appeals to the Board; ()

b. Within fourteen (14) days after the service date of this preliminary order, any party may appeal to the Board by filing with the hearing coordinator a petition for review of the preliminary order or exceptions to any part of the preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Board. Otherwise, this preliminary order will become a final order of the Board. ()

c. If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the hearing coordinator. The Board may review the preliminary order on its own motion. ()

d. If the Board grants a petition to review the preliminary order, 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 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. ()

e. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the 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 operates its principal place of business in Idaho, ()
or

iv. The real property or personal property that was the subject of the agency action is located. ()

f. This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See Section 67-5273, Idaho Code. 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 preliminary order shall not be considered. ()

731. -- 739. (RESERVED).

740. FINAL ORDERS.

01. 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. An order shall be considered a final order pursuant to Section 67-5246, Idaho Code, if issued after a decision by the number of Board members necessary to constitute a quorum. Emergency orders issued under Section 67-5247, Idaho Code, shall be designated as final orders if the Board will not issue further orders or conduct further proceedings in the matter. ()

02. Content. Every final order issued by the Board must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ()

a. This is a final order of the Board. ()

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party 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 operates its principal place of business in Idaho;
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. See Section 67-5273, Idaho Code. 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. -- 749. (RESERVED).

750. ORDER NOT DESIGNATED.

If an order is not designated as recommended, preliminary or final at its release, but is designated as recommended, preliminary or final after its release, its effective date for purposes of appeal is the date of the order of designation. If a party believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary or final, as appropriate. ()

751. -- 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 *the Board* 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 *Board*, 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 hearing coordinator as set out in Section 008 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 action 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. -- 798. (RESERVED).

799. RULES GOVERNING PROCEEDINGS ON PETITIONS TO INITIATE RULEMAKING.
Sections 799 through 802 establish provisions governing proceedings on petitions to initiate rulemaking. ()

800. FORM AND CONTENTS OF PETITION TO INITIATE RULEMAKING.
This rule addresses petitions to initiate rulemaking 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 hearing coordinator as set out in Section 008 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. ()

801. BOARD RESPONSE TO PETITION.

01. Action Of Board. 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, and these rules 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 Board 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 rulemaking 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. ()

802. NOTICE OF INTENT TO INITIATE RULEMAKING CONSTITUTES ACTION ON PETITION.
The Board 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 the Board's obligations to take action on the petition and is not a denial of a petition to initiate rulemaking. ()

803. -- 807. (RESERVED).

808. RULES GOVERNING RULEMAKING PROCEDURES.
Sections 808 through 860 establish provisions governing rulemaking procedures. ()

809. FORMAL AND INFORMAL RULEMAKING.
Formal rulemaking refers only to rulemaking procedures associated with formal notice of proposed rulemaking, receipt of and consideration of written or oral comment on the record in response to notice of proposed rulemaking, and adoption of rules. Informal rulemaking refers to informal procedures for development of, comment upon, or review of rules for later formal consideration. No rule may come into effect solely as a result of informal rulemaking. Agreements coming from informal rulemaking must be finalized by formal rulemaking. ()

810. LEGISLATIVE PREFERENCE FOR NEGOTIATED RULEMAKING PROCEDURES.
This rule addresses informal, negotiated rulemaking as described by Section 67-5220, Idaho Code. The Department, when feasible, shall proceed by informal, negotiated rulemaking in order to improve the substance of proposed rules by drawing upon shared information, expertise and technical abilities possessed by the affected persons; to arrive at a consensus on the content of the rule; to expedite formal rulemaking; and to lessen the likelihood that affected persons will resist enforcement or challenge the rules in court. ()

811. PUBLICATION IN IDAHO ADMINISTRATIVE BULLETIN.
If the Department determines that informal, negotiated rulemaking is feasible, it shall publish in the Idaho Administrative Bulletin a notice of intent to promulgate a rule. If the Department determines that informal, negotiated rulemaking is not feasible, it shall explain in its notice of intent to promulgate rules why informal rulemaking is not feasible and shall proceed to formal rulemaking as provided in this chapter. Reasons why the Department may find that informal, negotiated rulemaking is not feasible include, but are not limited to, the need for temporary rulemaking, the simple nature of the proposed rule change, the lack of identifiable representatives of affected interests, or determination that affected interests are not likely to reach a consensus on a proposed rule. The determination of the Department whether to use informal, negotiated rulemaking is not reviewable. ()

812. CONTENTS OF NOTICE OF INTENT TO PROMULGATE RULES.

The notice of intent to promulgate rules shall announce that the Department intends to proceed by way of informal, negotiated rulemaking to develop a proposed rule and shall include: ()

01. Subject Matter. *A brief, nontechnical statement of the subject matter to be addressed in the proposed rulemaking.* ()

02. Authority. *The statutory authority for the rulemaking.* ()

03. Obtain Copy. *An explanation how to obtain a preliminary draft of the proposed rules, if one is available.* ()

04. Issues. *The principal issues involved and the interests which are likely to be significantly affected by the rule.* ()

05. Department Contacts. *The person(s) designated to represent the Department.* ()

06. Method Of Participation. *An explanation how a person may participate in the informal, negotiated rulemaking.* ()

07. Schedule. *A proposed schedule for written comments or for a public meeting of interested persons, and a target date, if one (1) exists, to complete negotiation and to publish a proposed rule for notice and comment.* ()

813. PUBLIC MEETINGS.

The Department may convene public meetings of interested persons to consider the matter proposed by the Department and to attempt to reach a consensus concerning a proposed rule with respect to the matter and any other matter the parties determine is relevant to the proposed rule. Person(s) representing the Department may participate in the deliberations. ()

814. REPORTS TO THE DEPARTMENT.

If the parties reach a consensus on a proposed rule, they shall transmit to the Department a report stating their consensus and, if appropriate, a draft of a proposed rule incorporating that consensus. If the parties are unable to reach a consensus on particular issues, they may transmit to the Department a report specifying those areas on which they reached consensus and those on which they did not, together with arguments for and against positions advocated by various participants. The participants or any individual participant may also include in a report any information, recommendations, or materials considered appropriate. ()

815. DEPARTMENT CONSIDERATION OF REPORT.

The Department may accept in whole or in part or reject the consensus reached by the parties in publishing a proposed rule for notice and comment. ()

816. -- 829. (RESERVED).

830. REQUIREMENTS FOR NOTICE OF PROPOSED RULEMAKING.

01. Content. *Every notice of proposed rulemaking shall include:* ()

a. *A statement of the subject matter of the proposed rules;* ()

b. *A statement of the specific statutory authority for the proposed rules, including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;* ()

c. *A statement in nontechnical terms of the substance of the proposed rules, and, if the Department intends to take oral testimony on the proposed rule, the location, date and time of the oral presentations;* ()

d. A statement whether the Department intends to conduct oral presentations concerning the proposed rules, and, if not, what persons must do in order to request an oral presentation; ()

e. The address to which written submissions concerning the proposed rules must be mailed. ()

f. The name and telephone number of an Department contact to whom questions about the proposed rules may be referred; ()

g. The deadline for written comment on the proposed rules and for asking for an opportunity for an oral presentation concerning the proposed rules; ()

h. A statement whether negotiated rulemaking has been conducted, and if not, why not; ()

i. A summary of the proposed rules; and ()

j. The name, mailing address and telephone number of an Department contact person for the rulemaking. ()

02. Availability Of Information. *This information will be published in the Idaho Administrative Bulletin and be available directly from the Department. The notice of proposed rulemaking must be accompanied by a document showing the text of the proposed rule in legislative format. ()*

831. INFORMAL PHASES OF FORMAL RULEMAKING.
In addition to the formal phases of rulemaking proceedings, the Department may schedule meetings after the formal proposal of rules to explain the operation of the rules proposed. ()

832. COMMENTS ON PROPOSED RULES.
Deadlines for comment upon proposed rules or amendments to proposed rules will be set forth in the Idaho Administrative Bulletin. Comments should be made to the officers listed in the notices of proposed rulemaking published in the Idaho Administrative Bulletin. Further information concerning individual rulemaking should be directed to the contact person listed for that rulemaking in the Idaho Administrative Bulletin. ()

833. PETITIONS FOR ORAL PRESENTATION.

01. Requirement. *Any person petitioning for an opportunity for an oral presentation in a substantive rulemaking must substantially comply with this rule. ()*

02. Content. *The petition shall: ()*

a. Identify the petitioner and state the petitioner's interests in the matter. ()

b. Describe the nature of the opposition to or support of the rule or amendment to the rule proposed to be promulgated by the Department, and ()

c. Indicate alternative proposals of the petitioner and any statute, order, rule or other controlling law or factual allegations upon which the petitioner relies to support the request for the opportunity to provide an oral presentation. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. ()

03. Oral Presentation. *Within fourteen (14) days after receiving a petition for an oral presentation, the Department shall schedule the oral presentation or deny it. The Department shall provide an opportunity for oral presentation if requested by twenty-five (25) persons, a political subdivision, or another agency, but no oral presentation need be provided when the Department has no discretion as the substantive content of a proposed rule because the proposed rule is intended solely to comply with a controlling judicial decision or court order, or with the provisions of a statute or federal rule that has been amended since the adoption of the rule. If oral presentation is granted, notice of the oral presentation shall be published in the Idaho Administrative Bulletin. If oral presentation is denied, the denial shall state the grounds for denial. ()*

834. THE RULEMAKING RECORD.

The Department shall maintain a record of each rulemaking proceeding. ()

01. Contents. *The record for a rulemaking proceeding shall include:* ()

a. *Copies of all publications in the Idaho Administrative Bulletin relating to that rulemaking proceeding;* ()

b. *All written petitions, submissions, and comments received by the Department, and the Department's responses to those petitions, submissions and comments;* ()

c. *All written materials considered by the Department in connection with formulating the proposal or adoption of the rule;* ()

d. *A record of any oral presentations, any transcriptions of oral presentations, and any memoranda summarizing the contents of such presentations; and* ()

e. *Any other materials or documents prepared in conjunction with the rulemaking, including any summaries prepared for the Department in considering the rulemaking.* ()

02. Recording Or Reporting. *All oral presentations shall be recorded on audiotape or videotape or may be taken by a qualified court reporter at the Department's expense. The Department may provide for a transcript of the proceeding at its own expense. Persons may have a transcript of an oral presentation prepared at their own expense.* ()

835. ADOPTION AND PUBLICATION OF PENDING RULES FOLLOWING COMMENT OR ORAL PRESENTATION.

01. Adoption. *After the expiration of the written comment period for rulemaking and following any oral presentation on the rulemaking, but no sooner than seven (7) days after the expiration of the comment period, the Board shall consider fully all issues presented by the written and oral submissions respecting the proposed rule before adopting a pending rule.* ()

02. Publication. *Upon the Board's adoption of a pending rule, the Department shall publish the text of the pending rule in the bulletin, except that with the permission of the coordinator, the Department need not publish the full text of the pending rule if no significant changes have been made from the text of the proposed rule as published in the bulletin, but the notice of adoption of the pending rule must cite the volume of the bulletin where the text is available and must note all changes that have been made. In addition, the Department must publish in the bulletin a concise explanatory statement containing:* ()

a. *The reasons for adopting the pending rule;* ()

b. *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 any changes;* ()

c. *The date on which the pending rule will become final and effective pursuant to Section 67-5224(5), Idaho Code;* ()

d. *A statement that the pending rule may be rejected, amended or modified by concurrent resolution of the Legislature;* ()

e. *An identification of any portion of the pending rule imposing or increasing a fee or charge and stating that this portion of the pending rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature; and* ()

f. *A statement how to obtain a copy of the Department's written review of and written responses to the*

written and oral submissions respecting the proposed rule. ()

03. Rule Imposing Or Increasing Fees. *When any pending rule imposes a new fee or charge or increases an existing fee or charge, the Department shall provide the coordinator with a description of that portion of the rule imposing a new fee or charge or increasing an existing fee or charge, along with a citation of the specific statute authorizing the imposition or increase of the fee or charge.* ()

836. FINAL RULES.

Pending rules may become final rules, or may be rejected, amended or modified by concurrent resolution of the Legislature, as provided in Section 67-5224, Idaho Code. ()

837. -- 839. (RESERVED).

840. PROCEDURE FOR ADOPTION OF TEMPORARY RULES.

01. Gubernatorial Finding. *The Board may adopt temporary rules upon the Governor's finding that protection of the public health, safety, or welfare, compliance with deadlines in amendments to governing law or federal programs, or conferring a benefit requires a rule to become effective before it has been submitted to the Legislature for review. No temporary rule imposing a fee or charge may become effective before it has been approved, amended or modified by concurrent resolution of the Legislature unless the Governor finds that the fee or charge is necessary to avoid immediate danger that justifies the imposition of the fee or charge.* ()

02. Effective Date. *Temporary rules take effect according to the effective date specified in the rules. Temporary rules may be immediately effective.* ()

03. Expiration. *In no case may a temporary rule remain in effect beyond the conclusion of the next succeeding regular session of the Legislature unless the rule is approved, amended or modified by concurrent resolution, in which case the rule may remain in effect until the time specified in the resolution or until the rule has been replaced by a final rule that has become effective pursuant to Section 67-5224(5), Idaho Code.* ()

04. Notice And Publication. *The Department shall give such notice as is practicable in connection with adoption of a temporary rule. Temporary rules will be published in the first available issue of the Idaho Administrative Bulletin.* ()

05. Associated Proposed Rule. *Concurrently with promulgation of a temporary rule, or as soon as reasonably possible thereafter, the Department must begin rulemaking procedures by issuing a proposed rule on the same subject matter as the temporary rule, unless the temporary rule will expire by its own terms or by operation of law before a proposed rule could become final.* ()

841. -- 849. (RESERVED).

850. CORRECTION OF TYPOGRAPHICAL, TRANSCRIPTION OR CLERICAL ERRORS IN PENDING RULES.

The Board may amend pending rules to correct typographical errors, transcription errors, or clerical errors, in the manner approved by the Administrative Rules Coordinator. These amendments will be incorporated into the pending rule upon their publication in the Idaho Administrative Bulletin. ()

851. -- 859. (RESERVED).

860. PERSONS WHO MAY SEEK JUDICIAL REVIEW.

Pursuant to Section 67-5270, Idaho Code, any person aggrieved by an administrative rule of the Department (either temporary or final) may seek judicial review in district court. ()

01. Filing. *The petition for judicial review must be filed with the hearing coordinator as set out in Section 008 and with the district court and served on all parties. Pursuant to Section 67-5272, Idaho Code, petitions for review 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 operates its principal place of business in Idaho; or* ()
 - d. The real property or personal property that was the subject of the agency action is located.* ()
- 02.** ***Time.** Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final rule (except for a challenge to procedures used in promulgating the rule) may be filed at any time.* ()
- 861. -- 999.** **(RESERVED).**

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Bulletin Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

IDAPA 02 - DEPARTMENT OF AGRICULTURE P.O. Box 790, Boise, Idaho 83701-0790

Docket No. **02-0212-0101**, Bonded Warehouse Rules. Clarifies the following: definitions; when assessments are collected; CIFP ownership; how market value is determined; and the process by which assessments are collected. States penalties for failure to pay or late payment of assessments; and establishes formula for additional security when determined that licensee does not appear to have the ability to pay producers for commodities purchased or does not have a sufficient net worth to outstanding financial obligations ratio. Comment By: 8/22/01.

Docket No. **02-0213-0101**, Commodity Dealer's Rules. Clarifies the following: definitions; when assessments are collected; CIFP ownership; how market value is determined; and the process by which assessments are collected; states penalties for failure to pay or late payment of assessments; and establishes formula for additional security when determined that licensee does not appear to have the ability to pay producers for commodities purchased or does not have a sufficient net worth to outstanding financial obligations ratio. Comment By: 8/22/01.

Docket No. **02-0302-0101**, Soil and Plant Amendment Rules. Repeal of chapter. Comment By: 8/22/01.

Docket No. **02-0616-0101**, Rules Concerning Crop Residue Disposal. New chapter establishes definitions and general provisions for disposing crop residue through burning; determines burn or no burn days; requires registration of fields to be burned; establishes crop residue burning time frame; and authorizes the director to declare additional burn days. Comment By: 8/22/01.

Docket No. **02-0641-0101**, Rules Pertaining to the Soil and Plant Amendment Act of 2001. Authority for this rule has been transferred to the Division of Plant Industries. Incorporates by reference sections of the Soil and Plant Amendment Act of 2001; prescribes definitions not covered by the law; lists abbreviations; requires registration and provides for polyacrylamide (PAM) product registration; prescribes proper labeling; allows for certain nutrient claims on soil and plant amendment labels; provides for sampling; deficiencies; penalties and violations. Comment By: 8/22/01.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE PO Box 83720, Boise, ID 83720-0036

Docket No. **16-0305-0103**, Rules Governing Aid to the Aged, Blind and Disabled (AABD). Increases the nursing home personal needs allowance to \$40 and provides a supplement for patients whose income is less than the personal needs allowance; implements full Medicaid coverage for women screened and diagnosed for breast or cervical cancer through the Health Districts; provides for participants to request continued benefits pending a fair hearing; increases the disabled student income exclusion; adds exceptions for attributing income and resources to sponsored aliens who are battered or indigent; and provides for Medicaid coverage for inmates of ineligible institutions who are hospital inpatients. Comment By: 8/22/01.

Docket No. **16-0309-0105**, Rules Governing the Medical Assistance Program. Clarifies the criteria for determining the functional level of persons who qualify for nursing facility care; moves extensive assistance with meal preparation to the high indicator from the critical category, and moderate assistance with meal preparation is added to the medium indicator category. Comment By: 8/22/01.

Docket No. **16-0310-0101**, Rules Governing Medicaid Provider Reimbursement in Idaho. Adds legislative intent language to cap ICF/MR and special rates to contain Medicaid costs. Comment By: 8/22/01.

**IDAPA 18 - DEPARTMENT OF INSURANCE
PO Box 83720, Boise, ID 83720-0043**

Docket No. **18-0125-0101**, Title Insurance and Title Insurance Agents and Escrow Officers. Simplifies the 3-year audit requirement for title agents providing escrow services and allows an alternative method to comply with the escrow audit requirement; brings the escrow accounting requirements applicable to title agents in line with current marketplace procedures and new technology. Comment By: 8/22/01.

Docket No. **18-0156-0101**, Rebates and Illegal Inducements to Obtaining Title Insurance Business Rules. Clarifies to whom a title agent may distribute a free listing package; changes the number of items from 4 to 6 that may be included in the free listing package; adds item (5) Tax Information and (6) Property Characteristics, with specific limitations. Comment By: 8/22/01.

**IDAPA 23 - IDAHO STATE BOARD OF NURSING
PO Box 83720, Boise, ID 83720-0061**

Docket No. **23-0101-0101**, Rules of the Idaho Board of Nursing. Defines terms, clarifies the steps to be taken to obtain licensure, and addresses multistate discipline and license renewal. Comment By: 8/22/01.

Docket No. **23-0101-0102**, Rules of the Idaho Board of Nursing. Consolidates and renumbers existing rules; clarifies the disciplinary rules and standards of practice and rules regarding conditional or limited licensure; and adds definitions for "professionalism" and "failure to make timely inquiry". Comment By: 8/22/01.

Docket No. **23-0101-0103**, Rules of the Idaho Board of Nursing. Clarifies requirements for licensure by examination and the equivalency education requirements; eliminates out dated language regarding exam eligibility; provides for remedial measures for applicants who do not take the exam within 1 year of completion of education; and clarifies existing fee provisions. Comment By: 8/22/01.

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
1109 Main Street, Suite 220, Boise, Idaho 83702**

Docket No. **24-0801-0101**, Rules of the State Board of Morticians. Increases the following fees: Funeral Director and Mortician fees to \$85; funeral establishment fee to \$125; application fee to \$100; Mortician Resident Trainee and Certificate of Authority fees to \$50; and reinstatement fee to \$250. Comment By: 8/22/01.

Docket No. **24-1101-0101**, Rules of the State Board of Podiatry. Adds provisions for administrative appeals; incorporates by reference the American Podiatric Medical Association's Code of Ethics; adds Bureau contact information and Public Records section; clarifies citizenship requirement; increases original license fee and annual renewal fee to \$300; deletes reference to oral examination; clarifies examination subjects shall consist of those subjects outlined in Section 54-606, Idaho Code; adds licensure without written examination requires the filing of a complete application and a \$200 fee. Comment By: 8/22/01.

Docket No. **24-1401-0101**, Rules of the State Board of Social Work Examiners. Adds provisions for administrative appeals and incorporation by reference; adds mailing address of the Board; updates Bureau contact and Public Records information; defines "Bureau"; increases the following fees for certified social worker, private and independent practice, and social workers: application and original license fee to \$50; temporary permit fee to \$35; endorsement and license fee to \$55; and renewal fee for certified social worker, and social worker to \$50, and certified social worker with private and independent practice to \$60. Comment By: 8/22/01.

**IDAPA 35 - IDAHO STATE TAX COMMISSION
800 Park, Plaza IV, P.O. Box 36, Boise, ID 83722**

Docket No. **35-0103-0103**, Property Tax Administrative Rules. Statutory changes require changing the Dollar Certification Form (L-2 Form) and exempt certain tangible personal property that is agricultural machinery, tools, and

equipment used exclusively in agriculture; gives clarification and guidance to counties on how to report this exempted equipment for replacement money; implements requirements of House Bill 378, describing what tax charges are to be certified with 2000 property taxes levied, which tangible personal property is exempted, and to cross reference Property Tax Rule 803 on budget certification. Comment By: 8/22/01.

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
1410 N. Hilton, Boise, Idaho 83706-1255**

Docket No. **58-0101-0002**, Rules for the Control of Air Pollution in Idaho. Establishes registration process and operating parameters and requirements for rock crushers that include best management practices for the control of fugitive dust, limitations on the hours of operation or fuel consumption rates for different sizes and types of generators, general provisions to ensure compliance with the National Ambient Air Quality Standards and other applicable requirements and specifies length of time equipment may be operating at a single location before additional requirements apply. Comment By: 9/7/01.

Docket No. **58-0101-0101**, Rules for the Control of Air Pollution in Idaho. Provides a mechanism for the State to respond to and provide notice of unhealthful levels of various criteria pollutants; establishes four stages corresponding to increasing levels of pollutants with progressively more stringent response requirements for each stage. Comment By: 9/7/01.

Docket No. **58-0102-0101**, Water Quality Standards and Wastewater Treatment Requirements. Establishes or revises use designations for several tributaries to the lower Boise River, and for Bucktail Creek, a small stream located in the Salmon River basin. Comment By: 9/24/01.

Docket No. **58-0102-0102**, Water Quality Standards and Wastewater Treatment Requirements. Designates aquatic life beneficial uses for portions of the South Fork Coeur d'Alene River (SFCDA) and establishes site-specific criteria to protect those uses for cadmium, lead, and zinc. Cold water aquatic life use designations are proposed for the SFCDA from Canyon Creek upstream to Daisy Gulch. Comment By: 9/24/01.

Docket No. **58-0102-0103**, Water Quality Standards and Wastewater Treatment Requirements. Changes further application of site-specific criteria and aquatic life use designations; makes revisions to ammonia criteria; makes minor changes regarding temperature, natural background, and variance procedures; puts time limits for schedules of compliance for point source discharges; makes clerical corrections. Comment By: 9/24/01.

Docket No. **58-0110-0101**, Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, as Amended. Implements House Bill 192 which specifies radioactive materials or other radioactive material occurring naturally that may be disposed of at a commercial hazardous waste facility or site; establishes radiation protection standards for the disposal of radioactive materials not subject to regulation under the Atomic Energy Act of 1954, as amended (AEA). Comment By: 8/22/01.

PUBLIC HEARINGS – Public Hearings Have Been Scheduled For The Following Dockets:

Department of Agriculture

Docket No. **02-0418-0101**, Rules Governing CAFO Site Advisory Team

Department of Environmental Quality

Docket No. **58-0101-0002**, Rules for the Control of Air Pollution in Idaho.

Docket No. **58-0102-0101**, Water Quality Standards and Wastewater Treatment Requirements

Docket No. **58-0102-0102**, Water Quality Standards and Wastewater Treatment Requirements

Docket No. **58-0102-0103**, Water Quality Standards and Wastewater Treatment Requirements

Docket No. **58-0110-0101**, Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, as Amended.

Please refer to the Idaho Administrative Bulletin, **August 1, 2001, Volume 01-8** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact names.

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CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

**This index tracks the history of all agency rulemakings from 1993 to the present.
It includes all rulemaking activities on each chapter of rules
and includes negotiated, temporary, proposed, pending
and final rules, public hearing notices
and vacated rulemaking notices.**

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