

# IDAHO ADMINISTRATIVE BULLETIN

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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 monthly compilation of all administrative rulemaking documents in Idaho. The Bulletin publishes the official rulemaking notices and administrative rule text of state agency rulemakings and other official documents as necessary.*

*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 Rulemaking Notice published in the Bulletin. 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 Bulletins are cited by year and volume number. For example, Bulletin 02-1 refers to the first Bulletin issued in calendar year 2002, 03-1 refers to the first Bulletin issued in calendar year 2003. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No.02-1 refers to January 2002; Volume No. 02-2 refers to February 2002; and so forth. Example: The Bulletin published in January of 2003 is cited as Volume 03-1, the December 2002 Bulletin is cited as Volume 02-12, etc.*

## **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 RULEMAKINGS PUBLISHED IN THE ADMINISTRATIVE BULLETIN**

*The state of Idaho administrative rulemaking process, governed by the Administrative Procedure Act, comprises five distinct activities; Negotiated, Proposed, Temporary, Pending, and Final rulemaking. Not all rulemakings include all five. At a minimum a rulemaking includes proposed, pending, and final rulemaking. Many rules are adopted as temporary rules when meeting required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. 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 RULEMAKING**

*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, and in some cases required, to engage in this rulemaking activity whenever it is feasible to do so. Publication of a Notice of Intent to Promulgate a Rule in the Administrative Bulletin by the agency is optional. This process should result in the formulation of a proposed and/or temporary rule.*

### **PROPOSED RULEMAKING**

*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 RULEMAKING**

*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. However, a temporary rule that imposes a fee or charge may be adopted only if the Governor finds that the fee or charge is necessary to avoid an immediate danger which justifies the imposition of the fee or charge.*

*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.*

*State law requires that the text of both a proposed rule and a temporary rule be published in the Administrative Bulletin. 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. Combining the rulemaking allows for a single publication of the text.*

*An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rulemaking that is being vacated, the agency, in most instances, should rescind the temporary rule.*

### **PENDING RULEMAKING**

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

*When a pending rule is published in the Bulletin, the agency is required to include certain information in the Notice of 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 RULEMAKING**

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

*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 may be adopted to reject the rulemaking 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, BYU Idaho Library, and Northwest Nazarene College Library.*

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## SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0306, telephone (208) 332-1820.

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

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

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

**Internet Access** - The Administrative Code and Administrative Bulletin, 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 or FAX (208) 332-1896.

## 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.

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## DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER". The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0101). 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. 38-0501-0301"

"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).

"0301" 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 2003.

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 2003

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
03-1	January, 2003	<b>*November 13, 2002</b>	January 1, 2003	January 22, 2003
03-2	February, 2003	January 1, 2003	February 5, 2003	February 26, 2003
03-3	March, 2003	February 5, 2003	March 5, 2003	March 26, 2003
03-4	April, 2003	March 5, 2003	April 2, 2003	April 23, 2003
03-5	May, 2003	April 2, 2003	May 7, 2003	May 28, 2003
03-6	June, 2003	April 30, 2003	June 4, 2003	June 25, 2003
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03-8	August, 2003	July 2, 2003	August 6, 2003	August 27, 2003
03-9	September, 2003	July 30, 2003	September 3, 2003	September 24, 2003
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03-11	November, 2003	October 1, 2003	November 5, 2003	November 26, 2003
03-12	December, 2003	October 29, 2003	December 3, 2003	December 24, 2003

## BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2004

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
04-1	January, 2004	<b>*November 19, 2003</b>	January 7, 2004	January 28, 2004
04-2	February, 2004	January 7, 2004	February 4, 2004	February 25, 2004
04-3	March, 2004	February 4, 2004	March 3, 2004	March 24, 2004
04-4	April, 2004	March 3, 2004	April 4, 2004	April 25, 2004
04-5	May, 2004	March 31, 2004	May 5, 2004	May 26, 2004
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04-8	August, 2004	June 30, 2004	August 4, 2004	August 25, 2004
04-9	September, 2004	July 28, 2004	September 1, 2004	September 22, 2004
04-10	October, 2004	<b>**August 25, 2004</b>	October 6, 2004	October 27, 2004
04-11	November, 2004	October 6, 2004	November 3, 2004	November 24, 2004
04-12	December, 2004	November 3, 2004	December 1, 2004	December 22, 2004

***\*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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<b>IDAPA 22</b>	<b>MEDICINE</b> , Board of	<b>VOLUME 6</b>
<b>IDAPA 23</b>	<b>NURSING</b> , Board of	<b>VOLUME 6</b>
<b>IDAPA 24</b>	<b>OCCUPATIONAL LICENSES</b> , Board of Board of Architectural Examiners Board of Barber Examiners Board of Chiropractic Physicians Board of Cosmetology Board of Environmental Health Specialist Examiners Board of Hearing Aid Dealers and Fitters Board of Landscape Architects Board of Morticians Board of Examiners of Nursing Home Administrators Board of Optometry Board of Podiatry Board of Psychologist Examiners Board of Social Work Examiners Idaho Counselor Board Board of Dentistry Board of Acupuncture Real Estate Appraiser Board Board of Residential Care Facility Administrators	<b>VOLUME 6</b>
<b>IDAPA 25</b>	<b>OUTFITTERS AND GUIDES LICENSING BOARD</b>	<b>VOLUME 6</b>
<b>IDAPA 50</b>	<b>PARDONS AND PAROLE</b> , Commission for	<b>VOLUME 9</b>
<b>IDAPA 26</b>	<b>PARKS AND RECREATION</b> , Department of	<b>VOLUME 6</b>
<b>IDAPA 59</b>	<b>PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO - PERSI</b>	<b>VOLUME 9</b>
<b>IDAPA 27</b>	<b>PHARMACY</b> , Board of	<b>VOLUME 6</b>

<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS AND THE 2002 ADMINISTRATIVE CODE VOLUME NUMBERS</b>		
<b>IDAPA 29</b>	<b>POTATO COMMISSION, Idaho</b>	<b>VOLUME 7</b>
<b>IDAPA 31</b>	<b>PUBLIC UTILITIES COMMISSION</b>	<b>VOLUME 7</b>
<b>IDAPA 41</b>	<b>PUBLIC HEALTH DISTRICTS</b>	<b>VOLUME 8</b>
<b>IDAPA 33</b>	<b>REAL ESTATE COMMISSION</b>	<b>VOLUME 7</b>
<b>IDAPA 56</b>	<b>RANGELAND RESOURCES COMMISSION, Idaho</b>	<b>VOLUME 9</b>
<b>IDAPA 34</b>	<b>SECRETARY OF STATE, Office of the</b>	<b>VOLUME 7</b>
<b>IDAPA 49</b>	<b>SHORTHAND REPORTERS, Board of Certified</b>	<b>VOLUME 8</b>
<b>IDAPA 36</b>	<b>TAX APPEALS, Idaho Board of</b>	<b>VOLUME 7</b>
<b>IDAPA 35</b>	<b>TAX COMMISSION, State</b>	<b>VOLUME 7</b>
<b>IDAPA 39</b>	<b>TRANSPORTATION, Department of</b>	<b>VOLUME 8</b>
<b>IDAPA 54</b>	<b>TREASURER, Office of the State</b>	<b>VOLUME 9</b>
<b>IDAPA 21</b>	<b>VETERANS SERVICES, Division of</b>	
<b>IDAPA 46</b>	<b>VETERINARY MEDICAL EXAMINERS, Board of</b>	<b>VOLUME 8</b>
<b>IDAPA 55</b>	<b>VOCATIONAL AND TECHNICAL EDUCATION, Division of</b>	<b>VOLUME 9</b>
<b>IDAPA 47</b>	<b>VOCATIONAL REHABILITATION, Division of</b>	<b>VOLUME 8</b>
<b>IDAPA 37</b>	<b>WATER RESOURCES, Department of</b>	<b>VOLUME 8</b>
<b>IDAPA 42</b>	<b>WHEAT COMMISSION, Idaho</b>	<b>VOLUME 8</b>

## **IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE**

### **02.02.12 - BONDED WAREHOUSE RULES**

#### **DOCKET NO. 02-0212-0301 (FEE RULE)**

#### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is September 3, 2003.

**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 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 September 17, 2003.

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) Request for insurance calculation reduction; (2) Clarification of scale weight ticket requirements; (3) Clarification of guidelines for the issuance of a single bond, irrevocable letter of credit and certificate of deposit.; (4) Clarification of NPE (No Price Established Contracts) requirements; (5) Clarification of assessment remittance deadline.

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

Compliance with deadlines in amendments to governing law or federal programs. This rule is needed to implement the provisions of House Bill 308 passed by the 2003 Legislature and signed into law by the Governor on March 27, 2003.

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

A requirement for maintaining an Idaho Warehouse license is to have a surety bond, irrevocable letter of credit or a certificate of deposit.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Russ Dapsauski, Program Manager, at (208) 332-8612.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 29th Day of July, 2003.

Patrick A. Takasugi, Director  
Idaho State Dept. of Agriculture  
2270 Old Penitentiary Road  
PO Box 790, Boise, ID 83701  
(208) 332-8500  
(208) 334-2170 Fax

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0212-0301**

**010. DEFINITIONS.**

The Idaho State Department of Agriculture adopts the definitions set forth in Section 69-202, Idaho Code. In addition, the following definitions apply to Sections 480 through 486. (5-3-03)

**01. Cash Sale.** Payment to the producer by the warehouse or dealer contemporaneously with the transfer of commodity to the warehouse or dealer. (3-15-02)

**02. Commodity Indemnity Fund.** Commodity Indemnity Fund is a trust fund ~~and will be referred to herein as CIF.~~ ~~(3-15-02)~~(9-3-03)T

**03. 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. (3-15-02)

**04. Dealer.** Is limited to dealers licensed by the state of Idaho. (3-15-02)

**05. 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. (3-15-02)

**06. NPE.** (No price established contract) A contract containing no readily calculable sale value of the commodity for the producer. (9-3-03)T

**067. 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. (3-15-02)

**08. Seed Crops.** Means any seed crop regulated by Title 22, Chapter 4, Idaho Code. (9-3-03)T

**079. Warehouse.** Is limited to warehouses licensed by the state of Idaho. (3-15-02)

**011. ABBREVIATIONS.**

**01. CIF.** Commodity Indemnity Fund. (9-3-03)T

**02. NPE.** No price established contract. (9-3-03)T

**03. SIF.** Seed Indemnity Fund. (9-3-03)T

**0142. LICENSING.**

**01. Posting Of License.** Immediately upon receipt of the license or any renewal, extension or modification thereof under Title 69, Chapter 2, Idaho Code, the licensed warehouseman shall post the license in a conspicuous place in each place of business or in any other place as the Director may determine. The Department will issue a duplicate license for each additional facility as needed. (5-3-03)

**02. Return Of Suspended Or Terminated License.** If a license issued to a warehouseman has lapsed or is suspended, revoked or canceled by the Director, the license shall be returned to the Department. At the expiration of any period of suspension, revocation or cancellation the license shall be returned to the warehouseman to whom it was originally issued and shall be posted as prescribed by Subsection 011.01 of these rules. (5-3-03)

**03. Suspension Due To Neglect.** If, through subsequent inspection of stock in a licensed warehouse or

place of business or through other information, it is revealed or indicated that the commodities in storage are deteriorating due to the warehouseman's or operator's neglect, the license may be suspended until the matter has been corrected to the satisfaction of the Director. (9-1-92)

**04. Loss Of License.** Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate may be issued under the same number or a new number at the discretion of the Director. (9-1-92)

**05. Sign To Be Posted.** Each licensed warehouseman shall maintain suitable signs on the licensed property in such manner as will give ample public notice of his tenancy. These signs shall be painted on the warehouse or elevator in letters not less than six (6) inches in height and shall contain the following words: "State No. \_\_\_\_". The number of each warehouse shall be assigned by the Director. (9-1-92)

**06. Bins Labeled.** All storage areas licensed for the storage of agricultural commodities shall be numbered and a diagram of the storage areas shall be kept in the office. This diagram shall show the exact dimensions and the maximum capacity of the storage area. All licensed warehouses shall comply with all state laws and regulations regarding the storage and sale of seed. (9-1-92)

**07. Insurance Calculations.** The director may approve a request to reduce the insurance calculation for a facility provided: (9-3-03)T

**a.** The request is in writing; and (9-3-03)T

**b.** Evidence is supplied that all agricultural commodities that are stored at any given point in time are insured pursuant to Title 69, Chapter 2, Idaho Code. (9-3-03)T

**0143. -- 049. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. OFFICE RECORDS.**

A warehouseman shall maintain complete and sufficient records to show all deposits, purchases, sales contracts, storage obligations and loadouts of the warehouse in this state. Office records as set forth in Title 69, Chapter 2, Idaho Code, shall include, but not limited to, the following: (5-3-03)

**01. Daily Position Record.** This shall show the total quantity of each kind and class of agricultural commodity received and loaded out, the amount remaining in storage at the close of each business day, and the warehouseman's total storage obligation for each kind and class of agricultural commodity at the close of each business day. (9-1-92)

**02. Storage Ledger.** This shall show the name and address of the depositor, the date purchased, the terms of the sale, and the quality and quantity of the agricultural commodity purchased by the warehouseman. When applicable, the storage ledger shall also show the tare, grade, size, net weight, and unsold amount of agricultural commodities. (9-1-92)

**03. Scale Weight Tickets.** ~~These~~ Scale weight tickets, except tickets for electronic scales that are recorded and maintained electronically, shall be pre-numbered and one (1) copy of each ticket shall be maintained in numerical order. All scale weight tickets shall show the time when the commodities were delivered, the quantities delivered, who delivered the commodities, the ownership of the commodities, and the condition of the commodities upon delivery. ~~At least one (1) copy of the scale weight ticket shall be filed in numerical order.~~ (9-1-92)(9-3-03)T

**04. Receipts And Tickets.** Receipts and tickets in the warehouseman's possession which have not been issued. (5-3-03)

**05. Receipts And Tickets Issued By The Warehouseman.** Receipts and tickets issued by the

warehouseman. (5-3-03)

**06. Receipts And Tickets Returned And Cancelled.** Receipts and tickets returned to and cancelled by the warehouseman. (5-3-03)

**07. Insurance Documentation.** (9-1-92)

**08. Electronic Records.** If any electronic records are maintained outside of the state of Idaho, the Department must be allowed to examine them at any reasonable time and place as determined by the Department. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**131. AMOUNT OF BOND, IRREVOCABLE LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, OR SINGLE BOND.**

**01. Bonding Requirement.** The amount of bond to be furnished shall be fixed at a rate pursuant to Section 69-208A, Idaho Code. (9-3-03)T

**02. Single Bond, Irrevocable Letter Of Credit Or Certificate Of Deposit.** For the purposes of licensing as a warehouseman pursuant to Title 69, Chapter 2, Idaho Code and a seed buyer pursuant to Title 22, Chapter 51, Idaho Code a single bond, irrevocable letter of credit or certificate of deposit shall be fixed at whichever of the following amounts is greater: (9-3-03)T

**a.** Combined total indebtedness paid and owed to producers for agricultural commodity and seed crop, without any deductions, for the previous license year; or (9-3-03)T

**b.** The indebtedness owed and estimated to be owed to producers for agricultural commodity and seed crop, without any deductions, for the current license year. (9-3-03)T

~~137.~~ -- 149. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**480. 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. (~~3-15-02~~)(9-3-03)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. The maximum rate of assessment shall not exceed two-tenths of one percent (.2%) of the total gross dollar amount, without deductions, due the producer. 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. (5-3-03)

**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. (3-15-02)

**b.** If the amount of the assessment for a producer on all deposits made in a calender 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. (3-15-02)

**02. Exemptions To Assessments.** Producers are not eligible to participate in CIF and no assessments shall be collected in the following cases. (5-3-03)

**a.** If a producer has a financial or management interest in a licensed warehouse or licensed commodity dealer, except members of a cooperative marketing association qualified under Title 22, Chapter 26, Idaho Code. (5-3-03)

**b.** If a producer sells to another producer, none of which are a licensed warehouseman or a licensed commodity dealer. (5-3-03)

**c.** If a producer deposits or delivers commodity to an unlicensed entity pursuant to Title 69, Chapters 2 or 5, Idaho Code. (5-3-03)

**d.** Non-producers or producers delivering commodity that was grown on land not situated within the borders of the state of Idaho are exempt from paying assessments. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. (3-15-02)

**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. If assessment is paid by mail the payment must be postmarked not later than the twentieth day of the month following the close of the quarter to avoid interest and penalty charges. (~~3-15-02~~)(9-3-03)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. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**487. -- ~~999~~500. (RESERVED).**

**501. NPE CONTRACT CLAIMS ON THE FUND.**  
NPE contracts shall be executed in writing, dated, and signed by all parties to the contract. (9-3-03)T

**01. NPE Clause.** An NPE contract shall have the following statement: "No claim shall be paid from the CIF pursuant to Section 69-263, Idaho Code, if a producer files his claim more than one hundred eighty (180) days from the date the contract is executed." (9-3-03)T

**02. NPE Contract List.** A warehouseman shall maintain a list of all NPE contracts written in a calendar year and shall reflect the producers name, contract number, agricultural commodity and date of the contract. (9-3-03)T

**03. NPE Contract Renewal Period.** A producer may renew an NPE contract; but no claim shall be paid from the CIF if a producer files his claim more than three hundred sixty-five (365) days from the date the original NPE contract was executed. (9-3-03)T

**502. -- 999. (RESERVED).**

## IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

### 02.02.13 - COMMODITY DEALERS' RULES

#### DOCKET NO. 02-0213-0301 (FEE RULE)

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is September 3, 2003.

**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 5 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 September 17, 2003

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 scale weight ticket requirements; (2) Clarification of guidelines for the issuance of a single bond, irrevocable letter of credit and certificate of deposit; (3) Clarification of NPE (No Price Established Contracts) requirements; (4) Clarification of assessment remittance deadline.

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

Compliance with deadlines in amendments to governing law or federal programs. This rule is needed to implement the provisions of House Bill 307 passed by the 2003 Legislature and signed into law by the Governor on March 27, 2003.

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

A requirement for maintaining an Idaho Commodity Dealer license is to have a surety bond, irrevocable letter of credit or a certificate of deposit.

**NEGOTIATED RULEMAKING:** Informal negotiated rulemaking was conducted with warehousemen, commodity dealers and other interested parties.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Russ Dapsauski, Program Manager, at (208) 332-8612.

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 September 24, 2003.

DATED this 29th day of July, 2003.

Patrick A. Takasugi, Director  
Idaho State Dept. of Agriculture  
2270 Old Penitentiary Road  
PO Box 790, Boise, ID 83701  
(208) 332-8500  
(208) 334-2170 Fax

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0213-0301**

**010. DEFINITIONS.**

The Idaho State Department of Agriculture adopts the definitions set forth in Section 69-502, Idaho Code. In addition the following definitions apply to Sections 500 through 506. (5-3-03)

**01. Cash Sale.** Payment to the producer by the warehouse or dealer contemporaneously with the transfer of commodity to the warehouse or dealer. (3-15-02)

**02. Commodity Indemnity Fund.** Commodity Indemnity Fund is a trust fund ~~and will be referred to herein as CIF.~~ (3-15-02)(9-3-03)T

**03. 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. (3-15-02)

**04. Dealer.** Is limited to dealers licensed by the state of Idaho. (3-15-02)

**05. Seed Crops.** Means any seed crop regulated by Title 22, Chapter 4, Idaho Code. (9-3-03)T

**06. NPE.** (No price established contract) A contract containing no readily calculable sale value of the commodity for the producer. (9-3-03)T

**057. Warehouse.** Is limited to warehouses licensed by the state of Idaho. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**012. ABBREVIATIONS.**

**01. CIF.** Commodity Indemnity Fund. (9-3-03)T

**02. NPE.** No price established contract. (9-3-03)T

**03. SIF.** Seed Indemnity Fund. (9-3-03)T

**0123. -- 099. (RESERVED).**

**100. OFFICE RECORDS.**

A commodity dealer shall maintain complete and sufficient records to show all purchases and sales, including all contracts relating to these transactions. A warehouse licensed as a commodity dealer under Title 69, Chapter 5, Idaho Code, shall maintain complete and sufficient records to show all deposits, purchases, sales contracts, storage obligations and loadouts of the warehouse in this State. Office records as set forth in Title 69, Chapter 5, Idaho Code, shall include, but not be limited to, the following: (5-3-03)

**01. Daily Position Record.** This shall show the total quantity of each kind and class of agricultural commodity received and loaded out, the amount remaining in storage at the close of each business day and the warehouseman's total storage obligation for each kind and class of agricultural commodity at the close of each business day. (7-1-93)

**02. Settlement Sheets/Storage Ledgers.** Every commodity dealer shall use settlement sheets showing

the dealer's name and location in making settlement with the seller, unless otherwise approved by the Director. All settlement sheets/storage ledgers shall include, but not be limited to, the following: (7-1-93)

- a. The seller's name and address. (7-1-93)
- b. The date of deliveries. (7-1-93)
- c. The scale ticket numbers. (7-1-93)
- d. The amount, kind and grade of commodity delivered. (7-1-93)
- e. The price per bushel or unit. (7-1-93)
- f. The date and amount of payment. (7-1-93)
- g. The contract number if a deferred payment, deferred pricing or other sale contract is used. A copy of each settlement sheet shall be maintained in alphabetical order by the commodity dealer as part of the pay records. (7-1-93)
- h. Electronic Records. If any electronic records are maintained outside of the state of Idaho, the Department must be allowed to examine them at any reasonable time and place as determined by the Department. (5-3-03)

**03. Scale Weight Tickets.** ~~These~~ Scale weight tickets, except tickets for electronic scales that are recorded and maintained electronically, shall be pre-numbered and one (1) copy of each ticket shall be maintained in numerical order. All scale weight tickets shall show the time when the commodities were delivered, the quantities delivered, who delivered the commodities, the ownership of the commodities and the condition of the commodities upon delivery. ~~(7-1-93)~~(9-3-03)T

- a. Tickets in the commodity dealer's possession which have not been issued. (5-3-03)
- b. Tickets issued by the commodity dealer. (5-3-03)
- c. Tickets returned to and cancelled by the commodity dealer. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**451. AMOUNT OF BOND, IRREVOCABLE LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, OR SINGLE 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~~ and each class 2 dealer shall be fixed at a rate of ~~fifteen thousand dollars (\$15,000)~~ pursuant to Section 69-506, Idaho Code. ~~(3-15-02)~~(9-3-03)T

**02. Single Bond, Irrevocable Letter Of Credit Or Certificate Of Deposit.** For the purposes of licensing as a commodity dealer pursuant to Title 69, Chapter 5, Idaho Code, and a seed buyer pursuant to Title 22, Chapter 51, Idaho Code, a single bond, irrevocable letter of credit or certificate of deposit shall be fixed at whichever of the following amounts is greater: (9-3-03)T

- a. Combined total indebtedness paid and owed to producers for agricultural commodity and seed crop, without any deductions, for the previous license year; or (9-3-03)T
- b. The indebtedness owed and estimated to be owed to producers for agricultural commodity and seed

crop, without any deductions, for the current license year. (9-3-03)T

**023. 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. (3-15-02)

452. -- 499. (RESERVED).

**500. 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.

~~(3-15-02)~~(9-3-03)T

**01. Rate Of Assessment.** The rate of assessment shall be two-tenths of one percent (.2%) gross dollar amount, without deductions, due the producer pursuant to Section 69-257(2), Idaho Code. 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. (5-3-03)

**02. Exemptions To Assessment.** Producers are not eligible to participate in CIF and no assessments shall be collected in the following cases. (5-3-03)

**a.** If a producer has a financial or management interest in a licensed warehouse or licensed commodity dealer, except members of a cooperative marketing association qualified under Title 22, Chapter 26, Idaho Code. (5-3-03)

**b.** If a producer sells to another producer, none of which are a licensed warehouseman or a licensed commodity dealer. (5-3-03)

**c.** If a producer deposits or delivers commodity to an unlicensed entity pursuant to Title 69, Chapters 2 or 5, Idaho Code. (5-3-03)

**d.** Non-producers or producers delivering commodity that was grown on land not situated within the borders of the state of Idaho are exempt from paying assessments. (5-3-03)

**501. ~~(RESERVED)~~ NPE CONTRACT CLAIMS ON THE FUND.**

NPE contracts shall be executed in writing, dated, and signed by all parties to the contract. (9-3-03)T

**01. NPE Clause.** An NPE contract shall have the following statement: "No claim shall be paid from the CIF pursuant to Section 69-263, Idaho Code, if a producer files his claim more than one hundred eighty (180) days from the date the contract is executed". (9-3-03)T

**02. NPE Contract List.** A commodity dealer shall maintain a list of all NPE contracts written in a calendar year and shall reflect the producers name, contract number, agricultural commodity and date of the contract. (9-3-03)T

**03. NPE Contract Renewal Period.** A producer may renew an NPE contract; but no claim shall be paid from the CIF if a producer files his claim more than three hundred sixty-five (365) days from the date the original NPE contract was executed. (9-3-03)T

(BREAK IN CONTINUITY OF SECTIONS)

**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. (3-15-02)

**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 Title 69, Chapters 2 and 5, Idaho Code, collected by warehouses and dealers, are due and payable to the Department. A quarter will consist of three (3) months beginning on the first day of January, April, July, and October. If assessment is paid by mail the payment must be postmarked not later than the twentieth day of the month following the close of the quarter to avoid interest and penalty charges. (~~5-3-03~~)(9-3-03)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. (3-15-02)

# IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

## 02.02.14 - RULES FOR WEIGHTS AND MEASURES

### DOCKET NO. 02-0214-0301 (FEE RULE)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 71-111 and 71-121, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**Wednesday, September 10th, 2003**  
**7:00 p.m. - 9:00 p.m. - Nampa Civic Center**  
**311 Third Street South, Nampa, ID 83651**

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

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

The proposed rule implements the provisions of SB 1200, to establish annual licensing and fees for weighing and measuring devices and the administration of those licenses. The proposed rule also renumbers IDAPA 02.02.14 to meet requirements, changes the date specific reference documents to the 2004 edition of NIST Handbook 44 and updates the fees for special request testing.

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

CODE	KEY	FEE
A	Scales < 50 lb	\$ 4.50
B	Scales 50-1160 lb	\$ 9.00
C	Scales 1160 – 7500 lb	\$18.00
D	Scales 7500 – 60,000 lb	\$46.00
E & F	Scales 60,000 lb or more	\$57.00
G	Motor-fuel device $\leq$ 30 gpm	\$ 5.00
H	Petroleum meter 30 < 150 gpm	\$25.00
I	Petroleum meter $\geq$ 150 gpm	\$29.00
J	LPG dispenser	\$30.00
K & L	LPG Temperature Compensated	\$45.00
M	Cordage meter	\$ 4.00
N	Fabric meter	\$ 4.00
O	Bulk oil meter	\$25.00

Special request testing mileage charges are proposed to increase to \$0.36/mile for a car, \$0.50/mile for a pick-up truck and \$1.50/mile for a heavy duty truck. Proposed personnel charges include driving time.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, informal negotiated rulemaking was conducted. A

negotiated rule making advisory committee made up of interested parties met at two meetings where the proposed rule was formulated.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact: Tom Schafer, 332-8690.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 7th day of July, 2003.

Patrick A Takasugi  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd., Boise, ID 83712  
(208) 332-8500 / (208) 334-2378 FAX

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0214-0301**

**02.02.14 - ~~DEPARTMENT OF AGRICULTURE~~ RULES FOR WEIGHTS AND MEASURES**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Sections 71-111, 71-121, 71-232, 71-233, 71-236, 71-241, and 71-408, Idaho Code. (10-26-94)( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is "~~Department of Agriculture~~ Rules for Weights and Measures". (10-26-94)( )

**02. Scope.** This chapter has the following scope: to govern the checking, testing, and examination of weighing and measuring devices, packages and labels; to govern consumer and non-consumer packaging and labeling; to govern the registration of servicemen and service agencies for commercial weighing and measuring devices; ~~and~~ to govern the licensing of weighmasters, and to govern the licensing of commercially used weighing and measuring devices and to set maximum annual license fees for weighing and measuring devices. (10-26-94)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. INCORPORATION BY REFERENCE.**

**01. Required Reference Materials.** The 2004 edition of Handbook No. 44 of the National Institute of Standards and Technology, United States Department of Commerce, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," hereby incorporated by reference, shall be the specifications, tolerances and other technical requirements for commercial weighing and measuring devices, unless otherwise stated in these rules. ( )

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

**03. Local Availability.** Copies of Handbook No. 44 and Handbook No. 133 are on file with the State Law Library and the Idaho State Department of Agriculture, 2216 Kellogg Lane, Boise, Idaho, 83712, or may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C., 20402. Copies are available for downloading on the internet by going to <http://nist.gov>. ( )

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

**01. Office.** The Idaho State Department of Agriculture, Bureau of Weights and Measures. ( )

**02. Office Hours.** Office hours are from 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays as designated by the state of Idaho. ( )

**03. Mailing And Street Address.** ISDA Bureau of Weights and Measures, 2216 Kellogg Lane, Boise, ID 83712. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

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

**0057. -- 009. (RESERVED).**

**~~010. PROCEDURAL MATTERS.~~**

~~Procedural matters will be dealt with as provided for in the Idaho Weights and Measures Law of 1969, Chapter 1, Title 71, Idaho Code and in the Administrative Procedure Act, Chapter 52, Title 67, Idaho Code, and the rules heretofore adopted by the Department of Agriculture under the Idaho Administrative Procedure Act. (7-1-93)~~

**~~004010. DEFINITIONS.~~**

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

**011. ABBREVIATIONS.**

**01. ISDA.** Idaho State Department of Agriculture. ( )

**02. NIST.** National Institute of Standards and Technology. ( )

**012. LICENSE REQUIRED FOR COMMERCIALY-USED WEIGHING OR MEASURING INSTRUMENT OR DEVICE.**

Weighing or measuring instruments or devices used for commercial purposes in the State of Idaho shall be licensed annually. ( )

**01. Annual License.** No person shall operate or use for commercial purposes within the state any weighing or measuring instrument or device specified in Section 71-113, Idaho Code, that is not licensed in accordance with the requirements of this rule. ( )

**02. Specific Device.** Any license issued applies only to the instrument or device identified by model and serial number on the application for license. The license shall be applicable to an equivalent replacement for the original instrument or device, within the annual license period. ( )

**013. LICENSE APPLICATION.**

License application shall be submitted on forms provided by ISDA. An application shall be accompanied with the

proper fee as established in this rule. The capacity of an instrument or device will be determined by the manufacturer's rated capacity. ( )

**014. ANNUAL LICENSE PERIOD.**

Annual license applications and fees are due February 1 of each year and all licenses expire on January 31 of the following year. License fees for new devices installed during the annual licensing period shall be prorated based on the remaining licensing cycle. ( )

**015. LICENSE RENEWALS.**

Any device or instrument shall be considered rejected if the license for that device or instrument is not renewed within thirty (30) days of expiration. A person failing to pay the annual license fee within forty-five (45) days following the expiration date, forfeits the right to use the instrument or device for commercial purposes, and the instrument or device may be taken out of service by the ISDA Bureau of Weights and Measures until the license fee is paid. ( )

**016. MAXIMUM LICENSE FEE SCHEDULE FOR COMMERCIALLY USED WEIGHING AND MEASURING INSTRUMENTS AND DEVICES.**

The annual license fee for instruments and devices is based on manufacturer's capacity. The annual license fee for commercially used instrument and device types not listed in Table 1-A, will be determined by one-third (1/3) of the actual average time costs involved with testing that type of device.

<b>TABLE 1-A</b>		
<b>CODE</b>	<b>KEY</b>	<b>FEE</b>
A	Scales < 50 lb	\$4.50
B	Scales 50 -- 1160 lb	\$9.00
C	Scales 1160 -- 7500 lb	\$18.00
D	Scales 7500 -- 60,000 lb	\$46.00
E & F	Scales 60,000 Lb Or More	\$57.00
G	Motor-fuel device ≤ 30 gpm	\$5.00
H	Petroleum meter 30 < 150 gpm	\$25.00
I	Petroleum meter ≥ 150 gpm	\$29.00
J	LPG dispenser	\$30.00
K & L	LPG temperature compensated	\$45.00
M	Cordage meter	\$4.00
N	Fabric meter	\$4.00
O	Bulk oil meter	\$25.00

( )

**017. VOLUNTARY INSPECTION OF WEIGHING AND MEASURING INSTRUMENTS AND DEVICES, FEES.**

In addition to commercially used weighing and measuring instruments and devices, ISDA Bureau of Weights and Measures, at the request of an owner or user thereof, may inspect and test non-commercial weighing or measuring instruments or devices to ascertain if they are correct. Any entity making such special request shall pay the Bureau of Weights and Measures the cost of the inspection as listed in Section 100. ( )

**018. LICENSE DISPLAYED.**

Any owner or user of commercially used weighing and measuring instruments and devices shall display the current

annual license for those instruments and devices in a prominent place at the same physical location where those devices are installed or used. In the case of devices installed on vehicles, the license shall be carried in the vehicle on which the device is installed. ( )

~~0149.~~ -- 049. (RESERVED).

~~050. CHECKING, TESTING AND EXAMINING OF DEVICES, PACKAGES AND LABELS.~~

~~01. Required Reference Materials. The 2003 edition of Handbook No. 44 of the National Institute of Standards and Technology, United States Department of Commerce, "Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices," hereby incorporated by reference, shall be the specifications, tolerances and other technical requirements for commercial weighing and measuring devices, unless otherwise stated in the Department of Agriculture Rules for Weights and Measures. (5-3-03)~~

~~02. TICKET PRINTER - CUSTOMER TICKET.~~

~~Vehicle-mounted metering systems shall be equipped with a ticket printer which shall be used for all sales where product is delivered through the meter. A copy of the ticket issued by the device shall be left with the customer at the time of delivery or as otherwise specified by the customer. This Section shall apply to vehicles put into service on or after January 1, 1995. (3-15-02)~~

~~03. Required Reference Materials For Checking Prepackaged Commodities. The 4th Edition of Handbook No. 133 of the National Institute of Standards and Technology, United States Department of Commerce, "Checking the Net Contents of Packaged Goods," hereby incorporated by reference, shall be the authority in checking packaged commodities, unless otherwise stated in the Department of Agriculture Rules for Weights and Measures. (3-15-02)~~

~~04. Local Availability. Copies of Handbook No. 44 and Handbook No. 133 are on file with the State Law Library and the Idaho Department of Agriculture, 2216 Kellogg Lane, Boise, Idaho, 83712, or may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C., 20402. Copies are available for downloading on the internet by going to <http://nist.gov>. Go to "NIST Products and Services" then "Weights and Measures," scroll down to "General Information" and click on "Publications including Uniform Laws and Regulations". Documents are available in PDF or WP formats. (5-3-03)~~

051. -- 099. (RESERVED).

100. CHARGES FOR SPECIAL REQUEST TESTING OR EXAMINATION.

01. Mileage Charges. (7-1-93)

a. Thirty-six cents (\$.306) a mile for car travel. (7-1-93)( )

b. ~~Forty five~~ Fifty cents (\$.50) a mile for pickup and prover. (7-1-93)( )

c. One dollars and ~~ten~~ fifty cents (\$1.50) a mile for heavy capacity scale trucks. (7-1-93)( )

02. Fee Collection. Such fees will be collected from place where working and back. Where more than one (1) request is to be handled on same trip, the mileage will be prorated between the parties requesting the service. (7-1-93)

03. Personnel Charges. There will also be an hourly personnel charge of twenty-five dollars (\$25) per hour per person for special request testing, chargeable *only* during the time of the actual testing and examination of devices. ~~This charge is not to be made~~ and for driving time. (7-1-93)( )

**IDAPA 02 - IDAHO STATE DEPARTMENT OF AGRICULTURE**

**02.02.15 - RULES GOVERNING THE SEED INDEMNITY FUND**

**DOCKET NO. 02-0215-0301 (FEE RULE)**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is September 3, 2003.

**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 22-5129, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

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 scale weight ticket requirements; (2) Clarification of guidelines for the issuance of a single bond, irrevocable letter of credit and certificate of deposit; (3) Clarification of assessment remittance deadline.

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

Compliance with deadlines in amendments to governing law or federal programs. This rule is needed to implement the provisions of House Bill 309 passed by the 2003 Legislature and signed into law by the Governor on March 27, 2003.

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

A requirement for maintaining an Idaho Seed Buyer license is to have a surety bond, an irrevocable letter of credit or a certificate of deposit. Existing Seed Buyer licenses expire on June 30th. Section 22-5105 Idaho Code, requires the bond to run concurrent with the Seed Buyer license.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Russ Dapsauski, Program Manager, at (208) 332-8612.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 29th Day of July, 2003.

Patrick A. Takasugi, Director  
Idaho State Dept. of Agriculture  
2270 Old Penitentiary Road  
PO Box 790  
Boise, ID 83701  
(208) 332-8500  
(208) 334-2170 Fax

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0215-0301**

**014. SCALE WEIGHT TICKETS.**

Scale weight tickets for electronic scales that are recorded and maintained electronically are exempt from the sequentially numbered and in triplicate requirement. (4-2-03)

**01. Pre-Numbered Scale Tickets.** If a seed buyer has access to a scale which can be used for weighing seed, he shall use pre-numbered scale tickets. (9-3-03)T

**02. Numerical Order Requirement.** A copy of each ticket shall be maintained in numerical order. (9-3-03)T

**03. Custom Scale Requirement.** If a seed buyer does not have access to a scale and has seed crop custom weighed at various locations, the seed buyer shall maintain a copy of the scale ticket in chronological order as part of the seed crop records. (9-3-03)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**037. AMOUNT OF BOND, IRREVOCABLE LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, OR SINGLE BOND.**

**01. Bonding Requirement.** The amount of bond to be furnished shall be fixed at a rate pursuant to Section 22-5105, Idaho Code. (9-3-03)T

**02. Single Bond, Irrevocable Letter Of Credit Or Certificate Of Deposit.** For the purposes of licensing as a seed buyer pursuant to Title 22, Chapter 51, Idaho Code, and as a warehouseman pursuant to Title 69, Chapter 2, Idaho Code, or as a commodity dealer pursuant to Title 69, Chapter 5, Idaho Code, a single bond, irrevocable letter of credit or certificate of deposit shall be fixed at whichever of the following amounts is greater: (9-3-03)T

**a.** Combined total indebtedness paid and owed to producers for seed crop and agricultural commodity, without any deductions, for the previous license year; or (9-3-03)T

**b.** The indebtedness owed and estimated to be owed to producers for seed crop and agricultural commodity, without any deductions, for the current license year. (9-3-03)T

~~0378.~~ -- 046. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**080. COLLECTION AND REMITTANCE OF SIF ASSESSMENTS.**

SIF assessments shall be collected from obligations owed to the producer or at the time of withdrawal by the seed buyer and remitted to the ISDA. If assessment is paid by mail the payment must be postmarked not later than the twentieth day of the month following the close of the quarter to avoid interest and penalty charges.

(4-2-03)(9-3-03)T

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.04.03 - RULES GOVERNING ANIMAL INDUSTRY

DOCKET NO. 02-0403-0301

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2003.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 25-203, 25-207, 25-305, 25-401, 25-601, and [25-3704] 25-3504, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency not later than September 17, 2003.

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:

IDAPA 02.04.03 is being updated to delete obsolete sections, and reconcile conflicts with other rules and federal regulations. Additionally some deleted sections are being rewritten and published as new rule chapters. IDAPA 02.04.03.070, 160-170, 185, 186, 200, and 201 are being deleted and rewritten as new sections in 02.04.03. IDAPA 02.04.03.065, 145, 205, and 350 are being deleted. IDAPA 02.04.03.060 is being deleted, rewritten, and published as a new chapter IDAPA 02.04.24, "Rules Governing Tuberculosis". IDAPA 02.04.03.155 is being deleted, rewritten, and published as a new chapter IDAPA 02.04.26, "Rules Governing Livestock Marketing".

With the permission of the Office of the Administrative Rules Coordinator the aforementioned Sections, promulgated under IDAPA 02.04.03, are being deleted from this chapter under special circumstance. The deletions are being removed with annotations indicating that the Sections are being deleted from the chapter but are not being reprinted and struck out using the standard legislative format required for amending rules. This is being done to reduce the publication cost to the agency.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a), (b), and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This rule protects the public health, safety, and welfare, complies with deadlines in law, and confers a benefit.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted because this is an update of current rules to reflect changes in state law and federal regulations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Dr. Clarence Siroky, DVM, or John Chatburn, Idaho State Department of Agriculture at (208) 332-8540.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 4th day of August, 2003.

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

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0403-0301**

**IDAPA 02**  
**TITLE 04**  
**CHAPTER 03**

**02.04.03 - RULES ~~OF THE DEPARTMENT OF AGRICULTURE~~ GOVERNING ANIMAL INDUSTRY**

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is “Rules ~~of the Department of Agriculture~~ Governing Animal Industry”. ~~(1-10-94)~~(10-1-03)T

**02. Scope.** This chapter has the following scope: These rules shall govern procedures for the prevention, control and eradication of diseases among the animals in the state of Idaho. The official citation of this chapter is IDAPA 02.04.03.000 et.seq. For example, this Section’s citation is IDAPA 02.04.03.001. (1-10-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. ADMINISTRATIVE APPEAL.**

~~There is no provision for administrative appeals before the Department of Agriculture under this chapter~~ Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. ~~(1-10-94)~~(10-1-03)T

**004. INCORPORATION BY REFERENCE.**

**01. Incorporated Documents.** IDAPA 02.04.03 incorporates by reference the following documents: (5-3-03)

**a.** The USDA Pseudorabies Eradication State-Federal-Industry Program Standards, January 1, 1993. (5-3-03)

**b.** National Poultry Improvement Plan Dated, March 2002. (5-3-03)

**c.** Title 9, Parts 145, 147, and 161, CFR, January 1, 2002<sup>3</sup>. ~~(5-3-03)~~(10-1-03)T

**d.** Official Idaho Protocol for Culture of Trichomoniasis, August 1, 2002. (5-3-03)

**e.** The Compendium of Animal Rabies Prevention and Control, 2003. (10-1-03)T

**f.** Office Of International Epizootics, Disease Lists “A” And “B”, 2003. (10-1-03)T

**02. Availability Of Document.** Copies of these documents may be obtained from the Idaho State Department of Agriculture ~~and the State Law Library.~~ ~~(5-3-03)~~(10-1-03)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**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 83712-0790. (2-28-02)

**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. (2-28-02)

**03. Mailing Address.** The mailing address for the Division of Animal Industries at the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701. (~~2-28-02~~)(10-1-03)T

**04. Telephone Number.** The telephone number of the Division of Animal Industries at the central office is (208) 332-8540. (~~2-28-02~~)(10-1-03)T

**05. Fax Number.** The fax number of the Division of Animal Industries at the central office is (208) 334-2174062. (~~2-28-02~~)(10-1-03)T

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

As used in these rules the following terms have the following meanings: (5-3-03)

**01. Accredited Veterinarian.** A veterinarian approved by the Administrator and USDA/APHIS/VS, in accordance with the provisions of Title 9, Part 161, Code of Federal Regulations, to perform functions of State-Federal animal disease control programs. (5-3-03)

**02. Administrator.** The administrator of the Division of Animal Industries, Idaho State Department of Agriculture or his designee. (5-3-03)

**03. ~~Bureau.~~ Bureau of Animal Industry, Department of Agriculture Animal.** Any vertebrate member of the animal kingdom, except man. (~~9-6-61~~)(10-1-03)T

**04. ~~Commissioner.~~ Commissioner of Agriculture of the state of Idaho Approved Pseudorabies Vaccine.** Any pseudorabies vaccine produced under current USDA license and intended for immunizing swine against pseudorabies. (~~9-6-61~~)(10-1-03)T

**05. Cachexia.** Weakness and emaciation caused by a serious disease such as tuberculosis or cancer. (10-1-03)T

**056. Department.** The Idaho State Department of Agriculture. (5-3-03)

**067. Director.** Director of the Idaho State Department of Agriculture or his designee. (9-6-61)

**078. Division Of Animal Industries.** Idaho State Department of Agriculture, Division of Animal Industries. (5-3-03)

**09. ~~Federal Inspector.~~ Any inspector of the United States Agriculture Research Service, United States Department of Agriculture. Epithelioma.** Cancer or tumor. (~~9-6-61~~)(10-1-03)T

**10. ~~Federal Supervision.~~ Under the supervision of an inspector of the United states Agriculture Research Service. Equidae.** Horses, mules, and asses. (~~9-6-61~~)(10-1-03)T

**11. ~~Free Area.~~ The counties, areas or districts not quarantined by the Division of Animal Industries for the specific contagious, infectious, or communicable animal diseases. Exposed Livestock.** Any livestock that have been in contact with an animal infected with, or affected by, any contagious, infectious or communicable disease, including all livestock in a known infected herd. (~~5-3-03~~)(10-1-03)T

- ~~12.~~ **Federal Animal Health Official.** An employee of USDA/APHIS/VS who is authorized to perform animal health activities. (10-1-03)T
- ~~13.~~ **Gamebirds.** Domesticated gallinaceous fowl such as pheasants, partridge, quail, grouse, and guineas. (5-3-03)
- 14. Garbage.** Putrescible animal and vegetable waste containing animal parts resulting from the handling, preparation, processing, cooking or consumption of foods. (10-1-03)T
- ~~15.~~ **Hatching Eggs.** Fertilized eggs. (5-3-03)
- 16. Herd.** A herd is any group of livestock maintained on common ground for any purpose, or two (2) or more groups of livestock under common ownership or supervision, geographically separated, but which have an interchange or movement of animals without regard to whether the animals are infected with or exposed to contagious, infectious, or communicable animal diseases. (10-1-03)T
- 17. Infected Livestock.** Any livestock determined to be infected with a contagious infectious, or communicable disease by an official test or diagnostic procedure, or diagnosed by a veterinarian as infected. (10-1-03)T
- 148. Interstate Movement.** Movements of livestock and poultry from Idaho into any other state, territory or the District of Columbia or from any other state, territory or the District of Columbia into ~~this state~~ Idaho. (~~5-3-03~~)(10-1-03)T
- 159. Intrastate Movement.** Movement of ~~livestock and poultry from any county, area or district, quarantined or otherwise, to another county, area or district, quarantined or otherwise,~~ any animal from one location to another location within ~~the state~~ Idaho. (~~5-3-03~~)(10-1-03)T
- 20. Known Infected Herd.** Any herd in which any livestock has been determined to be infected with contagious, infectious, or communicable diseases by an official test or diagnostic procedure, or diagnosed by a veterinarian as being infected. (10-1-03)T
- 21. Livestock.** Swine, cattle, sheep, goats, equidae, domestic bison, domestic cervidae, camilids, ratites, captive antilocapridae and other domestically raised animals. (10-1-03)T
- 22. Necrosis.** Death of tissue. (10-1-03)T
- 23. Negative.** An animal that has been tested with official test procedures and is found to be negative. (10-1-03)T
- 24. Neoplastic Tissue.** New growth or tissue associated with a tumor. (10-1-03)T
- 25. Official Pseudorabies Test.** Any test for the diagnosis of pseudorabies that has been approved by USDA/APHIS and is conducted by a state/federal approved laboratory. (10-1-03)T
- 26. Orbital Region.** The bony cavity containing the eye and surrounding bones. (10-1-03)T
- 27. Positive.** An animal that has been tested and found positive with official disease test procedures and is considered infected with any contagious, infectious, or communicable disease. (10-1-03)T
- ~~1628.~~ **Poultry.** Domesticated fowl, including chickens, turkeys, waterfowl, and gamebirds. (5-3-03)
- 29. Pseudorabies.** The contagious, infectious, and communicable disease of livestock and other animals also known as Aujeszky's disease, mad itch or infectious paralysis. (10-1-03)T
- 30. Quarantine.** A written order, or a verbal order followed by a written order, executed by the Administrator, to confine or hold animals on a premise or any other location, and to prevent movement of animals

from a premise or any other location when the Administrator has determined that the animals have been found or are suspected to be exposed to or infected with any contagious, infectious, or communicable disease, or the animals are not in compliance with the provisions of this chapter. (10-1-03)T

~~18~~**31. Quarantined Area.** The counties, areas, or districts, portions thereof, quarantined by the Division of Animal Industries for specific contagious, infectious, or communicable animal diseases. (5-3-03)

~~19~~**32. Quarantined.** Isolation of all animals diseased or exposed thereto, from contact with healthy animals and exclusion of such healthy animals from enclosures or grounds where said diseased or exposed animals are, or have been kept. (9-6-61)

~~20~~**33. Ratites.** Large, non-flying birds including, but not limited to ostriches, emus, cassowaries, and rheas. (~~5-3-03~~)(10-1-03)T

~~21~~**34. Registered Veterinarians.** Veterinarians registered with, and approved by, the Division of Animal Industries to collect Trichomoniasis samples for official Trichomoniasis culture testing. (5-3-03)

**35. Restrain.** The confinement of livestock, or other animals, in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing, as approved by the Administrator. (10-1-03)T

~~22~~**36. State Animal Health Official.** The Administrator, or his designee, responsible for disease control and eradication activities. (5-3-03)

~~23.~~ ~~State Inspector.~~ ~~A deputy veterinarian or livestock investigator of the Division of Animal Industries.~~ (~~5-3-03~~)

~~24.~~ ~~State Supervisors.~~ ~~Under the supervision of a veterinarian or livestock inspector of the Bureau of Animal Industry of the state of Idaho.~~ (~~9-6-61~~)

~~13~~**7. Public Stockyards.** ~~Stockyards~~ A facility where trading in livestock is carried on, where yarding, feeding and watering places are provided by the stockyards or transportation companies, or where livestock associations or similar companies maintain corrals for feeding, shearing, dipping and separating animals. (~~5-3-03~~)(10-1-03)T

**38. Suppuration.** The formation of pus. (10-1-03)T

**39. Suspect.** An animal that has a response to an official test, but the response is not sufficient to determine the disease status of the animal tested. (10-1-03)T

**40. Swine.** All breeds of domestic porcine and all wild and exotic porcine. (10-1-03)T

**41. Swine Feedlot.** Premises designed and used exclusively for the finish feeding of swine, from which the swine will be moved directly to slaughter. (10-1-03)T

~~25~~**42. Waterfowl.** Domesticated fowl that normally swim such as ducks and geese. (5-3-03)

~~26~~**43. Wildfowl.** Wild gallinaceous fowl, turkeys, and waterfowl. (5-3-03)

**011. ABBREVIATIONS.**

**01. APHIS.** Animal Plant Health Inspection Service. (5-3-03)

~~02.~~ ~~AVIC.~~ ~~Area Veterinarian in Charge.~~ (~~5-3-03~~)

~~03~~**2. CFR.** Code of Federal Regulations. (5-3-03)



livestock exposed to, or affected by, any contagious, infectious or communicable disease, shall not be moved for any purpose unless the Administrator has approved the movement in writing, prior to the movement occurring.

(10-1-03)T

**04. Yards And Other Premises.** Yards and other premises which have contained cattle, swine or other livestock exposed to, or affected by, any contagious, infectious or communicable disease shall not be used in connection with the movement of healthy animals until the said yards and premises have been cleaned and disinfected, under state or federal supervision, as directed by the Administrator.

(10-1-03)T

**05. Disinfectants.** Only disinfectants approved by USDA or the Administrator shall be used.

(10-1-03)T

021. -- 024. (RESERVED).

**025. TRANSIT INSPECTION.**

When deemed necessary, movements of livestock animals will be stopped in transit for inspection. ~~If found the animals are suspected of being infected with or exposed to any contagious, infectious or communicable disease, all persons and corporations having control of the transportation or movement of such livestock the animals shall cease the movement of the animals upon receipt of an order from state or federal inspector, and animals shall thereafter be handled in accordance with these rules~~ animal health officials.

~~(9-6-61)~~(10-1-03)T

026. -- 029. (RESERVED).

**030. SLAUGHTERING OF DISEASED ANIMALS.**

**01. Authorized By Law.** When, in order to prevent the spread of contagious, infectious or communicable disease, it becomes necessary to slaughter any diseased or exposed livestock, the purchase of such livestock by the state is authorized by law, and an appropriation is available therefor, the value of the livestock shall be ascertained and compensation made therefor in accordance with the rules hereinafter provided.

(9-6-61)

**02. Not Authorized By Law.** When, in order to prevent the spread of or to eradicate any contagious, infectious or communicable disease among any animals of this state, it becomes necessary to slaughter or destroy any diseased or exposed animals, and the purchase of such animals by the state is not authorized, and an appropriation not available therefore, the said animals shall be slaughtered under federal meat inspections rules and regulations, or destroyed and disposed of in accordance with ~~Subsection 050.02~~ IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal".

~~(9-6-61)~~(10-1-03)T

~~031. -- 034. (RESERVED).~~

~~**035. MOVEMENT IN/FROM QUARANTINED AREAS.**~~

~~No animal or livestock shall be shipped, trailed, driven or hauled in private conveyance from quarantined areas in any county or district to free area in any other county or district and subsequently delivered to a transportation company for shipment to any other county or district without complying with all state rules pertaining to such movements.~~

~~(9-6-61)~~

~~036. -- 039. (RESERVED).~~

**040. INSPECTION OF ANIMALS.**

When animals are being inspected ~~and certified to~~ by a state or federal ~~inspector~~ animal health official, proper facilities for restraining ~~them~~ the animals, and assistance shall be provided by the owner in order that a careful inspection may be made, and ~~the inspector while making the inspection~~ state and federal animal health officials shall not be interfered with in any manner.

~~(9-6-61)~~(10-1-03)T

041. -- 044. (RESERVED).

**045. HEALTH CERTIFICATES OF VETERINARY INSPECTION.**

A copy of certificates issued by an accredited veterinarian, or a state or federal ~~inspector~~ animal health official

covering the movement of livestock shall ~~in all cases~~ accompany the livestock to destination, and ~~a copy of same mailed to the BUREAU OF ANIMAL INDUSTRY, (P.O. Box 790) Boise, Idaho. Where certificates covering the movement of livestock are provided for in these rules, the certificates shall become the property of the transportation company and shall be filed with the billing for future reference~~ shall be provided to the receiver of the livestock by the person who delivers the livestock. ~~(9-6-61)~~(10-1-03)T

**01. Copies.** Legible copies of certificates of veterinary inspection shall be submitted to the Division of Animal Industries. (10-1-03)T

**02. Idaho Certificates.** Accredited veterinarians in Idaho shall submit legible copies of all certificates that they issue to the Division of Animal Industries within five (5) business days of issuance. (10-1-03)T

**(OLD SECTIONS 046 THROUGH 149 HAVE BEEN DELETED)**

**046. -- 049. (RESERVED).**

**050. STATE AND FEDERAL SEALS.**

No person shall break, or in any way tamper with, a seal or other device applied to premises or conveyances by state or federal animal health officials, except: (10-1-03)T

**01. State Or Federal Animal Health Officials:** or (10-1-03)T

**02. Persons Designated By The Administrator.** (10-1-03)T

**051. NOTIFICATION OF BROKEN SEALS.**

Any person who discovers a state or federal seal that has been broken, tampered with, or is missing shall immediately notify the Administrator. (10-1-03)T

**052. OFFICIAL LIVESTOCK IDENTIFICATION.**

No person, except persons authorized by the Administrator, shall remove or tamper with any official state or federal livestock identification, including but not limited to: (10-1-03)T

**01. Official Vaccination Tags.** (10-1-03)T

**02. Official Identification Tags.** (10-1-03)T

**03. Trichomoniasis Tags.** (10-1-03)T

**04. Identification Tattoos.** (10-1-03)T

**053. -- 149. (RESERVED).**

**150. ARTIFICIAL INSEMINATION.**

**01. License Application.** Any person desiring to practice artificial insemination of domestic animals shall file an application for a license on an application form furnished by the ~~bureau of animal industry~~ Administrator, and such application shall be accompanied by a license fee of twenty-five (\$25) dollars. ~~(9-6-61)~~(10-1-03)T

**02. Training.** Each applicant shall be required to take a course of training in artificial insemination at the place and time designated by the ~~members of the artificial insemination board~~ Administrator. ~~(9-6-61)~~(10-1-03)T

**03. Examination.** Each applicant shall be examined in writing and in the arts and skill of artificial insemination. (9-6-61)

**04. Passing Examination.** No applicant shall be granted a license to practice artificial insemination who shall fail to answer correctly seventy-five percent (75%) of all questions asked. ~~(9-6-61)~~(10-1-03)T

**05. Temporary License.** Temporary license to practice artificial insemination under the direct supervision of a licensed inseminator or veterinarian may be granted by the ~~members of the artificial insemination board~~ administrator, until such time as the next insemination course and examination is given. ~~(9-6-61)~~(10-1-03)T

**06. License Expiration.** Licenses expire on the 30th day of June of each year, and all persons holding a license are entitled to renew and shall renew their license on or before the 1st day of July of each year. (9-6-61)

**07. License Renewal.** Each license holder shall make application for renewal of license to the ~~bureau of animal industry~~ Administrator, and the application shall be accompanied by a renewal license fee of five dollars (\$5). ~~(9-6-61)~~(10-1-03)T

**08. Renewal Delinquency.** Any license holder who does not renew his license by the 1st day of October following the date of delinquency shall have his license canceled. (9-6-61)

**09. Issuance Denial.** The ~~bureau~~ Administrator may refuse to issue or renew a license for cause pursuant to Section 25-810, Idaho Code. ~~(9-6-61)~~(10-1-03)T

~~151. -- 154. (RESERVED).~~

~~155. STATE -- FEDERAL SALES YARD.~~

~~01. Inspection. No cattle shall be released from a state federal approved sales yard unless a clinical inspection has been made by the inspector assigned to the yard and a release is furnished the owner, showing that the animals meet the health requirements for movement to the point of destination. (9-6-61)~~

~~02. Requirement Compliance. A quarantine pen or pens shall be provided at all sales yards, and the pen or pens shall be so marked, such pens to be used to hold only animals that have reacted to the brucellosis or tuberculosis test or animals suspected of being affected with a contagious or infectious disease and the pens shall comply with the following requirements: (9-6-61)~~

- ~~a. Hard surfaced with concrete or similar impervious material in good repair. (9-6-61)~~
- ~~b. Provided with separate feed and water facilities. (9-6-61)~~
- ~~c. Identified with the word "QUARANTINE" painted in red letters not less than four (4) inches high on the gate. (9-6-61)~~
- ~~d. Cleaned and disinfected not later than the day following date of sale. (9-6-61)~~
- ~~e. Tight board fence five and one-half (5 1/2) feet high. (9-6-61)~~
- ~~f. Drainage shall not be into adjoining pens or alleys. (9-6-61)~~

~~03. Sanitary Condition. All pens, alleys, troughs, and run ways shall be kept in a sanitary condition and shall be cleaned and disinfected under the supervision of a state or federal inspector whenever requested by a representative of the bureau. (9-6-61)~~

~~156]. -- 159. (RESERVED).~~

(OLD SECTIONS 160 THROUGH 186 HAVE BEEN DELETED)

**160. CANCER EYE - EPITHELIOMA.**

Any animal offered for sale and found to be affected with epithelioma of the eye or of the orbital region in which the eye has been destroyed or obscured by neoplastic tissue and which shows extensive infection, suppuration and necrosis, usually accompanied with foul odor, or any animal affected with epithelioma of the eye or the orbital region which, regardless of extent, is accompanied with cachexia shall not be sold for slaughter for human consumption. All such animals shall be humanely euthanized, or disposed of for immediate slaughter directly to: (10-1-03)T

**01. Animal Rendering Plants;** or (10-1-03)T

**02. Fur Farms.** Fur or mink farm or other establishment as approved by the Administrator. (10-1-03)T

**161. EPITHELIOMA - PUBLIC LIVESTOCK MARKETS.**

Any animal entering a public livestock market that is affected as described in Section 160, shall be held only in the quarantine pen and sold only there from. (10-1-03)T

**162. -- 174. (RESERVED).**

**175. RABIES.**

In order to prevent the introduction or dissemination of rabies among the animals of the state, the Administrator is authorized to develop and implement a plan for rabies control in any portion of this state. (10-1-03)T

**01. Reporting.** It is hereby made the duty of all persons practicing veterinary medicine in this state, or owners or persons in charge of animals, to report to the Administrator, by telephone, facsimile, or electronic mail, all cases of rabies within forty-eight (48) hours. (10-1-03)T

**02. Discharging Authority.** State and federal animal health officials are authorized and empowered to: (10-1-03)T

**a.** Inspect, quarantine, treat, condemn, slaughter and dispose of any animals affected or infected with or exposed to rabies. (10-1-03)T

**b.** Quarantine, clean and disinfect all premises where such animals have been kept. (10-1-03)T

**c.** Call upon sheriffs, constables and other peace officers to assist them in the discharge of their duties. (10-1-03)T

**176. -- 179. (RESERVED).**

**180. BIOLOGICALS.**

Veterinary serums, vaccines, recombinant vaccines, bacterins, biologic remedies, diagnostic agents, immunoassay agents and diagnostic probes used in the treatment or diagnosis of disease of livestock, poultry, domestic animals, fish or fur bearing animals shall not be imported into or sold, distributed, or used within the state of Idaho unless such serum, vaccines, recombinant vaccines, bacterins, biologic remedies, diagnostic agents, immunoassay agents and diagnostic probes have been produced under a license by the United States Department of Agriculture and the manufacturers shall have a permit issued by the Idaho Department of Agriculture, Division of Animal Industries. (10-1-03)T

**1861. -- 189. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**(OLD SECTIONS 200 THROUGH 219 HAVE BEEN DELETED)**

**200. EQUIDAE - EQUINE INFECTIOUS ANEMIA.**

Official tests for EIA shall include the AGID test, the C-ELISA test, and other EIA tests approved by USDA or the Administrator. (10-1-03)T

**01. Blood Samples.** Equine blood samples collected for official EIA tests shall be collected by a state or federal animal health official or an accredited veterinarian who is licensed in the state in which the animal being tested is located. (10-1-03)T

**02. Official Samples.** Official EIA test samples shall be accompanied to the testing laboratory by an official EIA test report on which is recorded the name and address of the owner or person in charge of the animal, the breed, sex, age and identification of the animal being tested. Identification shall include identifying tattoos, brands, color and distinctive markings. The accredited veterinarian or animal health official collecting the EIA test samples shall record the date the samples were collected and affix his signature to the official EIA test report. (10-1-03)T

**03. Official Tests.** Official EIA tests shall be conducted in a laboratory approved by USDA or the state of Idaho to conduct EIA tests. (10-1-03)T

**201. EIA IS A REPORTABLE DISEASE.**

All laboratories conducting EIA tests on Idaho origin equidae and all veterinarians who diagnose EIA in Idaho equidae shall report positive results of all EIA tests and diagnoses to the Administrator of Animal Industries within twenty-four (24) hours of such test or diagnosis. Negative test results shall be reported within forty-eight (48) hours. (10-1-03)T

**202. EIA INFECTED ANIMALS.**

Any equidae which are positive to an official EIA test shall be declared to be infected with EIA and shall be designated as an EIA reactor. The Administrator may require or recommend a re-test of EIA reactors in order to confirm infection or identification of the animal. In cases where a confirmatory test is conducted, the final determination of infection will be delayed until the results of the confirmatory test are available. The animal on which a confirmatory test is to be conducted shall be placed under an official Hold Order until the results of the confirmatory test are available. (10-1-03)T

**203. DISPOSITION OF EIA REACTORS.**

Equidae found to be infected with EIA shall be: (10-1-03)T

**01. Quarantined.** Quarantined to the premise where the animal was found to be infected, the owner's premise, or another premise that is approved by the Administrator. (10-1-03)T

**02. Duration of Quarantine.** The infected animal shall remain under quarantine until it is: (10-1-03)T

**a.** Consigned to slaughter at a USDA approved equine slaughter establishment; or (10-1-03)T

**b.** Euthanized and buried or incinerated; or (10-1-03)T

**c.** Donated to a university or other research facility for use in EIA research projects. (10-1-03)T

**204. ISOLATION OF EIA REACTORS.**

The quarantine premises or area for EIA reactors shall provide no less than two-hundred (200) yards separation from all other equidae. The quarantine area and quarantined animals therein may be monitored periodically by state or federal animal health officials to ensure that provisions of the quarantine are being met. (10-1-03)T

**205. IDENTIFICATION OF EIA REACTORS.**

All equidae found to be infected with EIA shall be identified with an "82 A" brand on the left neck or left shoulder of the animal. Identification as an EIA reactor shall be accomplished within fifteen (15) days of notification that the animal is infected with EIA. The "82 A" brand shall be at least two (2) inches high and may be either a hot iron brand or a freeze brand. (10-1-03)T

**206. EXPOSED EQUIDAE.**

EIA exposed equidae may include all equidae that are held within two-hundred (200) yards of the location where an EIA reactor is or was maintained. (10-1-03)T

**01. Hold Order.** Exposed equidae shall be placed under a Hold Order until the animals have been tested negative to EIA at least sixty (60) days after the last reactor animal has been removed from the premises. (10-1-03)T

**02. Movement Of Exposed Equids.** Individual exposed equids, which have not had a negative sixty (60) day test, may be allowed to move under Hold Order for specific purposes if they have a negative EIA test prior to movement. Such movement shall not be for longer than fifteen (15) days. (10-1-03)T

**207. EXTENDED VALIDITY EQUINE CERTIFICATES.**

Provided there is a written agreement between the Administrator and the chief livestock sanitary official of the state of destination, Idaho origin equidae may be moved from Idaho for shows, rides or other equine events and return to Idaho on an extended validity equine certificate under a state system of equine certification acceptable to the Administrator and the state of destination. The Administrator may authorize the movement of equidae into or out of Idaho on extended validity equine certificates under the following conditions: (10-1-03)T

**01. Purpose Of Certificate.** The movement involves short term travel to or from the state of Idaho for participation in equine activities, including but not limited to, participation in equine events, shows, rodeos, ropings, trail rides and search and rescue activities. (10-1-03)T

**02. Limitations Of Certificate.** The movement does not involve the sale or change of ownership of the equid, animal breeding activities or movements that involve stays of longer than ninety (90) days. Movements for these purposes shall be accompanied by a certificate of veterinary inspection. (10-1-03)T

**03. Completion, Reporting, And Approval Of Certificate.** The extended validity equine certificate is properly completed, the required tests and certifications are recorded on the certificate and a copy of the completed certificate is submitted to and approved by the Administrator. (10-1-03)T

**04. Certificate Validity.** Extended validity equine certificates shall be valid for no longer than six (6) months from the date the EIA sample is collected, if an EIA test is required, or six (6) months from the date of inspection if no EIA test is required. (10-1-03)T

**05. Reporting Itinerary.** The recipients of extended validity equine certificates shall be required to submit a travel itinerary for the equidae to the Administrator within ten (10) working days following the date of expiration of the certificate. The travel itinerary shall include a listing of all travel, including dates, purpose and destinations of travel that the equid has made out of the state of Idaho during the validity of the certificate. (10-1-03)T

**06. Cancellation Of Certificate.** The Administrator may cancel any extended validity equine certificate in the event of serious or emergency disease situations or for the certificate holders' failure to comply with the rules that apply to such certificates. Cancellation of the certificates may be accomplished by written or verbal notice to certificate holders. Verbal notice shall be confirmed by written notice. The canceled certificate will become invalid on the date and at the time of initial notification. (10-1-03)T

**207. -- 219. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**234. INFECTIONS WITH OTHER TYPES OF TRICHOMONADS.**

Bulls that have had a positive culture result for trichomoniasis testing may be further evaluated to determine if the organism is *Tritrichomonas foetus* or another species of trichomonad. Bulls having initially-positive trichomoniasis culture results will not be considered positive for trichomoniasis under the provisions of this rule if they meet the

following criteria: (10-1-03)T

**01. Bona Fide Virgin Bull.** The bull is a virgin bull under twenty-four (24) months of age and has never serviced a cow; and (10-1-03)T

**02. Trichomonad Organisms Identified.** The culture media containing the organisms that have been collected from the bull is forwarded to a laboratory that has the ability to identify the different species of trichomonad organisms and the laboratory is able to identify and report the species of trichomonad organisms present in the culture; and (10-1-03)T

**03. Tritrichomonas foetus Not Present.** None of the trichomonad organisms in the submitted culture are identified as *Tritrichomonas foetus*. (10-1-03)T

2345. -- 349. (RESERVED).

(OLD SECTION 350 HAS BEEN DELETED)

**350. FOREIGN ANIMAL AND REPORTABLE DISEASES.**

It is hereby made the duty of all persons in this state to report to the Administrator immediately, by telephone, facsimile, or electronic mail any lesions or symptoms resembling foot and mouth disease, or any other diseases exotic to Idaho, that they may find existing among the animals in the state, including: (10-1-03)T

**01. OIE List A Diseases.** (10-1-03)T

**02. OIE List B Diseases.** (10-1-03)T

**03. Chronic Wasting Disease.** (10-1-03)T

**04. Pseudorabies.** (10-1-03)T

351. -- ~~359~~. (RESERVED).

**360. ACTINOMYCOSIS AND ACTINOBACILLOSIS, LUMP JAW.**

**01. Selling Diseased Animal.** It shall be unlawful for any person to knowingly sell, offer for sale, or in any manner transfer ownership to another person any animal infected or affected with the disease known as actinomycosis and actinobacillosis, lump jaw, if the disease shows well-marked clinical symptoms, or is in the advanced stage, except for immediate slaughter, and then only in accordance with the meat inspection rules and regulations of the USDA. (10-1-03)T

**02. Public Livestock Markets.** Animals showing well marked clinical symptoms or in the advanced stage of actinomycosis and actinobacillosis, lump jaw, passing through public livestock markets shall be placed in quarantine pens and sold therefrom. (10-1-03)T

361. -- 399. (RESERVED).

**400. GARBAGE FEEDING.**

No person shall feed garbage to swine. (10-1-03)T

**01. Household Wastes.** Private household wastes not removed from the premises where produced shall not be considered garbage. (10-1-03)T

**02. Inspection And Investigation.** The Administrator is authorized to enter upon any private or public property for the purpose of inspecting and investigating conditions relating to the feeding of garbage to swine. (10-1-03)T

**401. PSEUDORABIES - PROCEDURES FOR CONTROL AND ERADICATION.**

**01. Laboratories.** Blood, serum, tissues, or other samples are to be tested only by state/federal-approved laboratories. (10-1-03)T

**02. Supervision.** State or federal veterinarians shall supervise pseudorabies control and eradication efforts. (10-1-03)T

**03. Quarantines.** Any herd in which any livestock has been determined to be infected with pseudorabies by an official pseudorabies test or diagnosed by a veterinarian as having pseudorabies shall be placed under official state quarantine for pseudorabies. (10-1-03)T

**a.** All swine on pseudorabies-infected premises shall be sold for slaughter under permit within fifteen (15) days of diagnosis. (10-1-03)T

**b.** Livestock, other than swine, on pseudorabies infected premises shall be confined to the premises for a period of ten (10) days after the swine herd is sold for slaughter. Livestock, other than swine can, under permit, be moved to a separate holding area and be released from quarantine after a period of ten (10) days, if no signs of pseudorabies occur in the animals. (10-1-03)T

**402. PSEUDORABIES VACCINE.**

No person shall import into Idaho, possess, use, keep, buy, sell, offer for sale, barter, exchange, give away, or otherwise dispose of any pseudorabies vaccine without written permission from the Administrator. (10-1-03)T

**403. VACCINATED SWINE.**

No person shall import into Idaho any swine that have been vaccinated for Pseudorabies. (10-1-03)T

**404. -- 419. (RESERVED).**

**420. ERADICATION METHODS.**

The elimination of pseudorabies from a herd shall be accomplished in accordance with the USDA Program Standards for pseudorabies. (10-1-03)T

**421. -- 429. (RESERVED).**

**430. IDENTIFICATION OF INFECTED SWINE.**

All seropositive and infected swine are to be individually identified by placing an ear tag in the left ear of the animal. The reactor tag number shall be recorded on movement documents. Identification shall be accomplished within five (5) days of the date the animals were reported as positive or infected. (10-1-03)T

**431. IDENTIFICATION OF EXPOSED SWINE.**

All exposed swine that are removed from the premises of origin shall be individually identified by placing a swine identification tag in the right ear of the animal. The identification number shall be recorded on movement documents. Individual identification may be waived for swine moving directly to slaughter, on a permit, in a sealed vehicle. (10-1-03)T

**432. -- 449. (RESERVED).**

**450. QUALIFIED PSEUDORABIES-NEGATIVE HERDS.**

The qualifying method and development of a pseudorabies-negative herd shall be accomplished in accordance with the USDA Program Standards for pseudorabies. (10-1-03)T

**451. -- 459. (RESERVED).**

**460. CLEANING AND DISINFECTION.**

All pens, wherein swine are held prior to or after their sale, shall be thoroughly cleaned and disinfected within

seventy-two (72) hours following completion of the sale or before the next sale, whichever occurs first. (10-1-03)T

**461. -- 989. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**991. -- 9998. (RESERVED).**

**999. MINOR VIOLATIONS.**

Nothing in this chapter shall be construed as requiring the Administrator to report minor violations when the Administrator believes that the public interest will be best served by suitable warnings or other administrative action.

(10-1-03)T

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.04.21 - RULES GOVERNING THE IMPORTATION OF ANIMALS**  
**DOCKET NO. 02-0421-0301**  
**NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, 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 25-203, 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 complete text of the proposed rule was published in the June 4, 2003 Idaho Administrative Bulletin, Volume 03-6, pages 33 through 35.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Dr. Dan Crowell, DVM, or John Chatburn, Idaho Department of Agriculture, at (208) 332-8540..

DATED this 29th day of July, 2003.

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

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**IDAPA 02, TITLE 04, CHAPTER 21**

**RULES GOVERNING THE IMPORTATION OF ANIMALS**

**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 03-6, June 4, 2003, pages 33 through 35.](#)**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.04.21 - RULES GOVERNING THE IMPORTATION OF ANIMALS**  
**DOCKET NO. 02-0421-0302**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2003.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 25-3903, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking has been scheduled as follows:

**September 11, 2003, 7 p.m.**  
**Nampa Civic Auditorium**  
**311 3rd Street South**  
**Nampa, ID 83651**

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

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

This rule specifies that deleterious exotic animals can only be imported into Idaho pursuant to IDAPA 02.04.27, "Rules Governing Deleterious Exotic Animals".

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

This rule protects the public health, safety, and welfare, and complies with a new law, title 25, chapter 39, Idaho Code.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**NEGOTIATED RULEMAKING:** Informal negotiated rulemaking was conducted with the assistance of an advisory committee comprised of persons interested in exotic animals.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Dr. Clarence Siroky, DVM, or John Chatburn, Idaho Department of Agriculture at (208) 332-8540.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 29th day of July, 2003.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0421-0301

**720. WILDLIFE AND EXOTIC ANIMALS.**

All native and non-native wildlife, and all exotic animals imported into Idaho: (5-3-03)

**01. Deleterious Exotic Animals.** No person shall import deleterious exotic animals into the state of Idaho except as provided in IDAPA 02.04.27. (10-1-03)T

**012. ~~Fish And Game~~ Wildlife And Exotic Animals, Except Deleterious Exotic Animals.** ~~Such~~ Wildlife and exotic animals, except deleterious exotic animals, and all matters pertaining to any restrictions governing their movement into the state of Idaho, are under the authority of the Idaho Department of Fish and Game. (~~5-3-03~~)(10-1-03)T

**023. Certificate And Permit.** In addition to any requirements of the Idaho Department of Fish and Game, ~~such~~ wildlife and exotic animals are required to have a certificate of veterinary inspection from the state of origin and an import permit from the Division of Animal Industries. (~~5-3-03~~)(10-1-03)T

**034. Additional Requirements.** The Administrator may impose test and certification requirements, for diseases of concern, on any native or non-native wildlife, or exotic animals imported into Idaho. (5-3-03)

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**

**02.04.24 - RULES GOVERNING TUBERCULOSIS**

**DOCKET NO. 02-0424-0301 (NEW CHAPTER)**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2003.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 25-203, 25-305, 25-402, and [25-3704] 25-3504, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency not later than September 17, 2003.

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 is a new chapter that replaces and updates the rules found in 02.04.03 regarding tuberculosis to reflect current state laws, federal regulations, and cooperative disease control programs.

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

This rule protects the public health, safety, and welfare, and confers a benefit.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted because state law or federal regulations require the changes.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Dr. Clarence Siroky, DVM, or John Chatburn, Idaho State Department of Agriculture at (208) 332-8540.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 29th day of July, 2003.

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

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0424-0301**

**IDAPA 02**  
**TITLE 04**  
**CHAPTER 24**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 25, Chapters 2, 3, 4 and [37] 35, Idaho Code. (10-1-03)T

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is "Rules Governing Tuberculosis". (10-1-03)T

**02. Scope.** This chapter has the following scope: These rules shall govern procedures for the prevention, surveillance, control, management, and eradication of tuberculosis in the state of Idaho. The official citation of this chapter is IDAPA 02.04.24.000 et.seq. For example, this Section's citation is IDAPA 02.04.24.001. (10-1-03)T

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. (10-1-03)T

**003. ADMINISTRATIVE APPEAL.**

Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (10-1-03)T

**004. INCORPORATION BY REFERENCE.**

**01. Incorporated Documents.** The following documents are incorporated by reference. (10-1-03)T

**a.** The January 22, 1999 Edition of "Bovine Tuberculosis Eradication Uniform Methods and Rules". (10-1-03)T

**b.** The Code of Federal Regulations, Title 9, Parts 71, 77, and 161, January 1, 2003. (10-1-03)T

**02. Availability Of Incorporated Documents.** Copies of these documents are available from the Idaho State Department of Agriculture Central Office. (10-1-03)T

**005. 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 83712-0790. (10-1-03)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. (10-1-03)T

**03. Mailing Address.** The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701. (10-1-03)T

**04. Telephone Number.** The telephone number for the Division of Animal Industries at the central office is (208) 332-8540. (10-1-03)T

**05. Fax Number.** The fax number of the Division of Animal Industries at the central office is (208) 334-4062. (10-1-03)T

**006. IDAHO PUBLIC RECORDS ACT.**

These rules are public records available for inspection and copying at the Central Office of the Idaho State Department of Agriculture. (10-1-03)T

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

As used in these rules the following terms have the following meanings: (10-1-03)T

- 01. Accredited Herd.** A herd that meets the standards of the UMR for bovine tuberculosis. (10-1-03)T
- 02. Accredited Veterinarian.** A veterinarian approved by the Administrator and USDA/APHIS/VS, in accordance with the provisions of Title 9, Part 161, Code of Federal Regulations, to perform functions of State-Federal animal disease control programs. (10-1-03)T
- 03. Administrator.** The administrator of the Division of Animal Industries, Idaho State Department of Agriculture or his designee. (10-1-03)T
- 04. Affected Herd.** A herd in which there is strong and substantial evidence that *Mycobacterium bovis* may exist. (10-1-03)T
- 05. Approved Laboratory.** A state or federal veterinary diagnostic laboratory. The primary laboratory for tuberculosis histopathology and bacteriology culture shall be the National Veterinary Services Laboratories, Ames, Iowa. (10-1-03)T
- 06. Area-Veterinarian-In-Charge.** The veterinary official of USDA/APHIS/VS, who is assigned by the deputy administrator of APHIS to supervise and perform official APHIS animal health work. (10-1-03)T
- 07. Bovine Tuberculosis.** A disease caused by *Mycobacterium bovis*. (10-1-03)T
- 08. Cattle.** All domestic bovidae, including domestic bison. (10-1-03)T
- 09. Department.** The Idaho State Department of Agriculture. (10-1-03)T
- 10. Director.** The director of the Idaho State Department of Agriculture or his designee. (10-1-03)T
- 11. Division Of Animal Industries.** Idaho State Department of Agriculture, Division of Animal Industries. (10-1-03)T
- 12. Domestic Bison.** All animals of the genus *Bison*, which are owned by a person. (10-1-03)T
- 13. Domestic Cervidae.** Elk, fallow deer, and reindeer owned by a person. (10-1-03)T
- 14. Eradication.** The complete elimination of bovine tuberculosis from cattle, domestic cervidae, bison and goats in a state so that the disease does not appear unless introduced from another species or from outside the state. (10-1-03)T
- 15. Exposed.** Animals that have had contact with other animals, herds, or materials that have been determined to be infected with or affected by *Mycobacterium bovis*. (10-1-03)T
- 16. Federal Animal Health Official.** An employee of USDA/APHIS/VS who is authorized to perform animal health activities. (10-1-03)T
- 17. Free Area.** The counties, areas or districts not quarantined by the Division of Animal Industries for tuberculosis. (10-1-03)T
- 18. Herd.** Any group of cattle, bison, goats, and domestic cervidae maintained on common ground, or

two (2) or more groups of cattle, bison, goats, and domestic cervidae under common ownership or supervision that are geographically separated from other groups but can have an interchange or movement without regard to health status. (10-1-03)T

**19. Herd Depopulation.** The destruction of all cattle, bison, goats, and domestic cervidae exposed to bovine tuberculosis in a herd. (10-1-03)T

**20. Interstate Movement.** Movements of cattle, bison, goats, and domestic cervidae from Idaho into any other state, territory or the District of Columbia or from any other state, territory or the District of Columbia into Idaho. (10-1-03)T

**21. Intrastate Movement.** Movement of cattle, bison, goats, and domestic cervidae within Idaho. (10-1-03)T

**22. Negative.** Any cattle, bison, domestic cervidae, or goats that show no response to the tuberculin test, or are classified by the testing laboratory as negative for tuberculosis. (10-1-03)T

**23. Official Tuberculin Test.** A test for bovine tuberculosis, approved by APHIS, applied and reported by approved personnel in accordance with the UMR. (10-1-03)T

**24. Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (10-1-03)T

**25. Public Stockyards.** Premises where trading in cattle, bison, goats, and domestic cervidae is carried on, where yarding, feeding and watering places are provided by the stockyards or transportation companies, or where cattle, bison, goats, and domestic cervidae associations or similar companies maintain corrals for feeding, shearing, dipping and separating animals. (10-1-03)T

**26. Quarantined Area.** The counties, areas, or portions thereof, quarantined by the Division of Animal Industries for tuberculosis. (10-1-03)T

**27. Quarantined.** Isolation of all animals diseased or exposed thereto, from contact with healthy animals and exclusion of such healthy animals from enclosures or grounds where said diseased or exposed animals are, or have been kept. (10-1-03)T

**28. Reactor.** Any cattle, domestic cervidae, bison or goat that shows a response to an official tuberculosis test and is classified a reactor by the testing veterinarian or DTE; or any animal that is classified a reactor upon slaughter inspection or necropsy. (10-1-03)T

**29. Restrain.** The confinement of cattle, bison, goats, or domestic cervidae in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. (10-1-03)T

**30. State Animal Health Official.** The Administrator, or his designee, responsible for animal disease control and eradication activities. (10-1-03)T

**31. Suspect.** Any cattle, bison, domestic cervidae, or goat that shows a response to a tuberculin test as stated in the UMR for bovine tuberculosis, and is not classified a reactor. (10-1-03)T

**32. Tuberculin.** A product that is approved by, and produced under, USDA license for injection into cattle, bison, goats, and domestic cervidae for the purpose of detecting bovine tuberculosis. (10-1-03)T

**011. ABBREVIATIONS.**

**01. APHIS.** Animal Plant Health Inspection Service. (10-1-03)T

**02. AVIC.** Area Veterinarian in Charge. (10-1-03)T

- 03.** CCT. Comparative Cervical Tuberculin Test. (10-1-03)T
- 04.** CFR. Code of Federal Regulations. (10-1-03)T
- 05.** CFT. Caudal-fold Tuberculin Test. (10-1-03)T
- 06.** DTE. Designated Tuberculosis Epidemiologist. (10-1-03)T
- 07.** NGL. No Gross Lesion(s). (10-1-03)T
- 08.** NVSL. National Veterinary Services Laboratories in Ames, Iowa. (10-1-03)T
- 09.** UMR. Uniform Methods and Rules. (10-1-03)T
- 10.** USDA. United States Department of Agriculture. (10-1-03)T
- 11.** VS. Veterinary Services. (10-1-03)T

**012. -- 019. (RESERVED).**

**020. APPLICABILITY.**

These rules apply to all cattle, bison, domestic cervidae, and goats located within, imported into, or exported from the state of Idaho, and other tuberculosis-susceptible animals. (10-1-03)T

**021. SUPERVISION.**

The official tuberculosis eradication program shall be supervised by full-time state or federal veterinarians. (10-1-03)T

**022. INSPECTIONS.**

In order to ascertain compliance with this chapter, state and federal animal health officials are authorized to inspect animals, records, premises and other areas where cattle, bison, goats, domestic cervidae and other animals are held or kept. (10-1-03)T

**01. Entering Premises.** In order to conduct activities authorized by this chapter, state or federal animal health officials are authorized to enter premises, other areas, or conveyances in the state where cattle, bison, goats, domestic cervidae or other tuberculosis susceptible animals are held or kept. State or federal animal health officials will attempt to notify the owner or operator of the premises or conveyance prior to conducting an inspection. (10-1-03)T

**02. Inspecting Records.** To ensure compliance with the provisions of this chapter, state or federal animal health officials are authorized to have access to, inspect, review, and copy any records deemed necessary during normal business hours. State or federal animal health officials will attempt to notify the owner or operator of the premises where the records are located prior to inspecting records. (10-1-03)T

**03. Emergencies.** In the event of an emergency, as determined by the Administrator, the notification requirements of Section 022 may be waived. (10-1-03)T

**023. TUBERCULOSIS TESTS.**

Official tests for tuberculosis shall be conducted only by persons authorized by the Administrator, and USDA/APHIS/VS. (10-1-03)T

**01. Authorized Person.** The Administrator may authorize state or federal animal health officials, or accredited veterinarians to perform official tuberculin tests. (10-1-03)T

**02. Tuberculin Test Interpretation.** The injection site on each animal shall be palpated by the authorized person that administered the tuberculin injection. The Administrator may grant variances from Subsection

023.02 on a case by case basis. (10-1-03)T

**024. REPORTING.**

**01. Test Results.** Results of all official tuberculin tests shall be submitted to the Division of Animal Industries on a form, approved by the Administrator, within seven (7) days of initiation of the test. (10-1-03)T

**02. Disease.** All owners of animals, and veterinarians, shall report evidence of tuberculosis infection to the Administrator, by telephone or facsimile, within twenty-four (24) hours of the discovery of the disease. (10-1-03)T

**025. QUARANTINES.**

All cattle, bison, goats, and domestic cervidae animals or herds that are exposed to, or infected with tuberculosis shall be quarantined. (10-1-03)T

**01. Infected Herds.** Infected herds or animals shall remain under quarantine until such time as the herd has been completely depopulated or the provisions for release of quarantine provided in the UMR for bovine tuberculosis have been met. (10-1-03)T

**02. Exposed Herds.** The quarantine for exposed herds or animals may take the form of a Hold-Order, which shall remain in effect until the exposed animals have been tested negative or the provisions for release of quarantine provided in the UMR for bovine tuberculosis are met. (10-1-03)T

**03. Validity Of Quarantine.** The quarantine shall be valid whether or not it is acknowledged by signature of the owner. (10-1-03)T

**026. CLEANING AND DISINFECTING.**

The Administrator is authorized to order the owner or operator of stockyards, pens, trucks, trailers, cars, vessels, chutes, and other conveyances and premises to clean and disinfect the same, at the owner's expense, whenever necessary for the eradication of tuberculosis. Cleaning and disinfecting shall be done under the supervision of state or federal animal health officials. (10-1-03)T

**01. Infected Premises.** Premises, conveyances, or other areas where infected animals have been held or kept shall be cleaned and disinfected within fifteen (15) days following the removal of reactors or the entire herd. (10-1-03)T

**02. Exemptions.** The Administrator may authorize an exemption from cleaning and disinfection requirements on a case-by-case basis. (10-1-03)T

**03. Extension Of Time.** The Administrator may authorize an extension of time for cleaning and disinfection under extenuating circumstances. (10-1-03)T

**028. TUBERCULOSIS TESTING.**

The Administrator may require tuberculosis testing of cattle, bison, goats, domestic cervidae, or other animals. (10-1-03)T

**01. Duty To Restrain.** It shall be the duty of each person who owns cattle, bison, goats, domestic cervidae, or other animals to pen the animals in suitable pens and restrain them for the test when directed to do so in writing by the Administrator. (10-1-03)T

**02. Records Of Tests.** When any cattle, bison, goats, domestic cervidae, or other animals are tested for tuberculosis a complete test record shall be made and the record shall be shown on an official tuberculosis test form provided by the Administrator. The test form shall be completely filled out and shall include the following information: (10-1-03)T

**a.** The name and address of the owner and the location of the animals at the time of the test. (10-1-03)T

- b.** The name and signature of the person conducting the test. (10-1-03)T
- c.** Individual identification number of each animal and the registration name and number of each purebred animal. (10-1-03)T
- d.** Age of each animal. (10-1-03)T
- e.** Sex of each animal. (10-1-03)T
- f.** Breed of each animal. (10-1-03)T
- g.** Species of animals tested. (10-1-03)T
- h.** Test results for each animal. (10-1-03)T

**029. TUBERCULOSIS EMERGENCY.**

In order to prevent the re-establishment of tuberculosis infection in cattle, bison, goats or domestic cervidae in the state, the Director may declare an animal health emergency. (10-1-03)T

**01. Tuberculosis In Idaho.** The Director may declare a tuberculosis emergency in the event that tuberculosis is diagnosed in any cattle, bison, goats or domestic cervidae in Idaho. (10-1-03)T

**02. Tuberculosis In Adjacent Area.** The Director may declare a tuberculosis emergency in the event that tuberculosis is discovered in areas outside the state that could result in transmission of tuberculosis to Idaho cattle, bison, goats, or domestic cervidae. (10-1-03)T

**030. TUBERCULOSIS INDEMNITY.**

Owners of animals that are condemned and depopulated because of tuberculosis shall be indemnified for such animals, and for reasonable costs of disposal and cleaning and disinfection in accordance with the provisions of this chapter, except as provided in Section 031. (10-1-03)T

**01. Indemnity Payments.** Payments shall be based upon the appraised value, less federal indemnity and salvage value for the animals. (10-1-03)T

**02. Time Limit For Slaughter.** Payment of indemnity shall be made under Section 030 for animals destroyed because of tuberculosis, only if the animals are shipped to slaughter or die otherwise within fifteen (15) days after the date of individual identification and tagging. The Administrator may extend the period for thirty (30) days. (10-1-03)T

**03. Verification Of Reactors That Die.** Indemnity may be paid on tuberculosis reactors that die before being sent to slaughter provided: (10-1-03)T

**a.** The reactors have been appraised and identified and die within fifteen (15) days from the date of appraisal; and (10-1-03)T

**b.** The state or federal animal health officials directing the disease control work are furnished with a signed statement by a veterinarian attesting that he observed the carcass of the dead animal, the reactor tag number found in the left ear of the animal, and date of death. (10-1-03)T

**04. Other Costs.** Reimbursement for disposal costs and cleaning and disinfection costs shall not exceed the actual cost. (10-1-03)T

**031. TUBERCULOSIS INDEMNITY – CLAIMS NOT ALLOWED.**

Claims for compensation for animals destroyed because of tuberculosis shall not be allowed if any of the following circumstances exist: (10-1-03)T

- 01. Failure To Comply.** The owner has failed to comply with any of these rules. (10-1-03)T
- 02. Illegal Imports.** The animals were illegally imported into the state. (10-1-03)T
- 03. Animals Sold For Slaughter.** At the time of the test or condemnation, the animals belonged to or were upon the premises of any person to whom the animals had been sold, shipped, or delivered for slaughter. (10-1-03)T
- 04. Unapproved Test.** The animals were subject to a test not approved by the Administrator. (10-1-03)T
- 05. Untested Animals.** All animals in the owner's herd have not been tested for tuberculosis under state or federal supervision. (10-1-03)T
- 06. Premises Not Cleaned.** The premises occupied by the tuberculosis infected animals were not cleaned and disinfected as directed, under state or federal supervision. (10-1-03)T
- 07. Attempt To Improperly Obtain Funds.** There is substantial evidence that the owner or his agent has in any way been responsible for any attempt unlawfully or improperly to obtain indemnity funds for such animals. (10-1-03)T
- 08. Unidentified Cattle And Bison.** Cattle or bison destroyed because of tuberculosis, unless they were marked for identification by branding the letter "T" on the left hip near the tailhead, not less than two (2) inches high, and unless a metal tag bearing a serial number and inscription "US REACTOR" or similar US Reactor tag, was suitably attached to the left ear of each animal. (10-1-03)T
- 09. Calves.** If the entire herd is not depopulated and the cattle or bison were calves under one hundred eighty (180) days of age. (10-1-03)T
- 032. -- 099. (RESERVED).**
- 100. Official Identification.**  
All cattle, bison, domestic cervidae, and goats tested for tuberculosis shall be individually identified by official eartag, individual tattoo, or individual brand, as provided in the UMR for bovine tuberculosis, at the time of injection. (10-1-03)T
- 101. CATTLE, BISON, GOATS, AND DOMESTIC CERVIDAE MARKET RELEASE.**  
The accredited veterinarian authorized to provide veterinary services at a specifically approved livestock market shall perform a clinical inspection of all cattle, bison, goats, and domestic cervidae and accurately complete a "Saleyard Release" form, certificate of veterinary inspection, or other market release mechanism certifying that the animals meet the health requirements for movement to the point of destination prior to any animals being released from the livestock market. (10-1-03)T
- 102. -- 119. (RESERVED).**
- 120. CLASSIFICATION OF CATTLE, BISON, AND DOMESTIC CERVIDAE.**  
Classification of cattle, bison, and domestic cervidae tested for tuberculosis shall be determined pursuant to the UMR for bovine tuberculosis. (10-1-03)T
- 121. -- 199. (RESERVED).**
- 200. PROCEDURES FOR INFECTED HERDS.**  
Disclosure of tuberculosis in any herd shall be followed by a complete epidemiological investigation and testing as provided in the UMR for bovine tuberculosis. (10-1-03)T
- 201. -- 209. (RESERVED).**

**210. PROCEDURES FOR TUBERCULOSIS - INFECTED FEEDLOTS.**

A tuberculosis-infected feedlot shall be handled in the same manner as an affected herd in regard to epidemiological investigation and the development of epidemiological tracings for animal movements into and out of the feedlot.

(10-1-03)T

**211. -- 219. (RESERVED).**

**220. DISPOSITION OF TUBERCULIN-RESPONDING CATTLE, BISON, AND DOMESTIC CERVIDAE.**

Cattle, bison, and domestic cervidae that respond to the tuberculin test shall be handled according to the UMR for bovine tuberculosis.

(10-1-03)T

**221. -- 249. (RESERVED).**

**250. IDENTIFICATION OF REACTOR CATTLE AND BISON.**

Reactor cattle and bison shall be identified in the following manner:

(10-1-03)T

**01. "T" Branding And Tagging.** Reactor cattle and bison shall be identified by branding the letter "T" on the left hip near the tailhead, not less than two (2) inches and not more than three (3) inches high, and by tagging with an approved metal eartag bearing a serial number and inscription "U.S. Reactor" or a similar State reactor tag suitably attached to the left ear of each animal.

(10-1-03)T

**02. Shipping Without Branding.** In lieu of branding, the reactor(s) may be shipped to slaughter in an officially sealed vehicle or accompanied to slaughter by a state or federal animal health official provided such reactor(s) are tattooed with the letters "TB" in the left ear and the same letters are sprayed on the left ear with yellow paint.

(10-1-03)T

**251. -- 259. (RESERVED).**

**260. IDENTIFICATION OF EXPOSED CATTLE AND BISON.**

Cattle and bison exposed to bovine tuberculosis shall be identified in the following manner:

(10-1-03)T

**01. "S" Branding And Tagging.** To be eligible for federal indemnity, exposed cattle and bison shall be identified by branding the letter "S" on the left hip near the tailhead, not less than two (2) inches nor more than three (3) inches high, and by tagging with an approved metal eartag bearing a serial number attached to either ear of each animal.

(10-1-03)T

**02. Shipping Without Branding.** In lieu of branding, such animals may be accompanied to slaughter by a state or federal animal health official or be shipped in vehicles sealed with official seals.

(10-1-03)T

**261. -- 299. (RESERVED).**

**300. RETESTING OF HIGH-RISK HERDS.**

Retesting schedules for high-risk herds of cattle and bison shall be determined pursuant to the UMR for bovine tuberculosis.

(10-1-03)T

**301. -- 399. (RESERVED).**

**400. ACCREDITED HERD PLAN FOR CATTLE, BISON, GOATS, AND DOMESTIC CERVIDAE.**

Testing of herds for accreditation or reaccreditation shall be conducted pursuant to the UMR for bovine tuberculosis.

(10-1-03)T

**401. -- 499. (RESERVED).**

**500. MOVEMENT OF INFECTED AND EXPOSED CATTLE, DOMESTIC CERVIDAE, OR BISON.**

All movement of infected or exposed cattle, domestic cervidae, or bison shall be on a restricted movement permit in accordance with the UMR for bovine tuberculosis.

(10-1-03)T

**501. -- 989. (RESERVED).**

**990. PENALTY FOR VIOLATIONS.**

Any person who violates any of the provisions of this chapter may be subject to the criminal and civil penalties provided in Title 25, Chapters 2, 3, [37] 35, Idaho Code. (10-1-03)T

**991. -- 998. (RESERVED).**

**999. MINOR VIOLATIONS.**

Nothing in this chapter requires the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action. (10-1-03)T

**IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE**  
**02.04.25 - RULES GOVERNING PRIVATE FEEDING OF BIG GAME ANIMALS**  
**DOCKET NO. 02-0425-0301**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is December 1, 2003.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 25-207A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking has been scheduled as follows:

**September 9, 2003, 7 p.m.**  
**City Council Chamber**  
**911 N 7th, Pocatello, ID 83201**

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 new rule designates portions of eastern Idaho where the private feeding of big game animals is prohibited to reduce disease transmission.

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

This rule protects the public health, safety, and welfare, complies with deadlines in law, and confers a benefit.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**NEGOTIATED RULEMAKING:** Informal negotiated rulemaking was conducted with the assistance of an advisory committee comprised of persons interested in big game animals and livestock.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Clarence Siroky, DVM, or John Chatburn, Idaho State Department of Agriculture at (208) 332-8540.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 4th day of August, 2003.

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

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0425-0301**

**IDAPA 02**  
**TITLE 04**  
**Chapter 25**

**02.04.25 - RULES GOVERNING PRIVATE FEEDING OF BIG GAME ANIMALS**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 25, Chapter 2, Idaho Code. (12-1-03)T

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.04.25, "Rules Governing Private Feeding of Big Game Animals". (12-1-03)T

**02. Scope.** These rules govern the private feeding of big game animals in areas of the state of Idaho that have been designated for regulation. The official citation of this chapter is IDAPA 02.04.25.000 et seq. For example, this Section's citation is IDAPA 02.04.25.001. (12-1-03)T

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. (12-1-03)T

**003. ADMINISTRATIVE APPEAL.**

Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (12-1-03)T

**004. INCORPORATION BY REFERENCE.**

This chapter does not incorporate any documents by reference. (12-1-03)T

**005. 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. (12-1-03)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. (12-1-03)T

**03. Mailing Address.** The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701-0790. (12-1-03)T

**04. Telephone Number.** The telephone number for the Division of Animal Industries at the central office is (208) 332-8540. (12-1-03)T

**05. Fax Number.** The fax number for the Division of Animal Industries at the central office is (208) 334-4062. (12-1-03)T

**006. IDAHO PUBLIC RECORDS ACT.**

These rules are public records available for inspection and copying at the Central Office of the Idaho State Department of Agriculture. (12-1-03)T

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

The following definitions shall apply in the interpretation and enforcement of this chapter. (12-1-03)T

**01. Administrator.** The administrator of the Division of Animal Industries, Idaho State Department of Agriculture or his designee. (12-1-03)T

**02. Big Game Animals.** All wild cervidae. (12-1-03)T

**03. Brucellosis.** An infectious disease of animals and humans caused by bacteria of the genus *Brucella*. (12-1-03)T

**04. Cattle.** All bovidae, including domestic bison. (12-1-03)T

**05. Department.** The Idaho State Department of Agriculture. (12-1-03)T

**06. Director.** The director of the Idaho State Department of Agriculture or his designee. (12-1-03)T

**07. Division Of Animal Industries.** Idaho State Department of Agriculture, Division of Animal Industries. (12-1-03)T

**08. Domestic Bison.** All animals in the genus *Bison* that are owned by a person. (12-1-03)T

**09. Domestic Cervidae.** Elk, fallow deer and reindeer that are owned by a person. (12-1-03)T

**10. Emergency Feeding.** Feeding of big game animals authorized by IDFG pursuant to IDAPA 13.01.18 "Rules Governing Emergency Feeding of Antelope, Elk, and Deer of the Idaho Fish and Game Commission," and IDFG written policies. (12-1-03)T

**11. Federal Animal Health Official.** An employee of the United States Department of Agriculture, Animal Plant Health Inspection Service, Veterinary Services who is authorized to perform animal health activities. (12-1-03)T

**12. Livestock.** Cattle, domestic cervidae, domestic bison, sheep, goats, camelids, and horses. (12-1-03)T

**13. Operator.** The person who has authority to manage or direct a premises or other area where livestock are fed, feed is stored, or the private feeding of big game animals may occur. (12-1-03)T

**14. Owner.** The person who owns or has financial control of livestock, premises or other areas where livestock are fed, where feed is stored, or where the private feeding of big game animals may occur. (12-1-03)T

**15. Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (12-1-03)T

**16. Premises.** The ground, area, buildings, corrals, and equipment utilized to keep, hold, or maintain animals. (12-1-03)T

**17. State Animal Health Official.** The Administrator, or his designee, responsible for disease control and eradication activities. (12-1-03)T

**18. Supplemental Feed.** Harvested hay, grain, baled straw, or pellet rations. (12-1-03)T

**19. Wild Cervidae.** All cervidae that are not owned by a person. (12-1-03)T

**011. ABBREVIATIONS.**

- 01. IDFG.** Idaho Department of Fish and Game. (12-1-03)T
- 02. ISDA.** Idaho State Department of Agriculture. (12-1-03)T

**012. -- 019. (RESERVED).**

**020. APPLICABILITY.**

In order to prevent the spread of brucellosis and other diseases between big game animals and from big game animals to livestock, these rules apply to all persons who purposely or knowingly provide supplemental feed to big game animals within the area designated in Section 100 of these rules, except supplemental feeding activities conducted by, or emergency feeding activities authorized by IDFG. (12-1-03)T

**021. INSPECTIONS.**

In order to ascertain compliance with this chapter, state and federal animal health officials are authorized to enter and inspect premises, and other areas, where the Administrator has reason to believe that the private feeding of big game animals may be occurring. (12-1-03)T

**01. Entering Premises.** State or federal animal health officials will attempt to notify the owner or operator of the premises or other area prior to conducting an inspection. (12-1-03)T

**02. Emergencies.** In the event of an emergency, as determined by the Administrator, the notification requirements of Section 021 may be waived. (12-1-03)T

**022. -- 099. (RESERVED).**

**100. EASTERN IDAHO BIG GAME PRIVATE FEEDING PROHIBITION ZONE.**

In order to prevent the spread of brucellosis and other diseases between big game animals and from big game animals to livestock, the following portion of Idaho is designated as the eastern Idaho big game private feeding prohibition zone: (12-1-03)T

- 01. Clark County.** All of Clark County. (12-1-03)T
- 02. Fremont County.** All of Fremont County. (12-1-03)T
- 03. Teton County.** All of Teton County. (12-1-03)T
- 04. Madison County.** All of Madison County. (12-1-03)T
- 05. Bonneville County.** All of Bonneville County. (12-1-03)T
- 06. Bingham County.** All of Bingham County, except the portion inside the external boundaries of the Fort Hall Indian Reservation. (12-1-03)T
- 07. Caribou County.** All of Caribou County. (12-1-03)T
- 08. Bear Lake County.** All of Bear Lake County. (12-1-03)T
- 09. Franklin County.** All of Franklin County. (12-1-03)T

**101. PRIVATE FEEDING OF BIG GAME ANIMALS PROHIBITED.**

No person shall purposely or knowingly provide supplemental feed to big game animals within the eastern Idaho big game private feeding prohibition zone, except supplemental feeding activities conducted by, or emergency feeding activities authorized by IDFG. (12-1-03)T

**102. INCIDENTAL GRAZING.**

Incidental grazing by big game animals on private rangeland forage, standing agricultural crops, or agricultural crop residue left on the ground following typical harvest practices shall not be considered providing supplemental feed. (12-1-03)T

**102. -- 109. (RESERVED).**

**110. DUTY TO REPORT.**

**01. Livestock Contact.** It shall be the duty of the owners or operators of premises where livestock are fed to report feed-line contact between big game animals and livestock to the Division of Animal Industries within twenty-four (24) hours of when the owner or operator knew, or reasonably should have known, of the contact. (12-1-03)T

**02. Stored Feed.** It shall be the duty of the owners, of premises or other areas where hay or other forms of supplemental feed are stored, to report any big game consumption of stored feed to the Division of Animal Industries or IDFG, within twenty-four (24) hours of when the owner or operator knew, or reasonably should have known, of the consumption of the stored feed. (12-1-03)T

**03. Reporting.** The reports required by Section 110 may be filed by telephone, facsimile, or electronic mail. (12-1-03)T

**04. Failure To Report.** Failure to make any of the reports as required in Section 110 is a violation of this chapter. (12-1-03)T

**111. -- 119. (RESERVED).**

**120. INCIDENTAL CONTACT.**

Incidental contact between livestock and big game animals, during the normal course of providing feed to livestock in the winter, is not a violation of this chapter provided: (12-1-03)T

**01. Notification.** The owner or operator of the premises where the livestock is being fed, notifies the Division of Animal Industries by telephone, facsimile, or electronic mail within twenty-four (24) hours of when the owner or operator knew, or reasonably should have known, of the contact; and (12-1-03)T

**02. Cooperation.** The owner and operator of the premises where the livestock are being fed cooperate with ISDA and IDFG, as determined by the Administrator, to facilitate conducting big game management activities that will eliminate the contact. (12-1-03)T

**121. -- 149. (RESERVED).**

**150. MANAGEMENT ACTIVITIES.**

ISDA and IDFG are authorized to enter premises and other areas within the eastern Idaho big game private feeding prohibition zone, where big game animals are being provided with supplemental feed, or there is feed-line contact between livestock, to conduct big game management activities, which include but are not limited to: (12-1-03)T

**01. Trapping.** Trapping big game animals. (12-1-03)T

**02. Testing.** Testing big game animals for diseases. (12-1-03)T

**03. Moving Animals.** Transferring big game animals to areas where there is suitable winter habitat. (12-1-03)T

**04. Hazing.** Hazing or dispersing big game animals. (12-1-03)T

**05. Supplemental Feed.** Making supplemental feed unavailable or unpalatable to big game animals. (12-1-03)T

**06. Entering Premises.** State animal health officials will attempt to notify the owner or operator of the premises or other area prior to conducting big game management activities. (12-1-03)T

**151. -- 989. (RESERVED).**

**990. PENALTIES FOR VIOLATIONS.**

Any person who violates the provisions of this chapter is subject to the penalties provided in Section 25-219, Idaho Code. (12-1-03)T

**991. -- 994. (RESERVED).**

**995. MINOR VIOLATIONS.**

Nothing in this chapter shall be construed as requiring ISDA to report minor violations when ISDA believes that the public interest will be best served by suitable warnings or other administrative action. (12-1-03)T

**996. -- 999. (RESERVED).**

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.04.26 - RULES GOVERNING LIVESTOCK MARKETING**  
**DOCKET NO. 02-0426-0301 (NEW CHAPTER)**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2003.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 25-203, 25-207, 25-305, 25-601, 25-1723, 25-3520, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking has been scheduled as follows:

**September 10, 2003, 7 p.m**  
**Nampa Civic Auditorium**  
**311 3rd Street South, Nampa, ID 83651**

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

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

This rule updates the rules for Public Livestock Markets and addresses disease surveillance, record keeping, and animal movement related to buying stations and livestock dealers.

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

This rule protects the public health, safety, and welfare, and confers a benefit.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**NEGOTIATED RULEMAKING:** Informal negotiated rulemaking was conducted with the assistance of an advisory committee comprised of persons interested in the marketing of livestock.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Dr. Clarence Siroky, DVM, or John Chatburn, Idaho Department of Agriculture at (208) 332-8540.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 29th day of July, 2003.

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

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0426-0301**

**IDAPA 02**  
**TITLE 04**  
**CHAPTER 26**

**02.04.26 - RULES GOVERNING LIVESTOCK MARKETING**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 25, Chapters 2, 3, 6, 17, and 35, Idaho Code. (10-1-03)T

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.04.26, "Rules Governing Livestock Marketing". (10-1-03)T

**02. Scope.** These rules shall govern the facilities, record keeping, identification, quarantine facilities, and movement of livestock through public livestock markets, buying stations, and livestock dealers. The official citation of this chapter is IDAPA 02.04.26.000 et seq. For example, this Section's citation is IDAPA 02.04.26.001. (10-1-03)T

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. (10-1-03)T

**003. ADMINISTRATIVE APPEAL.**

Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (10-1-03)T

**004. INCORPORATION BY REFERENCE.**

**01. Incorporated Documents.** The following documents are incorporated by reference: Code of Federal Regulations, Title 9, Parts 71, 75, 77, 78, 85, and 161, CFR, January 1, 2003. (10-1-03)T

**02. Availability Of Documents.** Copies of these documents may be obtained from the Idaho State Department of Agriculture Central Office. (10-1-03)T

**005. 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 83712-0790. (10-1-03)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. (10-1-03)T

**03. Mailing Address.** The mailing address for the central office is Idaho State Department of Agriculture, P. O. Box 790, Boise, Idaho 83701. (10-1-03)T

**04. Telephone Number.** The telephone number for the Division of Animal Industries at the central office is (208) 332-8540. (10-1-03)T

**05. Fax Number.** The fax number for the Division of Animal Industries at the central office is (208) 334-4062. (10-1-03)T

**006. IDAHO PUBLIC RECORDS ACT.**

These rules are public records available for inspection and copying at the Central Office of the Idaho State Department of Agriculture. (10-1-03)T

**007. -- 009. (RESERVED).**

**010. Definitions.**

The following definitions shall apply in the interpretation and enforcement of this chapter. (10-1-03)T

**01. Accredited Veterinarian.** A veterinarian approved by the Administrator and the USDA/APHIS/VS, in accordance with the provisions of Title 9, Part 161, Code of Federal Regulations, to perform functions of State-Federal animal disease control programs. (10-1-03)T

**02. Administrator.** The administrator of the Division of Animal Industries, Idaho State Department of Agriculture or his designee. (10-1-03)T

**03. Approved Buying Station.** A specific livestock facility, approved by the Administrator, where cattle are concentrated for delivery directly to an approved slaughter establishment. (10-1-03)T

**04. Approved Feedlot.** A feedlot approved by the Administrator to feed cattle and domestic bison of unknown disease status. (10-1-03)T

**05. Approved Slaughter Establishment.** A USDA inspected slaughter establishment where ante-mortem and post-mortem inspections are conducted by USDA inspectors. (10-1-03)T

**06. Brucellosis.** An infectious disease of animals and humans caused by bacteria of the genus *Brucella*. (10-1-03)T

**07. Cattle.** All domestic bovidae, including domestic bison. (10-1-03)T

**08. Department.** The Idaho State Department of Agriculture. (10-1-03)T

**09. Director.** The director of the Idaho State Department of Agriculture, or his designee. (10-1-03)T

**10. Division.** Idaho State Department of Agriculture, Division of Animal Industries. (10-1-03)T

**11. Domestic Bison.** All animals in the genus *Bison*, which are owned by a person. (10-1-03)T

**12. Domestic Cervidae.** Elk, fallow deer, and reindeer owned by a person. (10-1-03)T

**13. Epithelioma Of The Eye.** Carcinoma of the eye of cattle commonly known as cancer eye. (10-1-03)T

**14. Federal Animal Health Official.** An employee of USDA/APHIS/VS who is authorized to perform animal health activities. (10-1-03)T

**15. Herd.** Any group of livestock maintained on common ground, or two (2) or more groups of livestock under common ownership or supervision that are geographically separated from other groups but can have an interchange or movement without regard to health status. (10-1-03)T

**16. Interstate Movement.** Movements of livestock from Idaho into any other state, territory or the District of Columbia or from any other state, territory or the District of Columbia into Idaho. (10-1-03)T

**17. Livestock.** Cattle, domestic bison, swine, horses, mules, asses, domestic cervidae, sheep, goats, camelids, and ratites. (10-1-03)T

**18. Livestock Dealer.** A person licensed by the State Brand Board pursuant to Title 25, Chapter 33, Idaho Code. (10-1-03)T

**19. Lump Jaw.** A condition known as actinomycosis or actinobacillosis in cattle. (10-1-03)T

**20. Official Ear Tag.** An APHIS approved identification ear tag conforming to the alphanumeric

national uniform ear tagging system, which provides unique identification for each animal. (10-1-03)T

**21. Official Individual Identification.** Official USDA approved ear tag, USDA back tag, registration tattoo, or identification approved by the Administrator. (10-1-03)T

**22. Official Vaccination Ear Tag.** An APHIS approved identification ear tag conforming to the alphanumeric national uniform ear tagging system, which provides unique identification for each animal. (10-1-03)T

**23. Operator.** The person who has authority to manage or direct a public livestock market, buying station, or livestock dealer's premises. (10-1-03)T

**24. Owner.** The person who owns or has financial control of a public livestock market, buying station, or livestock dealer's premises. (10-1-03)T

**25. Public Livestock Market.** Any place, establishment, or facility owned or operated by a person in which livestock is received, held, sold or kept for sale or shipment, which is conducted or operated for compensation or profit as a public market for livestock. (10-1-03)T

**26. Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (10-1-03)T

**27. Restraint.** The confinement of livestock in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. (10-1-03)T

**28. State Animal Health Official.** The Administrator, or his designee, responsible for disease control and eradication activities. (10-1-03)T

**29. Tuberculosis.** An infectious disease of humans and animals caused by *Mycobacterium bovis*. (10-1-03)T

**30. USDA Back Tag.** A back tag issued by APHIS that conforms to the eight (8) character alphanumeric National Back Tagging System and that provides unique identification for each animal. (10-1-03)T

**011. ABBREVIATIONS.**

**01. APHIS.** Animal Plant Health and Inspection Service. (10-1-03)T

**02. CFR.** Code of Federal Regulations. (10-1-03)T

**03. USDA.** United States Department of Agriculture. (10-1-03)T

**04. VS.** Veterinary Services. (10-1-03)T

**012. -- 019. (RESERVED).**

**020. APPLICABILITY.**

These rules apply to chartered livestock markets, buying stations, and livestock dealers operating in Idaho. (10-1-03)T

**021. -- 029. (RESERVED)**

**030. INSPECTIONS.**

To prevent the introduction and dissemination, or to control and eradicate diseases, state and federal animal health officials are authorized to inspect livestock records, premises, facilities, and livestock to ensure compliance with the provisions of this chapter and other state or federal laws or rules applicable to public livestock markets, buying stations, and livestock dealers. (10-1-03)T

**01. Entering Premises.** In order to conduct activities authorized by this chapter, state or federal animal health officials are authorized to enter public livestock market, buying station, or livestock dealer premises. State or federal officials will attempt to notify the owner or operator of the premises prior to conducting an inspection. (10-1-03)T

**02. Inspecting Records.** To ensure compliance with the provisions of this chapter, state or federal animal health officials are authorized to have access to, inspect, review, and copy any records deemed necessary during normal business hours. State or federal animal health officials will attempt to notify the owner or operator of the premises where the records are located prior to inspecting records. (10-1-03)T

**03. Emergencies.** In the event of an emergency, as determined by the Administrator, the notification requirements of this section may be waived. (10-1-03)T

**031. -- 039. (RESERVED).**

**040. LIVESTOCK TREATMENT.**

Each public livestock market, buying station, and livestock dealer shall humanely treat all livestock. All non-ambulatory livestock shall be: (10-1-03)T

**01. Returned.** Returned to premises of origin; or (10-1-03)T

**02. Feed And Water.** Provided adequate feed and clean water; or (10-1-03)T

**03. Euthanized.** Humanely euthanized; or (10-1-03)T

**04. Slaughtered.** Delivered directly to an approved slaughter establishment. (10-1-03)T

**041. -- 049. (RESERVED).**

**050. DEAD ANIMAL DISPOSAL.**

The movement and disposal of all dead animals shall be pursuant to the provisions of IDAPA 02.04.17 "Rules Governing Dead Animal Movement and Disposal". (10-1-03)T

**051. -- 059. (RESERVED).**

**060. ENVIRONMENTAL REQUIREMENTS.**

All public livestock markets, buying stations, and livestock dealers shall meet the provisions of IDAPA 02.04.15 "Rules Governing Beef Cattle Animal Feeding Operations". (10-1-03)T

**061. -- 099. (RESERVED).**

**100. PUBLIC LIVESTOCK MARKET CHARTER.**

No person shall conduct or operate a public livestock market without first securing a charter from the Department. Charters shall expire on April 30 of each year. It shall be the responsibility of the public livestock market operator to apply each year for charter renewal. (10-1-03)T

**101. PUBLIC LIVESTOCK MARKET MINIMUM SALE REQUIREMENT.**

Each chartered public livestock market shall conduct a minimum of one (1) sale during each calendar year. (10-1-03)T

**102. -- 109. (RESERVED).**

**110. MARKET RELEASE.**

Prior to any livestock being released from a public livestock market, the following conditions shall be fulfilled: (10-1-03)T

**01. Clinical Inspection.** A clinical inspection, of each animal, shall be made by the accredited veterinarian authorized to provide veterinary services to the market; and (10-1-03)T

**02. Saleyard Release Form.** An accurate and legible "Saleyard Release" form, certificate of veterinary inspection, or other market release mechanism, approved by the Administrator, shall be completed certifying that the animals meet the health requirements for movement to the point of destination. (10-1-03)T

**111. -- 119. (RESERVED).**

**120. IDENTIFICATION.**

All livestock entering a public livestock market shall be immediately individually identified to the herd of origin. (10-1-03)T

**121. APPROVED FORMS OF IDENTIFICATION.**

The following are approved methods of individual identification. (10-1-03)T

**01. Back Tag.** USDA approved back tag; or (10-1-03)T

**02. Ear Tag.** Official USDA ear tag; or (10-1-03)T

**03. Registration Tattoo;** or (10-1-03)T

**04. Brand Inspection.** Statement of ownership such as a brand inspection certificate. (10-1-03)T

**05. Removal Of Identification.** No animal identification shall be intentionally removed, tampered with, or otherwise altered, except as approved by the Administrator. (10-1-03)T

**122. -- 129. (RESERVED).**

**130. QUARANTINE PENS.**

A quarantine pen or pens shall be provided at all public livestock markets and such pens shall only be used to hold animals that have reacted to the brucellosis or tuberculosis test or animals affected with, or suspected of being affected with a contagious or infectious disease, epithelioma of the eye, or lump jaw. The pens shall comply with the following requirements: (10-1-03)T

**01. Hard Surface.** Hard surfaced with concrete or similar impervious material in good repair; and (10-1-03)T

**02. Feed And Water.** Provided with adequate feed and clean water facilities which are completely separate from all other livestock; and (10-1-03)T

**03. Signage.** Identified with the word "QUARANTINE" in red letters, not less than four (4) inches high, on a white background on the pen gate; and (10-1-03)T

**04. Cleaning And Disinfection.** Cleaned and disinfected no later than the day following date of sale; and (10-1-03)T

**05. Fence Construction.** The fence shall be solid, constructed by boards or other material approved by the Administrator, and shall be a minimum of five and one-half (5 ½) feet high; and (10-1-03)T

**06. Drainage.** Drainage shall not be onto adjoining pens, restraint facilities or alleys. (10-1-03)T

**131. -- 149. (RESERVED).**

**150. RESTRAINT FACILITIES.**

Each public livestock market shall have a restraint system, approved by the Administrator, for humanely, efficiently, and effectively restraining livestock for the purpose of inspecting, identifying, treating, or testing of animals by state

or federal animal health officials. (10-1-03)T

**151. -- 159. (RESERVED).**

**160. SANITARY CONDITIONS.**

All pens, alleys, troughs, restraint facilities, and runways shall be kept in a sanitary condition. Operators of public livestock markets shall clean and disinfect livestock market facilities, under the supervision of a state or federal animal health official, upon request by the Administrator. (10-1-03)T

**161. -- 169. (RESERVED).**

**170. RECORDS.**

Each public livestock market shall keep sufficient records of animals presented for sale to enable state or federal animal health officials to trace such animals satisfactorily to their herd of origin, and such records shall be maintained for a minimum of five (5) years. (10-1-03)T

**171. -- 299. (RESERVED).**

**300. APPROVED BUYING STATIONS.**

No person shall operate a buying station prior to receiving written approval from the Administrator. All cattle entering the buying station shall be shipped to an approved slaughter establishment within seven (7) days of arrival at the buying station. (10-1-03)T

**301. APPLICATION FOR DESIGNATION AS AN IDAHO APPROVED BUYING STATION.**

Application for designation as an Idaho approved buying station shall be made on application forms provided by the Administrator. (10-1-03)T

**302. ADMINISTRATOR APPROVAL.**

State or federal animal health officials shall inspect all buying stations, prior to approval by the Administrator. The Administrator may take any past enforcement or violation history into consideration when making the final determination of whether or not to approve a buying station. (10-1-03)T

**303. APPROVED BUYING STATION NUMBER.**

Buying stations approved by the Administrator shall receive an Idaho approved buying station number. (10-1-03)T

**304. EXPIRATION OF APPROVED STATUS.**

Approved buying station status shall expire on June 30 of each year. It shall be the responsibility of the buying station owner or operator to apply each year for renewal of approved status. (10-1-03)T

**305. REVOCATION OF APPROVED BUYING STATION STATUS.**

In addition to any other Department administrative or civil action, the Administrator may withdraw or deny the approval of any buying station, by notifying the owner in writing, when one (1) or more of the following conditions exist: (10-1-03)T

**01. Violation Of Record Keeping Requirements.** There is evidence that the owner or operator of the buying station violated the record keeping requirements of this chapter applicable to buying stations, or animal health regulations; or (10-1-03)T

**02. Inability To Trace Animals.** There is an inability to trace to the point of origin those affected, exposed, or reactor animals handled by the buying station; or (10-1-03)T

**03. Violations.** A buying station violates any of the provisions of this chapter; or (10-1-03)T

**04. Owner Request.** Owners may have the approved status revoked by emptying the buying station and requesting in writing that the status be revoked; or (10-1-03)T

**05. Regulation Changes.** Idaho approved buying station status may be revoked at such time as

revocation is required by changes in state or federal rules or regulations. (10-1-03)T

**306. DISPOSITION OF CATTLE.**

Should the Idaho approved buying station status be revoked, cattle still in the buying station shall be removed directly to an approved slaughter establishment within seven (7) days. (10-1-03)T

**307. -- 309. (RESERVED).**

**310. IDENTIFICATION.**

All cattle shall be individually identified, to the herd of origin, with a form of identification approved by the Administrator immediately upon arrival at a buying station. Animal identification is to be maintained to slaughter and shall not be removed, tampered with, or otherwise altered. (10-1-03)T

**311. -- 319. (RESERVED).**

**320. BUYING STATION RECORDS.**

Each buying station shall keep records of all cattle that enter, leave, or die at the facility to enable state or federal animal health officials to trace such animals satisfactorily to their herd of origin. (10-1-03)T

**321. CONTENT OF RECORDS.**

The content of buying station records shall include, but is not limited to: (10-1-03)T

**01. Name And Address.** The name and address of: (10-1-03)T

**a.** The owner of the cattle that enter the buying station; and (10-1-03)T

**b.** The person delivering the cattle to the buying station. (10-1-03)T

**02. Individual Identification.** Individual USDA back tag number, or other form of identification specifically approved by the Administrator, for each animal entering the buying station. (10-1-03)T

**03. Premises Of Origin.** The premises of origin for each animal, which shall be comprised of either the premises identification, or the physical address. (10-1-03)T

**04. The Date Of Entry.** The date individual cattle enter a buying station. (10-1-03)T

**05. Shipment Date.** Date of shipment to slaughter. (10-1-03)T

**06. Destination.** Name and address of approved slaughter establishment destination. (10-1-03)T

**07. Death Loss.** An accurate account of all death loss, including individual identification numbers, and disposition of all dead cattle. (10-1-03)T

**08. Dead Animals.** An accurate description, including any forms of identification, of any dead animals that are left at the approved buying station by other persons. (10-1-03)T

**322. CATTLE SUBJECT TO QUARANTINE.**

No cattle that have reacted to the brucellosis or tuberculosis test, or cattle affected with, or suspected of being affected with a contagious or infectious disease, epithelioma of the eye, or lump jaw shall be allowed to enter, occupy, or be sold from a buying station. (10-1-03)T

**323. -- 329. (RESERVED).**

**330. RECORDS RETENTION.**

All records relating to cattle that are, or have been, in the buying station shall be retained for a period of not less than five (5) years. (10-1-03)T

**331. -- 339. (RESERVED).**

**340. FACILITIES.**

An approved buying station shall meet the following facility requirements: (10-1-03)T

**01. Restraint System.** A restraint system, approved by the Administrator, for humanely, efficiently, and effectively restraining livestock for the purpose of inspecting, identifying, treating, or testing of animals by state or federal animal health officials. (10-1-03)T

**02. Feed And Water.** All cattle that are on the premises for over twelve (12) hours shall have access to a clean source of water sufficient to provide for the number of animals present, and an adequate quality and quantity of feed. (10-1-03)T

**03. Pens.** The facility shall be in compliance with IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and pens that contain cattle remaining at the facility for over twelve (12) hours shall provide adequate pen space for the cattle to rest and ruminate, and shall provide adequate drainage. (10-1-03)T

**04. Fences.** All fences shall be constructed of materials, and to specifications, sufficient to prevent the escape of cattle from the facility, as determined by the Administrator. (10-1-03)T

**05. Condition.** All facilities shall be maintained in good repair. (10-1-03)T

**341. -- 349. (RESERVED).**

**350. SANITATION.**

All buying stations shall be maintained in a sanitary condition. The facility shall provide the necessary equipment to clean and disinfect the premises, and the owner or operator of the facility shall clean and disinfect the premises at the direction of the Administrator. (10-1-03)T

**351. -- 359. (RESERVED).**

**360. SIGNAGE.**

Each buying station shall comply with the following signage requirements: (10-1-03)T

**01. Wording.** Signs shall state: "All Cattle And Bison Entering This Facility Shall Go Directly To Slaughter"; and (10-1-03)T

**02. Color.** Lettering shall be red and not less than four (4) inches in height on a white background; and (10-1-03)T

**03. Location.** Signs shall be placed prominently at each entrance, exit, and cattle loading or unloading facility. (10-1-03)T

**361. -- 369. (RESERVED).**

**370. LOCATION OF BUYING STATIONS.**

All buying stations shall be located separate and apart from any other livestock handling facilities, as determined by the Administrator, that handle any livestock that are not destined to slaughter within seven (7) days. (10-1-03)T

**371. -- 499. (RESERVED).**

**500. APPROVED LIVESTOCK DEALERS.**

When the following conditions exist, livestock dealers shall not operate facilities in Idaho, except Idaho approved feedlots, without receiving prior approval from the Administrator: (10-1-03)T

**01. Livestock Of Unknown Disease Status.** Livestock of unknown disease status are received from the farm or ranch of origin; and (10-1-03)T

**02. Not Transported To Slaughter Or Market.** All livestock are not transported directly to an approved slaughter establishment, a specifically approved livestock market, an Idaho approved feedlot, or out of the state of Idaho on the day of arrival. (10-1-03)T

**501. APPLICATION FOR APPROVED LIVESTOCK DEALER STATUS.**

Application for approved livestock dealer status shall be made on application forms provided by the Administrator. (10-1-03)T

**502. ADMINISTRATOR APPROVAL.**

The Administrator may approve livestock dealer applications after: (10-1-03)T

**01. Inspection.** State or federal animal health officials have inspected the dealer's facility; and (10-1-03)T

**02. Adequate Facilities.** The livestock dealer has demonstrated that livestock can be secured in the facility; and (10-1-03)T

**03. Adequate Records.** The livestock dealer's records are adequate to show the origin and disposition of the livestock that enter the facility; and (10-1-03)T

**04. Past History.** The Administrator may take any past enforcement or violation history into consideration when making the final determination of whether or not to approve a livestock dealer's facility. (10-1-03)T

**503. APPROVED LIVESTOCK DEALER NUMBER.**

The division shall use the license number issued by the State Brand Board to livestock dealers for dealer identification. (10-1-03)T

**504. EXPIRATION OF APPROVED STATUS.**

Approved livestock dealer status shall expire on July 1 of each year. It shall be the responsibility of the livestock dealer to apply each year for renewal of approved status. (10-1-03)T

**504. -- 519. (RESERVED).**

**520. IDENTIFICATION.**

All livestock shall be individually identified, to the herd of origin, with a form of identification approved by the Administrator immediately upon arrival at a livestock dealer's facility. Animal identification is to be maintained and shall not be removed, tampered with, or otherwise altered. (10-1-03)T

**521. APPROVED FORMS OF IDENTIFICATION.**

The following are approved methods of individual identification. (10-1-03)T

**01. Back Tag.** USDA approved back tag; or (10-1-03)T

**02. Ear Tag.** Official USDA ear tag; or (10-1-03)T

**03. Registration Tattoo;** or (10-1-03)T

**04. Brand Inspection.** Statement of ownership such as a brand inspection certificate. (10-1-03)T

**05. Administrator Approval.** The Administrator may approve other forms of identification on a case-by-case basis. (10-1-03)T

**06. Removal Of Identification.** No animal identification shall be removed, tampered with, or otherwise altered, except as approved by the Administrator. (10-1-03)T

**522. ANIMALS SUBJECT TO QUARANTINE.**

No animals that have reacted to the brucellosis or tuberculosis test, or animals affected with, or suspected of being affected with a contagious or infectious disease, epithelioma of the eye, or lump jaw shall be allowed to enter, occupy, or be sold from a livestock dealer's premises. (10-1-03)T

**523. -- 529. (RESERVED).**

**530. CONTENT OF RECORDS FOR APPROVED LIVESTOCK DEALERS.**

All approved livestock dealers shall keep accurate and complete records of all livestock that enter, leave, or die at the dealer's facility. These records shall readily show: (10-1-03)T

- 01. Name And Address.** The name and address of : (10-1-03)T
  - a.** The owner of the livestock prior to acquisition by the livestock dealer; and (10-1-03)T
  - b.** The person delivering the livestock to the livestock dealer. (10-1-03)T
- 02. Individual Identification.** Individual identification, approved by the Administrator, for each animal entering the livestock dealer's facility; and (10-1-03)T
- 03. Premises Of Origin.** The premises of origin for each animal, which shall be recorded as either the premises identification, or the physical address; and (10-1-03)T
- 04. The Date Of Entry.** The date the livestock entered a livestock dealer's facility. (10-1-03)T
- 05. Shipment Date.** Date of shipment out of the facility. (10-1-03)T
- 06. Destination.** Name and address of shipment destination. (10-1-03)T
- 07. Death Loss.** An accurate account of all death loss, including individual identification numbers, and disposition of the dead animal. (10-1-03)T
- 08. Dead Animals.** An accurate description of any dead animals, including any forms of identification, that are left at the livestock dealer's facilities by other persons. (10-1-03)T
- 09. Requirements.** That all applicable permit, test, examination, identification, and vaccination requirements have been met. (10-1-03)T

**531. RECORDS RETENTION.**

Livestock dealers shall retain their records for a period of not less than five (5) years following the removal of the livestock from the dealer's facility. (10-1-03)T

**532. -- 539. (RESERVED).**

**540. REMOVAL REQUIREMENTS.**

All livestock that are removed from a livestock dealer's facilities shall be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian prior to the livestock removal, except: (10-1-03)T

- 01. Livestock Markets.** Those animals shipped directly to a specifically approved livestock market; or (10-1-03)T
- 02. Slaughter.** Those animals shipped directly to an approved slaughter establishment; or (10-1-03)T
- 03. Approved Feedlots.** Those animals shipped directly to an Idaho approved feedlot. (10-1-03)T

**541. LIVESTOCK DEALER'S DUTY.**

It is the duty of livestock dealers to ensure that all livestock, removed from a livestock dealer's facility, are in

compliance with the animal health requirements of the state of Idaho and the point of destination. (10-1-03)T

**542. -- 549. (RESERVED).**

**550. LIVESTOCK DEALER'S FACILITIES.**

Approved livestock dealer's facilities shall meet the following facility requirements: (10-1-03)T

**01. Restraint System.** A restraint system, approved by the Administrator, for humanely, efficiently, and effectively restraining livestock for the purpose of inspecting, identifying, treating, or testing of animals by state or federal animal health officials. (10-1-03)T

**02. Feed And Water.** All livestock that are on the premises for over twelve (12) hours shall have access to a clean source of water sufficient to provide for the number of animals present, and an adequate quality and quantity of feed. (10-1-03)T

**03. Pens.** The facility shall be in compliance with IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and pens that contain livestock remaining at the facility for over twelve (12) hours shall provide adequate pen space for the livestock to rest, and shall provide adequate drainage. (10-1-03)T

**04. Fences.** All fences shall be constructed of materials, and to specifications, sufficient to prevent the escape of livestock from the facility, as determined by the Administrator. (10-1-03)T

**05. Condition.** All facilities shall be maintained in good repair. (10-1-03)T

**551. -- 559. (RESERVED).**

**560. SANITATION.**

All livestock dealer's facilities shall be maintained in a sanitary manner. The facility shall provide the necessary equipment to clean and disinfect the premises, and the livestock dealer shall clean and disinfect the premises at the direction of the Administrator. (10-1-03)T

**561. -- 569. (RESERVED).**

**570. REVOCATION OF APPROVED STATUS.**

In addition to any other Department administrative or civil action, the Administrator may withdraw or deny the approval of any livestock dealer, by notifying the dealer in writing, when one (1) or more of the following conditions exist: (10-1-03)T

**01. Record Keeping Requirements.** There is evidence that the livestock dealer violated the record keeping requirements of this section, or animal health regulations; or (10-1-03)T

**02. Inability To Trace Animals.** There is a history of repeated inability to trace to the point of origin those affected, exposed, or reactor animals that enter the livestock dealer's facility; or (10-1-03)T

**03. Violations.** A livestock dealer violates any of the provisions of this chapter. (10-1-03)T

**04. Dealer Request.** The livestock dealer may have the approved status revoked by emptying his facility and requesting in writing that the status be revoked; or (10-1-03)T

**05. Regulation Changes.** Approved status may be revoked at such time as revocation is required by changes in state rules or federal regulations. (10-1-03)T

**571. -- 989. (RESERVED).**

**990. PENALTIES.**

Any person who violates any of the provisions of this chapter may be subject to the criminal and civil penalties provided in Title 25, Chapters 2, 6, 17, and 35, Idaho Code. (10-1-03)T

**991. -- 998. (RESERVED).**

**999. MINOR VIOLATIONS.**

Nothing in this chapter shall be construed as requiring the Administrator to report minor violations when the Administrator believes that the public interest will be best served by suitable warnings or other administrative action.  
(10-1-03)T

**IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE**  
**02.04.27 - RULES GOVERNING DELETERIOUS EXOTIC ANIMALS**  
**DOCKET NO. 02-0427-0301 (NEW CHAPTER)**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2003.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 25-3903, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking has been scheduled as follows:

**September 11, 2003, 7 p.m.**  
**Nampa Civic Auditorium**  
**311 3<sup>rd</sup> Street South, Nampa, ID 83651**

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 new rule specifies which animals are classified as deleterious exotic animals and how they are regulated.

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

This rule protects the public health, safety, and welfare, and complies with a new Section 25-3903, Idaho Code.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**NEGOTIATED RULEMAKING:** Informal negotiated rulemaking was conducted with the assistance of an advisory committee comprised of persons interested in exotic animals.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Clarence Siroky, DVM, or John Chatburn, Idaho State Department of Agriculture at (208) 332-8540.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 4th day of August, 2003.

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

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0427-0301**

**IDAPA 02**  
**TITLE 04**  
**CHAPTER 27**

**02.04.27 - RULES GOVERNING DELETERIOUS EXOTIC ANIMALS**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 25, Chapter 39, Idaho Code. (10-1-03)T

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.04.27, "Rules Governing Deleterious Exotic Animals". (10-1-03)T

**02. Scope.** These rules govern the designation, importation, and possession of deleterious exotic animals. The official citation of this chapter is IDAPA 02.04.27.000 et seq. For example, this Section's citation is IDAPA 02.04.27.001. (10-1-03)T

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. (10-1-03)T

**003. ADMINISTRATIVE APPEAL.**

Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (10-1-03)T

**004. INCORPORATION BY REFERENCE.**

**01. Incorporated Documents.** This chapter incorporates the following documents by reference: Code of Federal Regulations, Title 9, Parts 1, 2, 3, 4, and 161, CFR, January 1, 2003. (10-1-03)T

**02. Availability Of Documents.** Copies of these documents may be obtained from the Idaho State Department of Agriculture Central Office. (10-1-03)T

**005. 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. (10-1-03)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. (10-1-03)T

**03. Mailing Address.** The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701-0790. (10-1-03)T

**04. Telephone Number.** The telephone number for the Division of Animal Industries at the central office is (208) 332-8540. (10-1-03)T

**05. Fax Number.** The fax number for the Division of Animal Industries at the central office is (208) 334-4062. (10-1-03)T

**006. IDAHO PUBLIC RECORDS ACT.**

These rules are public records available for inspection and copying at the Central Office of the Idaho State Department of Agriculture. (10-1-03)T

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

The following definitions shall apply in the interpretation and enforcement of this chapter. (10-1-03)T

**01. Accredited Veterinarian.** A veterinarian approved by the Administrator and the USDA/APHIS/VS, in accordance with provisions of Title 9, Part 161, Code of Federal Regulations, to perform functions of State-Federal animal disease control programs. (10-1-03)T

**02. Administrator.** The administrator of the Division of Animal Industries, Idaho State Department of Agriculture, or his designee. (10-1-03)T

**03. Animal.** Any member of the animal kingdom, except man. (10-1-03)T

**04. Deleterious Exotic Animal.** Any live animal that is not native to the state of Idaho and is determined by the Administrator to be dangerous to the environment, livestock, agriculture, or wildlife of the state. (10-1-03)T

**05. Department.** The Idaho State Department of Agriculture. (10-1-03)T

**06. Director.** The director of the Idaho State Department of Agriculture or his designee. (10-1-03)T

**07. Division of Animal Industries.** Idaho State Department of Agriculture, Division of Animal Industries. (10-1-03)T

**08. Federal Animal Health Official.** An employee of the United States Department of Agriculture, Animal Plant Health Inspection Service, Veterinary Services who is authorized to perform animal health activities. (10-1-03)T

**09. Livestock.** Cattle, domestic bison, swine, horses, mules, asses, domestic cervidae, sheep, goats, camelids, and ratites. (10-1-03)T

**10. Operator.** The person who has authority to manage or direct a premises or other area where animals are kept. (10-1-03)T

**11. Owner.** The person who owns or has financial control of premises or other areas where animals are kept. (10-1-03)T

**12. Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (10-1-03)T

**13. Premises.** The ground, area, buildings, corrals, enclosures, pens, cages, ponds, raceways, tanks, and equipment utilized to keep, hold, or maintain animals. (10-1-03)T

**14. State Animal Health Official.** The Administrator, or his designee, responsible for disease control and eradication activities. (10-1-03)T

**011. ABBREVIATIONS.**

**01. AZA.** American Zoo and Aquarium Association. (10-1-03)T

**02. CFR.** Code of Federal Regulations. (10-1-03)T

- 03. IDFG.** Idaho Department of Fish and Game. (10-1-03)T
- 04. ISDA.** Idaho State Department of Agriculture. (10-1-03)T
- 05. USDA.** United States Department of Agriculture. (10-1-03)T
- 012. -- 019. (RESERVED).**
- 020. APPLICABILITY.**  
These rules apply to the importation and possession of all deleterious exotic animals in Idaho. (10-1-03)T
- 021. DELEGATION OF AUTHORITY.**  
The Administrator may designate IDFG to conduct permitting activities for deleterious exotic animals. (10-1-03)T
- 022. INSPECTIONS.**  
In order to ascertain compliance with this chapter, the Administrator is authorized to enter and inspect premises and other areas where animals are held or kept. (10-1-03)T
- 01. Entering Premises.** State or federal animal health officials will attempt to notify the owner or operator of the premises or other area prior to conducting an inspection. (10-1-03)T
- 02. Emergencies.** In the event of an emergency, as determined by the Administrator, the notification requirements of Section 022 of this rule may be waived. (10-1-03)T
- 023. -- 099. (RESERVED).**
- 100. IMPORTATION OF DELETERIOUS EXOTIC ANIMALS.**  
No person shall import any deleterious exotic animals into Idaho, except by permit. The Administrator may authorize, by permit, the importation of deleterious exotic animals to: (10-1-03)T
- 01. Zoos.** Public or private zoos accredited by the AZA. (10-1-03)T
- 02. Educational Institutions.** Public or private institutions of higher education, for research purposes. (10-1-03)T
- 03. Research Facilities.** Persons conducting research determined by the Administrator to be beneficial to agriculture, the environment, or wildlife. (10-1-03)T
- 04. USDA Licensed Facilities.** Zoos and exhibitors open to the public, licensed by USDA pursuant to Title 9, Parts 1, 2, 3, and 4, CFR, and approved by the Administrator. (10-1-03)T
- 101. CIRCUSES AND TRAVELING EXHIBITIONS.**  
The Administrator may authorize, by permit, the importation and possession of deleterious exotic animals by circuses and other traveling exhibitions licensed by USDA. (10-1-03)T
- 01. Period of Validity.** Import permits, issued pursuant to Section 101, shall be valid for no more than fourteen (14) days. (10-1-03)T
- 02. Removal.** All deleterious exotic animals imported pursuant to Section 101, shall be removed from Idaho prior to the expiration of the import permit. (10-1-03)T
- 03. Time Extension.** The Administrator may extend the time limits in Section 101 of this rule on a case-by-case basis. (10-1-03)T
- 102. IMPORT PERMIT AND CERTIFICATE OF VETERINARY INSPECTION.**  
All deleterious exotic animals imported pursuant to Sections 100 or 101 of this rule shall be accompanied in transit by

an import permit issued by the Administrator, any permits required by the Idaho Department of Fish and Game, and an official certificate of veterinary inspection. (10-1-03)T

**103. CONTENTS OF CERTIFICATES OF VETERINARY INSPECTION.**

All certificates shall be written, legible, and attest that the animal(s) meet the importation requirements of the state of Idaho. The certificate shall be on an official form of the state of origin, be approved by its livestock sanitary official, and be issued by an accredited veterinarian. An equivalent form of the USDA issued by a federal animal health official is acceptable in lieu of a certificate of veterinary inspection. All certificates shall contain the following information: (10-1-03)T

- 01. Name And Address.** Name and address of the consignor and consignee; and (10-1-03)T
- 02. Origin Of Shipment.** Including city and state; and (10-1-03)T
- 03. Final Destination.** Final destination of shipment in Idaho, including city; and (10-1-03)T
- 04. Description Of Animals.** An accurate description and identification of each animal; and (10-1-03)T
- 05. Purpose Of Shipment.** The purposes for which the animals were shipped; and (10-1-03)T
- 06. Method of Transportation;** and (10-1-03)T
- 07. Health Status.** The certificate shall indicate the health status of the animals involved including dates and results of inspection and of tests and vaccinations, if any, required by the state of Idaho; and (10-1-03)T
- 08. Signature.** The signature of the accredited veterinarian, or state or federal animal health official, conducting the veterinary inspection. (10-1-03)T
- 09. Submission of Certificate.** The required copies of certificates of veterinary inspection or other approved certificates shall submitted, within thirty (30) days of inspection, to the Division. (10-1-03)T
- 10. Period Of Certificate Validity.** Certificates of veterinary inspection shall be valid for no longer than thirty (30) days after the date of inspection. (10-1-03)T

**104.-- 109. (RESERVED).**

**110. DECLARATION OF EXISTING DELETERIOUS EXOTIC ANIMALS.**

Any person that possesses deleterious exotic animals shall declare those animals to the Administrator, in writing, on a form provided by the Division of Animal Industries prior to June 30, 2004. The declaration form shall be filled out accurately, legibly, and completely. (10-1-03)T

**111. POSSESSION PERMIT REQUIRED.**

Effective July 1, 2004, no person shall possess a deleterious exotic animal without a possession permit signed by the Administrator. (10-1-03)T

- 01. Existing Deleterious Animals.** The Administrator may authorize possession permits for existing deleterious exotic animals on a case-by-case basis. (10-1-03)T
- 02. Permit Applications.** Possession permit applications shall be on a form prescribed by the Administrator and obtained from the Division of Animal Industries. (10-1-03)T
- 03. Deadline For Application.** Possession permit applications for existing deleterious exotic animals shall be received by the Administrator prior to June 30, 2004. (10-1-03)T
- 04. Exceptions.** The Administrator may grant exceptions to the requirements of Section 111, or extensions of the time limits set in Section 111, on a case-by-case basis. (10-1-03)T

**112. -- 119. (RESERVED).**

**120. IDENTIFICATION OF DELETERIOUS EXOTIC ANIMALS.**

All deleterious exotic animals in Idaho shall be officially identified with permanent types of identification, approved by the Administrator. (10-1-03)T

**121.-- 149. (RESERVED).**

**150. PROPAGATION OF DELETERIOUS EXOTIC ANIMALS.**

No person shall propagate any deleterious exotic animals in Idaho. The Administrator may authorize, by permit, the following entities to propagate deleterious exotic animals: (10-1-03)T

**01. Zoos.** Public or private zoos accredited by the AZA. (10-1-03)T

**02. Educational Institutions.** Public or private institutions of higher education, for research purposes. (10-1-03)T

**03. Research Facilities.** Persons conducting research determined by the Administrator to be beneficial to agriculture, the environment, or wildlife. (10-1-03)T

**04. USDA Licensed Facilities.** Zoos and exhibitors, open to the public, licensed by USDA pursuant to Title 9, Parts 1, 2, 3, and 4, CFR, and approved by the Administrator. (10-1-03)T

**05. Existing Operations.** Persons that have declared under Section 110 and that possess deleterious exotic animals under Section 111 may be permitted to propagate deleterious exotic animals on a case-by-case basis. (10-1-03)T

**151. -- 199. (RESERVED).**

**200. CONFINEMENT OF DELETERIOUS EXOTIC ANIMALS.**

All deleterious exotic animals shall be confined in appropriate facilities, as determined by the Administrator. These facilities shall be constructed and maintained to: (10-1-03)T

**01. Prevent Escape.** Prevent the escape of deleterious exotic animals. (10-1-03)T

**02. Prevent Ingress Of Wildlife.** Prevent the ingress of free ranging wildlife that could be negatively impacted by the confined deleterious exotic animals. (10-1-03)T

**03. Assure Animal Care.** Assure the appropriate level of animal care. (10-1-03)T

**201. -- 299. (RESERVED).**

**300. DISPOSITION OF DELETERIOUS EXOTIC ANIMALS WITHIN IDAHO.**

No person shall sell, barter, trade, change ownership, or release into the wild within Idaho, any deleterious exotic animal except: (10-1-03)T

**01. To Permitted Facilities.** Deleterious exotic animals may be sold, bartered, traded, or given to a zoo, educational institution, USDA licensed facility, or research facility that has a possession permit pursuant to Section 111. (10-1-03)T

**02. Between Permitted Facilities.** Zoos, educational institutions, USDA licensed facilities, or research facilities that have a possession permit, pursuant to Section 111 of this rule, may sell, trade, barter, or exchange deleterious exotic animals with other zoos, educational institutions, USDA licensed facilities, or research facilities that have possession permits pursuant to Section 111. (10-1-03)T

**301. EXPORT OF DELETERIOUS EXOTIC ANIMALS.**

Any deleterious exotic animals exported from Idaho shall meet all applicable federal regulations for the interstate movement of animals. (10-1-03)T

**302. -- 309. (RESERVED).**

**310. DEAD ANIMALS.**

All deleterious exotic animals that die, or are euthanized, shall be disposed of in accordance with IDAPA 02.04.17 "Rules Governing Dead Animal Movement and Disposal". (10-1-03)T

**311. -- 399. (RESERVED).**

**400. DELETERIOUS EXOTIC ANIMALS - INVERTEBRATES.**

- 01. Zebra Mussel (*Dreissenia polymorpha*).** (10-1-03)T
- 02. New Zealand Mud Snail (*Potamopyrgus antipodarum*).** (10-1-03)T
- 03. Red Claw Crayfish.** (10-1-03)T
- 04. Yamabe Crayfish.** (10-1-03)T
- 05. Marone Crayfish.** (10-1-03)T

**401. -- 499. (RESERVED).**

**500. DELETERIOUS EXOTIC ANIMALS - FISH.**

- 01. Green Sturgeon (*Acipenser medirostris*).** (10-1-03)T
- 02. Walking Catfish (*Clariidae*).** (10-1-03)T
- 03. Bowfin (*Ania Calva*).** (10-1-03)T
- 04. Gar (*Lepiostidae*).** (10-1-03)T
- 05. Piranhas (*Serrasalmus spp., Rosseveltiella spp., Pygocentrus spp.*).** (10-1-03)T
- 06. Rudd (*Scardinius erythrophthalmus*).** (10-1-03)T
- 07. Ide (*Leuciscus idus*).** (10-1-03)T
- 08. Grass Carp (*Ctenopharyngoden idella*). Diploid grass carp.** (10-1-03)T
- 09. Bighead Carp (*Hypophthalmichthys nobilis*).** (10-1-03)T
- 10. Silver Carp (*Hypophthalmichthys molitrix*).** (10-1-03)T
- 11. Black Carp (*Mylopharyngodeon piceus*).** (10-1-03)T
- 12. Snakeheads (*Channa spp., Parachanna spp.*).** (10-1-03)T

**501. -- 599. (RESERVED).**

**600. DELETERIOUS EXOTIC ANIMALS - AMPHIBIANS.**

**601. -- 649. (RESERVED).**

**650. DELETERIOUS EXOTIC ANIMALS - REPTILES.**

**651. -- 699. (RESERVED).**

**700. DELETERIOUS EXOTIC ANIMALS - BIRDS.**

**01. Mute Swan (*Cygnus olor*).** Mute swans except those that have been pinioned. (10-1-03)T

**701. -- 799. (RESERVED).**

**800. DELETERIOUS EXOTIC ANIMALS - MAMMALS.**

**01. Red Deer (*Cervus elaphus elaphus*).** (10-1-03)T

**02. Sika Deer (*Cervus nippon*).** (10-1-03)T

**03. European or Russian Wild Boar (*Sus scrofa*).** (10-1-03)T

**04. Brush Tailed Possum (*Trichsurus vulpecula*).** (10-1-03)T

**05. European Hedgehog (*Erinaceus*).** (10-1-03)T

**06. Nutria (*Myocastor coypus*).** (10-1-03)T

**07. Prairie Dogs (*Cynomys*).** (10-1-03)T

**08. African Tree Squirrels (*Heliosciurus*).** (10-1-03)T

**09. African Rope Squirrels (*Funisciurus*).** (10-1-03)T

**10. African Dormices (*Graphiurus*).** (10-1-03)T

**11. Gambian Giant Pouched Rats (*Cricetomys*).** (10-1-03)T

**12. Brush-tailed Porcupines (*Atherurus*).** (10-1-03)T

**13. African Striped Mice (*Hybomys*).** (10-1-03)T

**14. Peccary (*Tayassuidae*).** (10-1-03)T

**15. Capybara (*Hydrochoerus hydrochaeris*).** (10-1-03)T

**16. Barbary Sheep (*Ammotragus lervia*).** (10-1-03)T

**17. Lion (*Panthera leo*).** (10-1-03)T

**18. Tiger (*Panthera tigris*).** All tigers. (10-1-03)T

**19. Leopard (*Panthera pardus*).** All leopards. (10-1-03)T

**21. Jaguar (*Panthera onca*).** (10-1-03)T

**22. Cheetah (*Acinonyx jubatus*).** (10-1-03)T

**23. Serval (*Felis cerval*).** (10-1-03)T

**24. Caracal (*Felis caracal*).** (10-1-03)T

- 25. Ocelot. (10-1-03)T
- 26. Margay. (10-1-03)T
- 27. Jeoffroy's Cat. (10-1-03)T
- 25. South American Rodents. All South American rodents except guinea pigs. (10-1-03)T
- 26. Mouflon Sheep (*Ovis musimon*). (10-1-03)T

**801. -- 899. (RESERVED).**

**900. ADDITIONAL REQUIREMENTS.**

The Administrator may add additional animals to the deleterious exotic animals list in this chapter by issuing a written order listing animals and the reasons for adding them to the deleterious exotic animals list. (10-1-03)T

**901. -- 989. (RESERVED).**

**990. PENALTIES FOR VIOLATIONS.**

Any person who violates the provisions of this chapter shall be subject to the penalty provisions of Section 25-3905, Idaho Code. (10-1-03)T

**991. -- 998. (RESERVED).**

**999. MINOR VIOLATIONS.**

Nothing in this chapter shall be construed as requiring ISDA to report minor violations when ISDA believes that the public interest will be best served by suitable warnings or other administrative action. (10-1-03)T

**IDAPA 09 - IDAHO DEPARTMENT OF LABOR**

**09.01.30 - RULES OF THE BENEFITS BUREAU**

**DOCKET NO. 09-0130-0301**

**NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective upon adjournment of the Legislature unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 72-1333(2), 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.

IDAPA 09.01.30.550.03 was amended in the proposed rule to add a new method for benefit claimants to file weekly or biweekly reports. This amendment provided that, in addition to the current filing methods, reports may be filed electronically. No additional amendments have been made to the pending rule.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-7, pages 37 and 38.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Roger Holmes at 208/332-3570 ext. 3233.

DATED this 30th day of July, 2003.

Roger Holmes  
UI Benefits Bureau Chief  
Benefit Programs Bureau  
Idaho Department of Labor  
317 W. Main St., Boise, ID 83735  
208/332-3570 ext. 3233 / 208/334-6301 Fax

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**IDAPA 09, TITLE 01, CHAPTER 30**

**RULES OF THE BENEFITS BUREAU**

**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 03-7, July 2, 2003, pages 37 and 38.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

**IDAPA 09 - IDAHO DEPARTMENT OF LABOR**  
**09.01.35 - RULES OF THE EMPLOYER ACCOUNTS BUREAU**  
**DOCKET NO. 09-0135-0301**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 72-1333(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

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:

Elimination of Subsection 011.04 from this rule will remove the restriction against assessing penalty once a tax lien is filed, but while the tax is still delinquent. Penalty provisions are intended to encourage the prompt payment of delinquent taxes to prevent additional charges. Inability to assess penalties once a tax lien is filed negates this incentive and encourages delay in paying owed amounts.

Subsection 134.02 is being changed to eliminate the specific reference to a time period for notification of change for transfer of tax rate. The Department anticipates changing the statutory time frame found in Idaho Code 72-1351(4) for requests of rate transfer to allow more time for employers to make this request. Changing the rule to refer to the statute for the allowed time frame will permit the rule to conform with the statute as it currently appears and immediately upon change.

U.S. Department of Labor has noticed a trend called "SUTA dumping" in which employers with high UI tax rates due to high employee turnover, lower their rate by transferring their employees from one legal entity to another with a low tax rate. This results in an unfair lowered tax rate being given to employers who continue to have high employee turnover but maintain the lower tax rate by cycling through business entities as the rate rises. This cycling through entities with low tax rates while continuing to operate in a manner that causes deficit payments for these employers causes an excessive drain on the UI trust fund and higher rates for all covered employers. Subsection 221.01 is being changed to require a mandatory transfer of rate for employers when there is a continuity of ownership or management between the predecessor and successor.

**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 being amended to clarify penalty provisions in an existing rule, in response to anticipated legislative changes, and in response to Federal recommendations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Whitworth at 208/332-3570 ext. 3266.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 30th day of July, 2003.

Mark Whitworth  
Employer Accounts Bureau Chief  
Idaho Department of Labor  
317 W. Main Street, Boise, ID 83735  
208/332-3570 ext. 3266 / Fax: 208/334-6301

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0135-0301**

**011. GENERAL PROVISIONS.**

The following Rules for Employer Contributions are adopted pursuant to Section 72-1333(2), Idaho Code. (3-19-99)

**01. Quarterly Reporting.** Subject employers shall report all wages paid for services in covered employment each calendar quarter. Ref. Sec. 72-1337, Idaho Code. (3-19-99)

**02. Contribution Due Date.** Contributions are due on or before the last day of the month following the calendar quarter except if the last day of the month falls on a weekend or holiday, in which case the next workday is the due date. Ref. Sec. 72-1349, Idaho Code. (3-19-99)

**03. Penalties And Interest On Bankruptcy.** Penalty and/or interest shall not be assessed on amounts covered in the Department's Proof of Claim with the Bankruptcy Court for the period after the filing date of the Bankruptcy Petition and ending with the conclusion of bankruptcy proceedings and distribution of assets. Post petition penalty and interest shall be compromised, provided the amount due is paid in full by a date established after the termination of the bankruptcy proceedings. Ref. Sec. 72-1356, Idaho Code. (3-19-99)

~~**04. Late Penalty.** Penalty shall be calculated on the unpaid balance for any amount not secured by a lien. Ref. Sec. 72-1354, Idaho Code. (3-19-99)~~

**054. Lien Interest.** Lien interest on a delinquent account shall be assessed against the remaining unpaid balance computed from the day following the recording of a tax lien, at a rate established by law. (See Section 056). Ref. Sec. 72-1360, Idaho Code. (3-19-99)

~~**065. Penalty And Interest During Controversy.** Penalty and/or interest shall be compromised for periods when a valid controversy exists if amounts determined to be due are paid in full by a date established at the conclusion of the issue. Ref. Sec. 72-1354 and 72-1360, Idaho Code. (3-19-99)~~

~~**076. Confidential Information.** Information obtained from an employer shall be held as confidential and shall not be released without the consent of the employer except as provided in IDAPA 09.01.08, "Rules on Disclosure of Information," Section 011 or when disclosure is necessary for collection of any amount due under the employment security law, or as otherwise provided by law or these rules. Ref. Sec. 9-340 and 72-1342, Idaho Code. (3-19-99)~~

**087. Filing Of An Employer Appeal.** (3-30-01)

**a.** An appeal shall be in writing, signed by an interested party or representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination or redetermination of the Department. The appeal may be filed by delivering it, or faxing it, to any Job Service office or to the Employer Accounts Bureau of the Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. A faxed appeal that is received by a Job Service office or the Employer Accounts Bureau by 5 p.m. (as of the time zone of the office receiving the appeal) on a business day shall be deemed filed on that date. A faxed appeal that is received by a Job Service office or the Employer Accounts Bureau on a weekend or holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. An appeal may also be filed by mailing it to any Job Service office or to the Employer Accounts Bureau, Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark on the request. Ref. Sec. 72-1361, Idaho Code. (3-30-01)

**b.** An appeal should be accompanied by a specific statement, information or evidence which provides an explanation as to why the original determination is erroneous. (3-30-01)

**c.** In cases where a determination of amounts due is made by the Department pursuant to Section 72-1358, Idaho Code, the reports shall replace the determination and will be used to establish the employer's liability if

(i) the employer files reports for the periods covered by the determination before the determination becomes final, and (ii) the Department determines that the reports are accurate and complete. If the Department determines the reports are not accurate or complete, the reports shall be treated as an appeal of the determination. (3-30-01)

**098. Determinations.** Determinations shall be in writing, signed by an authorized representative of the director, and shall contain provisions which advise the interested parties of their right to appeal the determination within fourteen (14) days from the date of mailing of the determination in accordance with Section 72-1361, Idaho Code. (3-30-01)

**409. Determination Of Payment Date.** Each amount shall be deemed to have been paid on the date that the Department receives payment thereof in cash or by check or other order for the payment of money honored by the drawer on presentment; provided, that if sent through the mail, it shall be deemed to have been paid as of the date mailed as determined by the postmark on the envelope containing same, or the date of the check in lieu of a postmark. Provided further, that in the case of payments received by means of garnishment, execution, or levy, the amount received shall be deemed to have been paid as of the date that the order of garnishment, execution, or levy is served. Ref. Sec. 72-1349, Idaho Code. (3-19-99)

**140. Release Of Lien Upon Payment In Full.** An amount secured by a lien shall be deemed to be satisfied when payment in full is received by the Department in the form of cash, money order, or other certified funds, or proof presented that a check or other negotiable instrument has been honored by its drawer upon presentment. Ref. Sec. 45-1908, Idaho Code. (3-19-99)

**121. Contribution Reports.** Each contribution shall be accompanied by an employer's contribution report in a form or medium prescribed and furnished or approved for such purpose, giving such information as may be required, including number of individuals employed and wages paid or payable to each, which must be signed or furnished by the covered employer or, on his behalf by someone having personal knowledge of the facts therein stated, and who has been authorized by the covered employer to submit the information. Ref. Sec. 72-1349, Idaho Code. (3-19-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**134. PROFESSIONAL EMPLOYER ORGANIZATIONS.**

A professional employer organization shall fully comply with the requirements of the Professional Employer Recognition Act, Chapter 24, Title 44, Idaho Code in order to be eligible for any transfers of experience rating as allowed by Section 72-1349B, Idaho Code. (3-15-02)

**01. Methods Of Reporting.** To report the wages and employees covered by the professional employer arrangement between a professional employer and client, professional employers and their clients shall make reports to the Department in one (1) of the following ways, subject to the conditions in Subsections 134.02 through 134.06 of this rule: (3-15-02)

**a.** Report the workers included in the professional employer arrangement under the employer account number of the professional employer and transfer the rate of the client to the professional employer; or (3-15-02)

**b.** Report the workers included in the professional employer arrangement under the account number of the professional employer without transferring the experience rate of the client to the professional employer; or (3-15-02)

**c.** Report the workers included in the professional employer arrangement under the employer account number of the client without an experience rate transfer. Ref. Sec. 72-1349B, Idaho Code. (3-15-02)

**02. Joint Transfer Of Experience Rate.** In order to effect a transfer of a client's experience rate into the experience rate of a professional employer organization, both the client and the professional employer organization shall jointly apply for the transfer of the experience rate within ~~ninety (90) days~~ the same timeframes as required of employers by Section 72-1351(4), Idaho Code, from the date of the agreement entered into between the

professional employer organization and the client. Ref. Sec. 72-1351(4), Idaho Code.

~~(3-15-02)~~(\_\_\_\_)

**03. Partial Transfers Of Experience Rate Prohibited.** In the event that a client and a professional employer organization jointly apply to transfer the experience rate of the client into that of the professional employer, the client's entire experience rate and factors of experience rate shall be transferred into that of the professional employer, and no partial transfers of experience factors or the experience rate shall be allowed. Ref. Sec. 72-1349B, Idaho Code. (3-15-02)

**04. Mandatory Transfer Of Experience Rate.** If the professional employer organization elects to report the workers assigned to the client under the experience rate of the professional employer, and the client employer has a deficit experience rate, the experience rate transfer shall be mandatory. Ref. Sec. 72-1351, and 72-1349B, Idaho Code. (3-15-02)

**05. Partial Reporting Of Workers.** If some of the client's workers are included in the professional employer arrangement and some are not included, and the professional employer organization and the client elect to report the workers included in the professional employer arrangement under the employer account number of the client, then only one (1) quarterly report shall be remitted to the Department, which shall list or include all the client's workers whether or not included in the professional employer arrangement. Ref. Sec. 72-1349B, Idaho Code. (3-15-02)

**06. Combined Wages Or Services For Purposes Of Coverage.** If a client employer has employees or employment, or both, that does not independently meet the coverage or threshold requirements necessary to constitute covered employment, such employees, services or employment shall nonetheless be deemed to meet the coverage requirements of the Employment Security Law if, in combination with other employees, employment or services of such other employees of the professional employer organization or any of its clients, such wages, services or employees do jointly meet coverage requirements. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**221. TRANSFER OF EXPERIENCE RATING.**

Upon request, employers shall be informed of the requirements for transferring an experience rating record. A status determination shall be issued to interested parties when an experience rating record transfer request is made. Ref. Sec. 72-1351, Idaho Code. (3-15-02)

**01. Mandatory Transfer Of ~~Deficit~~ Rate.** An experience rating record transfer shall be mandatory if ~~there is a continuity of ownership or management between the predecessor and successor, and the predecessor covered employer had a deficit experience rating record as of the last computation date.~~ The parties in interest shall be notified of such transfer of ~~deficit~~ experience as determined from the facts applicable to the case. Such determination may be appealed as provided in Ref. Sec. 72-1351, 72-1361, Idaho Code. ~~(3-19-99)~~(\_\_\_\_)

**02. Continued Predecessor Employment For Liquidation.** When a total transfer of experience rating record has been completed and it is found that the predecessor employer continues to have employment in connection with the liquidation of his business, such employer shall continue to pay contributions at the assigned rate for the period of liquidation but not to extend beyond the balance of the rate year. Ref. Sec. 72-1351, Idaho Code. (3-19-99)

**03. Management Or Ownership Unchanged.** For the purposes of Sections 72-1351(4)(a) and (b), Idaho Code, management and/or ownership shall be considered substantially the same if at least fifty percent (50%) of the business enterprise of the successor is owned or controlled by individuals who, immediately preceding the change in the legal entity, owned or controlled fifty percent (50%) or more of the enterprise. Ref. Sec. 72-1351, Idaho Code. (3-15-02)

**04. Wage Paid By Predecessor.** The successor employer may use wages paid by the predecessor employer to arrive at the wage base for purposes of calculating taxable wages only when the experience rate of a predecessor employer has been transferred to a successor employer. Ref. Sec. 72-1349(1), 72-1351(4), and 72-1350(8), Idaho Code. (3-15-02)

## IDAPA 11 - IDAHO STATE POLICE

### 11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-0301

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is December 5, 2002.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 19-5107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

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

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The temporary rule establishes the minimum standards for employment that juvenile probation officers must meet in order to qualify for mandatory certification. In addition, it has been found that more information is needed from applicants in reference to their vision.

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

The temporary rule is necessary to protect the public health, safety, or welfare.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Michael N. Becar at (208) 884-7251.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 9th day of July, 2003.

Michael N. Becar  
Executive Director  
Idaho State Police  
Peace Officer Standards and Training  
700 S. Stratford Dr.  
P.O. Box 700  
Meridian, ID 83680-0700  
(208) 884-7251  
(208) 884-7295 (Fax)

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1101-0301**

**057. PHYSICAL - MEDICAL.**

**01. Requirements. (7-1-93)**

**a.** Hearing. The applicant ~~shall~~ must have unaided or aided hearing between zero (0) and twenty-five (25) decibels for each ear at the frequencies of five-hundred (500) Hz, one thousand (1000) Hz, two thousand (2000) Hz, and three thousand (3000) Hz. Waiver to the above may be considered by the Council if accompanied by an audiologist's or ear, nose, and throat physician's certification that the applicant's condition ~~would~~ will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, ~~or~~ juvenile detention, or juvenile probation officer. (~~3-15-02~~)(12-5-02)T

**b.** Vision. (7-1-93)

**i.** The applicant ~~shall~~ must possess normal binocular coordination; depth of proficiency of a minimum of one (1) minute of arc at twenty (20) feet; peripheral vision ~~shall~~ must be binocularly two hundred (200) degrees laterally with sixty (60) degrees upward and seventy (70) degrees downward. There ~~shall~~ must be no pathology of the eye; applicant ~~shall~~ must possess a minimum seventy percent (70%) proficiency of the Dvorine or equivalent color discrimination test. Waiver to the above may be considered by the Council if accompanied by a vision specialist's certification that the applicant's condition ~~would~~ will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, ~~or~~ juvenile detention, or juvenile probation officer. (~~3-15-02~~)(12-5-02)T

**ii.** The applicant ~~shall~~ must have uncorrected vision in each eye of twenty/two hundred (20/200) with the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but ~~shall~~ must have the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination must be administered by an optometrist or ophthalmologist to any applicant whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or worse. Waiver to the above may be considered by the Council if accompanied by a vision specialist's certification that the applicant's condition ~~would~~ will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, ~~or~~ juvenile detention, or juvenile probation officer. (~~3-15-02~~)(12-5-02)T

**c.** Disease/Condition. The applicant ~~shall~~ must be free from any impediments of the senses; of sight, hearing, taste, smell, and touch; physically sound; well developed physically and in possession of his extremities; free from any physical defects, chronic or organic diseases, organic or functional conditions, or emotional or mental instabilities which may tend to impair efficient performance of duty or which might endanger the lives of others or the life of the officer. Waiver to a physical defect may be considered by the Council upon the applicant's demonstration that the defect does not jeopardize or impair his ability to perform the duties of a peace, detention, ~~or~~ juvenile detention, or juvenile probation officer. (~~3-15-02~~)(12-5-02)T

**d.** Agency Physical Agility/Fitness Test. To determine the applicant's physical capability, a physical agility or fitness test based upon the job requirements of the appointing agency ~~shall~~ must be administered by the appointing agency to each applicant. (~~3-15-02~~)(12-5-02)T

**02. Procedures. (7-1-93)**

**a.** A POST Council-approved medical history form ~~shall~~ must be supplied by each applicant to the examining physician. The medical history ~~shall~~ must include information on past and present diseases, injuries and operations. (~~3-15-02~~)(12-5-02)T

**b.** A medical examination ~~shall~~ must be administered by a licensed physician or his designee to determine if the applicant is free from any physical, emotional, or mental condition which might adversely affect the

applicant's ability to perform the duties of a peace, detention, ~~or~~ juvenile detention, or juvenile probation officer. The physician *shall must* record his findings on the appropriate form or letter and *shall must* note thereon, for evaluation by the appointing authority, any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature, or indications of mental or emotional instability. (~~3-15-02~~)(12-5-02)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**071. BASIC TRAINING ACADEMY.**

Each and every peace, detention, juvenile detention, and juvenile probation officer *shall must* successfully complete the respective POST Basic Training Academy, including the field training portion, within twelve (12) months from the date of their appointment as a full-time officer. This time period includes probationary time. (~~4-2-03~~)(12-5-02)T

**01. Closed Campus.** The POST Basic Training Academies will operate as a closed campus Monday through Thursday. The POST Council may consider an exemption to this requirement in the case of a documented severe financial hardship for the applicant where no other alternative exists and provided the applicant's agency head files a written request for review with the POST Council. A trainee granted a hardship exemption will be required to attend all mandatory classes, and must not be late to any class. Unauthorized lateness to or absence from any class will be grounds for revocation of the hardship exemption by the POST Executive Director. (12-5-02)T

**042. Attendance.** Attendance *shall must* be required of each trainee at all classes in the Basic Training Academy. A trainee who is absent for more than one (1) day of the academy session *shall must* make up such course content. (~~7-1-93~~)(12-5-02)T

**023. Completion.** A trainee *shall must* successfully complete the Basic Training Academy within six (6) months of the date they enroll in such course. In a case of delay of more than six (6) months, the entire course *shall must* be repeated. (~~3-15-02~~)(12-5-02)T

**034. Field Training.** The field training portion *shall must* be completed to be eligible for certification. (~~3-15-02~~)(12-5-02)T

# **IDAPA 11 - IDAHO STATE POLICE**

## **11.13.01 - THE MOTOR CARRIER RULES**

**DOCKET NO. 11-1301-0301**

### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is January 4, 2004.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-2901A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

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

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

The temporary rule incorporates by reference a version of 39 CFR Parts 393 and 395 effective January 4, 2004, governing commercial vehicle load securement and driver hours of service, respectively.

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

Protection of the public safety, or welfare and compliance with deadlines in amendments to governing law or federal programs.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Captain Lamont Johnston at (208) 884-7221.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 28th day of July, 2003.

R. Dan Charboneau, Director  
Idaho State Police  
700 S. Stratford Dr.  
P.O. Box 700  
Meridian, ID 83680-0700  
(208) 884-7003  
884-7090 (FAX)

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1301-0301**

**019. CARRIER SAFETY REQUIREMENTS.**

**01. Adoption Of Federal Regulations.** Adoption of Federal Regulations 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399 are hereby adopted by reference. All interstate and foreign carriers and all intrastate carriers subject to the safety authority of the Idaho State Police while operating in Idaho that transport passengers or property must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers). The subject matter of 49 CFR 391.11(b)(1) is a twenty-one (21) year minimum age for drivers of commercial vehicles subject to federal safety regulation. Intrastate carriers subject to the safety authority of the Idaho State Police may hire drivers who are eighteen (18) years or older as set forth in Section 49-303, Idaho Code. Whenever any one (1) of these federal regulations (except Section 391.11(b)(1)) exempts intrastate carriers from any of their requirements, this Rule at IDAPA 11.13.01, "The Motor Carrier Rules," Section 019 removes that exemption and subjects the intrastate carrier to the same requirements. The Department asserts its authority under this Section 019 to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-679 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR Part 388.

(10-1-02)T

**02. Obligation Of Familiarity With Rules.** All interstate and foreign carriers and all intrastate carriers subject to these Rules at IDAPA 11.13.01, "The Motor Carrier Rules," Section 019 must obtain copies of the federal regulations adopted by reference in Subsection 019.01 and make them available to their drivers and other personnel affected by the regulations. Failure to be familiar with these federal regulations adopted by reference is a violation of this Subsection 019.02 for any carrier subject to those regulations. The federal regulations adopted by reference address the following subject matter:

(4-5-00)

- a. Part 356. Authority to Serve a Particular Section - Construction. (10-1-02)T
- b. Part 365. How to Apply for Operating Authority. (10-1-02)T
- c. Part 382. Controlled Substance and Alcohol Use and Testing. (4-5-00)
- d. Part 383. Commercial Driver's License Standards; Requirements and Penalties. (4-5-00)
- e. Part 385. Safety Fitness Standards. (4-5-00)
- f. Part 387. Financial Responsibility. (10-1-02)T
- g. Part 388. Cooperative Agreements with States. (4-5-00)
- h. Part 390. Federal Motor Carrier Safety Regulations: General. (4-5-00)
- i. Part 391. Qualifications of Drivers. (4-5-00)
- j. Part 392. Driving of Motor Vehicles. (4-5-00)
- k. Part 393. Parts and Accessories Necessary for Safe Operation. (4-5-00)
- l. Part 395. Hours of Service of Drivers. (4-5-00)
- m. Part 396. Inspection, Repair and Maintenance. (4-5-00)
- n. Part 397. Transportation of Hazardous Materials; Driving and Parking Rules. (4-5-00)
- o. Part 398. Transportation of Migrant Workers. (4-5-00)
- p. Part 399. Employee Safety and Health Standards. (4-5-00)

**03. Recognition Of Federal Waivers.** Whenever a driver or carrier has applied to a federal agency and

been granted a waiver from any of the requirements of the federal regulations adopted in Subsection 019.01, the federal waiver will also be recognized under these rules. The Department reserves the authority to implement a waiver program and grant waivers on the state level for intrastate commercial motor vehicle drivers. (4-5-00)

**04. Version Of Federal Regulations Adopted.** The federal regulations adopted by reference in this Subsection 019 are those contained in the compilation of 49 CFR Parts 356, 365, 382, 383, 385, 387, 388, ~~and~~ 390 through ~~394, and 396 through~~ 399 published in the Code of Federal Regulations volumes dated October 1, 2002, and ~~as subsequently recompiled~~ Parts 393 and 395 published in the Code of Federal Regulations volumes dated January 4, 2004. ~~(10-1-02)T~~(1-4-04)T

**05. Availability Of Incorporated Documents.** The 49 CFR's can be found at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov) or copies may be viewed at the central office of the Idaho State Police. (1-4-04)T

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

**15.02.30 - BUSINESS ENTERPRISE PROGRAM**

**DOCKET NO. 15-0230-0301**

**NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-5401, 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 June 4, 2003 Idaho Administrative Bulletin, Volume 03-6, pages 37 and 38.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this pending rule, contact Michael Graham, Administrator, at (208) 334-3220.

DATED this 9th day of July, 2003.

Michael Graham, Administrator  
Idaho Commission for the Blind and Visually Impaired  
341 W. Washington St.  
P. O. Box 83720  
Boise, ID 83720-0012  
Phone: (208) 334-3220  
Fax: (208) 334-2963

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**IDAPA 15, TITLE 02, CHAPTER 30**

**BUSINESS ENTERPRISE 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 03-6, June 4, 2003, pages 37 and 38.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

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

#### **DOCKET NO. 16-0214-0301 (FEE RULE)**

#### **NOTICE OF RULEMAKING - PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-1003 and 56-1007, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

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

This chapter of rules is being amended to add substantive sections being repealed in this publication under Docket 16-0505-0301. Fee amounts are being added to Section 032 and a new Section 033 is being added for waiver of fee information.

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

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

The fees in this chapter are fees that have been in IDAPA 16.05.05, "Rules Governing Fees for Health and Environmental Operating Permits, Licenses, and Inspections Services" which is being repealed in this publication under Docket 16-0505-0301. In order to save on publication and duplication of rules, the fees are being moved into IDAPA 16.02.14. The fees will remain the same.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes being added to this chapter are because of a repeal of a chapter of rules which will minimize publication and duplication of rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Elke Shaw-Tulloch at (208) 334-5950.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before September 24, 2003.

DATED this 10th day of July, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW - Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone  
(208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0214-0301

**000. LEGAL AUTHORITY.**

~~Idaho Code~~ Sections 56-1003 and 56-1007, Idaho Code, grants authority to the Board of Health and Welfare to adopt and to the Director, Department of Health and Welfare, to enforce minimum standards of health, safety and sanitation and to establish reasonable fees for services for all public swimming pools within the State. ~~(4-5-00)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**032. PERMIT FEE AND PLAN REVIEW FEE.**

**01. Fee Amounts.** All applications shall be accompanied by payment of the permit fee specified in the Idaho Department of Health and Welfare Rules, IDAPA 16.05.05, "Rules Governing Fees for Health and Environmental Operating Permits, Licenses, and Inspection Services" of fifty dollars (\$50) annually for each swimming pool. A plan review fee per unit for each swimming pool is one hundred dollars (\$100). ~~(4-5-00)~~( )

**033. WAIVER OF FEES.**

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

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

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

**03. Limitations.** Granting of a waiver shall not be considered as precedent or be given any force or effect in any other proceeding. ( )

**0334. -- 039. (RESERVED).**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.03 - RULES GOVERNING CHILD SUPPORT SERVICES**

**DOCKET NO. 16-0303-0301**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective July 1, 2003.

**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 Sections 7-1206, 32-1209, 32-1217, 32-1214G, 56-203A, and 56-1004, 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 September 17, 2003.

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:

This rule is being published to comply with provisions of Section 32-1214, Idaho Code, requiring the enforcement of the health coverage provision in a child support order. It sets forth administrative procedures in order for the Department to provide information on how to secure medical support information, the obligor parent's ability to request and administrative review and enforcement of the health care coverage provision in a child support order.

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

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226(1)(b), Idaho Code and are necessary in order to comply with deadlines in amendments to governing law and federal programs.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is mandated to comply with Idaho law and federal requirements.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Terri Meyer at (208) 334-6673.

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 September 24, 2003.

DATED this 23rd day of July, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street, 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone  
(208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0303-0301

308. -- ~~5499.~~ (RESERVED).

~~6500. SECURING MEDICAL SUPPORT INFORMATION AND SECURING AND ENFORCING MEDICAL SUPPORT.~~

~~01. **Obtaining Information.** Child Support Services shall must obtain information as to whether *the non-custodial* either parent has a health insurance policy *and, if so, the policy name(s) and number(s) and name(s) of person(s) covered in any case for which an assignment of support rights is* in effect. Child Support Services must obtain the names of both parents' employers. The information about available medical insurance will be provided to the applicant/recipient other parent. ~~(7-1-98)~~(7-1-03)T~~

~~02501. SECURING AND ENFORCING MEDICAL SUPPORT OBLIGATIONS.~~

~~Medical support enforcement services shall must be provided in any case for which an assignment of medical support is in effect, including:~~ ~~(7-1-98)~~(7-1-03)T

~~a01. **Petition.** Petitioning the court to include health insurance that is available to *the non-custodial* either parent at reasonable cost in new or modified court orders for support. Health insurance is considered reasonable in cost if it is available through employment *related* or other group health *insurance, regardless of service delivery mechanism;* benefit plan. ~~(7-1-98)~~(7-1-03)T~~

~~b02. **Enforcement.** Taking any necessary action to ensure that *the non-custodial* one (1) parent secures and maintains medical insurance required by the support order. ~~(7-1-98)~~(7-1-03)T~~

~~502. **ADMINISTRATIVE REVIEW FOR ENFORCEMENT OF MEDICAL SUPPORT.**~~

~~01. **Request.** An obligor may request an administrative review within twenty (20) days after a notice of intent to enroll one (1) or more children in a health benefit plan is mailed by the Department. ~~(7-1-03)T~~~~

~~02. **Scope Of Administrative Review.** The Department will cancel a notice of intent to enroll or a National Medical Support Notice (NMSN) if: ~~(7-1-03)T~~~~

~~a. The parent does not owe medical support. ~~(7-1-03)T~~~~

~~b. The parent is no longer obligated to provide medical support. ~~(7-1-03)T~~~~

~~c. Medical support, excluding Medicaid, is already being provided by either parent. ~~(7-1-03)T~~~~

503. -- 600. (RESERVED).

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

**DOCKET NO. 16-0309-0306**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective July 1, 2003.

**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 Sections 56-202, 56-203, 56-1003(1), and 56-1004(1)(a), 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 September 17, 2003.

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:

As a part of the Medicaid budget appropriation for State Fiscal Year (SFY) 2004, the Department was given an additional \$147,900 with which to provide additional Targeted Case Management for the mentally ill. In order to respond to the appropriation, crisis case management hours are reduced from four (4) to three (3) hours and ongoing non-crisis case management hours are increased from four (4) to five (5) hours.

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

**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 not conducted because rulemaking occurred to comply with legislative action.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Paul Leary or Pat Guidry at (208) 364-1833

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 September 24, 2003.

DATED this 23rd day of July, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street, 10th Floor  
P.O. Box 83720  
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0306

**483. PAYMENT FOR SERVICES.**

When an assessment indicates the need for medical, psychiatric, social, educational, or other services, referral or arrangement for such services may be included as CM services, however, the actual provision of the service does not constitute CM. Medicaid will reimburse only for core services (Section 480 of these rules) provided to members of the eligible target group by qualified staff. (12-1-02)T

**01. Duplication.** Payment for CM will not duplicate payment made to public or private entities under other program authorities for the same purpose. (3-30-01)

**02. Inpatients.** Payment will not be made for CM services provided to individuals who are inpatients in nursing homes or hospitals. (3-30-01)

**03. Evaluation/Service Plan Development.** Reimbursement for the initial evaluation and individual service plan development shall be paid based on an hourly rate, not to exceed six (6) hours. The rate will be established by the Department. (12-1-02)T

**04. Case Management.** Reimbursement for on-going case management services shall be at a rate established by the Department. (12-1-02)T

**05. Reimbursement.** Medicaid reimbursement shall be provided only for the following case management services: (3-30-01)

**a.** Face-to-face contact between the case manager and the recipient, no less than every thirty days; (3-30-01)

**b.** Telephone contact between the case manager and the recipient, the recipient's mental health and other service providers, a recipient's family members, primary caregivers, legal representative, or other interested persons; (8-1-92)

**c.** Face-to-face contacts between the case manager and the recipient's family members, legal representative, primary caregivers, mental health providers or other service providers, or other interested persons; (8-1-92)

**d.** Development, review, and revision of the recipient's individual service plan, including the case manager's functional assessment of the recipient. (8-1-92)

**06. Services Delivered Prior To Assessment.** The Department will not provide Medicaid reimbursement for on-going non-crisis case management services delivered prior to the completion of the assessments and individual service plan. (4-28-03)T

**07. Crisis Case Management.** The Department will provide Medicaid reimbursement for crisis case management services identified under Subsection 478.03 of these rules. Crisis case management services may be delivered prior to, or after, the completion of the assessment and individual service plan. Without authorization by the Department or its designee, crisis case management services are limited to a total of ~~four~~ three (3) hours per calendar month. The Department or its designee may authorize additional crisis case management services beyond the ~~four~~ three (3) hour limit if a recipient still has severe or prolonged crisis case management needs that meet all of the following criteria: (~~4-28-03~~)T(7-1-03)T

**a.** The service recipient is at imminent risk (within fourteen (14) days) of hospitalization or institutionalization, including jail or nursing home; and (4-28-03)T

**b.** The service recipient is experiencing symptoms of psychiatric decompensation; and (4-28-03)T

c. The service recipient has already received the maximum number of monthly hours of ongoing case management and crisis case management services; and (4-28-03)T

d. No other crisis assistance services are available to the recipient under other Medicaid mental health option services, including Psychosocial Rehabilitation Services (PSR). (4-28-03)T

**08. Audit Reviews.** Audit reviews will be conducted at least once a calendar year by the Department or its designee. Review findings may be referred to the Department's Surveillance and Utilization Review Section for appropriate action. (12-1-02)T

**09. Recoupment.** Failure to provide services for which reimbursement has been received or to comply with these rules will be cause for recoupment of payments for services, sanctions, or both. (3-30-01)

**10. Information.** The provider will provide the Department with access to all information required to review compliance with these rules. (3-30-01)

**11. Group Case Management.** The Department will not provide Medicaid reimbursement for case management services provided to a group of recipients. (3-30-01)

**12. Case Management In A Facility.** Medicaid will reimburse for case management services on the same date a recipient is admitted or discharged from a hospital, nursing facility, or other institutional setting, as long as the recipient is not yet admitted or has been discharged at the time of service delivery. Services may be provided during the last thirty (30) days of inpatient stay or if the inpatient stay is not expected to last longer than thirty (30) days, when not duplicating those included in the responsibilities of the facility. (3-30-01)

**13. On-Going Non-Crisis Case Management.** On-going non-crisis case management services are limited to a total of ~~four~~ five (45) hours per calendar month. (~~4-28-03~~)T(7-1-03)T

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

**DOCKET NO. 16-0309-0307**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective July 15, 2003 and October 1, 2003.

**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 Sections 56-202(b) and 56-203(g), and 39-4601, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

<b>Monday, October 6, 2003</b> 7:00 - 9:00 p.m. Region I 1120 Ironwood Drive Coeur d'Alene, ID	<b>Wednesday, October 8, 2003</b> 7:00 - 9:00 p.m. Region IV 1720 Westgate Drive Boise, ID	<b>Thursday, October 9, 2003</b> 7:00 - 9:00 p.m. Region VI 421 Memorial Drive Pocatello, ID
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The hearing sites 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 rule making:

These rule changes are being made to support the implementation of the Department's new prior authorization process found in new chapter of rules, IDAPA 16.03.13, "Prior Authorization of Behavioral Health Services". In those portions of the text dealing with the prior authorization process, citations have been inserted to refer the reader to IDAPA 16.03.13. Other changes have been made to align terminology and content with that in IDAPA 16.03.13.

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

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226(1)(a), Idaho Code and are necessary in order to protect the public health, safety and welfare.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted by the Department of Health and Welfare. However, during the past three (3) years, the Department has engaged both in extensive public participation efforts and a pilot program to gather public input on and subsequently develop and test the prior authorization process formalized in this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Mary Wells at (208) 364-1955.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 30th day of July, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0307

**118. TARGETED DEVELOPMENTAL DISABILITIES SERVICE COORDINATION.**

The Department will purchase targeted case management, hereafter referred to as Targeted Service Coordination (TSC) for ~~adult~~ Medicaid-eligible ~~recipients~~ participants with developmental disabilities when authorized ~~by the Regional ACCESS Unit~~ through the Department's prior authorization process in IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services," and provided by an organized service coordination provider agency who has entered into a written provider agreement/~~contract~~ with the Department. ~~The Department will only provide Targeted Service Coordination in a geographic area where such service is not available through a private provider who has entered into a provider agreement/contract with the Department.~~ The purpose of these services is to assist eligible individuals to obtain needed health, educational, vocational, residential, and social services.

~~(3-16-95)~~(10-1-03)T

**01. Eligible Target Group.** Only Medicaid eligible adults, eighteen (18) years of age or older, and adolescents, age fifteen (15) through the month of their eighteenth birthday, who are eligible for the Idaho State School and Hospital (ISSH) waiver who desire to live, learn, or work in community based settings are eligible. All participants must have a ~~primary~~ diagnosis of ~~D~~developmental ~~D~~disability.

~~(3-30-01)~~(7-15-03)T

**a.** The following diagnostic and functional criteria will be applied to determine ~~membership in the target population~~ eligibility for Targeted Service Coordination: "Developmental Disability," as defined in Section 66-402, Idaho Code, means a chronic disability of a person that appears before twenty-two (22) years of age and:

~~(1-7-94)~~(10-1-03)T

*i.* ~~"Developmental Disability" means a chronic disability of a person which appears before the age of twenty-two (22) years of age and:~~

~~(10-1-94)~~

~~(1)~~*ii.* Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and

(10-1-94)

~~(2)~~*iii.* Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and

~~(10-1-94)~~(10-1-03)T

~~(3)~~*iii.* Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and individually planned or coordinated.

(10-1-94)

**b.** Eligible individuals may reside in certified family homes, residential care, semi-independent living, room and board, their own homes, or be homeless.

(12-1-02)T

**c.** Eligible individuals may be receiving ~~habilitation, supportive assistance, respite~~ DDA services, wave services, or other services. These individuals may not be receiving any other types of service coordination.

~~(1-7-94)~~(10-1-03)T

**02. TSC Service Description.** ~~TSC shall be delivered by eligible providers to assist the Medicaid recipient to obtain and coordinate needed health, educational, vocational, residential, and social services using the least restrictive and most appropriate procedures and settings. Targeted service coordinators may be paid plan developers and plan monitors as described in IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services".~~ TSC ~~shall~~ consists of the following core functions:

~~(10-1-94)~~(10-1-03)T

**a.** ~~Individual Assessment and Service Planning. Unless specifically excluded by the recipient, an Individual Support Plan (ISP) shall be developed in conjunction with the recipient, service providers, the recipient's family and/or guardian and other individuals selected by the recipient. Linking the Participant to Needed Services.~~

Linking includes finding, arranging, and assisting the participant with maintaining the services, supports, and community resources identified on the plan of service. Linking also includes advocating for the unmet needs of the participant and encouraging his independence. (3-16-95)(10-1-03)T

~~i. The ISP shall replace existing service plans, except when such plans are required by other rules, and be developed from a person-centered planning process and include information obtained from evaluations (assessments), consumer interview, observation in community settings, and other pertinent information. (10-1-94)~~

~~ii. The plan shall be directed at meeting the individual recipient's needs, primarily by building on, maintaining, and utilizing the recipient's identified strengths and abilities. Services proposed must: be the result of on-going planning; be built around the recipient's wants and needs; encourage the recipient to choose the locality in which he lives and works; be age appropriate; include, whenever possible, two (2) or more options from which the recipient may choose; be aimed at maximizing community participation; be culturally appropriate; be designed to promote and utilize natural and informal community supports, including family, friends, and other non-paid citizens; and be designed with supports and services necessary to succeed in his chosen environment. (1-7-94)~~

~~iii. The plan must be completed within ninety (90) days of the selection of the service coordinator, unless documentation of a delay based on consumer need is submitted to the regional ACCESS unit. (5-24-95)~~

~~iv. The plan must be written in language that is easily understood by the consumer and his team. (5-24-95)~~

~~b. The service coordinator is responsible for writing the plan, and submitting it to the Regional ACCESS Unit for authorization of Medicaid and state general fund eligibility. The service coordinator will be responsible for finding alternative funding/resources for services and supports not deemed eligible for Medicaid or state general fund reimbursement. Monitoring and Coordination of Services. Monitoring and coordination of services includes assisting the participant and his family or guardian to coordinate and retain services and assure consistency and nonduplication between services. This includes assuring that the services are satisfactory to the participant and making adjustments to the plan of service when needed. Targeted service coordinators must report immediately all allegations or suspicions of mistreatment, abuse, neglect, or exploitation, as well as injuries of unknown origin to the Regional Medicaid Services (RMS), the adult protection authority, and any other entity identified under Section 39-5303, Idaho Code, or federal law. (10-1-94)(10-1-03)T~~

~~e. Implementation. The service coordinator shall arrange for services necessary to execute the ISP. (10-1-94)~~

~~d. Monitoring. The service coordinator shall review, update and monitor the plan continuously to meet the recipient's changing needs. This can occur through phone contact and/or face face meetings with the participant. Monitoring includes discussing changes, assessing satisfaction with services, evaluating progress and making necessary changes based on the service coordinator's evaluation. (12-1-02)F~~

~~e. Enablement. The service coordinator shall enable the recipient whenever possible. Enablement includes but is not limited to the following: (10-1-94)~~

~~i. Providing information in ways that empower the recipient to make an informed decision; (1-7-94)~~

~~ii. Assuring that all placements in the service delivery system shall be to services which offer the individual the best available opportunity for personal development, provide an improved quality of life, and are within the least restrictive environment appropriate to the individual. (1-7-94)~~

~~iii. Ensure that all residential arrangements are community-based. Such arrangements may include, but are not limited to, the recipient's family's residence, or an independent living arrangement. (1-7-94)~~

~~iv. Ensure that providers comply with clients' rights as specified in the Developmental Disabilities Act. (10-1-94)~~

~~v. Assure that no one shall be denied TSC solely on the basis of the severity of physical or mental~~

~~disability.~~ (12-1-02)F

~~vi. If the placement or services which are recommended are not immediately available, continued attempts to try to access the service or placement for the recipient must be documented.~~ (1-7-94)

~~vii. The service coordinator will foster the independence of the recipient (family or guardian if appropriate) by demonstrating to the individual how best to access service delivery systems.~~ (10-1-94)

**03. Targeted Service Coordination Agency Qualifications.** Targeted Service Coordination agencies must meet the following criteria: (10-1-94)

~~a. Have demonstrated the ability to provide supervision over and assure the provision of all the core elements listed functions of Targeted Service Coordination to the target population as described in Subsection 1198.02 of TSC to the target population; and these rules~~ (10-1-94)(10-1-03)T

~~b. May contract with individual service coordinators or case management agencies to provide TSC services.~~ Employ individuals qualified to do Targeted Service Coordination; (10-1-94)(10-1-03)T

~~c. Not provide service coordination to any individual for whom the agency, owners or employees also provide direct services. Agencies must disclose any interest by the owners of the agency, or their employees or their contractors in any other agency that provides services to people with developmental disabilities;~~ (10-1-94)(10-1-03)T

~~d. The individual or agency employees~~ Assure that all targeted service coordinators they employ successfully complete the service coordination certification training specified by the Department; (10-1-94)(10-1-03)T

~~e. The individual or agency follows~~ Follows the written procedures for service coordination authorized and adhered to by the Department; (10-1-94)(10-1-03)T

~~f. Adheres to the Department's mission and value statements for "right service," "right setting," and "right cost"; and~~ (10-1-94)(10-1-03)T

~~g. Adheres to the Department's contract requirements, billing, and reimbursement procedures.~~ (10-1-94)(10-1-03)T

**04. TSC Provider Staff Qualifications.** All individual service coordinators, paid plan developers, and paid plan monitors must be employees or contractors of an organized provider agency that has a valid provider agreement/~~contract~~ with the Department. The employing entity will supervise the individual service coordinators, paid plan developers, and paid plan monitors and assure that they meet the following qualifications ~~are met for each individual service coordinator.~~ (10-1-94)(10-1-03)T

~~a. Must be a psychologist, Ph.D., Ed.D., M.A./M.S.; nurse, B.S.N., M.S., Ph.D.; Q.M.R.P.; Developmental Specialist; M.D.; D.O.; or possess a valid Idaho social work license issued by the Board of Social Work Examiners; and~~ (10-1-94)(10-1-03)T

~~b. Must have documentation of at least twelve (12) months, at based on an average of twenty (20) hours per week, of on-the-job experience providing direct service to the target population, or be working under the supervision of a fully qualified service coordinator; and~~ (12-1-02)F(10-1-03)T

~~c. A Must satisfactorily complete a criminal history check with finger printing shall be obtained as required by IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks"; and~~ (10-1-94)(10-1-03)T

~~d. Must be supervised by an individual with the authority to oversee the service delivery, and to remove the individual if the recipient's participant's needs are not met; provider agencies will supervise their service coordinators, plan developers, and plan monitors; and~~ (10-1-94)(10-1-03)T

e. Cannot be the service coordinator, plan developer, or plan monitor for any recipient participant for whom the service coordinator has individual responsibility for the provision of any other care or treatment; ~~and~~  
(10-1-94)(10-1-03)T

f. Must have at least six (6) months work experience both as an EPSDT service coordinator, as described in Section 530 of these rules, and as a targeted service coordinator if they are providing services for adolescents on the ISSH waiver;  
(10-1-03)T

~~fg.~~ At no time will the ~~Must not at any time have a total caseload of a service coordinator be~~ so large as to violate the purpose of the program or adversely affect the health and welfare of any recipient participant served by the service coordinator.  
(12-1-02)T(10-1-03)T

gh. Paraprofessionals may be used to assist in the implementation of the ISP plan of service. They may not be paid plan developers or plan monitors. Paraprofessionals must meet the following qualifications:  
(10-1-94)(10-1-03)T

i. ~~Must b~~Be eighteen (18) years of age and have a high school diploma or the equivalent (G.E.D.); ~~and~~  
(1-7-94)(10-1-03)T

ii. ~~Must b~~Be able to read and write at a level commensurate with the general flow of paperwork and forms; and  
(1-7-94)(10-1-03)T

iii. ~~Must e~~Complete a training program developed by the Division of Family and Community Services Department and be working under the supervision of a fully qualified targeted service coordinator; ~~and~~  
(10-1-94)(10-1-03)T

iv. A criminal background check will be obtained.  
(10-1-94)

05. Recipient's Participant's Choice. The choice of whether or not to receive TSC services will be the eligible recipient's. All recipients who choose TSC services will have free choice of authorized TSC providers, as well as, the providers of medical and other services under the Medicaid Program. The participant may choose to receive or not to receive TSC services. The participant has the choice of:  
(10-1-94)(10-1-03)T

a. Developing and monitoring his own plan of service, with the choice of using service coordination;  
or  
(10-1-03)T

b. Using the targeted service coordinator for plan development, monitoring, and service coordination;  
or  
(10-1-03)T

c. Selecting a non-paid plan developer, and receiving plan monitoring and service coordination by a targeted service coordinator.  
(10-1-03)T

06. Payment For Services. When an assessment indicates the need for medical, psychiatric, social, educational, or other services, referral or arrangement for such services may be included as TSC services, however the actual provision of the services does not constitute TSC. Medicaid will only reimburse for core services (Subsection 118.02) provided to members of the eligible target group by qualified staff. Payment for services includes the following conditions:  
(10-1-94)(10-1-03)T

a. Payment for TSC will not duplicate payment made to public or private entities under other program authorities for the same purpose. Service coordination includes coordinating services and plan monitoring paid at a monthly rate.  
(10-1-94)(10-1-03)T

b. Plan development is paid as a separate service on an hourly basis.  
(10-1-03)T

c. Plan monitoring is paid as a separate service on an hourly basis when there is no service coordination.  
(10-1-03)T

**d.** ~~Targeted service coordinators, plan developers, and plan monitors may not deliver or be paid for direct services.~~ (10-1-03)T

**be.** Payment will not be made for TSC services provided to individuals who are inpatients in NFs, ICFs/MRs, or hospitals, except as follows. ~~(10-1-94)~~(10-1-03)T

i. Medicaid will reimburse for TSC on the same date a recipient participant is admitted or discharged from NF, ICF/MR or other institutional setting, as long as the recipient participant is not yet admitted or has been discharged at the time of the service delivery. ~~(10-1-94)~~(10-1-03)T

ii. TSC may be provided during the last thirty (30) days of inpatient stay or when the inpatient stay is not expected to last longer than thirty (30) days when not duplicating those services included in the responsibilities of the facility. (10-1-94)

~~e. Reimbursement for TSC services shall be made at rates established by the Department. (12-1-02)T~~

**df.** The Department will not provide Medicaid reimbursement for on-going TSC services delivered prior to the completion of assessments and ISP plan of service. ~~(10-1-94)~~(10-1-03)T

~~e. The Department will provide Medicaid reimbursement for crisis assistance provided prior to or after the completion of the assessments and ISP. (10-1-94)~~

**fg.** Medicaid reimbursement will be provided only for the following TSC services: (10-1-94)

i. Face-to-face contact between the service coordinator and the recipient participant, the recipient's participant's family members, guardian, service providers, legal representatives, primary caregivers, or other interested persons; ~~(10-1-94)~~(10-1-03)T

ii. Telephone contact between the service coordinator and the recipient participant, the recipient's participant's family, guardian, service providers, legal representatives, primary caregivers, or other interested persons; ~~(10-1-94)~~(10-1-03)T

iii. Plan development, review, revision of the ISP, and addenda as needed, if the service coordinator is chosen as the plan developer; ~~(10-1-94)~~(10-1-03)T

**gh.** The provider will provide the Department with access to all information required to review compliance with these rules. (1-7-94)

**hi.** Failure to provide services for which reimbursement has been received or to comply with these rules will be cause for recoupment of payments for services, sanctions, or both. (1-7-94)

**ij.** The Department will not provide Medicaid reimbursement for TSC provided to a group of individuals. (10-1-94)

**jk.** The TSC agency must release all pertinent information to direct service providers when written informed consent is obtained from the recipient participant. ~~(5-24-95)~~(10-1-03)T

**l.** The targeted service coordinator may be paid separately for community crisis supports as described in IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". (10-1-03)T

**07. Record Requirements.** In addition to the development and maintenance of the ISP plan of service, the following documentation must be maintained by the provider: ~~(10-1-94)~~(10-1-03)T

**a.** Name of recipient participant; ~~(1-7-94)~~(10-1-03)T

**b.** Name of provider agency and person providing the service; (1-7-94)

- c. Date, time, and duration of service; (1-7-94)
- d. Place of service delivery; (1-7-94)
- e. Activity record describing the service(s) provided; (1-7-94)
- f. Documented review of progress toward each service plan goal, and assessment of the ~~recipient's~~ participant's need for TSC and other services as the ~~recipient's~~ participant's needs change; ~~(1-7-94)~~(10-1-03)T
- g. Documentation using the Department-required form justifying the provision of community crisis assistance supports to the ~~recipient~~ participant; and ~~(1-7-94)~~(10-1-03)T
- h. An informed consent form clearly explaining the purpose of the TSC and signed by the ~~recipient~~ participant or legal guardian ~~clearly explaining the purpose of TSC~~. ~~(1-7-94)~~(10-1-03)T

119. (RESERVED).

120. REHABILITATIVE SERVICES -- DEVELOPMENTAL DISABILITIES AGENCIES.

~~The Department will pay for rehabilitative services pursuant to Under 42 CFR 440.130(d), the Department will pay for rehabilitative services including medical or remedial services provided by facilities which that have entered into a provider agreement with the Department and are licensed as developmental disabilities agencies by the Division of Family and Community Services, Bureau of Developmental Disabilities Department. Effective July 1, 1995, all recipients not currently receiving services from a Developmental Disabilities Agency shall do so only as part of an Individual Support Plan (ISP) developed by the client and his targeted service coordinator, if one is selected. If the client chooses not to select a targeted service coordinator, the Developmental Disabilities Agency (DDA) must ensure an Individual Program Plan is developed. Clients who are Home and Community Based Services Waiver recipients who want and need DDA services shall develop an ISP with their targeted service coordinator and submit that plan to the Regional ACCESS Unit for authorization. Educational services, other than those "related services" found in 34 CFR 300.13 and provided to all eligibles under the State Medical Plan, are the responsibility of the public schools and are not eligible for Medicaid payments. Covered "related services" include: audiology; psychotherapy services; physician services; developmental and occupational therapy; physical therapy; speech pathology and transportation necessary to obtain other covered services.~~ ~~(3-30-01)~~(10-1-03)T

**01. Requirement For Plan Of Service And Prior Authorization.** All services for adults with developmental disabilities and ISSH waiver participants must be identified on the plan of service and prior authorized as described in IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services," Sections 200 through 320. ~~(10-1-03)T~~

**02. Individual Program Plan Requirement.** All services for children must be identified on the Individual Program Plan developed by the developmental disabilities agency (DDA) as described in IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies". ~~(10-1-03)T~~

**043. Evaluation And Diagnostic Services.** ~~Prior to delivery of service, current and accurate comprehensive evaluations or specific skill assessment shall be completed or obtained as necessary to effectively plan the consumer's program. Evaluations and assessments shall reflect the current status of the consumer. (3-30-01)~~

~~a. When required in~~ Medical/social, psychological, speech and hearing, physical, developmental, and occupational therapy evaluations must meet the requirements of IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies," ~~with the following exceptions:~~ ~~(3-30-01)~~

~~i. For children being served in a Developmental Disabilities Agency under Part C of IDEA (Individuals with Disabilities Education Act), the above evaluations must meet the requirements in Title 16, Chapter 1, Idaho Code, "Early Intervention Services" and the Idaho State Plan for Early services Intervention of the Individuals with Developmental Disabilities Education Act; or (3-30-01)~~

~~ii. For children being served in a Developmental Disabilities Agency under Part B of IDEA, the above evaluations must meet Section 33-201, Idaho Code, "School Age," and IDAPA 08.02.03, "Rules Governing~~

*Thoroughness*".

(3-30-01)

**b.** Twelve (12) hours is the maximum Medicaid reimbursable time allowed for the combination of all evaluation or diagnostic services provided in any calendar year. Additional hours may be approved for a child through the month of his twenty-first birthday with approval from EPSDT staff in the Division of Medicaid.

(10-6-88)(10-1-03)T

**024. Treatment Services.** ~~Home, community and center based~~ Developmental disabilities agency services must be recommended by a physician or other practitioner of the healing arts and provided in accordance with objectives as specified in ~~an ISP submitted to the Regional ACCESS Unit~~ IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies". The treatment services listed below in Subsections 120.04.a. through 120.04.e. of this rule and community supported employment must not be authorized for more than forty (40) hours per week. Covered treatment services include the following therapies:

(3-30-01)(10-1-03)T

**a.** ~~The treatment services must meet the requirements of IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies," with the following exceptions:~~ Developmental Therapy. Developmental therapy may be delivered in a Developmental disabilities agency center-based program, the community, or the home of the participant. Participants living in a certified family home must not receive home-based developmental therapy in a certified family home. Developmental therapy includes individual developmental therapy and group developmental therapy.

(3-30-01)(10-1-03)T

**i.** ~~For children being served in a Developmental Disabilities Agency under Part C of IDEA, treatment services must meet the requirements in Title 16, Chapter 01, Idaho Code, "Early Intervention Services" and the Idaho State Plan for Early Intervention of the Individuals with Developmental Disabilities Education Act; or~~

(3-30-01)

**ii.** ~~For children being served in a Developmental Disabilities Agency under Part B of IDEA, treatment services must meet Section 33-201, Idaho Code, "School Age," and IDAPA 08.02.03, "Rules Governing Thoroughness".~~

(3-30-01)

**b.** Psychotherapy Services. Psychotherapy services are limited to a maximum of forty-five (45) hours in a calendar year, and include:

(7-1-95)(10-1-03)T

**i.** Individual psychotherapy;

(7-1-95)

**ii.** Group psychotherapy; and

(7-1-95)(10-1-03)T

**iii.** Family-centered psychotherapy which must include the ~~recipient~~ participant and one (1) other family member at any given time.

(7-1-95)(10-1-03)T

**c.** Speech and Hearing Therapy Services. Speech and hearing therapy services are limited to two hundred fifty (250) treatment sessions per calendar year.

(7-1-95)(10-1-03)T

**d.** Physical Therapy. Physical therapy services are limited in accordance with Section 140 of these rules.

(3-30-01)(10-1-03)T

**e.** ~~Developmental and occupational therapy services alone or in combination are limited to a maximum of thirty (30) hours per week.~~ Occupational Therapy. Occupational therapy includes individual occupational therapy and group occupational therapy.

(3-30-01)(10-1-03)T

**f.** Intensive Behavioral Intervention (IBI). Intensive behavioral intervention includes individual intensive behavioral intervention and intensive behavioral intervention consultation.

(10-1-03)T

**fg.** Collateral Contact. Collateral contact is contact with individuals directly involved with the ~~recipient of participant receiving the service to~~ expand rehabilitative services into the client's living location promote understanding of each person's therapeutic objectives and consistency among persons having direct contact with the

program participant. Such contacts will be included in the limitations of hours of treatment service reimbursed by Medicaid. Contacts with such persons for the purpose of future placement, interagency and intra-agency case monitoring, staffings and social service activities are not allowable for Medicaid payment. ~~(10-6-88)~~(10-1-03)T

~~gh.~~ *Intensive Behavioral Interventions are individualized, comprehensive, proven interventions used on a short term, one to one basis that produce measurable outcomes which diminish behaviors that interfere with the development and use of language and appropriate social interaction skills or broaden an otherwise severely restricted range of interest. Intensive Behavioral Intervention is available only to children birth through age twenty-one (21) who have self-injurious, aggressive, or severely maladaptive behavior and severe deficits in the areas of verbal and non-verbal communication; or social interaction; or leisure and play skills. Intensive Behavioral Intervention alone or in combination with developmental and occupational therapy is limited to thirty (30) hours a week and may be delivered for no longer than thirty-six (36) months. Except in the case of a child prior authorized for additional therapy hours through the EPSDT program, the services of developmental therapy, occupational therapy, and intensive behavioral intervention are limited to no more than thirty (30) hours per week either alone or in combination.* ~~(3-15-02)~~(10-1-03)T

~~hi.~~ Only one (1) type of therapy service will be reimbursed during a single time period by the Medicaid program. No therapy services will be reimbursed during periods when the ~~recipient~~ participant is being transported to and from the agency. ~~(3-30-01)~~(10-1-03)T

~~03.~~ **Optional Services.** ~~(11-22-91)~~

~~a.~~ *Consultation for the purpose of prescribing, monitoring, and/or administering medications. These consultations shall be:* ~~(11-22-91)~~

~~i.~~ *Provided by a physician or licensed nurse practitioner in direct face to face contact with the client;* ~~(11-22-91)~~  
and

~~ii.~~ *Incorporated into the client's Individual Support Plan with the type, amount, and duration of the service specified.* ~~(7-1-95)~~

~~b.~~ *Nursing services for the purpose of supervising, monitoring, and/or administering medication within the limits of the Nurse Practice Act, Section 54-1402(d), Idaho Code. These services shall be:* ~~(11-22-91)~~

~~i.~~ *Ordered and supervised by a physician; and* ~~(11-22-91)~~

~~ii.~~ *Provided by licensed and qualified nursing personnel in direct face to face contact with the client;* ~~(11-22-91)~~  
and

~~iii.~~ *Incorporated into the client's Individual Support Plan with the type, amount, and duration of the service specified.* ~~(7-1-95)~~

~~e.~~ *Psychiatric evaluations and services for the purpose of establishing a diagnosis, identifying client strengths and needs, and recommending and/or implementing interventions to address each need. These evaluations and services shall be:* ~~(11-22-91)~~

~~i.~~ *Conducted by a physician in direct face to face contact with the client; and* ~~(11-22-91)~~

~~ii.~~ *Incorporated into the client's Individual Support Plan with the type, amount, and duration of service specified.* ~~(7-1-95)~~

~~04.~~ **Requirements For Agencies.** *Agencies must be licensed as Developmental Disabilities Agencies by the Department. Loss of licensure by an agency will be cause for termination of all Medicaid program payment for services and termination of the agency's provider agreement.* ~~(3-30-01)~~

**05. Excluded Services.** The following services are excluded for Medicaid payments: (10-6-88)

- a. Vocational services; and (10-6-88)
- b. Educational services; and (10-6-88)
- c. Recreational services. (10-6-88)

**06. Payment Procedures.** Payment for agency services must be in accordance with rates established by the Department. (3-30-01)

a. Providers of services must accept as payment in full the Department's payment for such services and must not bill a ~~MA recipient~~ Medicaid participant for any portion of any charges. (~~11-10-81~~)(10-1-03)T

b. Third party payment resources, such as Medicare and private insurance, must be exhausted before the Department is billed for services provided to an eligible ~~recipient~~ participant. Proof of billing other third party payors is required. (~~11-10-81~~)(10-1-03)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**143. WAIVER SERVICES FOR ADULTS WITH DEVELOPMENTALLY DISABILITIES RECIPIENTS AND ISSH WAIVER PARTICIPANTS.**

~~Pursuant to~~ Under 42 CFR Section 440.180, it is the intention of the Department to provide waiver services to eligible ~~recipients in order~~ participants to prevent unnecessary institutional placement, ~~to~~ provide for the greatest degree of independence possible, ~~to~~ enhance the quality of life, ~~to~~ encourage individual choice, and ~~to~~ achieve and maintain community integration. For a ~~recipient~~ participant to be eligible, the Department must find that the ~~recipient~~ participant requires services due to a developmental disability ~~which that~~ impairs their his mental or physical function or independence, ~~he is~~ is capable of being maintained safely and effectively in a non-institutional setting, and would, in the absence of such services, need to reside in an ICF/MR. (~~7-1-95~~)(10-1-03)T

**01. Services Provided.** (7-1-95)

a. Residential habilitation services which consist of an integrated array of individually-tailored services and supports furnished to eligible ~~recipients~~ participants which are designed to assist them to reside successfully in their own homes, with their families, or alternate family homes. The services and supports that may be furnished consist of the following: (~~7-1-97~~)(10-1-03)T

i. Habilitation services aimed at assisting the individual to acquire, retain or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: (7-1-97)

(1) Self-direction, including the identification of and response to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (7-1-95)

(2) Money management including training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (7-1-95)

(3) Daily living skills including training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, home safety, first aid, and emergency procedures; (7-1-95)

(4) Socialization including training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the ~~recipient~~ participant to ~~their~~ his community. (Socialization training associated with participation in community activities includes assisting the ~~recipient~~ participant to identify activities of interest, working out arrangements to participate in such activities and identifying

specific training activities necessary to assist the ~~recipient~~ participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in nontherapeutic activities which are merely diversional or recreational in nature); ~~(7-1-95)~~(10-1-03)T

(5) Mobility, including training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; (7-1-95)

(6) Behavior shaping and management includes training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors; or extension of therapeutic services, which consist of reinforcing physical, occupational, speech and other therapeutic programs. (7-1-95)

ii. Personal Assistance Services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the ~~recipient~~ participant or the ~~recipient's~~ participant's primary caregiver(s) are unable to accomplish on his own behalf. ~~(7-1-95)~~(10-1-03)T

iii. Skills training to teach waiver ~~recipients~~ participants, family members, alternative family caregiver(s), or a ~~recipient's~~ participant's roommate or neighbor to perform activities with greater independence and to carry out or reinforce habilitation training. Services are focused on training and are not designed to provide substitute task performance. Skills training is provided to encourage and accelerate development in independent daily living skills, self direction, money management, socialization, mobility and other therapeutic programs. ~~(7-1-95)~~(10-1-03)T

b. Chore services which are heavy household maintenance and minor home repairs necessary to maintain the functional use of the home and to provide a clean, sanitary and safe environment. Chore activities include washing windows; moving heavy furniture and shoveling snow to provide safe access inside and outside the home; chopping wood when wood is the ~~recipient's~~ participant's primary source of heat; and tacking down loose rugs and flooring. These services are only available when neither the ~~recipient~~ participant, nor anyone else in the household is capable of performing or financially providing for them, and where no other relative, caretaker, landlord, community volunteer/agency or third party payor is capable of or responsible for their provision. In the case of rental property, the responsibility of the landlord, pursuant to the lease agreement, will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the ~~recipient~~ participant. ~~(7-1-95)~~(10-1-03)T

c. Respite care services are those services provided on a short term basis because of the absence of persons normally providing non-paid care. Respite care services provided under this waiver will not include room and board payments. Respite care services are limited to ~~recipients~~ participants who reside with non-paid caregivers. ~~(4-5-00)~~(10-1-03)T

d. Supported employment which is competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred; or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and who, because of the nature and severity of their disability, need intensive supported employment services or extended services in order to perform such work. (7-1-95)

i. Supported employment services rendered under the waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation will be maintained in the file of each individual receiving this service verifying that the service is not otherwise available ~~or~~ funded under the Rehabilitation Act of 1973 as amended, or IDEA. ~~(4-5-00)~~(10-1-03)T

ii. Federal Financial Participation (FFP) will not be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver ~~recipients~~ participants to encourage or subsidize employers' participation in a supported employment program; payments that are passed through to beneficiaries of supported employment programs; or payments for vocational training that is not directly related to a waiver participant's supported employment program. ~~(7-1-95)~~(10-1-03)T

e. Transportation services which are services offered in order to enable waiver ~~recipients~~ participants to gain access to waiver and other community services and resources required by the ~~individual support~~ plan of service. This service is offered in addition to medical transportation required under 42 CFR 440.431.53 and transportation services offered under the State ~~P~~Plan, defined at 42 CFR 440.170(a), and ~~shall~~ must not replace them. Whenever possible, family, neighbors, friends, or community agencies which can provide this service without charge or public transit providers will be utilized. (7-1-95)(10-1-03)T

f. Environmental ~~modifications~~ accessibility adaptations which are those interior or exterior physical adaptations to the home, required by the waiver ~~recipient's support~~ participant's plan of service, which are necessary to ensure the health, welfare, safety of the individual, or which enable the individual to function with greater independence in the home and without which, the waiver ~~recipient~~ participant would require institutionalization. Such adaptations may include the installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems which are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver ~~recipient~~ participant, but ~~shall~~ must exclude those adaptations or improvements to the home which are not of direct medical or remedial benefit to the ~~recipient~~ participant, such as carpeting, roof repair, or central air conditioning. All services ~~shall~~ must be provided in accordance with applicable State or local building codes. Permanent environmental modifications are limited to modifications to a home rented or owned by the ~~recipient~~ participant or the ~~recipient's~~ participant's family when the home is the ~~recipient's~~ participant's principal residence. Portable or non-stationary modifications may be made when such modifications can follow the ~~recipient~~ participant to his next place of residence or be returned to the Department. (7-1-95)(10-1-03)T

g. Specialized medical equipment and supplies which include devices, controls, or appliances, specified in the ~~Individual Support P~~plan of service which enable ~~recipients~~ participants to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. They also include items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State ~~P~~Plan. Items reimbursed with waiver funds ~~shall~~ must be in addition to any medical equipment and supplies furnished under the State ~~P~~Plan and ~~shall~~ must exclude those items which are not of direct medical or remedial benefit to the ~~recipient~~ participant. All items ~~shall~~ must meet applicable standards of manufacture, design and installation. (7-1-95)(10-1-03)T

h. Personal Emergency Response Systems (PERS) which may be provided to monitor waiver ~~recipient~~ participant safety and/or provide access to emergency crisis intervention for emotional, medical or environmental emergencies through the provision of communication connection systems. PERS are limited to ~~recipients~~ participants who rent or own their home, who are alone for significant parts of the day, have no regular caretaker for extended periods of time and who would otherwise require extensive routine supervision. (7-1-95)(10-1-03)T

i. Home delivered meals which are designed to promote adequate wavier ~~recipient~~ participant nutrition through the provision and home delivery of one (1) to two (2) meals per day. Home delivered meals are limited to ~~recipients~~ participants who rent or own their own home, who are alone for significant parts of the day and have no regular caretaker for extended periods of time. (7-1-97)(10-1-03)T

~~j. Therapy services under the waiver include physical therapy services; occupational therapy services; and speech, hearing and language services. These services are to be available through the waiver when the need for such services exceeds the therapy limitations under the State plan. Under the waiver, therapy services will include:~~ (7-1-97)

~~i. Services provided in the waiver recipient's residence, day habilitation site, or supported employment site;~~ (7-1-95)

~~ii. Consultation with other service providers and family members;~~ (7-1-95)

~~iii. Participation on the recipient's Individual Support Plan team.~~ (7-1-97)

~~kj.~~ Nursing services are those intermittent nursing services or private duty nursing services which

provide individual and continuous care listed in the ~~Individual Support Plan~~ plan of service which are within the scope of the Nurse Practice Act and are provided by a licensed ~~registered~~ registered professional (RN) nurse or licensed practical nurse (LPN) under the supervision of an ~~registered nurse RN~~, licensed to practice in Idaho. (7-1-95)(10-1-03)T

~~k.~~ Behavior Consultation/Crisis Management services which provide direct consultation and clinical evaluation of ~~recipients~~ participants who are currently experiencing or may be expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a ~~recipient~~ participant. These services also provide emergency back-up involving the direct support of the ~~recipient~~ participant in crisis. (7-1-97)(10-1-03)T

~~m.~~ Adult Day Care is a supervised, structured day program, outside the home of the participant that offer one (1) or more of a variety of social, recreational, health activities, supervision for safety, and assistance with activities of daily living. These activities need to be identified on the ~~Individual Support Plan~~ plan of service. Adult Day Care can not exceed thirty (30) hours per week either alone or in combination with ~~developmental therapy, occupational therapy, or IBI~~. (4-5-00)(10-1-03)T

i. Services provided in a facility must meet the building and health standards identified in IDAPA 16.04.11, "Rules Governing Developmental Disability Agencies," Sections 920 and 921. (4-5-00)

ii. Services provided in a home must meet the standards of home certification identified in IDAPA 16.03.19, "Rules Governing Certified Family Home," and health standards identified in IDAPA 16.04.11, "Rules Governing Developmental Disability Agencies" Section 921. (4-5-00)

**02. Place Of Service Delivery.** Waiver services ~~for developmentally disabled recipients~~ may be provided in the ~~recipient's~~ participant's personal residence, ~~specialized a certified~~ family home, ~~waiver facilities~~, day habilitation/supported employment program, or community. The following living situations are specifically excluded as a ~~personal residence~~ place of service for ~~the purpose of these rules~~ waiver services: (7-1-95)(10-1-03)T

- a. Licensed skilled, or intermediate care facilities, certified nursing facility (NF) or hospital; and (7-1-95)
- b. Licensed Intermediate Care Facility for ~~the persons with~~ Mentally Retarded ~~education~~ (ICF/MR); and (7-1-95)(10-1-03)T
- c. Licensed Residential ~~and or~~ Assisted Living Facility. (4-5-00)(10-1-03)T
- d. Additional limitations to specific services are listed under that service definition. (7-1-95)

**03. Authorization Of Services ~~Delivered Following On A Written Plan.~~** All waiver services must be ~~identified on the plan of service and~~ authorized by the ~~ACCESS Unit in the Region where the recipient will be residing and provided based on a written Individual Support Plan (ISP) process described in IDAPA 16.03.13, "Prior Authorization of Behavioral Health Services," Sections 200 through 320. The plan of service must be reviewed by a plan monitor or targeted service coordinator at a frequency determined by the person-centered planning team, but at least every ninety (90) days.~~ (7-1-95)(10-1-03)T

- ~~a.~~ *The ISP is developed by the ISP team which includes:* (7-1-95)
  - ~~i.~~ *The waiver recipient. Efforts must be made to maximize the recipient's participation on the team by providing him with information and education regarding his rights; and* (7-1-95)
  - ~~ii.~~ *The service coordinator chosen by the recipient; and* (7-1-95)
  - ~~iii.~~ *The guardian when appropriate; and* (7-1-95)
  - ~~iv.~~ *May include others identified by the waiver recipient.* (7-1-95)
- ~~b.~~ *The ISP must be based on a person-centered planning and assessment process approved by the*

~~Department.~~ (7-1-95)

~~e. The ISP must include the following:~~ (7-1-95)

~~i. The specific types, amounts, frequency and duration of Medicaid reimbursed waiver services to be provided; and~~ (7-1-95)

~~ii. Supports and service needs that are to be met by the recipient's family, friends and other community services; and~~ (7-1-95)

~~iii. The providers of waiver services when known; and~~ (7-1-95)

~~iv. Documentation that the recipient has been given a choice between waiver services and institutional placement; and~~ (7-1-95)

~~v. The signature of the recipient or his legal representative and the service coordinator.~~ (7-1-95)

~~d. The plan must be reviewed monthly by the ISP team. Revisions and updates are made based upon treatment results or a change in the recipient's needs. A new plan must be developed and approved annually.~~ (4-5-00)

~~04. Authorization Of Services. All services reimbursed under the Home and Community Based Waiver for Developmentally Disabled must be authorized prior to the payment of services by the Regional ACCESS Unit.~~ (7-1-95)

~~054. Service Supervision. The Individual Support Plan of service which includes all waiver services is monitored by the plan monitor or targeted service coordinator.~~ (7-1-95)(10-1-03)T

~~065. Provider Qualifications. All providers of waiver services must have a valid provider agreement/ performance contract with the Department. Performance under this agreement/contract will be monitored by the ACCESS Unit in each region Department.~~ (7-1-95)(10-1-03)T

~~a. Residential Hhabilitation services must be provided by an agency that is certified by the Department as a Residential Habilitation Agency under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies," and is capable of supervising the direct services provided. Individuals who provide twenty-four (24) hour services in their own home and are must be certified by the Department as a Certified Family Home (CFH) and must be affiliated with a Residential Habilitation Agency. The Residential Habilitation Agency provides oversight, training, and quality assurance to the certified family home provider. Individuals who provide Residential Hhabilitation services in the home of the consumer participant (supported living), must be employed by a Residential Habilitation Agency. Providers of residential habilitation services must meet the following requirements:~~ (5-3-03)(10-1-03)T

~~i. Direct service staff must meet the following minimum qualifications:~~ (10-1-03)T

~~(1) Be at least eighteen (18) years of age;~~ (10-1-03)T

~~(2) Be a high school graduate or have a GED or demonstrate the ability to provide services according to an Individual Support Plan of service;~~ (10-1-03)T

~~(3) Have current CPR and First Aid certifications; be free from communicable diseases;~~ (10-1-03)T

~~(4) Pass a criminal background check in accordance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". (When residential habilitation services are provided in a certified family home, all adults living in the home must pass a Criminal History check);~~ (10-1-03)T

~~(5) Participate in an orientation program, including the purpose and philosophy of services, service rules, policies and procedures, proper conduct in relating to waiver participants, and handling of confidential and~~

emergency situations that involve the waiver participant, provided by an agency prior to performing services; and  
(10-1-03)T

(6) ~~Have~~ appropriate certification or licensure if required to perform tasks which require certification or licensure. ~~The provider agency will be responsible for providing training specific to the needs of the recipient.~~  
(5-3-03)(10-1-03)T

ii. The provider agency will be responsible for providing training specific to the needs of the ~~recipient~~ participant. Skill training must be provided by a Qualified Mental Retardation Professional (QMRP) who has demonstrated experience in writing skill training programs. Additional training requirements must include at a minimum:  
(4-5-00)(10-1-03)T

- (1) Instructional technology; (4-5-00)
- (2) Behavior technology; (4-5-00)
- (3) Feeding; (4-5-00)
- (4) Communication/sign language; (4-5-00)
- (5) Mobility; (4-5-00)
- (6) Assistance with medications (training in assistance with medications must be provided by a licensed nurse); (4-5-00)
- (7) Activities of daily living; (4-5-00)
- (8) Body mechanics and lifting techniques; (4-5-00)
- (9) Housekeeping techniques; and (4-5-00)
- (10) Maintenance of a clean, safe, and healthy environment. (4-5-00)

iii. When residential habilitation services are provided in the provider's home, the provider's home must meet the requirements ~~as identified~~ in IDAPA 16.03.19, "Rules Governing Certified Family Homes". Non-compliance with the certification process ~~will be~~ is cause for termination of the provider's provider agreement.  
(5-3-03)(10-1-03)T

b. Providers of chore services must meet the following minimum qualifications: (7-1-95)

i. Be skilled in the type of service to be provided; and (7-1-95)

ii. Demonstrate the ability to provide services according to ~~an individual support~~ plan of service.  
(7-1-95)(10-1-03)T

c. Providers of respite care services must meet the following minimum qualifications: (7-1-95)

i. Meet the qualifications prescribed for the type of services to be rendered, ~~for instance Residential Habilitation providers~~, or must be an individual selected by the waiver participant and/or the family or guardian; and  
(7-1-95)(10-1-03)T

ii. Have received caregiving instructions in the needs of the person who will be provided the service; and  
(7-1-95)(10-1-03)T

iii. Demonstrate the ability to provide services according to an ~~individual support~~ plan of service; and  
(7-1-95)(10-1-03)T

- iv. Have good communication and interpersonal skills and the ability to deal effectively, assertively and cooperatively with a variety of people; ~~and~~ ~~(7-1-95)~~(10-1-03)T
- v. Be willing to accept training and supervision by a provider agency or the primary caregiver of services; and (7-1-95)
- vi. Be free of communicable diseases. (7-1-95)
- d. Supported Employment services must be provided by an agency capable of supervising the direct service and be accredited by the Commission on Accreditation of Rehabilitation Facilities; or other comparable standards; or meet State requirements to be a State approved provider (7-1-95)
- e. Providers of transportation services must: (7-1-95)
  - i. Possess a valid driver's license; and (7-1-95)
  - ii. Possess valid vehicle insurance. (7-1-95)
- f. Environmental ~~Modifications~~ accessibility adaptations services must: ~~(7-1-95)~~(10-1-03)T
  - i. Be done under a permit, if required; and (7-1-95)
  - ii. Demonstrate that all modifications, improvements, or repairs are made in accordance with local and state housing and building codes. (7-1-95)
- g. Specialized Equipment and Supplies purchased under this service must: (7-1-95)
  - i. Meet Underwriter's Laboratory, FDA, or Federal Communication Commission standards where applicable; and (7-1-95)
  - ii. Be obtained or provided by authorized dealers of the specific product where applicable. ~~For instance, This may include~~ medical supply businesses or organizations that specialize in the design of the equipment. ~~(7-1-95)~~(10-1-03)T
- h. Personal Emergency Response Systems (PERS) must demonstrate that the devices installed in waiver participants' homes meet Federal Communications Standards or Underwriter's Laboratory standards or equivalent standards. ~~(7-1-95)~~(10-1-03)T
- i. Services of Home Delivered Meals under this section may only be provided by an agency capable of supervising the direct service and must: (7-1-95)
  - i. Provide assurances that each meal meets one third (1/3) of the Recommended Dietary Allowance as defined by the Food and Nutrition Board of National Research Council or meet physician ordered individualized therapeutic diet requirement; ~~and~~ ~~(7-1-97)~~(10-1-03)T
  - ~~ii. Maintain Registered Dietitian documented review and approval of menus, menu cycles and any changes or substitutes; and~~ ~~(7-1-95)~~
  - iii. Must provide assurances that the meals are delivered on time and demonstrate the ability to deliver meals at a minimum of three (3) days per week; ~~and~~ ~~(7-1-97)~~(10-1-03)T
  - ~~iv. Maintain documentation reflecting the meals delivered are nutritionally balanced and made from the highest U.S.D.A. Grade for each specific food served; and~~ ~~(7-1-95)~~(10-1-03)T
- iv. Provide documentation of current driver's license for each driver; and (7-1-95)
- vi. Must be inspected and licensed as a food establishment by the District Health Department. (7-1-95)

~~j.~~ All therapy services, with the exception of physical therapy, must be provided by a provider agency capable of supervising the direct service. Providers of services must meet the provider qualifications listed in the State Plan. (7-1-95)

~~k.~~ Nursing service providers must provide documentation of current Idaho licensure as a licensed professional nurse (RN) or licensed practical nurse (LPN) in good standing. (7-1-95)(10-1-03)T

~~k.~~ Behavior Consultation/Crisis Management Providers must meet the following: (7-1-95)

i. Work for a provider agency capable of supervising the direct service or work under the direct supervision of a licensed psychologist or Ph.D. in Special Education, with training and experience in treating severe behavior problems and training and experience in applied behavior analysis; and (7-1-95)

ii. Must have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, special education or a closely related course of study; or (7-1-95)

iii. Be a licensed pharmacist; or (7-1-95)

iv. Be a Qualified Mental Retardation Professional (QMRP). (7-1-97)(10-1-03)T

v. Emergency back-up providers must meet the minimum residential habilitation provider qualifications under Residential Habilitation services described under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies". (7-1-95)(10-1-03)T

~~m.~~ Providers of adult day care services work for a provider must be employed by or be affiliated with the residential habilitation agency that provides program coordination for the participant if the service is provided to a single participant in a certified family home other than the participant's primary residence, be capable of supervising direct services, provide services as identified on the Individual Support Plan of service, provide care and supervision identified on the participant's residential habilitation plan, and must meet the following minimum qualifications: (4-5-00)(10-1-03)T

i. Demonstrate the ability to communicate and deal effectively, assertively, and cooperatively with a variety of people; (4-5-00)

ii. Be a high school graduate, or have a GED or demonstrate the ability to provide services according to the Individual Support Plan of service; (4-5-00)(10-1-03)T

iii. Be free from communicable disease; (4-5-00)

iv. Pass a Criminal History Check as required by IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks"; (4-5-00)(10-1-03)T

v. Demonstrate knowledge of infection control methods; and (4-5-00)

vi. Agree to practice confidentiality in handling situations that involve waiver participants. (4-5-00)

**076. Recipient Participant Eligibility Determination.** Waiver eligibility will be determined by the Regional ACCESS Unit Department as described in IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". The recipient participant must be financially eligible for MA as described in IDAPA 16.03.05, Section 787, "Rules Governing Eligibility for Aid for the Aged, Blind, and Disabled (AABD)". The cited chapter implements and is in accordance with the Financial Eligibility Section of the Idaho State Plan. In addition, waiver recipients participants must meet the following requirements: (4-5-00)(10-1-03)T

a. Recipient DD waiver participants must be eighteen (18) years of age or older. ISSH waiver participants must be fifteen (15) years of age through the month of their eighteenth birthday. (4-5-00)(7-15-03)T

- b. The ~~Regional ACCESS Unit~~ Department or its designee must determine that: ~~(7-1-95)~~(10-1-03)T
- i. The ~~recipient participant~~ would qualify for ICF/MR level of care as set forth in Section 610 of these rules, if the waiver services listed in Section 143 of these rules were not made available; and ~~(5-3-03)~~(10-1-03)T
- ii. The ~~recipient participant~~ could be safely and effectively maintained in the requested/ or chosen community residence with appropriate waiver services. This determination must: be made by a team of individuals with input from the ~~ISP~~ person-centered planning team; and prior to any denial of services on this basis, be determined by the ~~Service Coordinator~~ plan developer that services to correct the concerns of the team are not available. ~~(7-1-95)~~(10-1-03)T
- iii. The average ~~daily annual~~ cost of waiver services and other medical services to the ~~recipient participant~~ would not exceed the average ~~daily annual~~ cost to Medicaid of ICF/MR care and other medical costs. ~~Individual recipients whose cost of services exceeds this average may be approved on a case-by-case basis that assures that the average per capita expenditures under the waiver do not exceed one hundred percent (100%) of the average per capita expenditures for ICF/MR care under the State plan that would have been made in that fiscal year had the waiver not been granted. This approval will be made by a team identified by the Administrators of the Divisions of Medicaid and Family and Community Services.~~ ~~(7-1-97)~~(10-1-03)T
- iv. Following the approval by the ~~ACCESS Unit~~ Department for services under the waiver, the ~~recipient participant~~ must receive and continue to receive a waiver service as described in these rules. A ~~recipient participant~~ who does not use a waiver service for thirty (30) consecutive days will be terminated from the waiver program. ~~(7-1-95)~~(10-1-03)T
- c. A ~~recipient participant~~ who is determined by the ~~ACCESS Unit~~ Department to be eligible for services under the Home and Community Based Services Waivers for ~~developmentally disabled~~ ISSH and DD may elect to not utilize waiver services but may choose admission to an ICF/MR. ~~(7-1-95)~~(10-1-03)T
- d. The ~~recipient's eligibility examiner~~ participant's self-reliance staff will process the application in accordance with IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)," as if the application was for admission to an ICF/MR, except that the ~~eligibility examiner~~ self-reliance staff will forward potentially eligible applications immediately to the ~~ACCESS Unit~~ Department for review. The Medicaid application process cited above conforms to all statutory and regulatory requirements relating to the Medicaid application process. ~~(4-5-00)~~(10-1-03)T
- e. The decisions of the ~~ACCESS Unit~~ Department or its designee regarding the acceptance of the ~~recipients participants~~ into the waiver program will be transmitted to the ~~eligibility examiner~~ self-reliance staff. ~~(7-1-95)~~(10-1-03)T

**08. Case Redetermination.** (7-1-95)

a. Financial redetermination will be conducted pursuant to IDAPA 16.03.01, "Rules Governing Eligibility for Medicaid for Families and Children," and IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)". Medical redetermination will be made at least annually by the ~~ACCESS Unit~~ Department, or sooner at the request of the ~~recipient participant~~, the ~~eligibility examiner~~ self-reliance staff, provider agency or physician. The sections cited implement and are in accordance with Idaho's approved ~~s~~State ~~p~~Plan with the exception of deeming of income provisions. ~~(4-5-00)~~(10-1-03)T

b. The redetermination process will assess the following factors: (7-1-95)

i. The ~~recipient's~~ participant's continued need and eligibility for waiver services; and ~~(7-1-95)~~(10-1-03)T

ii. Discharge from the waiver services program. (7-1-97)

**098. Provider Reimbursement.** (7-1-95)

a. Waiver service providers will be paid on a fee for service basis based on the type of service provided as established by the Department. (7-1-95)

b. Provider claims for payment will be submitted on claim forms provided or approved by the Department. Billing instructions will be provided by the Department. (7-1-95)

c. The ~~fees reimbursement rates~~ calculated for waiver services include both services and mileage. No separate charges for mileage will be paid by the Department for provider transportation to and from the ~~recipient's~~ participant's home or other service delivery location when the ~~recipient~~ participant is not being provided transportation. (7-1-95)(10-1-03)T

**409. Provider Records.** Three (3) types of record information will be maintained on all ~~recipients~~ participants receiving waiver services: (7-1-97)(10-1-03)T

a. Direct Service Provider Information which includes written documentation of each visit made or service provided to the ~~recipient~~ participant, and will record at a minimum the following information: (7-1-95)(10-1-03)T

i. Date and time of visit; and (7-1-95)

ii. Services provided during the visit; and (7-1-95)

iii. A statement of the ~~recipient's~~ participant's response to the service, if appropriate to the service provided, including any changes in the ~~recipient's~~ participant's condition; and (7-1-95)(10-1-03)T

iv. Length of visit, including time in and time out, if appropriate to the service provided. Unless the ~~recipient~~ participant is determined by the Service Coordinator to be unable to do so, the delivery will be verified by the ~~recipient~~ participant as evidenced by their signature on the service record. (7-1-95)(10-1-03)T

v. A copy of the above information will be maintained in the ~~recipient's~~ participant's home unless authorized to be kept elsewhere by the ~~ACCESS Unit~~ Department. Failure to maintain such documentation will result in the recoupment of funds paid for undocumented services. (7-1-97)(10-1-03)T

b. The ~~individual support plan which is initiated by the ACCESS Unit and~~ of service developed by the ~~Service Coordinator~~ plan developer and the ~~ISP~~ person-centered planning team must specify which ~~waiver~~ services are required by the ~~recipient~~ participant. The plan ~~will~~ of service must contain all elements required by Subsection 143.03 of these rules and a copy of the most current ~~individual support plan will~~ of service must be maintained in the ~~recipient's~~ participant's home and ~~will~~ must be available to all service providers and the Department. (7-1-95)(10-1-03)T

c. In addition to the ~~individual support plan of service, at least monthly the service coordinator will verify in writing, that the services provided were consistent with the individual support plan. Any changes in the plan will be documented and include the signature of the service coordinator and when possible, the recipient~~ all providers, with the exception of chore, non-medical transportation, and enrolled Medicaid vendors, must submit a provider status review six (6) months after the start date of the plan of service and annually to the plan monitor as described in IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". (7-1-95)(10-1-03)T

**140. Provider Responsibility For Notification.** It is the responsibility of the service provider to notify the service coordinator or plan developer when any significant changes in the ~~recipient's~~ participant's condition are noted during service delivery. Such notification will be documented in the service record. (7-1-95)(10-1-03)T

**141. Records Maintenance.** In order to provide continuity of services, when a ~~recipient is transferred among~~ participant changes service providers, plan developers, or ~~when a recipient changes~~ service coordinators, all of the foregoing ~~recipient~~ participant records will be delivered to and held by the ~~Regional ACCESS Unit~~ Department until a replacement service provider, plan developer, or service coordinator ~~assumes the case~~ is selected by the participant. When a ~~recipient~~ participant leaves the waiver services program, the records will be retained by the

~~Regional ACCESS Unit Department~~ as part of the ~~recipient's~~ participant's closed case record. Provider agencies will be responsible to retain their client's records for three (3) years following the date of service. ~~(7-1-97)~~(10-1-03)T

**132. Home And Community-Based Waiver ~~Recipient~~ Participant Limitations.** The number of Medicaid ~~recipients~~ participants to receive waiver services under the home and community based waiver for developmentally disabled ~~recipients~~ participants will be limited to the projected number of users contained in the Department's approved waiver. Individuals who apply for waiver services after the waiver maximum has been reached will be placed on a waiting list and will have their applications processed after September 30 for the DD waiver and after June 30 for the ISSH waiver of each new waiver year. ~~The earliest effective date of waiver service delivery for these recipients will be October 1 of each new waiver year.~~ ~~(7-1-97)~~(10-1-03)T

**(BREAK IN CONTINUITY OF SECTIONS)**

~~**656. REQUEST FOR RECONSIDERATION OF ICF/MR LEVEL OF CARE.**~~

~~Persons who have been found to not be eligible for ICF/MR level of care may request a reconsideration by a team which includes administrative staff from the Division of Family and Community Services, the Division of Medicaid and Interdisciplinary Professionals who were not involved in the original eligibility decision prior to a request for fair hearing.~~ (4-5-00)

~~**01. Time Frame For Receiving Appeal.** An appeal for a administrative review must be received by the regional program fifteen (15) days from the regional denial. This action does not replace the right to a fair hearing.~~ (4-5-00)

~~**02. Time Frame For Requesting Fair Hearing.** Persons who receive a denial from the Administrative Review may request a fair hearing within thirty (30) days of the administrative denial.~~ (4-5-00)

~~657~~6. -- 659. (RESERVED).

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.13 - PRIOR AUTHORIZATION FOR BEHAVIORAL HEALTH SERVICES**  
**DOCKET NO. 16-0313-0301**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective October 1, 2003.

**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 Sections 56-202(b) and 56-203(g), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

<b>Monday, October 6, 2003</b> <b>7:00 - 9:00 p.m.</b> <b>Region I</b> <b>1120 Ironwood Drive</b> <b>Coeur d'Alene, ID</b>	<b>Wednesday, October 8, 2003</b> <b>7:00 - 9:00 p.m.</b> <b>Region IV</b> <b>1720 Westgate Drive</b> <b>Boise, ID</b>	<b>Thursday, October 9, 2003</b> <b>7:00 - 9:00 p.m.</b> <b>Region VI</b> <b>421 Memorial Drive</b> <b>Pocatello, ID</b>
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The hearing sites 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 rule making:

This new chapter of rules covers prior authorization for Developmental Disability (DD) program services for eligible adults that are reimbursed by Idaho Medicaid. These include: Home and Community Based Services (HCBS) Waiver services for the Developmentally Disabled and for Idaho State School and Hospital (ISSH) Waiver participants, Targeted Service Coordination, and Developmental Disability Agency (DDA) services for adults.

These rules require an assessment of the individuals seeking any of the above-mentioned services. Based on the findings of the assessment, a participant budget is established for each participant. Participants, their representatives, or both, will negotiate for the type and amount of services they require and desire. The Department or its designee will authorize the medically necessary services, reauthorize such services at least annually, and regularly conduct quality improvement reviews.

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

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226(1)(a), Idaho Code and are necessary in order to protect the public health, safety and welfare.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted by the Department of Health and Welfare. However, during the past three (3) years, the Department has engaged both in extensive public participation efforts and a pilot program to gather public input on and subsequently develop and test the prior authorization process formalized in this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Mary Wells at (208) 364-1955.

Anyone can submit written comments regarding the proposed rule. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 23rd day of July, 2003.

Sherri Kovach, Administrative Procedures Coordinator  
DHW - Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 332-7347 fax / kovachs@idhw.state.id.us e-mail

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0313-0301**

**IDAPA 16**  
**TITLE 03**  
**CHAPTER 13**

**16.03.13 - PRIOR AUTHORIZATION FOR BEHAVIORAL HEALTH SERVICES**

**000. LEGAL AUTHORITY.**

The Idaho Department of Health and Welfare has the authority to promulgate rules governing prior authorization under Sections 56-202(b) and 56-203(g), Idaho Code. (10-1-03)T

**001. TITLE, POLICY AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.03.13, "Prior Authorization For Behavioral Health Services". (10-1-03)T

**02. Policy And Scope.** The policy is to assure the provision of the right care, in the right place, at the right price, and with the right outcomes in order to enhance health and safety, and to promote participants' rights, self-determination, and independence. Prior authorization involves the assessment of the need for services, development of a budget, development of a plan of services, prior approval of services, and a quality improvement program. Services are reimbursable if they are identified on the authorized plan of service and are consistent with the purpose and rule for prior authorization as well as rules for the specific service. The scope of these rules defines prior authorization for the following Medicaid behavioral health services for adults: (10-1-03)T

**a.** DD/ISSH Waiver services as described at IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 143; and (10-1-03)T

**b.** Developmental Disability Agency services as described at IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 120 and IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies"; and (10-1-03)T

**c.** Service Coordination for persons with developmental disabilities as described at IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 118. (10-1-03)T

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for these rules. (10-1-03)T

**003. RECONSIDERATIONS, COMPLAINTS, AND ADMINISTRATIVE APPEALS.**

**01. Reconsideration.** Participants with developmental disabilities who are adversely affected by a Department decision regarding program eligibility and authorization of services under these rules may request a

reconsideration within thirty (30) days from the date the decision was mailed. The reconsideration must be performed by an interdisciplinary team with at least one (1) individual who was not involved in the original decision. The reviewers must consider all information and must issue a written decision within fifteen (15) days of receipt of the request. (10-1-03)T

**02. Complaints.** Participant complaints about the assessment process, eligibility determination, plan development, quality of service, and other relevant concerns may be referred to the Division of Medicaid, Bureau of Care Management. (10-1-03)T

**03. Administrative Appeals.** Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (10-1-03)T

**004. INCORPORATION BY REFERENCE.**  
The Department has incorporated by reference the following document: (10-1-03)T

**01. SIB-R Comprehensive Manual.** Scales of Independent Behavior - Revised Comprehensive Manual, 1996, Riverside Publishing Co, 425 Spring Lake Drive, Itasca, IL 60143-2079. (10-1-03)T

**02. Availability Of Incorporated Documents.** A copy is available for public review at the Department of Health and Welfare, 450 West State Street, P.O. Box 83720, Boise, Idaho 83720-0036. (10-1-03)T

**005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (10-1-03)T

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (10-1-03)T

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (10-1-03)T

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (10-1-03)T

**05. Internet Website.** The Department's internet website is found at "<http://www2.state.id.us/dhw/>". (10-1-03)T

**006. PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.**  
Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records". (10-1-03)T

**007. -- 009. (RESERVED).**

**010. DEFINITIONS (A THROUGH L).**  
For the purposes of these rules the following terms are used as defined below: (10-1-03)T

**01. Adult.** A person who is eighteen (18) years of age or older or an ISSH Waiver participant. (10-1-03)T

**02. Assessment.** A process that is described in Section 100 of these rules for program eligibility and in Section 200 of these rules for plan of service. (10-1-03)T

**03. Assessor.** A contractor that has no financial interest in the provision of Medicaid behavioral health care services and is responsible for conducting an assessment for services as well as authorization of services. (10-1-03)T

- 04. Budget.** The level of financial support that corresponds to a participant's assessed needs, level of support determined by the SIB-R, and the past three (3) years' expenditures, when available. Using this information, the budget is negotiated with the plan developer, participant, and assessor. (10-1-03)T
- 05. Care Manager.** A Department employee who conducts clinical evaluations for the completion of exception reviews, concurrent reviews, crisis authorizations, and reconsiderations of decisions. (10-1-03)T
- 06. Clinical Review.** A process of professional review that validates the need for continued services. (10-1-03)T
- 07. Community Crisis Support.** Intervention for participants who are at risk of losing housing, employment or income, or who are at risk of incarceration, physical harm, family altercations or other emergencies. (10-1-03)T
- 08. Concurrent Review.** A clinical review to determine the need for continued prior authorization of services. (10-1-03)T
- 09. Customer.** Any stakeholder with the exception of the participant. (10-1-03)T
- 10. Department.** The Idaho Department of Health and Welfare. (10-1-03)T
- 11. Developmental Disability.** A developmental disability, as defined in Section 66-402, Idaho Code, means a chronic disability of a person that appears before the age of twenty-two (22) years of age and: (10-1-03)T
- a.** Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other conditions found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services or is attributable to dyslexia resulting from such impairments; and (10-1-03)T
  - b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity: (10-1-03)T
    - i. Self-care; (10-1-03)T
    - ii. Receptive and expressive language; (10-1-03)T
    - iii. Learning; (10-1-03)T
    - iv. Mobility; (10-1-03)T
    - v. Self-direction; (10-1-03)T
    - vi. Capacity for independent living; or (10-1-03)T
    - vii. Economic self-sufficiency; and (10-1-03)T
  - c.** Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and individually planned and coordinated. (10-1-03)T
- 12. Exception Review.** A clinical review of a plan that falls outside the established standards. (10-1-03)T
- 13. Independent Assessment Provider (IAP) Or Assessor.** See definition for Assessor in Section 010 of these rules. (10-1-03)T
- 14. Intermediate Care Facility For Persons With Mental Retardation (ICF/MR).** An intermediate

care facility whose primary purpose is to provide habilitative services and maintain optimal health status for individuals with mental retardation or persons with related conditions. (10-1-03)T

**15. Level Of Support.** An assessment score derived from the SIB-R that indicates types and amounts of services and supports necessary to allow the individual to live independently and safely in the community. (10-1-03)T

**011. DEFINITIONS (M THROUGH Z).**

For the purposes of these rules the following terms are used as defined below: (10-1-03)T

**01. Medical Necessity.** A service is medically necessary if: (10-1-03)T

**a.** It is reasonably calculated to prevent, diagnose, or treat conditions in the participant that endanger life, cause pain, or cause functionally significant deformity or malfunction; and (10-1-03)T

**b.** There is no other equally effective course of treatment available or suitable for the participant requesting the service which is more conservative or substantially less costly. (10-1-03)T

**c.** Medical services must be of a quality that meets professionally recognized standards of health care and must be substantiated by records including evidence of such medical necessity and quality. Those records must be made available to the Department upon request. (10-1-03)T

**02. Participant.** A person who receives health care services and is eligible for Medicaid. (10-1-03)T

**03. Person-Centered Planning Process.** A planning team of family and individuals who are significant to the participant and who collaborate with the participant to develop the plan of service. This team is convened and facilitated by a plan developer. (10-1-03)T

**04. Plan Developer.** A paid or nonpaid person identified by the participant who is responsible for developing one (1) plan of service and subsequent addenda that cover all services and supports, based on a person-centered planning process. (10-1-03)T

**05. Plan Monitor.** A person who oversees the provision of services on a paid or non-paid basis. The plan developer is the plan monitor unless there is a Service Coordinator, in which case the Service Coordinator assumes both roles. (10-1-03)T

**06. Plan Monitor Summary.** A summary that provides information to evaluate plans and initiate action to resolve any concerns. The plan monitor must complete a plan monitor summary when the plan has been in effect for six (6) months and at the annual person-centered planning process. The summary is based on the provider status reviews referred to in Subsection 300.06 of these rules. The plan monitor will use the provider information to evaluate plans and initiate action to resolve any concerns. (10-1-03)T

**07. Plan Of Service.** An initial or annual plan that identifies all services and supports based on a person-centered planning process. Plans are authorized annually every three hundred sixty-five (365) days. (10-1-03)T

**08. Prior Authorization (PA).** A process for determining a participant's eligibility for services and medical necessity prior to the delivery or payment of services as provided by these rules. (10-1-03)T

**09. Provider Status Review.** The written documentation that identifies the participant's progress toward goals defined in the plan of service. (10-1-03)T

**10. Right Care.** Accepted treatment for defined diagnosis, functional needs and abilities to achieve the desired outcome. The right care is consistent with best practice and continuous quality improvement. (10-1-03)T

**11. Right Place.** Services delivered in the most integrated setting in which they normally occur, based on the participant's choice to promote independence. (10-1-03)T

**12. Right Price.** The most integrated and least expensive services that are sufficiently intensive to address the participant's needs. The amount is based on the individual's needs for services and supports as identified in the assessment. (10-1-03)T

**13. Right Outcomes.** Services based on assessed need that ensure the health and safety of the participant and result in progress, maintenance, or delay or prevention of regression for the participant. (10-1-03)T

**14. Service Coordination.** Service coordination is an activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. (10-1-03)T

**15. Service Coordinator.** An individual who provides service coordination to a Medicaid-eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 118. This includes Targeted Service Coordinators. (10-1-03)T

**16. Services.** Services paid for by the Department that enable the individual to reside safely and effectively in the community. (10-1-03)T

**17. SIB-R.** The Scales of Independent Behavior - Revised (SIB-R) is a standardized assessment tool evaluating functional skill levels and evaluating maladaptive behavior. The SIB-R is used by the Department or its designee to determine waiver eligibility, skill level to identify the participant's needs for the plan of service, and for determining the participant budget. (10-1-03)T

**18. Supports.** Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. (10-1-03)T

**012. -- 099. (RESERVED).**

**100. DETERMINATION OF PROGRAM ELIGIBILITY FOR ADULTS WITH A DEVELOPMENTAL DISABILITY.**

The Department will make the final determination of an individual's eligibility, based upon the assessments and evaluations administered by the Department or its designee. Initial and annual assessments must be performed by the Department or its designee. The purpose of the assessment is to determine a participant's eligibility for developmental disabilities services in accordance with Section 66-402(4), Idaho Code, and for ICF/MR level of care for waiver services in accordance with IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Sections 610 through 615. (10-1-03)T

**01. Initial Assessment.** For new applicants, an assessment must be completed within thirty (30) days from the date a completed application is submitted. (10-1-03)T

**02. Annual Assessments.** Assessments must also be completed for current participants at the time of their annual eligibility redetermination. The assessor must evaluate whether assessments are current and accurately describe the status of the participant. At least sixty (60) days before the expiration of the current plan of service: (10-1-03)T

**a.** The assessment process must be completed; and (10-1-03)T

**b.** The assessor must provide the results of the assessment to the participant. (10-1-03)T

**03. Determination Of Developmental Disability Eligibility.** The evaluations or assessments that are required for determining developmental disabilities for a participant's eligibility for developmental disabilities services must include a medical/social history and a functional assessment. Participants must provide the results of psychometric testing if eligibility for developmental disabilities services is based on mental retardation and they have no prior testing or prior testing is inconclusive. Documentation of diagnosis is required for participants whose eligibility is based on developmental disabilities other than mental retardation. A SIB-R will be administered by the

Department or its designee for use in this determination. (10-1-03)T

**04. ICF/MR Level Of Care Determination For Waiver Services.** The assessor will determine ICF/MR level of care for adults in accordance with IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Sections 610 through 615. (10-1-03)T

**101. -- 199. (RESERVED).**

**200. ASSESSMENT FOR PLAN OF SERVICE.**

The assessment for a plan of service is required for all participants prior to the development of the plan of service. This assessment must include the following: (10-1-03)T

**01. Physician's History And Physical.** The history and physical must include a physician's referral for nursing services under the DD and ISSH waivers and for developmental disabilities agencies' services, if they are anticipated to be part of the plan of service. A physician's history and physical is required within the year prior to the initiation of service and thereafter on a frequency determined by the physician. For participants in Healthy Connections: (10-1-03)T

**a.** The Healthy Connections physician may delegate to the Department the authority to approve developmental disability services. (10-1-03)T

**b.** The Healthy Connections physician must conduct the history and physical, and may refer the participant for other evaluations. (10-1-03)T

**02. Medical/Social And Developmental History.** (10-1-03)T

**03. SIB-R.** The results of the SIB-R are used to determine the level of support for the participant. The level of support score established by the SIB-R, as described in Chapter Five (5) of the SIB-R Comprehensive Manual, must be used as one (1) of the factors to establish a negotiated budget. A current SIB-R assessment must be evaluated prior to the initiation of service and must be reviewed annually to assure it continues to reflect the functional status of the participant. (10-1-03)T

**04. Participant's Medical Conditions, Risk Of Deterioration, Living Conditions, And Individual Goals.** (10-1-03)T

**05. Behavioral Or Psychiatric Needs That Require Special Consideration.** (10-1-03)T

**201. -- 209. (RESERVED).**

**210. DEVELOPING A PARTICIPANT BUDGET.**

**01. Methodology For Developing Participant Budget.** The participant budget is developed using the following methodology: (10-1-03)T

**a.** Evaluate the past three (3) years of Medicaid expenditures from the participant's profile, excluding physician, pharmacy, and institutional services; (10-1-03)T

**b.** Review all assessment information identified in Section 200 of these rules; (10-1-03)T

**c.** Identify the level of support derived from the most current SIB-R. The level of support is a combination of the individual's functional abilities and maladaptive behavior as determined by the SIB-R. Six (6) broad levels of support have been identified on a scale from zero to one hundred (0 - 100) (see Table 210.01.c.). There are six (6) levels of support, each corresponding to a support score range.

TABLE 210.01.c. - LEVEL OF SUPPORT	
Support Score Range	Level of Support
1-24	Pervasive
25-39	Extensive
40-54	Frequent
55-69	Limited
70-84	Intermittent
85-100	Infrequent

(10-1-03)T

**d.** Correlate the level of support identified by the SIB-R to a budget range derived from the expenditures of individuals at the same level of support across the adult DD population. This correlation will occur annually prior to the development to the plan of service; (10-1-03)T

**02. Negotiating An Appropriate Budget.** The assessor, the participant, and the plan developer must use all the information from Subsections 210.01.a. through 210.01.d. of this rule to negotiate an appropriate budget that will support the participant's identified needs. (10-1-03)T

**211. -- 299. (RESERVED).**

**300. PLAN OF SERVICE.**

In collaboration with the participant, the Department or its designee must assure that the participant has one (1) plan of service. This plan of service is based on the negotiated participant budget referred to in Section 210 of these rules and must identify all services and supports. Participants may develop their own plan or designate a paid or non-paid plan developer. In developing the plan of service, the plan developer and the participant must identify services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. Authorized services must be delivered by providers who are selected by the participant. (10-1-03)T

**01. Qualifications Of A Paid Plan Developer.** Neither a provider of direct service to the participant nor the assessor may be chosen to be the paid plan developer. Family members and all others who wish to be paid for plan development must be employed as a service coordinator as defined in IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 118. (10-1-03)T

**02. Plan Development.** The plan must be developed with the participant. With the participant's consent, the person-centered planning team may include family members, guardian, or individuals who are significant to the participant. In developing the plan of service, the plan developer and participant must identify any services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. The plan of service must be submitted within thirty (30) days prior to the expiration of the existing plan of service unless delayed because of participant unavailability due to extenuating circumstances. If the plan is not submitted within this time period, authorization for provider payments may be terminated. (10-1-03)T

**03. Prior Authorization Outside Of These Rules.** The plan developer must ensure that all services that require prior authorization outside of these rules are submitted to the appropriate unit of the Department. These services include: (10-1-03)T

- a.** Durable Medical Equipment (DME); (10-1-03)T
- b.** Transportation; and (10-1-03)T
- c.** Physical, speech and occupational therapy provided outside of a Development Disabilities Agency

(DDA). (10-1-03)T

**04. No Duplication Of Services.** The plan developer will ensure that there is no duplication of services if there are multiple plans of service. Duplicate services will not be authorized. (10-1-03)T

**05. Plan Monitoring.** The participant, service coordinator or paid plan monitor must monitor the plan. The planning team must identify the frequency of monitoring, which must be at least every ninety (90) days. Plan monitoring must include the following: (10-1-03)T

**a.** Review the plan of service in a face-to-face contact with the participant to identify the current status of programs and changes if needed; (10-1-03)T

**b.** Contact service providers to identify barriers to service provision; (10-1-03)T

**c.** Discuss participant satisfaction regarding quality and quantity of services; and (10-1-03)T

**d.** Review provider status reviews and complete a plan monitor summary. (10-1-03)T

**06. Provider Status Reviews.** Service providers must report the participant's progress toward goals to the plan monitor on the provider status review when the plan has been in effect for six (6) months and at the annual person-centered planning meeting. The semi-annual and annual reviews must include: (10-1-03)T

**a.** The status of supports and services to identify progress; (10-1-03)T

**b.** Maintenance; or (10-1-03)T

**c.** Delay or prevention of regression. (10-1-03)T

**07. Plan Monitor Summary.** The plan monitor must complete a plan monitor summary when the plan has been in effect for six (6) months and at the annual person-centered planning process. The summary is based on the provider status review. (10-1-03)T

**301. -- 309. (RESERVED).**

**310. CONTENT OF THE PLAN OF SERVICE.**

The plan of service must identify the type of service to be delivered, goals to be addressed within the plan year, frequency of supports and services, and identified service providers. The plan of service must include activities to promote progress, maintain functional skills, or delay or prevent regression. (10-1-03)T

**311. -- 319. (RESERVED).**

**320. NEGOTIATION FOR THE PLAN OF SERVICE.**

The plan of service must be negotiated with the participant if the requested services fall outside the negotiated budget or do not reflect the assessed needs. When the plan of service cannot be negotiated by the assessor, the plan developer, and the participant, it will be referred by the assessor to the Department's care manager for additional evaluation. Services will not be paid for unless they are authorized on the plan of service. (10-1-03)T

**321. -- 329. (RESERVED).**

**330. INFORMED CONSENT.**

Unless the participant has a guardian with appropriate authority, the participant must make decisions regarding the type and amount of services required. During plan development and amendment, planning team members must each indicate whether they believe the plan meets the needs of the participant, and represents the participant's choice. If not, the plan or amendment must be referred to the Bureau of Care Management's Medicaid Consumer Relations Specialist to negotiate a resolution with members of the planning team. (10-1-03)T

**01. No Guardian.** If the participant has no guardian or if the guardian is not readily available, service

coordination must be provided to coordinate and monitor services unless the participant chooses not to receive that service. (10-1-03)T

**02. Paid Provider.** If a paid provider is the guardian, there must be a service coordinator who is not the guardian, to coordinate and monitor services. (10-1-03)T

**331. -- 339. (RESERVED).**

**340. PROVIDER IMPLEMENTATION PLAN.**

Each provider of Medicaid services, subject to prior authorization, must develop an implementation plan that identifies specific objectives that demonstrate how the provider will assist the participant to meet the participant's goals and needs identified in the plan of service. (10-1-03)T

**01. Exceptions.** An implementation plan is not required for waiver providers of: (10-1-03)T

**a.** Specialized medical equipment; (10-1-03)T

**b.** Home delivered meals; (10-1-03)T

**c.** Environmental modifications; (10-1-03)T

**d.** Non-medical transportation; (10-1-03)T

**e.** Personal emergency response systems (PERS); (10-1-03)T

**f.** Respite care; and (10-1-03)T

**g.** Chore services. (10-1-03)T

**02. Time For Completion.** The implementation plan must be completed within fourteen (14) days after the initial provision of service, and revised whenever participant needs change. (10-1-03)T

**341. -- 349. (RESERVED).**

**350. ADDENDUM TO THE PLAN OF SERVICE.**

A plan of service may be adjusted during the year with an addendum to the plan. These adjustments must be based on changes in a participant's need or demonstrated outcomes. Additional assessments or information may be clinically necessary. Adjustment of the plan of service is subject to prior authorization by the Department or its designee. (10-1-03)T

**351. -- 399. (RESERVED).**

**400. COMMUNITY CRISIS SUPPORTS.**

Community crisis supports are interventions for participants who have been determined eligible for developmental disability services and who are at risk of losing housing, employment or income, or are at risk of incarceration, physical harm, family altercation, or other emergencies. Community crisis support may be authorized the following business day after the intervention if there is a documented need for immediate intervention, no other means of support are available, and the services are appropriate to rectify the crisis. Community crisis support is limited to a maximum of twenty (20) hours during any consecutive five (5) day period. (10-1-03)T

**01. Emergency Room.** Crisis services may be provided in an emergency room during the ER evaluation process if the goal is to prevent hospitalization and return the participant to the community. (10-1-03)T

**02. Before Plan Development.** Community crisis support may be provided before or after the completion of the assessment and plan of service. If community crisis support is provided before the completion of the assessment and plan of service, the plan of service must include an identification of the factors contributing to the crisis and a strategy for addressing those factors in the future. (10-1-03)T

**401. -- 499. (RESERVED).**

**500. ANNUAL REAUTHORIZATION OF SERVICES.**

A participant's plan of service must be reauthorized annually. The Department or its designee must review and authorize the new plan of service prior to the expiration of the current plan. (10-1-03)T

**01. Plan Developer Responsibilities For Annual Reauthorization.** A new plan of service must be provided to the Department or its designee by the plan developer at least thirty (30) days prior to the expiration date of the current plan. Prior to this, the plan developer must: (10-1-03)T

**a.** Notify the providers who appear on the plan of service of the annual review date. (10-1-03)T

**b.** Obtain a copy of the current annual provider status review from each provider for use by the person-centered planning team. Each provider status review must meet the requirements in Subsection 300.06 of these rules. (10-1-03)T

**c.** Convene the person-centered planning team to develop a new plan of service. (10-1-03)T

**02. Evaluation And Prior Authorization Of The Plan Of Service.** The plan of service must be evaluated and prior authorized in accordance with the requirements in Sections 200 through 320 of these rules. (10-1-03)T

**03. Adjustments To The Annual Budget And Services.** The annual budget and services may be adjusted based on demonstrated outcomes, progress toward goals and objectives, and benefit of services. (10-1-03)T

**04. Annual Status Reviews Requirement.** If the provider's annual status reviews are not submitted with the annual plan, services will not be authorized at the time of the annual reauthorization. These services may be added to the plan of service only by means of an addendum to the plan in accordance with Section 350 of these rules. (10-1-03)T

**05. Reapplication After A Lapse In Service.** For participants who are re-applying for service after a lapse in service, the assessor must evaluate whether assessments are current and accurately describe the status of the participant. (10-1-03)T

**06. Annual Assessment Results.** An annual assessment must be completed in accordance with Sections 100 and 200 of these rules. (10-1-03)T

**501. -- 599. (RESERVED).**

**600. QUALITY ASSURANCE AND IMPROVEMENT.**

**01. Quality Assurance.** Quality Assurance consists of audits and reviews to assure compliance with the Department's rules and regulations. If problems are identified during the review or audit, the provider must implement a corrective action plan within forty-five (45) days after the results are received. The Department may terminate authorization of service for providers who do not comply with the corrective action plan. (10-1-03)T

**02. Quality Improvement.** The Department may gather and utilize information from providers to evaluate customer satisfaction, participant satisfaction, outcomes monitoring, care management, quality assurance, quality improvement activities, and health and safety. These findings may lead to quality improvement activities to improve provider processes and outcomes for participants. (10-1-03)T

**03. Exception Review.** The Department will complete a clinical review of plans of service that exceed the budget authorized by the assessor or are inconsistent with the participant's assessed needs. The supporting documentation must demonstrate the medical necessity of services in the plan of service. (10-1-03)T

**04. Concurrent Review.** The Department will obtain the necessary information to determine that

participants continue to meet eligibility criteria, services continue to be clinically necessary, services continue to be the choice of the participant, and services constitute appropriate care to warrant continued authorization or need for the service. (10-1-03)T

**05. Abuse, Fraud, Or Substandard Care.** Reviewers finding suspected abuse, fraud, or substandard care must refer their findings for investigation to the Department and other regulatory or law enforcement agencies for investigation. (10-1-03)T

**601. -- 999. (RESERVED).**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.23 - RULES GOVERNING UNIFORM ASSESSMENTS FOR STATE-FUNDED CLIENTS**

**DOCKET NO. 16-0323-0301**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective October 1, 2003.

**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 Sections 56-202(b) and 56-203(g), and 39-4601, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

**Monday, October 6, 2003**  
**7:00 - 9:00 p.m.**  
**Region I**  
**1120 Ironwood Drive**  
**Coeur d'Alene, ID**

**Wednesday, October 8, 2003**  
**7:00 - 9:00 p.m.**  
**Region IV**  
**1720 Westgate Drive**  
**Boise, ID**

**Thursday, October 9, 2003**  
**7:00 - 9:00 p.m.**  
**Region VI**  
**421 Memorial Drive**  
**Pocatello, ID**

The hearing sites 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:

This rule change is being made to support the implementation of the Department's new prior authorization process found in new chapter of rules, IDAPA 16.03.13, "Prior Authorization of Behavioral Health Services". The rule change identifies the standard adopted by the Department to assess individuals with a developmental disability for determination of eligibility and determination of a participant budget for authorization of services.

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

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226(1)(a), Idaho Code and are necessary in order to protect the public health, safety and welfare.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted by the Department of Health and Welfare. However, during the past three (3) years, the Department has engaged both in extensive public participation efforts and a pilot program to gather public input on and subsequently develop and test the prior authorization process formalized in this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the this rulemaking, contact Mary Wells at (208) 364-1955.

Anyone can submit written comments regarding the proposed rule. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 23rd day of July, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone / (208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0323-0301

004. DEFINITIONS.

01. **Activities Of Daily Living.** Bathing, dressing, toileting, transferring, eating, and walking. (4-5-00)
02. **Client.** A person for whom the State of Idaho, or a program administered by the State of Idaho, pays all or any part of the cost of the person's care. (4-5-00)
03. **Department.** The Idaho Department of Health and Welfare. (4-5-00)
04. **Instrumental Activities Of Daily Living.** Meal preparation, money management, transportation, shopping, using the telephone, medication management, heavy housework, and light housework. (4-5-00)
05. **Service Plan.** A plan that describes the type and quantity of services that will be provided to a client, whether called a plan of care, plan for care, negotiated services agreement, individual support plan, or by some other name. (4-5-00)
06. **Significant Change In Client's Condition.** A major change in the client's status that affects more than one area of the client's functional or health status, and requires review or revision of the care plan or negotiated service agreement. (4-5-00)
07. **Supported Living Services.** Assistance with activities of daily living, instrumental activities of daily living, and supervision to enable a client to reside safely in the setting of the client's choice. (4-5-00)
08. **Supported Living Services Provider.** A facility or person that provides supported living services. Such facilities and persons include nursing facilities, licensed residential and assisted living facilities, certified family homes, specialized family homes, personal care service providers, semi-independent facilities, intermediate care facilities for persons with mental retardation, and home and community-based services waiver providers. (4-5-00)
09. **Uniform Assessment Or Uniform Assessment Instrument (UAI).** A set of standardized criteria adopted by the Department of Health and Welfare to assess functional and cognitive abilities. For participants using the Developmental Disabilities and Idaho State School and Hospital Waiver services, adults using Developmental Disability Agencies services, and Targeted Service Coordinator services, the Uniform Assessment is the Care Management-required testing and history under IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". (~~4-5-00~~)(10-1-03)T

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.04.11 - RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES (DDA)

DOCKET NO. 16-0411-0301

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** These temporary rules are effective October 1, 2003.

**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 Sections 56-202(b) and 56-203(g), and 39-4601, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

**Monday, October 6, 2003**  
7:00 - 9:00 p.m.  
Region I  
1120 Ironwood Drive  
Coeur d'Alene, ID

**Wednesday, October 8, 2003**  
7:00 - 9:00 p.m.  
Region IV  
1720 Westgate Drive  
Boise, ID

**Thursday, October 9, 2003**  
7:00 - 9:00 p.m.  
Region VI  
421 Memorial Drive  
Pocatello, ID

The hearing sites 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 rule making:

These rule changes are being made to support the implementation of the Department's new prior authorization process found in a new chapter of rules, IDAPA 16.03.13, "Prior Authorization of Behavioral Health Services".

These rule changes establish the requirement for Developmental Disabilities agencies (DDAs) to obtain prior authorization for DDA services for all adult participants. They also establish the requirement that DDAs submit provider status reviews semiannually and annually. In those portions of the text dealing with the prior authorization process, citations have been inserted to refer the reader to IDAPA 16.03.13. Other changes have been made to align terminology and content with that in IDAPA 16.03.13. The sections required by the Office of Administrative Rules were updated.

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

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226(1)(a), Idaho Code and are necessary in order to protect the public health, safety and welfare.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted by the Department of Health and Welfare. However, during the past three (3) years, the Department has engaged both in extensive public participation efforts and a pilot program to gather public input on and subsequently develop and test the prior authorization process formalized in this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Diane Helton at (208) 334-0603 or Mary Wells at (208) 364-1955.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 23rd day of July, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0411-0302**

**000. LEGAL AUTHORITY.**

The following rules for the licensure of developmental disabilities agencies and the provision of services to persons with developmental disabilities in Idaho are adopted under the statutory authority vested in the Board of Health and Welfare, ~~pursuant to~~ under the Developmental Disabilities Services and Facilities Act, Sections 39-4601 et seq., Idaho Code. (7-1-97)(10-1-03)T

**001. TITLE, POLICY AND SCOPE.**

~~These rules govern the licensing of providers of rehabilitative and habilitative services to persons with developmental disabilities and the provision of services to eligible persons. These rules are to be cited as Idaho Department of Health and Welfare Rules, IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies".~~ (7-1-97)

**01. Title.** The title of these rules is IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies". (10-1-03)T

**02. Policy.** It is the policy of the Department of Health and Welfare to make developmental disability rehabilitative and habilitative services available through community agencies, throughout the state, as authorized or mandated by law only to the extent of funding and available resources as may be appropriated by the Idaho legislature. It is the responsibility of the Department to assure developmental disability rehabilitative and habilitative services are available to those persons diagnosed as having a developmental disability. Services ~~shall~~ must be provided in community-based settings in natural environments such as home, work, leisure or center-based settings, based on ~~consumer~~ participant needs, interests or choices. Services provided by DDA's promote independence, participation and inclusion of people with developmental disabilities in their neighborhoods and communities. (7-1-97)(10-1-03)T

**03. Scope.** These rules govern the licensing of providers of rehabilitative and habilitative services to persons with developmental disabilities and the provision of services to eligible persons. (10-1-03)T

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for these rules. (10-1-03)T

**003. ADMINISTRATIVE APPEALS.**

Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (10-1-03)T

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into this chapter of rules. (10-1-03)T

**005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (10-1-03)T

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (10-1-03)T

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83720-0036. (10-1-03)T

**04. Telephone.** The telephone number for of the Idaho Department of Health and Welfare is (208) 334-5500. (10-1-03)T

**05. Internet Website.** The Department's internet website is found at "http://www2.state.id.us/dhw/". (10-1-03)T

**006. PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.**

Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records". (10-1-03)T

**007. -- 009. (RESERVED).**

**00310. DEFINITIONS -- A THROUGH O.**

For the purposes of these rules the following terms are used, as *herein* defined below: (7-1-97)(10-1-03)T

~~**01. ACCESS Unit.** Access to Care Coordination, Evaluation, Services and Supports. A regional multidisciplinary, transdivisional unit that has the responsibility of determining eligibility, authorizing services, and assuring quality services and supports for individuals with developmental disabilities. (7-1-97)~~

**01. Adult.** A person who is eighteen (18) years of age or older or an ISSH Waiver participant. (10-1-03)T

**02. Annual.** Every three hundred sixty-five (365) days except during a leap year which equals three hundred sixty-six (366) days. (7-1-97)

**03. Audiologist.** A person qualified to conduct hearing evaluation and therapy, who possesses a certificate of clinical competency in audiology or who will be eligible for certification within one (1) year of employment. Certification *shall* *must* be from the American Speech, Language and Hearing Association (ASHA). (7-1-97)(10-1-03)T

**04. Baseline.** Current level of ability to complete a task independently, as a basis for initiating therapeutic intervention. (7-1-97)

**05. Board.** The Idaho State Board of Health and Welfare. (7-1-97)

~~**06. Bureau Of Developmental Disabilities.** The section of the Department responsible for community programs for persons with developmental disabilities and which serves as the state developmental disability authority. (7-1-97)~~

~~**07. Consumer.** A person who has been identified as having a developmental disability as defined in this chapter and who is receiving services through a DDA. (7-1-97)~~

**086. Department.** The Idaho Department of Health and Welfare. (7-1-97)

**097. Developmental Disabilities Agency (DDA).** A developmental disabilities facility designated in accordance with these rules to provide (outpatient) rehabilitative or habilitative services to children or adults with developmental disabilities. (7-1-97)

**408. Developmental Disabilities Facility.** Any public or private organization or agency which provides developmental disabilities services on an inpatient, outpatient, residential, clinical or other programmatic basis, including community rehabilitation programs and developmental disabilities agencies. (7-1-97)

**409. Developmental Disabilities Professional (DDP).** A physician, psychologist, social worker, audiologist, speech and language pathologist specialist, developmental specialist, occupational therapist, physical therapist, or therapeutic recreation specialist employed by the developmental disabilities agency to provide evaluation and services as defined by the Department. (7-1-97)

**120. Developmental Disability.** A developmental disability, as defined in Section 66-402, Idaho Code, means a chronic disability of a person which appears before the age of twenty-two (22) years of age and: ~~(7-1-97)~~(10-1-03)T

**a.** Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments, which requires similar treatment or services or is attributable to dyslexia resulting from such impairments; and (7-1-97)

**b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (7-1-97)

**c.** Reflects the need for a combination or sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated. (7-1-97)

**131. Developmental Specialist.** A person qualified to conduct developmental evaluation and therapy, including: (3-30-01)

**a.** A person who possesses a bachelor's or master's degree in special education, early childhood special education, speech and language pathology, applied behavioral analysis, psychology, physical therapy, occupational therapy, social work, or therapeutic recreation and who has a minimum of two hundred forty (240) hours of professionally supervised experience with individuals who have developmental disabilities; or (3-30-01)

**b.** A person who possesses a bachelor's or master's degree in an area not listed in Subsection ~~00310.131~~ 10.131, a. of these rules, and who: ~~(3-30-01)~~(10-1-03)T

**i.** Has completed a competency course jointly approved by the Department and the Idaho Association of Developmental Disabilities Agencies which relates to the job requirements of a developmental specialist; and (3-30-01)

**ii.** Has passed a competency examination approved by the Department; and (3-30-01)

**iii.** Has a minimum of two hundred forty (240) hours of professionally supervised experience with individuals who have developmental disabilities; or (3-30-01)

**c.** A person who possesses a bachelor's or master's degree in an area not listed in Subsection ~~00310.131~~ 10.131, a. of these rules, and who: ~~(3-30-01)~~(10-1-03)T

**i.** Has passed a competency examination approved by the Department; and (3-30-01)

**ii.** Has a minimum of two hundred forty (240) hours of professionally supervised experience with individuals who have developmental disabilities; or (3-30-01)

**d.** A person who is exempt from the requirements of these rules: (3-30-01)

**i.** Any person employed as a developmental specialist prior to October 6, 1988 will be exempt from

the requirements of these rules as long as there is not a gap of more than three (3) years of employment as a developmental specialist; or (3-30-01)

ii. Any person employed as a developmental specialist prior to May 30, 1997, unless previously disallowed by the Department, will be exempt from the requirements of these rules. (3-30-01)

e. Developmental Specialists providing services to infants and toddlers, birth to three (3) years of age, must have a minimum of two hundred forty (240) hours of professionally supervised experience with young children who have developmental disabilities and one (1) of the following: (3-30-01)

i. An Elementary Education Certificate or Special Education Certificate with an Endorsement in Early Childhood Special Education; or (3-30-01)

ii. A bachelor's or master's degree in special education, elementary education, speech language pathology, early childhood education, physical therapy, occupational therapy, psychology, social work, or nursing plus a minimum of twenty (20) credits in Early Childhood Special Education (ECSE) from the listing of approved courses. Courses must cover content in each of the following areas: normal child development, characteristics of young children with disabilities and foundations of special education, curriculum and instruction in ESCE, assessment in ESCE and families of young children with disabilities. Closely related electives may be accepted with recommendation from an institution of higher education. In circumstances where there is a shortage of such qualified personnel to meet service needs the Department may approve the most qualified individuals who are demonstrating satisfactory progress toward completion of applicable course work in accordance with the individuals's approved plan to meet the required standard within three (3) years of being hired. Satisfactory progress will be determined on an annual review by the Department. (3-30-01)

f. Developmental Specialists providing services to children ages three (3) through seventeen (17) must meet one (1) of the Developmental Specialists definitions listed in Subsections ~~00310.131.a.~~ through ~~00310.131.d.~~ of this rule, and also complete a competency course regarding developmental evaluation and therapy for children and pass a competency examination that includes demonstration of learned skills within one (1) year of the availability of the Department approved competency course and examination. ~~(3-30-01)~~(10-1-03)T

g. Developmental Specialists providing services to children under the provisions of an Individualized Education Plan approved by a local school district must meet the personnel requirements established by the State Department of Education, Bureau of Special Education. Services must also be delivered in accordance with local school district and state education requirements for mandatory school attendance, and coordination of services, see Section 821 of these rules. ~~(3-30-01)~~(10-1-03)T

**142. Director.** The Director of the Idaho Department of Health and Welfare or his designee. (7-1-97)

~~**15. Division Of Family And Community Services.** *The division of the Department with responsibility for both community and institutional services for persons with developmental disabilities and mental illness.* (7-1-97)~~

**163. Evaluation.** A process by which the need for services or progress toward identified goals is determined. It may include a comprehensive assessment or a specific skill assessment for the purpose of determining baseline or the need for further intervention for the discipline area being assessed. (7-1-97)

**174. Habilitation.** The process of developing skills and abilities. (7-1-97)

**185. Initial License.** A license issued to a DDA upon application when the Department determines that all application requirements have been met. An initial license can be issued for a period not to exceed one hundred eighty (180) days from the initiation of services. This license allows the Department time to evaluate the agency's ongoing capability to provide services and to meet these rules. (7-1-97)

**196. Normalization.** The process of providing services which promote a life as much as possible like that of other citizens of the community, including living in the community and access to community resources. These services are designed to enhance the social image and personal competence of those being served. (7-1-97)

~~2017.~~ **Objective.** A behavioral statement of outcome developed to address an identified need of an individual. The need is identified by the ~~consumer~~ participant and guardian where applicable, and others the ~~consumer participant~~ has chosen to participate on his planning team, to be incorporated into the ~~consumer's participant's~~ repertoire of functional behaviors. The objective is written in measurable terms which specify a target date for completion, no longer than two (2) years in duration, and criteria for successful attainment of the objective.  
(~~7-1-97~~)(10-1-03)T

~~218.~~ **Occupational Therapist.** A person qualified to conduct occupational therapy evaluations and therapy, who is certified by the American Occupational Therapy Certification Board and licensed to practice in Idaho, and who has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities.  
(7-1-97)

**011. DEFINITIONS -- P THROUGH Z.**

For the purposes of these rules, the following terms are used as defined below: (10-1-03)T

~~2201.~~ **Paraprofessional.** A person such as an aide or therapy technician who is qualified to assist DDP's in providing services.  
(7-1-97)

~~02.~~ **Participant.** A person who receives health care services, is eligible for Medicaid, has been identified as having a developmental disability as defined in this chapter, and who is receiving services through a DDA.  
(10-1-03)T

~~203.~~ **Person-Centered Planning Process.** *The means by which the consumer and those individuals selected by the consumer to be team members, identify the consumer's talents, skills, strengths, needs and desires. A planning team of family and individuals who are significant to the participant and who collaborate with the participant to develop the plan of service. This team is convened and facilitated by a plan developer.*  
(~~7-1-97~~)(10-1-03)T

~~04.~~ **Plan Developer.** A paid or nonpaid person identified by the participant who is responsible for developing one (1) plan of service and subsequent addenda that covers all services and supports, based on a person-centered planning process.  
(10-1-03)T

~~05.~~ **Plan Monitor.** A person who oversees the provision of services on a paid or non-paid basis. The plan developer is the plan monitor unless there is a Service Coordinator, in which case the Service Coordinator assumes both roles.  
(10-1-03)T

~~06.~~ **Plan Of Service.** An initial or annual plan that identifies all services and supports based on a person-centered planning process. Plans are authorized annually every three hundred sixty-five (365) days.  
(10-1-03)T

~~2407.~~ **Physical Therapist.** A person qualified to conduct physical therapy evaluations and therapy, who is registered to practice in Idaho, and has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities.  
(7-1-97)

~~2508.~~ **Physician.** A person licensed to practice medicine in Idaho in accordance with the provisions of the Medical Practice Act, Sections 54-1801 et seq., Idaho Code.  
(7-1-97)

~~09.~~ **Prior Authorization (PA).** A process for determining a participant's eligibility for services and medical necessity prior to the delivery or payment of services as provided by these rules.  
(10-1-03)T

~~2610.~~ **Provider.** Any individual or organization furnishing services through the provisions of these rules.  
(7-1-97)

~~2711.~~ **Provider Agreement.** An agreement between a provider and third-party payor whereby the third-party payor agrees to pay the provider for furnishing developmental disabilities rehabilitative and habilitative services in accordance with these rules.  
(7-1-97)

**12. Provider Status Review.** The written documentation that identifies the participant's progress toward goals defined in the plan of service. (10-1-03)T

**3813. Provisional License.** A license issued to a DDA which is found not to be in substantial compliance with these rules but not to have deficiencies which jeopardize the health or safety of ~~consumers~~ participants. A provisional license can be issued for a specific period of time, not to exceed one hundred eighty (180) days, while corrections are being completed. (~~7-1-97~~)(10-1-03)T

**2914. Psychologist.** A person licensed by the State of Idaho in accordance with the provisions of Sections 54-2301 et seq., Idaho Code, to independently practice psychology, or who is exempt from such requirements and meets the minimum qualifications established by the Idaho Personnel Commission to perform the duties assigned in classified service as defined by the Department, and has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities. (7-1-97)

**3015. Psychology Assistant.** An individual who practices psychology under the supervision of a licensed psychologist as required by Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners". (7-1-97)

**316. Rehabilitation.** The process of improving skills or level of adjustment to increase the person's ability to maintain satisfactory independent or dependent functioning. (7-1-97)

**3217. Rehabilitative And Habilitative Services.** Evaluation and diagnostic services which include medical, social, developmental, psychological/psychiatric services, occupational therapy, physical therapy, and speech and hearing therapy. Treatment services which include individual, group and family-centered psychotherapy; individual and group speech and hearing therapy; individual and group physical therapy; individual and group developmental therapy, and individual and group occupational therapy. Evaluation, diagnostic and treatment services are to be provided on an outpatient basis and may be community-based, home-based, or center-based as consistent with the requirements of this chapter. (7-1-97)

**3318. Service.** Evaluation, diagnosis, therapy, training, assistance, or support provided to a person with a developmental disability by a DDA. (7-1-97)

**19. Service Coordination.** Service coordination is an activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. (10-1-03)T

**20. Service Coordinator.** An individual who provides service coordination to a Medicaid-eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 118. This includes Targeted Service Coordinators. (10-1-03)T

**3421. Social Worker.** A person licensed in accordance with the Social Work Licensing Act, Sections 54-3201 et seq., Idaho Code, and who has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities. (7-1-97)

**3522. Speech And Language Pathologist.** A person qualified to conduct speech/language evaluation and therapy, who possesses a certificate of clinical competency in speech-language pathology or who will be eligible for certification within one (1) year of employment. Certification ~~shall~~ must be from the American Speech Language and Hearing Association (ASHA). (~~7-1-97~~)(10-1-03)T

**3623. State Developmental Disability Authority.** ~~The Division of Family and Community Services, Bureau of Developmental Disabilities, within the~~ Department is the State Developmental Disability Authority which has statewide responsibility for planning, coordinating and monitoring developmental disabilities services. (~~7-1-97~~)(10-1-03)T

**3724. Substantial Compliance.** Deficiencies identified at the time of the survey by the licensing agency that do not present a serious risk to ~~consumers~~ participants' health or safety or seriously impede the agency's ability

to provide habilitative or rehabilitative services.

(7-1-97)(10-1-03)T

~~38~~**25. Supervision.** Initial direction and procedural guidance by a DDP and periodic inspection of the actual work performed at the site of service delivery. (7-1-97)

~~39.~~ **Targeted Service Coordinator.** *A regionally enrolled provider of the Department who is qualified by training and experience to develop and coordinate individual supports and services for eligible consumers of the Department, as defined in IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 118.* (7-1-97)

**26. Supports.** Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. (10-1-03)T

~~40~~**27. Temporary Developmental Disabilities Site Approval.** A location, established by a fully licensed agency, to provide additional services for ninety (90) or less consecutive days. (7-1-97)

~~42~~**28. U.L. Underwriters Laboratories.** (7-1-97)

~~004~~**12. -- 099. (RESERVED).**

**100. LICENSING OF OTHER LICENSED FACILITIES.**

Hospitals, skilled nursing facilities, intermediate care facilities for persons with mental retardation, community rehabilitation programs or other facilities or agencies licensed or certified under state law to provide medical, residential, professional or other services to persons with developmental disabilities need not be licensed under these rules unless the facility is seeking to provide rehabilitative and habilitative services to persons with developmental disabilities as described under Subsection ~~003.33~~ 011.17 of these rules. (7-1-97)(10-1-03)T

**101. REQUIRED LICENSING.**

All agencies providing or seeking to provide rehabilitative or habilitative services to persons with developmental disabilities described in Subsection ~~003.33~~ 011.17 of these rules ~~shall~~ must be licensed unless exempt from licensing requirements described in Section 100 of these rules. (7-1-97)(10-1-03)T

**102. -- 199. (RESERVED).**

**200. THE ROLE OF DEVELOPMENTAL DISABILITIES AGENCIES (DDA'S).**

Services ~~shall~~ must be directed toward persons identified as having a developmental disability as defined in these rules. Agencies ~~shall~~ must provide services to eligible ~~consumers~~ participants with developmental disabilities. (7-1-97)(10-1-03)T

**201. -- 299. (RESERVED).**

**300. LICENSURE OF DEVELOPMENTAL DISABILITIES AGENCIES DDA'S.**

**01. Application For Licensure.** ~~Any~~ All DDA's ~~shall~~ must apply for licensure under these rules. (7-1-97)(10-1-03)T

**02. Eligibility To Contract.** Any program not licensed under these rules is ineligible to enter into a contract with, or receive funds through, the Department for the purpose of providing rehabilitative and habilitative services to persons with developmental disabilities as outlined in Subsection ~~003.33~~ 011.17 of these rules. (7-1-97)(10-1-03)T

**03. Obligation To Contract.** Licensure of an agency by the Department does not constitute an obligation by the state to enter into a contract with that agency or otherwise provide state or federal funding or services. (7-1-97)

**301. APPLICATION FOR LICENSURE.**

**01. License Required.** Before any agency, private or public, profit or nonprofit, can provide rehabilitative and habilitative services to persons with developmental disabilities under these rules, it ~~shall~~ **must** make application for licensure. No ~~consumer shall~~ **participant may** receive services through an agency until the licensing agency has approved the application for licensure. No funding for services will be paid by the Department until the agency is licensed. ~~(7-1-97)(10-1-03)T~~

**02. Conformity.** Licensed agencies ~~shall~~ **must** conform to all applicable rules and rules of the Department, such as Medicaid reimbursement procedures, background checks, including compliance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," and fingerprinting requirements. ~~(3-30-01)(10-1-03)T~~

**03. Accessible Records.** The DDA and records required under these rules ~~shall~~ **must** be accessible during normal operations of the agency to the licensing agency for the purpose of inspection, with or without prior notification, ~~pursuant to~~ **under** Sections 39-4605(4) and 39-108, Idaho Code. ~~(7-1-97)(10-1-03)T~~

**04. Open Application.** Application for new agencies will be accepted on an open and continuous basis in accordance with Subsection 301.02 **of these rules.** ~~(7-1-97)(10-1-03)T~~

**05. National Accreditation.** The Department may adopt the policy of accepting national accreditation in lieu of state licensure for developmental disabilities agencies. ~~(7-1-97)~~

**06. Content Of Application.** Application ~~shall~~ **must** be made to the licensing agency of the Department on a form provided by the Department. The application and supporting documents ~~shall~~ **must** be received by the Department at least sixty (60) days prior to the planned opening date. The application shall include: ~~(7-1-97)(10-1-03)T~~

- a. Name, address and telephone number of the agency; and ~~(7-1-97)~~
- b. Types of services to be provided by the agency and the anticipated capacity of each service; and ~~(7-1-97)~~
- c. The service area of the agency; and ~~(7-1-97)~~
- d. The target population to be served and the service area to be covered by the program; and ~~(7-1-97)~~
- e. The anticipated date for the initiation of services; and ~~(7-1-97)~~
- f. A statement indicating the need for the agency's services; and ~~(7-1-97)~~
- g. A statement which identifies the ownership and describes the management structure of the agency, including a copy of the corporation's articles of incorporation with designation as nonprofit or profit, public or private, and a copy of the bylaws; and ~~(7-1-97)~~
- h. A statement that the agency is in compliance with these rules and all other applicable local, state and federal requirements, including an assurance that the agency is in compliance with the provisions of Subsection 925.02 **of these rules** governing nondiscrimination; and ~~(7-1-97)(10-1-03)T~~
- i. A copy of the proposed organizational chart or plan for staffing of the agency; and ~~(7-1-97)~~
- j. Staff qualifications including resumes, job descriptions and copies of state licenses for staff when applicable; and ~~(7-1-97)~~
- k. When center-based services are to be provided, evidence of a local fire safety inspection; and ~~(7-1-97)~~
- l. When center-based services are to be provided, evidence of compliance with local building and zoning codes; and ~~(7-1-97)~~

- m. When center-based services are provided, written policy and procedures regarding emergency evacuation procedures; and (7-1-97)
- n. Staff and ~~consumer~~ participant illness policy, communicable disease policy and other health and hygiene policies and procedures; and (~~7-1-97~~)(10-1-03)T
- o. Written admission and transition policy; and (7-1-97)
- p. Written ~~consumer~~ participant grievance policy; and (~~7-1-97~~)(10-1-03)T
- q. Program records system including completed examples of individual service plans, intervention techniques, and monitoring records; and (7-1-97)
- r. Fiscal record system including program billings and documentation of services provided ~~consumers~~ participants; and (~~7-1-97~~)(10-1-03)T
- s. Written description of the agency's quality assurance program; and (7-1-97)
- t. Any other information requested by the Department for determining the agency's compliance with these rules or the agency's ability to provide the services for which licensure is requested. (7-1-97)
- u. If the agency intends to seek a waiver or variance of any rule, then the application ~~shall~~ must include a written request for a waiver or variance request and ~~shall~~ must specify the particular rule and provide an explanation of the reasons for requesting the waiver or variance. (~~7-1-97~~)(10-1-03)T

**07. Agency Review.** Upon receipt of the application form and initial application materials, the licensing agency will review the materials to determine if the agency has in place systems, which if properly implemented, would result in regulatory compliance. (7-1-97)

**08. Written Decision.** A written decision with regard to licensure will be submitted to the agency by the licensing agency within thirty (30) days of the date the completed application packet is received in the licensing agency's office. (7-1-97)

**302. ISSUANCE OF TEMPORARY LICENSE.**

If an initial application for licensure is approved by the licensing agency, the agency will be issued a temporary license. Prior to the expiration of the temporary license, the licensing agency will conduct an on-site review of the agency to determine if the agency is in substantial compliance with the requirements of this chapter. A provisional license ~~shall~~ must not be issued immediately following a temporary license. (~~7-1-97~~)(10-1-03)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**304. CHANGE OF PHYSICAL LOCATION.**

**01. Notification Of Change.** Prior to changing physical locations, agencies providing center-based services ~~shall~~ must notify the licensing agency of the plans to relocate and the address of the new program site thirty (30) days prior to the actual move. (~~7-1-97~~)(10-1-03)T

**02. Evidence Of Review.** For the new physical location, agencies ~~shall~~ must provide evidence of review and approval by the local fire and building authorities and a statement verifying that the new location is accessible to persons with developmental disabilities. (~~7-1-97~~)(10-1-03)T

**305. ISSUANCE OF A PROVISIONAL LICENSE, DENIAL OR REVOCATION OF LICENSE.**

The Department will issue a provisional license, or deny or revoke the license if, after investigation of the agency, it

finds that the agency is not in substantial compliance with these rules. (7-1-97)

**01. Intent To Issue Provisional License.** At the time of a survey, the applicant will be notified of the intent to issue a provisional license, or deny or revoke the license and the reasons for the intended action. (7-1-97)

**02. Applicant Notification.** Within fifteen (15) days of the site review, the applicant will be notified in writing of the Department's decision and the reason(s) for the intended action, ~~pursuant to~~ under Sections 307 and 308 of these rules. ~~(7-1-97)~~(10-1-03)T

**03. Request For Hearing.** Within fifteen (15) days of the receipt date of the notice to issue a provisional license or deny or revoke the license, the applicant may request, in writing, a hearing with the Director and subsequently may appeal to the District Court. (7-1-97)

**04. Contested Case Provisions.** Upon receipt of the written request, a hearing will be scheduled and conducted in accordance with IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". A review decision will be sent to the applicant within thirty (30) days of the date of the conclusion of hearing. (7-1-97)

### **306. ISSUANCE AND TRANSFER OF LICENSE.**

**01. Issuance Of License.** A notice of licensure ~~shall~~ must be issued by the Department when it determines, in accordance with the provisions of this section, that the agency requesting licensure is in substantial compliance with these rules. Agencies found to be in substantial compliance with these rules but failing to comply with every detail may be issued a license when failure to comply does not present a serious risk to the ~~consumers'~~ participants' health or safety or seriously impede the agency's ability to provide rehabilitative or habilitative services. A license issued on the basis of substantial compliance is contingent upon the correction of deficiencies in accordance with a plan developed by the agency and approved by the Department. ~~(7-1-97)~~(10-1-03)T

**02. License Return.** The license is the property of the state and ~~shall~~ must be returned to the state if it is revoked or suspended in accordance with Sections 307 and 308 of these rules. ~~(7-1-97)~~(10-1-03)T

**03. License Not Transferable.** The license is issued only to the agency named thereon and may not be transferred or assigned to any other person or entity without the written permission of the Department. (7-1-97)

**04. Availability Of License.** The license ~~shall~~ must be available. ~~(7-1-97)~~(10-1-03)T

### **307. EXPIRATION AND RENEWAL OF LICENSE.**

All licenses issued under the provisions of these rules, except for those facilities exempted ~~pursuant to~~ under Section 100 of these rules, ~~shall~~ must continue for a period of no greater than two (2) years unless revoked. No later than ninety (90) days before expiration, an agency may apply for renewal of the license. Applicants for renewal will also require a site review by the licensing agency. Licensing will be reviewed no less than every two (2) years. An agency ~~shall~~ must be found to be in substantial compliance with these rules in order to receive renewal of the license. An application for renewal received less than ninety (90) days before expiration of the license ~~shall~~ must be treated as an application to be acted upon after timely applications of renewal and initial applications. ~~(7-1-97)~~(10-1-03)T

### **308. PROVISIONAL LICENSE.**

If a new applicant or applicant for renewal is found not to be in substantial compliance with these rules but does not have deficiencies which jeopardize the health or safety of ~~consumers~~ participants, a provisional license may be issued by the Department for a one hundred and eighty (180) day period. At that time, the licensing agency will determine whether areas of concern have been corrected. If so, then the regular license will be issued. If not, the license will be denied or revoked. ~~(7-1-97)~~(10-1-03)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**310. EMERGENCY REVOCATION.**

An agency's license may be immediately revoked when there is evidence of life-threatening danger or harm to consumers participants served. If, following investigation, the issue of the safety of consumers participants is resolved, then a license may be granted. (7-1-97)(10-1-03)T

**311. VARIANCE OR WAIVER.**

A variance or waiver to these rules in whole or in part may be granted if good cause is shown for such waiver; the health, welfare, or safety of consumers participants will not be endangered by granting such a waiver; the agency's ability to provide services will not be impeded by granting such a waiver; and precedent ~~shall~~ must not be set by the granting of such a waiver. The waiver may be renewed if sufficient written justification is presented to the licensing agency. (7-1-97)(10-1-03)T

**312. -- 599. (RESERVED).**

**600. MANAGEMENT INFORMATION SYSTEM.**

All licensed DDA's seeking funding from the Department ~~shall~~ must maintain a data base on consumer participant services. The agencies must be capable of providing the Department with basic consumer participant information such as, but not limited to, the number of persons with developmental disabilities served, diagnostic category, level of mental retardation, age, ~~sex~~ gender and hours of services. This information may be hand-tabulated or part of the agency's computerized information system. (7-1-97)(10-1-03)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**750. QUALITY ASSURANCE.**

Each DDA defined under these rules ~~shall~~ must develop and implement a quality assurance program. (7-1-97)(10-1-03)T

**01. Purpose.** The quality assurance program is an ongoing proactive internal review of the DDA designed to ensure: (7-1-97)

**a.** Services provided to consumers participants are high quality and consistent with individual choices, interests, and needs and current standards of practice; and (7-1-97)(10-1-03)T

**b.** Sufficient staff and material resources are available to meet the needs of each person served; and (7-1-97)

**c.** The environment in which center-based services are delivered is safe and conducive to learning; (7-1-97)  
and

**d.** Skill training activities are conducted in the natural setting where a person would commonly learn and utilize the skill, whenever appropriate; and (7-1-97)

**e.** The rights of a person with disabilities are protected and each person is provided opportunities and training to make informed choices. (7-1-97)

**02. Program Components.** The quality assurance program ~~shall~~ must be described in writing and include: (7-1-97)(10-1-03)T

**a.** Goals and procedures by which the purpose of the quality assurance program as described in Subsection 750.01 of these rules will be achieved; and (7-1-97)

**b.** Person, discipline or department responsible for each goal; and (7-1-97)

**c.** A system to ensure the correction of problems identified within a specified period of time; and

(7-1-97)

d. A method for assessing ~~consumer~~ participant satisfaction. (~~7-1-97~~)(10-1-03)T

03. **Additional Requirements.** The quality assurance program ~~shall~~ must ensure that services provided: (~~7-1-97~~)(10-1-03)T

a. Are developed with ~~consumer~~ participant and guardian where applicable, and actively promote participation, personal choice and preference; and (~~7-1-97~~)(10-1-03)T

b. Are age appropriate; and (7-1-97)

c. Promote normalization; and (7-1-97)

d. Provide opportunities for community participation and inclusion; and (7-1-97)

e. Offer opportunities for ~~consumers~~ participants to exercise their rights; and (~~7-1-97~~)(10-1-03)T

f. Are observable in practice. (7-1-97)

751. -- 759. (RESERVED).

760. **CONSUMER PARTICIPANT RIGHTS.**

Each person receiving services through an agency designated under these rules ~~shall~~ must be ensured the following rights: (~~7-1-97~~)(10-1-03)T

01. **Idaho Code.** Sections 66-412 and 66-413, Idaho Code, provides the following rights. (~~7-1-97~~)(10-1-03)T

a. Humane care and treatment; and (7-1-97)

b. Not be put in isolation; and (7-1-97)

c. Be free of mechanical restraints, unless necessary for the safety of that person or for the safety of others; and (7-1-97)

d. Be free of mental and physical abuse; and (7-1-97)

e. Communicate by telephone or otherwise and to have access to private area to make telephone calls and receive visitors; and (7-1-97)

f. Receive visitors at all reasonable times and to associate freely with persons of his own choice; and (7-1-97)

g. Voice grievances and to recommend changes in policies or services being offered; and (7-1-97)

h. Practice his own religion; and (7-1-97)

i. Wear his own clothing and to retain and use personal possessions; and (7-1-97)

j. Be informed of his medical and habilitative condition, of services available at the agency and the charges for the services; and (7-1-97)

k. Reasonable access to all records concerning himself; and (7-1-97)

l. Refuse services; and (7-1-97)

- m. Exercise all civil rights, unless limited by prior court order. (7-1-97)
- 02. Additional ~~Consumer~~ Participant Rights.** The agency ~~shall~~ must also ensure the following rights. (7-1-97)(10-1-03)T
- The right to:
- a. Privacy and confidentiality; and (7-1-97)
- b. Be treated in a courteous manner; and (7-1-97)
- c. Receive a response from the agency to any request made within a reasonable time frame; and (7-1-97)
- d. Receive services which enhance the ~~consumer's~~ participant's social image and personal competencies and, whenever possible, promote inclusion in the community; and (7-1-97)(10-1-03)T
- e. Refuse to perform services for the agency. If the ~~consumer~~ participant is hired to perform services for the agency the wage paid ~~shall~~ must be consistent with state and federal law; and (7-1-97)(10-1-03)T
- f. Review the results of the most recent survey conducted by the Department and the accompanying plan of correction; and (7-1-97)
- g. All other rights established by law; and (7-1-97)
- h. Be protected from harm. (7-1-97)
- 03. Method Of Informing ~~Consumers~~ Participants Of Their Rights.** Each agency ~~shall~~ must ensure that each person receiving services is informed of his rights in the following manner: (7-1-97)(10-1-03)T
- a. Upon initiation of services, each ~~consumer~~ participant and guardian, where applicable, ~~shall~~ must be provided with a packet of information which outlines rights, access to grievance procedures, and the names, addresses, and telephone numbers of protection and advocacy services. This packet ~~shall~~ must be written in easily understood terms. (7-1-97)(10-1-03)T
- b. When providing center-based services, agencies ~~shall~~ must prominently post a list of the rights contained in this chapter. (7-1-97)(10-1-03)T
- c. Each ~~consumer~~ participant and guardian, where applicable, ~~shall~~ must be provided with a verbal explanation of their rights in a manner that will best promote individual understanding of these rights. (7-1-97)(10-1-03)T

#### 761. APPLICANT SCREENING

The agency ~~shall~~ must develop policies and procedures, including compliance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," which ensure that individuals hired do not have a conviction or prior employment history of abuse, neglect, mistreatment, or exploitation of a child or vulnerable adult. (3-30-01)(10-1-03)T

#### 762. OBLIGATION TO REPORT.

All confirmed or suspected incidents of mistreatment, neglect, exploitation or abuse of ~~consumers~~ participants must be reported to the adult or child protection authority. (7-1-97)(10-1-03)T

#### 763. DEVELOPMENT OF POSITIVE SOCIAL BEHAVIORS.

Each DDA ~~shall~~ must develop and implement written policies and procedures that address the development of positive social behaviors and the management of inappropriate behavior. These policies and procedures ~~shall~~ must include: (7-1-97)(10-1-03)T

- 01. Positive Social Skills.** Focusing on increasing positive social skills. (7-1-97)

**02. Positive Approaches/Least Restrictive Alternatives.** Ensuring and documenting the use of positive approaches and least restrictive alternatives. (7-1-97)

**03. Protected Rights.** Ensuring that the safety, welfare and human and civil rights of *consumers participants* are adequately protected. (7-1-97)(10-1-03)T

**04. Underlying Causes.** Addressing the evaluation or assessment of the possible underlying causes of the inappropriate behavior and what the *consumer participant* may be attempting to communicate by the behavior. (7-1-97)(10-1-03)T

**05. Objectives And Plans.** Ensuring that objectives and intervention techniques are developed or obtained and implemented to address self-injurious behavior, aggressive behavior, inappropriate sexual behavior and any other behaviors which significantly interfere with the *consumer's participant's* independence or ability to participate in the community. (7-1-97)(10-1-03)T

**06. Training Alternate Behavior.** Ensuring that programs to manage inappropriate *consumer participant* behavior include training of the appropriate alternative behavior(s). (7-1-97)(10-1-03)T

**07. Consumer Participant Involvement.** For plans developed by the agency ensuring the *consumer participant* is involved, whenever possible, in developing the plan to manage inappropriate behavior. When plans used by the agency are developed by another service provider the agency *shall* must not be held accountable for ensuring *consumer participant* involvement in the development of the plan. (7-1-97)(10-1-03)T

**08. Written Informed Consent.** Ensuring that programs developed by the agency to manage inappropriate *consumer participant* behavior are conducted only with the written informed consent of the *consumer participant* and guardian where applicable. When programs used by the agency are developed by another service provider the agency *shall* must obtain a copy of the informed consent. (7-1-97)(10-1-03)T

**09. Review And Approval.** Ensuring that programs developed by the agency to manage inappropriate behavior are only implemented after the review and written approval of a DDP. If the program contains restrictive or aversive components, the agency psychologist will also review and approve, in writing, the plan prior to implementation. When programs implemented at the agency are developed by another service provider the agency *shall* must obtain a copy of these reviews and approvals. (7-1-97)(10-1-03)T

**10. Appropriate Use Of Interventions.** Ensuring that interventions used to manage inappropriate *consumer participant* behavior are never used: (7-1-97)(10-1-03)T

- a. For disciplinary purposes; or (7-1-97)
- b. For the convenience of staff; or (7-1-97)
- c. As a substitute for a needed training program; or (7-1-97)
- d. By untrained or unqualified staff. (7-1-97)

764. -- 799. (RESERVED).

**800. STANDARDS FOR ~~DDA'S DEVELOPMENTAL DISABILITIES AGENCIES (DDA) PROVIDING SERVICES TO CONSUMERS WITH AUTHORIZED INDIVIDUAL SUPPORT PLANS PARTICIPANTS AGE EIGHTEEN OR OLDER AND ISSH WAIVER PARTICIPANTS.~~**

~~DDA services for participants eighteen (18) years of age or older and ISSH Waiver participants must be prior authorized in accordance with IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". Each DDA shall must provide the following rehabilitative and habilitative services consistent with the needs of persons with developmental disabilities who have developed an Individual Support Plan with a Targeted Service Coordinator through a person centered planning process~~ eighteen (18) years of age or older or ISSH Waiver participants based on a plan of service authorized by the Department. (7-1-97)(10-1-03)T

- 01. Intake.** (7-1-97)
- ~~a.~~ *To ensure the health and safety of the consumer, a medical profile sheet which contains relevant medical and identifying information about the consumer and family, and accurately reflects the current status and needs of the consumer shall be obtained or completed prior to the delivery of services.* Prior to the delivery of any DDA services, the Department must find the person eligible for DDA services. ~~(7-1-97)(10-1-03)T~~
- ~~b.~~ Prior to the delivery of DDA services, ~~current and accurate comprehensive evaluations or specific skill assessments shall be completed or obtained, as necessary, to effectively plan the consumer's program. To be considered current, evaluations and assessments shall accurately reflect the current status of the consumer~~ all services must be prior authorized by the Department or its designee under IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". IBI services are authorized under Section 810 of these rules. ~~(7-1-97)(10-1-03)T~~
- 02. Evaluations.** (7-1-97)
- ~~a.~~ Comprehensive assessments which are completed by the agency ~~shall~~ must: ~~(7-1-97)(10-1-03)T~~
- ~~b.a.~~ Be conducted by qualified professionals for the respective disciplines as defined in this chapter; (7-1-97)
- ~~eb.~~ Be identified as a service on the ~~Individual Support Pplan~~ of service and be prior authorized by the Department or its designee. ~~(7-1-97)(10-1-03)T~~
- 03. Specific Skill Assessments.** Specific skill assessments which are completed by the agency ~~shall~~ must: ~~(7-1-97)(10-1-03)T~~
- and
- ~~a.~~ Be completed by qualified professionals for the respective disciplines as defined in this chapter; (7-1-97)
- ~~b.~~ Be identified as a service or need on the ~~Individual Support Pplan~~ of service; and ~~(7-1-97)(10-1-03)T~~
- ~~c.~~ Be conducted for the purposes of determining baselines, or the need for further interventions. (7-1-97)
- 04. Individual Support Plan Of Service.** Any services provided by the DDA must be included on the plan and authorized by the ~~Regional ACCESS Unit~~ Department or its designee before a ~~consumer participant~~ can receive the service from the agency. ~~(7-1-97)(10-1-03)T~~
- ~~05. Transition Plan.~~ ~~Each Targeted Service Coordinator shall annually review Individual Support Plans for progress/outcomes and facilitate transition to more independent activities.~~ ~~(3-30-01)~~
- 06. Implementation Plan.** The DDA ~~shall~~ must be required to develop an Implementation Plan for each service or support which is included on the ~~consumer's Individual Support participant's Pplan~~ of service provided by the agency as outlined in these rules. The Implementation Plan ~~shall~~ must be completed within fourteen (14) days from the time the services were provided and include: ~~(7-1-97)(10-1-03)T~~
- ~~a.~~ The ~~consumer's~~ participant's name; and ~~(7-1-97)(10-1-03)T~~
- ~~b.~~ The specific skill area; and (7-1-97)
- ~~c.~~ A baseline statement addressing the ~~consumer's~~ participant's specific skills and abilities related to the specific skill to be learned; and ~~(7-1-97)(10-1-03)T~~
- ~~d.~~ Measurable, behaviorally stated objectives which are developed from an identified service or support in the ~~Individual Support Pplan~~ of service; and ~~(7-1-97)(10-1-03)T~~

e. Written instructions to staff such as curriculum, lesson plans, locations, activity schedules, type and frequency of reinforcement and data collection, directed at the achievement of each objective. These instructions may be standardized, however, shall must be individualized and revised as necessary to promote consumer participant progress toward the stated objective. (7-1-97)(10-1-03)T

f. Identification of the specific environment(s) where services shall must be provided. (7-1-97)(10-1-03)T

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

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

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

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

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

**086. Program Documentation.** Each consumer's participant's record shall must include documentation of the consumer's participant's participation in and response to services provided. This documentation shall must include at a minimum: (7-1-97)(10-1-03)T

a. Daily entry of all activities conducted toward meeting consumer participant objectives; and (7-1-97)(10-1-03)T

b. Sufficient progress data to accurately assess the consumer's participant's progress toward each objective; and (7-1-97)(10-1-03)T

c. A review of the data and, when indicated, changes in the daily activities or specific implementation procedures by a DDP. The review shall must include the DDP's dated initials; and (7-1-97)(10-1-03)T

d. Documentation of notification of the consumer participant and when applicable, the consumer's participant's guardian. (7-1-97)(10-1-03)T

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

a. The DDA shall must coordinate the consumer's participant's DDA program with other service providers to maximize learning. (7-1-97)(10-1-03)T

b. ~~Documentation of Implementation Plan Changes.~~ Documentation of Implementation Plan changes will be included in the consumer's participant's record. This documentation shall must include at a minimum, the reason for the change, documentation of coordination with other service providers, where applicable, the date the change was made and the signature of the person making the change complete with date and title. A copy of ~~an ISP~~ the plan of service will suffice for compliance to this requirement. (7-1-97)(10-1-03)T

**108. Records.** Each DDA licensed under these rules shall must maintain accurate, current and complete consumer participant and administrative records. Each participant record ~~of consumers with Targeted Service Coordinators~~ shall must contain the following information: (7-1-97)(10-1-03)T

a. Documentation which verifies that the services provided are ~~recommended by a physician~~ authorized by the Department or its designee. A copy of ~~an Individual Support Plan~~ of service will suffice for compliance to this requirement; and (7-1-97)(10-1-03)T

b. When evaluations are completed or obtained by the agency the ~~consumer's~~ participant's record ~~shall~~ must include the evaluation forms and narrative reports, signed and dated by the respective evaluators; and  
(7-1-97)(10-1-03)T

c. A copy of the ~~Individual Support Pplan~~ plan of service authorized by the ~~ACCESS Unit~~ Department or its designee; and  
(7-1-97)(10-1-03)T

d. ~~Implementation Plans.~~ Program documentation and monitoring records which comply with all applicable sections of these rules; and  
(7-1-97)(10-1-03)T

e. The case record ~~shall~~ must be divided into program/discipline areas identified by tabs, such as, ~~Individual Support Pplan~~ plan of service, medical, social, psychological, speech, and developmental. (7-1-97)(10-1-03)T

**09. Provider Status Review.** DDAs must submit semiannual and annual status reviews to the plan monitor reflecting the status of behavioral objectives or services identified on the plan of service. Semiannual status reviews must remain in participant file and annual status reviews must be attached to annual plan of service.  
(10-1-03)T

**801. STANDARDS FOR DDA'S PROVIDING SERVICES TO ~~CONSUMERS WITHOUT TARGETED SERVICE COORDINATORS~~ PARTICIPANTS UNDER AGE EIGHTEEN WHO DO NOT USE ISSH WAIVER SERVICES.**

Each DDA ~~shall~~ must provide the following rehabilitative and habilitative services consistent with the needs of persons under age eighteen (18) or who do not use ISSH Waiver services with developmental disabilities ~~who have chosen not to access a Targeted Service Coordinator~~; to be available and accessible throughout its service area.  
(7-1-97)(10-1-03)T

**01. Eligibility Documentation.** Prior to the delivery of services, current and accurate comprehensive evaluations or specific skills assessments ~~shall~~ must be completed or obtained, as necessary to determine eligibility as defined in Section 66-402, Idaho Code, and the Department's current interpretive guidelines, and to effectively plan the ~~consumer's~~ participant's program.  
(7-1-97)(10-1-03)T

**02. Intake.** To ensure the health and safety of the ~~consumer~~ participant, medical information which accurately reflects the current status and needs of the ~~consumer~~ ~~shall~~ participant must be obtained prior to the delivery of services. When this information is not available, a comprehensive medical evaluation ~~shall~~ must be completed prior to the provision of services.  
(7-1-97)(10-1-03)T

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

a. Comprehensive evaluations which are completed by the agency ~~shall~~ must be conducted by qualified professionals for the respective disciplines as defined in this chapter, recommended by a physician, identify accurate, current and relevant ~~consumer~~ participant strengths, needs and interests as applicable to the respective discipline, and recommend the type and amount of therapy necessary to address the ~~consumer's~~ participant's needs.  
(7-1-97)(10-1-03)T

b. Prior to the delivery of ongoing services in a specific discipline a comprehensive medical, medical/social assessment ~~shall~~ must be completed or obtained.  
(7-1-97)(10-1-03)T

c. Evaluation or specific skill assessments from additional disciplines such as speech and language pathologists or physical therapists, ~~shall~~ must also be completed or obtained as necessary to meet the ~~consumer's~~ participant's needs.  
(7-1-97)(10-1-03)T

d. All evaluations ~~shall~~ must be completed within forty-five (45) calendar days of the date recommended by the physician. If not completed within this time frame, the ~~consumer's~~ participant's records must contain ~~consumer~~ participant-based documentation justifying the delay.  
(7-1-97)(10-1-03)T

e. A current psychological or psychiatric evaluation ~~shall~~ must be completed or obtained when the ~~consumer~~ participant is receiving a behavior modifying drug(s), or prior to the initiation of restrictive interventions to

modify inappropriate behavior(s), or an evaluation is necessary to determine eligibility for services or establish a diagnosis, or the consumer participant has a primary or secondary diagnosis of mental illness, or when otherwise required in this chapter. ~~(7-1-97)~~(10-1-03)T

f. Comprehensive evaluations and specific skill assessments completed or obtained by the DDA shall must be current. To be considered current, evaluations and assessments shall must accurately reflect the current status of the consumer participant. ~~(7-1-97)~~(10-1-03)T

**04. Individual Program Plan.** ~~When a consumer has not developed an Individual Support Plan with a Targeted Service Coordinator through a person-centered planning process,~~ The DDA is required to complete an Individual Program Plan and the following shall apply according to the following: ~~(7-1-97)~~(10-1-03)T

a. The Individual Program Plan shall must be developed following obtainment or completion of all applicable evaluations consistent with the requirements of this chapter. ~~(7-1-97)~~(10-1-03)T

b. The planning process shall must include the consumer participant and guardian, if applicable, and others the individual chooses to have in attendance. The consumer participant and guardian where applicable, will be provided a copy of the completed individual program plan. If the consumer participant and guardian where applicable, is unable to participate, the reason shall must be documented in the consumer's participant's record. ~~(7-1-97)~~(10-1-03)T

**05. Program Plan Components.** The Individual Program Plan shall must promote self-sufficiency, the consumer's participant's choice in program objectives and activities and encourage the consumer's participant's participation and inclusion in the community. The Individual Program Plan shall must include: ~~(7-1-97)~~(10-1-03)T

a. The consumer's participant's name and medical diagnosis; and ~~(7-1-97)~~(10-1-03)T

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

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

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

e. A list of the consumer's participant's current personal goals, interests and choices; and ~~(7-1-97)~~(10-1-03)T

f. An accurate, current and relevant list of the consumer's participant's specific developmental and behavioral strengths; and ~~(7-1-97)~~(10-1-03)T

g. An accurate, current and relevant list of the consumer's participant's specific developmental and behavioral needs. This list will identify which needs are a priority based on the consumer's participant's choices and preferences. An Individual Program Plan objective shall must be developed for each priority need; and ~~(7-1-97)~~(10-1-03)T

h. A list of the measurable, behaviorally stated objectives, which correspond to the list of priority needs. An Implementation Plan shall must be developed for each objective; and ~~(7-1-97)~~(10-1-03)T

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

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

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

l. An individual transition plan designed to facilitate independence, personal goals and interests. The

transition plan may include vocational goals/objectives directed toward paid employment. The transition plan ~~shall~~ must specify criteria for transition into alternative settings, vocational training, supported or independent employment, volunteer opportunities, community based organizations and activities, or less restrictive settings. The implementation of some components of the plan may necessitate decreased hours of service or discontinuation of services from a DDA. ~~(7-1-97)(10-1-03)T~~

**06. Support Documentation.** The Individual Program Plan ~~shall~~ must be supported by documentation included in the ~~consumer's~~ participant's record. ~~(7-1-97)(10-1-03)T~~

**07. Frequency Of Plan Development.** Members of the planning team ~~shall~~ must meet at least annually, or more often if necessary, to review and update the plan to reflect any changes in the needs or status of the ~~consumer~~ participant. ~~(7-1-97)(10-1-03)T~~

**08. Physician Recommendation.** There ~~shall~~ must be documentation that the plan is recommended by a physician prior to implementing the Individual Program Plan and when revisions in the plan change the type, amount, or duration of the service provided, and at the annual review. ~~(7-1-97)(10-1-03)T~~

**09. Regional Notification.** DDAs are responsible to send a quarterly report to the ~~Regional ACCESS Units Department or its designee~~ for entry into a database. The report ~~shall~~ must include each participant's name, date of birth, type and amount of service, start date, and social security number. ~~(3-30-01)(10-1-03)T~~

**10. Implementation Plan.** The DDA ~~shall be required to~~ must develop an Implementation Plan for each objective listed on the Individual Program Plan. The implementation Plan ~~shall~~ must be completed within fourteen (14) days from the time the service was provided and include: ~~(7-1-97)(10-1-03)T~~

- a. The ~~consumer's~~ participant's name; and ~~(7-1-97)(10-1-03)T~~
- b. The measurable, behaviorally stated Individual Program Plan objective; and (7-1-97)
- c. Baseline assessment to determine the ~~consumer's~~ participant's specific skills and abilities related to the specific skill to be learned; and ~~(7-1-97)(10-1-03)T~~
- d. Written instructions to staff such as curriculum, lesson plans, activity schedules, type and frequency of reinforcement and data collection, directed at the achievement of each objective. These instructions may be standardized, however, ~~shall~~ must be individualized and revised as necessary to promote ~~consumer~~ participant progress towards the stated objective; and ~~(7-1-97)(10-1-03)T~~
- e. Identification of the specific location where services ~~shall~~ must be provided; and ~~(7-1-97)(10-1-03)T~~
- ~~f. These implementation plans shall be completed within fourteen (14) calendar days of the initiation of services; and (7-1-97)~~
- gf. The target date for completion. (7-1-97)

**11. Program Documentation.** Each ~~consumer's~~ participant's record ~~shall~~ must include documentation of the ~~consumer's~~ participant's participation in and response to services provided. This documentation ~~shall~~ must include at a minimum: ~~(7-1-97)(10-1-03)T~~

- a. Daily entry of all activities conducted toward meeting ~~consumer~~ participant objectives; and ~~(7-1-97)(10-1-03)T~~
- b. Sufficient progress data to accurately assess the ~~consumer's~~ participant's progress toward each objective; and ~~(7-1-97)(10-1-03)T~~
- c. A review of the data and, when indicated, changes in the daily activities or specific implementation procedures by a DDP. The review ~~shall~~ must include the DDP's dated initials. ~~(7-1-97)(10-1-03)T~~

**12. Documentation Of Program Changes.** Documentation of all changes in the Individual Program Plan or Implementation Plan *shall must* be included in the *consumer's participant's* record. This documentation *shall must* include at a minimum; (7-1-97)(10-1-03)T

- a. The reason for the change; and (7-1-97)
- b. The date the change was made; and (7-1-97)
- c. Signature of the person making the change complete with date and title; and (7-1-97)
- d. Documentation of notification of the *consumer participant* and, when applicable, the *consumer's participant's* guardian. (7-1-97)(10-1-03)T

**13. Records.** Each DDA licensed under these rules *shall must* maintain accurate, current and complete *consumer participant* and administrative records. Each *consumer participant* record *shall must* support the individual's choices, interests and needs which result in the type and amount of each service provided. Each agency *shall must* have an integrated *consumer participant* records system to provide past and current information and to safeguard *consumer participant* confidentiality *pursuant to under* these rules. Each *participant* record *of consumers without a Targeted Service Coordinator shall must* contain the following information: (7-1-97)(10-1-03)T

- a. Profile sheet containing necessary identifying information about the *consumer participant* and family; and (7-1-97)(10-1-03)T
- b. Medical/social history containing relevant medical and social history and information on the *consumer participant* and family; and (7-1-97)(10-1-03)T
- c. Documentation which verifies that the services provided are recommended by a physician; and (7-1-97)
- d. When evaluations are completed or obtained by the agency the *consumer's participant's* record *shall must* include the evaluation forms and narrative reports, signed and dated by the respective evaluators; and (7-1-97)(10-1-03)T
- e. Individual Program Plan, when developed by the agency; and (7-1-97)
- f. Implementation Plans, program documentation and monitoring records which comply with all applicable sections of these rules; and (7-1-97)
- g. The case records *shall must* be divided into program/discipline areas identified by tabs, such as, Individual Program Plan, medical, social, psychological, speech, and developmental. (7-1-97)(10-1-03)T

**802. FUNDS.**

Agencies which receive funds under these rules *shall must* maintain accurate records of the receipt, obligation and disbursement of funds. Reimbursement for services is contingent upon documentation in *consumer participant* records which supports the need for the type and amount of each service. (7-1-97)(10-1-03)T

**803. ACCESSIBILITY.**

Records *shall must* be accessible during normal operation of the agency to the Department for the purpose of inspection, with or without prior notification, *pursuant to under* Section 39-108, Idaho Code. (7-1-97)(10-1-03)T

**804. REQUIRED SERVICES.**

Services provided *shall must* be sufficient in quantity and quality to meet the needs of each person receiving services, and *shall must* be provided by qualified professionals for the respective disciplines defined in this chapter. The following services, individual, group, community-based and home-based *shall must* be available as recommended by the physician and based on *consumer participant* needs, interests, or choices to eligible *consumers participants* either by employees of the agency or through formal written agreement and *shall must* comply with all applicable rules of

this chapter: ~~(7-1-97)~~(10-1-03)T

**01. Psychotherapy.** Psychotherapy services when provided by a physician, psychiatrist, psychologist, psychology assistant, or social worker in accordance with the objectives specified. Psychotherapy services available ~~shall~~ must include the following: ~~(7-1-97)~~(10-1-03)T

a. Individual psychotherapy; and (7-1-97)

b. Group psychotherapy in which there ~~shall~~ must be a minimum ratio of one (1) qualified staff person for every twelve (12) individuals in group therapy; and ~~(7-1-97)~~(10-1-03)T

c. Family-centered psychotherapy which ~~shall~~ must include the ~~consumer~~ participant and one (1) other family member at any given time. ~~(7-1-97)~~(10-1-03)T

**02. Speech And Hearing Therapy.** Speech and hearing therapy services provided in accordance with the specified objectives. (7-1-97)

**03. Physical Therapy.** Physical therapy services provided by a licensed physical therapist in accordance with the specified objectives. (7-1-97)

**04. Developmental Therapy.** Developmental therapy services: (7-1-97)

a. ~~Shall~~ Must be provided by qualified developmental disabilities staff in accordance with objectives specified; and ~~(7-1-97)~~(10-1-03)T

b. Therapy ~~shall~~ must be directed toward the rehabilitation/habilitation of physical or mental disabilities in the areas of self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living or economic self-sufficiency. ~~(7-1-97)~~(10-1-03)T

**05. Occupational Therapy.** Occupational therapy services provided by a licensed occupational therapist in accordance with the specified objectives. (7-1-97)

**805. OPTIONAL SERVICES.** Optional services include medication consultation, psychiatric advices, and Intensive Behavioral ~~Intervention~~ (IBI). ~~(4-5-00)~~(10-1-03)T

**806. MEDICATION CONSULTATION.** Consultation for the purpose of prescribing, monitoring, or administering medications. These consultations ~~shall~~ must be provided by a physician or licensed nurse practitioner in direct face-to-face contact with the ~~consumer~~ participant and incorporated into the individual plan with the type, amount, and duration of the service specified. ~~(4-5-00)~~(10-1-03)T

**807. PSYCHIATRIC SERVICES.** Psychiatric evaluations and services for the purpose of establishing a diagnosis, identifying ~~consumer~~ participant strengths and needs, and recommending or implementing interventions to address each need. These evaluations and services ~~shall~~ must be conducted by a physician in direct face-to-face contact with the ~~consumer~~ participant and incorporated into the ~~consumer's~~ participant's individual plan with the type, amount, and duration of service specified. ~~(4-5-00)~~(10-1-03)T

**808. INTENSIVE BEHAVIORAL INTERVENTION (IBI).**

**01. Individualized And Comprehensive Interventions.** Individualized and comprehensive interventions used on a short term, one-to-one basis that have been shown to be effective and produce measurable outcomes which diminish behaviors that interfere with the development and use of language and appropriate social interaction skills or broaden an otherwise severely restricted range of interest. (10-1-03)T

**02. Service Availability.** Intensive Behavioral Intervention is available only to children birth through

age twenty-one (21) who have self-injurious, aggressive or severely maladaptive behavior and severe deficits in the following areas: ~~(4-5-00)~~(10-1-03)T

- ~~01a.~~ Verbal ~~A~~and ~~N~~onverbal ~~C~~ommunication; or ~~(4-5-00)~~(10-1-03)T
- ~~02b.~~ Social ~~I~~nteraction; or ~~(4-5-00)~~(10-1-03)T
- ~~03c.~~ Leisure ~~A~~and ~~P~~lay ~~S~~kills. ~~(4-5-00)~~(10-1-03)T

**809. QUALIFICATIONS TO PROVIDE INTENSIVE BEHAVIORAL INTERVENTION (IBI).**

A person qualified to provide or direct the provision of Intensive Behavioral Intervention (IBI) must meet the following requirements: (5-3-03)

**01. Degree.** A qualified IBI professional must hold at least a bachelor's degree in a health, human services, educational, behavioral science or counseling field from a nationally accredited university or college. (5-3-03)

**02. Experience.** An individual applying for IBI paraprofessional or professional certification must be able to provide documentation of one (1) year's supervised experience working with children with developmental disabilities. The year's experience must include one thousand (1,000) hours of direct contact or care of children in a behavioral context with developmental disabilities. (5-3-03)

**03. Training And Certification.** Qualified IBI professionals and paraprofessionals must complete and pass a Department approved training course and examination for certification. The training must include a curriculum that addresses standards of competence for the provision of intensive behavioral intervention and ethical standards. Specifically, the curriculum must include: assessment of individuals, behavioral management, services or treatment of individuals, supervised practical experience, and an observation of demonstrated competencies. An individual applying for IBI professional certification or to be certified as an IBI trainer must also be able to demonstrate their competency in the provision of IBI services by passing a certification examination. A certified IBI professional who has a break in the provision of IBI services of more than one (1) year will be required to meet any additional Department requirements implemented subsequent to the individual's certification. (5-3-03)

**04. Individuals Previously Certified.** Beginning July 1, 2003, an individual certified as an IBI professional prior to that date ~~shall~~ must continue to be certified as an IBI professional as long as they meet the requirements of Subsection 809.03 of these rules. ~~(5-3-03)~~(10-1-03)T

**05. Use Of Paraprofessionals.** An aide or therapy technician who has completed Department approved training and certification may be used to provide Intensive Behavioral Intervention under the supervision of a professional who is certified by the Department to provide Intensive Behavioral Intervention. (4-5-00)

**a.** The agency ~~shall~~ must assure adequate professional supervision during its services hours; and ~~(4-5-00)~~(10-1-03)T

**b.** Paraprofessionals ~~shall~~ must not conduct evaluations or establish the Implementation Plan. These activities ~~shall~~ must be conducted by a professional qualified to provide or direct the provision of Intensive Behavioral Intervention; and ~~(4-5-00)~~(10-1-03)T

**c.** The professional ~~shall~~ must, on a weekly basis or more often if necessary, give instructions, review progress and provide training on the program(s) and procedures to be followed; and ~~(4-5-00)~~(10-1-03)T

**d.** A professional ~~shall~~ must, on a monthly basis or more often if necessary, observe and review the work performed by the paraprofessional to assure the paraprofessional has been trained on the program(s) and demonstrates the necessary skills to correctly implement the program(s). ~~(4-5-00)~~(10-1-03)T

**06. Limitation To Service Provision By A Paraprofessional.** Intensive Behavioral Intervention provided by a paraprofessional is limited to ninety percent (90%) of the direct intervention time. The remaining ten percent (10%) of the direct intervention time must be provided by the professional qualified to provide or direct the

provision of Intensive Behavioral Intervention. (4-5-00)

**810. STAFFING REQUIREMENTS FOR AGENCIES.**

**01. Physician.** *The agency shall have a physician available a sufficient amount of time to:* (7-1-97)

*and*  
**a.** *Review medical/social history information for the purpose of ordering appropriate evaluations;*  
(7-1-97)

**b.** *Perform necessary medical assessments; and* (7-1-97)

**e.** *Review and recommend the services identified in the Individual Program Plans; and* (7-1-97)

**d.** *Participate in annual reviews of consumer services to determine continued appropriateness of the plan if applicable.* (7-1-97)

**02. Professionals.** *The agency shall have available, at a minimum, the qualified DDP as employees of the agency or through formal written agreement:* (7-1-97)

**a.** *Audiologist or speech and language pathologist; and* (7-1-97)

**b.** *Developmental specialist; and* (7-1-97)

**e.** *Occupational therapist; and* (7-1-97)

**d.** *Physical therapist; and* (7-1-97)

**e.** *Physician; and* (7-1-97)

**f.** *Psychologist; and* (7-1-97)

**g.** *Social worker.* (7-1-97)

**8140. INITIAL PRIOR AUTHORIZATION.**

Initial Intensive Behavioral Intervention services or consultation must be prior authorized by the Department. The DDA must submit evidence of each child's eligibility for Intensive Behavioral Intervention, the Implementation Plan, the number of hours of service requested, and the measurable outcomes expected as the result of the intervention. (4-5-00)

**8121. PROGRESS REPORTS, EVALUATION, AND CONTINUED PRIOR AUTHORIZATION.**

The provider must submit a report on the child's progress toward Intensive Behavioral Intervention outcomes to the Department every one hundred twenty (120) days and seek prior authorization for continuation or modification of services. On an annual basis, a multi disciplinary treatment team that includes at a minimum, the parent(s), staff psychologist and staff providing services to the child, will review current evaluations and make a recommendation for continuation or modification of the intervention. (4-5-00)

**8132. PARENT AND STAFF CONSULTATION.**

Professionals may provide consultation to parents and to other staff who provide therapy or care for the child in other disciplines to assure successful integration and transition from Intensive Behavioral Intervention to other therapies. (4-5-00)

**813. STAFFING REQUIREMENTS FOR AGENCIES.**

**01. Physician.** For participants whose services are governed by Section 801 of these rules, the agency must have a physician available a sufficient amount of time to: (10-1-03)T

- a.** Review medical/social history information for the purpose of ordering appropriate evaluations; and (10-1-03)T
- b.** Perform necessary medical assessments; and (10-1-03)T
- c.** Review and recommend the services identified in the Individual Program Plans; and (10-1-03)T
- d.** Participate in annual reviews of participant services to determine continued appropriateness of the plan if applicable. (10-1-03)T

**02. Professionals.** The agency must have available, at a minimum, the qualified DDP as employees of the agency or through formal written agreement: (10-1-03)T

- a.** Audiologist or speech and language pathologist; and (10-1-03)T
- b.** Developmental specialist; and (10-1-03)T
- c.** Occupational therapist; and (10-1-03)T
- d.** Physical therapist; and (10-1-03)T
- e.** Physician; and (10-1-03)T
- f.** Psychologist; and (10-1-03)T
- g.** Social worker. (10-1-03)T

**814. -- 819. (RESERVED).**

**820. PAYMENT PROCEDURES.**

Payment for agency services ~~shall~~ must be in accordance with rates, forms, policies and procedures established by the Department. Payment for services is contingent upon documentation in each ~~consumer's~~ participant's record which supports the type and amount of each service based on the agency's integrated records system and compliance with the requirements specified under Section 802 of ~~this chapter~~ these rules. (~~7-1-97~~)(10-1-03)T

**821. COOPERATION OF SERVICES.**

Each DDA ~~shall~~ must act in cooperation with other agencies providing services to ~~consumers~~ participants to maximize learning. Services with which coordination and integration ~~shall~~ must occur include: (~~7-1-97~~)(10-1-03)T

**01. Children's Services.** DDA's ~~shall~~ must refer a child of mandatory school attendance age, seven (7) through sixteen (16), to the local school district for consideration for education and related services under the provisions of the Individuals with Disabilities Education Act (IDEA). The DDA may provide services beyond those that the school is obligated to provide during regular school hours. These related services include audiology, psychotherapy services, physician's services, developmental therapy, occupational therapy, physical therapy and speech pathology. The ~~consumer's~~ participant's record ~~shall~~ must contain an Individualized Education Plan for each child of school age, including any recommendations for Extended School Year. The DDA ~~shall~~ must send a current copy of the child's Individual Program Plan to his school. (~~3-30-01~~)(10-1-03)T

**02. Services Through School District.** Services provided through a school district contract and reimbursed by the school district are not required to meet DDA rules, nor are they reimbursable as DDA services. (7-1-97)

**822. -- 899. (RESERVED).**

**900. ADDITIONAL STANDARDS FOR PERSONNEL PROVIDING DEVELOPMENTAL DISABILITY SERVICES.**

**01. Professionals.** Except as provided in Subsection 900.02 of ~~this section~~ these rules, all personnel employed by an agency for the purpose of providing developmental disabilities services after October 6, 1988, ~~shall~~ must be DDP's. ~~(7-1-97)~~(10-1-03)T

**02. Paraprofessionals.** Paraprofessionals, such as aides or therapy technicians, may be used by an agency to provide developmental disabilities services if they are under the supervision of a DDP. (7-1-97)

**a.** The agency ~~shall~~ must assure adequate professional supervision during its service hours; and ~~(7-1-97)~~(10-1-03)T

**b.** There ~~shall~~ must be a minimum of one (1) qualified staff, who may be a paraprofessional or a DDP, providing direct services for every twelve (12) individuals. Additional staff ~~shall~~ must be added, as necessary, to meet the needs of each individual served; and ~~(7-1-97)~~(10-1-03)T

**c.** Aides or therapy technicians utilized to assist in the provision of physical therapy services may do so only when a physical therapist is present at the site of service delivery; and (7-1-97)

**d.** Paraprofessionals ~~shall~~ must not conduct ~~consumer participant~~ evaluations or establish the Implementation Program Plan. These activities ~~shall~~ must be conducted by a DDP; and ~~(7-1-97)~~(10-1-03)T

**e.** A professional ~~shall~~ must, on a weekly basis or more often if necessary, give instructions, review progress and provide training on the program(s) and procedures to be followed; and ~~(7-1-97)~~(10-1-03)T

**f.** A professional ~~shall~~ must, on a monthly basis or more often if necessary, observe and review the work performed by the paraprofessional to assure the paraprofessional has been trained on the program(s) and demonstrates the necessary skills to correctly implement the program(s). ~~(7-1-97)~~(10-1-03)T

**03. Specified Service Providers.** In accordance with Section 800 of these rules, only specified developmental disabilities service providers may provide service within the designated element of service. (7-1-97)

**04. Administrative Staffing.** The program administrator ~~shall~~ must be accountable for all service elements of a developmental disabilities program and ~~shall~~ must be employed on a continuous regularly scheduled basis. ~~(7-1-97)~~(10-1-03)T

**a.** The program administrator ~~shall~~ must be a DDP as defined in these rules. ~~(7-1-97)~~(10-1-03)T

**b.** If the administrator is not a DDP, a DDP ~~shall~~ must be employed on a continuous regularly scheduled basis and ~~shall~~ must be responsible for the service elements of the developmental disabilities program; ~~(7-1-97)~~(10-1-03)T

**c.** Either the program administrator or the DDP ~~shall~~ must have two (2) years of supervisory or management experience providing developmental disabilities services to individuals with developmental disabilities. ~~(7-1-97)~~(10-1-03)T

**901. VOLUNTEERS.**

If volunteers are utilized, the program ~~shall~~ must establish policies and procedures governing the screening, training and utilization of volunteer workers for delivery of services. ~~(7-1-97)~~(10-1-03)T

**902. TRAINING.**

Each agency designated under these rules ~~shall~~ must provide ongoing training for staff and volunteers. ~~(7-1-97)~~(10-1-03)T

**01. Annual Training.** A minimum of twelve (12) hours of formal training ~~shall~~ must be provided. ~~(7-1-97)~~(10-1-03)T

**a.** Within ninety (90) days of employment, each staff member will be certified in first aid and CPR; and (7-1-97)

b. In addition, a minimum of twelve (12) hours of training areas including fire safety, behavior management, and skill development in the area of rehabilitation or habilitation of persons with developmental disabilities on an annual basis. (7-1-97)

**02. Sufficient Training.** Training of staff and volunteers ~~shall~~ must be sufficient to ensure the following as applicable to their work assignments and responsibilities: (~~7-1-97~~)(10-1-03)T

a. Correct and consistent implementation of ~~consumer~~ participant individual program plans and implementation plans, to achieve individual objectives; and (~~7-1-97~~)(10-1-03)T

b. Optimal independence of all individuals receiving services is encouraged, supported and reinforced through appropriate activities, opportunities, and training; and (7-1-97)

c. Correct and appropriate use of assistive technology used by individuals obtaining services; and (7-1-97)

d. Accurate record keeping and data collection procedures; and (7-1-97)

e. Consistent use of behavioral and developmental programming principles and the use of positive behavioral intervention techniques; and (7-1-97)

f. Adequate observation, review and monitoring of staff, volunteer and ~~consumer~~ participant performance to promote the achievement of ~~consumer~~ participant objectives; and (~~7-1-97~~)(10-1-03)T

g. Each ~~consumer's~~ participant's rights, advocacy resources, confidentiality, safety and welfare; and (~~7-1-97~~)(10-1-03)T

h. The proper implementation of all policies and procedures developed by the agency. (7-1-97)

**903. -- 919. (RESERVED).**

**920. BUILDING STANDARDS.**

The requirements under this section apply when an agency is providing center-based services. (7-1-97)

**01. Accessibility.** Agencies designated under these rules ~~shall~~ must be responsive to the needs of the service area and persons receiving services and accessible to persons with disabilities as defined in 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, and the uniform federal accessibility standard. (~~7-1-97~~)(10-1-03)T

**02. Environment.** The agency ~~shall~~ must be designed and equipped to meet the needs of each ~~consumer~~ participant including, but not limited to, factors such as sufficient space, equipment, lighting and noise control. (~~7-1-97~~)(10-1-03)T

**03. Capacity.** Agencies ~~shall~~ must serve no more than forty (40) persons with developmental disabilities on site at a given time. Agencies may apply to the Director for a waiver ~~pursuant to~~ under these rules. The decision of the Director may be reviewed by the Board. Agencies are encouraged to include persons without disabilities in their programs or to integrate persons with disabilities into community activities for part of the day. (~~7-1-97~~)(10-1-03)T

**04. Fire And Safety Standards.** (7-1-97)

a. Buildings on the premises used as facilities ~~shall~~ must meet all local and state codes concerning fire and life safety that are applicable to a DDA. The owner/operator ~~shall~~ must have the facility inspected at least annually by the local fire authority. In the absence of a local fire authority, such inspections ~~shall~~ must be obtained from the Idaho State Fire Marshall's office. A copy of the inspection ~~shall~~ must be made available to the licensing agency upon request and ~~shall~~ must include documentation of any necessary corrective action taken on violations

cited; and

(7-1-97)(10-1-03)T

b. The facility *shall must* be structurally sound and *shall must* be maintained and equipped to assure the safety of ~~consumers~~ participants, employees and the public; and

(7-1-97)(10-1-03)T

c. On the premises of all facilities where natural or man-made hazards are present, suitable fences, guards or railings *shall must* be provided to protect ~~consumers~~ participants; and

(7-1-97)(10-1-03)T

d. The premises and all buildings used as facilities *shall must* be kept free from the accumulation of weeds, trash and rubbish; and

(7-1-97)(10-1-03)T

e. Portable heating devices *shall must* be prohibited except units that have heating elements that are limited to not more than two hundred twelve (212) degrees Fahrenheit. The use of unvented, fuel-fired heating devices of any kind *shall must* be prohibited. All portable space heaters must be U.L. approved as well as approved by the local fire or building authority; and

(7-1-97)(10-1-03)T

f. Quantities of flammable or combustible materials deemed hazardous by the licensing agency *shall must* not be stored in the facility; and

(7-1-97)(10-1-03)T

g. All hazardous or toxic substances *shall must* be properly labeled and stored under lock and key; and

(7-1-97)(10-1-03)T

h. Water temperatures in areas accessed by ~~consumers shall~~ participants *must* not exceed one hundred twenty (120) degrees Fahrenheit; and

(7-1-97)(10-1-03)T

i. Portable fire extinguishers *shall must* be installed throughout the facility. Numbers, types and location *shall must* be directed by the applicable fire authority noted in Subsection 920.04.a. of these rules; and

(7-1-97)(10-1-03)T

j. Electrical installations and equipment *shall must* comply with all applicable local or state electrical requirements. In addition, equipment designed to be grounded *shall must* be maintained in a grounded condition and extension cords and multiple electrical outlet adapters *shall must* not be utilized unless U.L. approved and the numbers, location, and use of them are approved, in writing, by the local fire or building authority.

(7-1-97)(10-1-03)T

k. There *shall must* be a telephone available on the premises for use in the event of an emergency. Emergency telephone numbers *shall must* be posted near the telephone; and

(7-1-97)(10-1-03)T

l. Furnishings, decorations or other objects *shall must* not obstruct exits or access to exits.

(7-1-97)(10-1-03)T

**05. Evacuation Plans.** Evacuation plans *shall must* be posted throughout the building. Plans *shall must* indicate point of orientation, location of all fire extinguishers, location of all fire exits, and designated meeting area outside of building.

(7-1-97)(10-1-03)T

a. Emergency plans and training requirements:

(7-1-97)

b. There *shall must* be written policies and procedures covering the protection of all persons in the event of fire or other emergencies; and

(7-1-97)(10-1-03)T

c. All employees *shall must* participate in fire and safety training upon employment and at least annually thereafter; and

(7-1-97)(10-1-03)T

d. All employees and ~~consumers shall~~ participants *must* engage in quarterly fire drills. At least two (2) of these fire drills *shall must* include evacuation of the building; and

(7-1-97)(10-1-03)T

e. A brief summary of the fire drill and the response of the employees and ~~consumers shall~~

participants must be written and maintained on file. The summary ~~shall~~ must indicate the date and time the drill occurred, problems encountered and corrective action taken. ~~(7-1-97)~~(10-1-03)T

**06. Food Preparation And Storage.** (7-1-97)

a. If foods are prepared in the agency, they ~~shall~~ must be prepared by sanitary methods. ~~(7-1-97)~~(10-1-03)T

b. Except during actual preparation time, cold perishable foods ~~shall~~ must be stored and served under forty-five (45F) degrees Fahrenheit and hot perishable foods ~~shall~~ must be stored and served over one hundred forty (140F) degrees Fahrenheit. ~~(7-1-97)~~(10-1-03)T

c. Refrigerators and freezers used to store ~~consumer~~ participant lunches and other perishable foods used by ~~consumers~~ participants, ~~shall~~ must be equipped with a reliable, easily-readable thermometer. Refrigerators ~~shall~~ must be maintained at forty-five (45F) degrees Fahrenheit or below. Freezers ~~shall~~ must be maintained at zero (0F) to ten (10F) degrees Fahrenheit or below. ~~(7-1-97)~~(10-1-03)T

d. When meals are prepared or provided for by the agency, meals will meet the nutritional, dietary and individual needs of each ~~consumer~~ participant. ~~(7-1-97)~~(10-1-03)T

**07. Housekeeping And Maintenance Services.** (7-1-97)

a. The interior and exterior of the agency ~~shall~~ must be maintained in a clean, safe and orderly manner and ~~shall~~ must be kept in good repair; and ~~(7-1-97)~~(10-1-03)T

b. Deodorizers cannot be used to cover odors caused by poor housekeeping or unsanitary conditions; and ~~(7-1-97)~~(10-1-03)T

c. All housekeeping equipment ~~shall~~ must be in good repair and maintained in a clean, safe and sanitary manner; and ~~(7-1-97)~~(10-1-03)T

d. The agency ~~shall~~ must be maintained free from infestations of insects, rodents and other pests; and ~~(7-1-97)~~(10-1-03)T

e. The facility ~~shall~~ must maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means. ~~(7-1-97)~~(10-1-03)T

**08. Vehicle Safety.** If the DDA provides transportation, a preventive maintenance program will be in place for each agency owned or leased vehicle, including but not limited to: (7-1-97)

a. Inspections, liability insurance, licensed drivers, and other maintenance to insure safety; and (7-1-97)

b. Coordination with transportation providers when the DDA does not provide the transportation. (7-1-97)

**921. HEALTH.**

**01. Policies And Procedures.** The agency ~~shall~~ must develop policies and procedures which describe how the agency will assure that staff is free from communicable disease and how it will protect ~~consumers~~ participants from exposure to other individuals exhibiting symptoms of illness. ~~(7-1-97)~~(10-1-03)T

**02. Employees.** Each employee with direct contact with ~~consumers~~ participants ~~shall~~ must be free of communicable disease and infected skin lesions while on duty. ~~(7-1-97)~~(10-1-03)T

**03. Handling Of ~~Consumer's~~ Participant's Medications.** Personnel of the agency ~~shall~~ must not administer medications unless legally authorized to do so. Personnel may assist the ~~consumer~~ participant to take his

own medication under the following conditions:

(7-1-97)(10-1-03)T

a. The medication *shall must* be brought by the *consumer participant* in a prepackaged container which is appropriately labeled with the name of the medication, dosage and time and amount to be taken. Each medication *shall must* be packaged separately to avoid mistakes in identification unless packaged in Medisets or a similar system.

(7-1-97)(10-1-03)T

b. Only licensed nurses and other professionals legally authorized to administer medications may give *consumers participants* injectable medications.

(7-1-97)(10-1-03)T

c. No medications *shall must* be given except under the verbal or written orders of a physician. Evidence of the written or verbal order *shall must* be maintained in the *consumer's participant's* record. Medisets labeled by a pharmacist and supplied to the *consumer participant* on a weekly basis may serve as written evidence of a physician's order. An original prescription bottle labeled by a pharmacist describing the current physician's orders/instructions for use, may also serve as written evidence of a physician's orders.

(7-1-97)(10-1-03)T

d. The agency *shall must* be responsible for the safeguarding of the *consumer's participant's* medications while he is at the agency or in the community.

(7-1-97)(10-1-03)T

e. Medications which are no longer used by the *consumer shall participant must* not be retained by agency staff. These *shall must* be returned to the pharmacist, the *consumer participant*, or person responsible for the *consumer's participant's* home care.

(7-1-97)(10-1-03)T

f. Medications *shall must* not be borrowed between *consumers participants*.

(7-1-97)(10-1-03)T

04. **Accident/Injury Reports.** Accident/injury reports *shall must* be completed for all such incidents experienced by *consumers participants* receiving services.

(7-1-97)(10-1-03)T

## 922. COMMUNITY SITES.

The requirements under this section apply when an agency is providing community-based services. (7-1-97)

01. **Accessibility.** The community-based setting *shall must* be accessible, safe and appropriate for each *consumer participant*.

(7-1-97)(10-1-03)T

02. **Environment.** The community-based setting *shall must* be designed and equipped to meet the needs of each *consumer participant* including, but not limited to, factors such as sufficient space, equipment, lighting, and noise control.

(7-1-97)(10-1-03)T

03. **Training Group Size Sessions.** The community-based services *shall must* occur in integrated inclusive settings and with no more than three (3) *consumers participants* per trainer at each training session.

(7-1-97)(10-1-03)T

## 923. ANNUAL PROGRESS REPORT AND PLAN.

By June 30 of each year, each DDA *shall must* submit an annual progress report and plan covering the current fiscal year to the state developmental disability authority.

(7-1-97)(10-1-03)T

## 924. STATE PLAN.

Each agency *shall must* be required, as needed, to participate in the state developmental disabilities plan development by completing an annual needs assessment survey or public hearing on services for Idahoans with disabilities.

(7-1-97)(10-1-03)T

## 925. AFFIRMATIVE ACTION.

01. **Equal Employment Opportunity.** It is the policy of the Department to promote the objectives of equal employment opportunity and fair labor practice laws of the United States and the state of Idaho. (7-1-97)

02. **Nondiscrimination.** No employee of a agency designated under these rules will, in the course of

serving ~~consumer~~ participant needs, discriminate against any individual on the basis of race, color, national origin, religion, ~~sex~~ gender, age, or physical/mental disability. (7-1-97)(10-1-03)T

926. -- 9979. (RESERVED).

**~~998. ADMINISTRATIVE PROVISIONS.~~**

~~Contested case hearings shall be governed according to the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings".~~ (7-1-97)

**~~999. CONFIDENTIALITY OF RECORDS.~~**

~~Any disclosure of information obtained by the Department is subject to the restrictions contained in IDAPA 16.05.01, "Use and Disclosure of Department Records". In addition:~~ (7-1-97)

~~01. Storage Of Records. All consumer information including, but not limited to, consumer records shall be maintained and stored in a manner which ensures consumer confidentiality.~~ (7-1-97)

~~02. Written Consent. Consumer information and records shall not be provided to individuals or agencies not legally authorized to receive it without the informed written consent of the consumer and guardian where applicable.~~ (7-1-97)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.04.17 - RULES GOVERNING RESIDENTIAL HABILITATION AGENCIES**

**DOCKET NO. 16-0417-0301**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective October 1, 2003.

**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 Sections 56-202(b) and 56-203(g), and 39-4601, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

**Monday, October 6, 2003**  
**7:00 - 9:00 p.m.**  
**Region I**  
**1120 Ironwood Drive**  
**Coeur d'Alene, ID**

**Wednesday, October 8, 2003**  
**7:00 - 9:00 p.m.**  
**Region IV**  
**1720 Westgate Drive**  
**Boise, ID**

**Thursday, October 9, 2003**  
**7:00 - 9:00 p.m.**  
**Region VI**  
**421 Memorial Drive**  
**Pocatello, ID**

The hearing sites 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 rule making:

These rule changes are being made to support the implementation of the Department's new prior authorization process found in new chapter of rules, IDAPA 16.03.13, "Prior Authorization of Behavioral Health Services". The rule changes establish the requirement that access to Residential Habilitation Agency services be prior authorized. They also establish the requirement that Residential Habilitation agencies submit provider status reviews semiannually and annually. In those portions of the text dealing with the prior authorization process, citations have been inserted to refer the reader to IDAPA 16.03.13. Other changes have been made to align terminology and content with that in IDAPA 16.03.13. The sections required by the Office of Administrative Rules were updated.

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

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226(1)(a), Idaho Code and are necessary in order to protect the public health, safety and welfare.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted by the Department of Health and Welfare. However, during the past three (3) years, the Department has engaged both in extensive public participation efforts and a pilot program to gather public input on and subsequently develop and test the prior authorization process formalized in this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Diane Helton at (208) 334-0603 or Mary Wells at (208) 364-1955.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 23rd day of July, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0417-0301**

**000. LEGAL AUTHORITY.**

The Idaho Legislature, ~~pursuant to~~ under Section 39-4605, Idaho Code, has empowered the Board of Health and Welfare with broad authority to develop and coordinate services for persons with developmental disabilities, so that the needs of each such person can be met. The authority delegated includes the power to promulgate standards and rules. ~~(7-1-95)~~(10-1-03)T

**001. TITLE AND SCOPE.**

**01. Title.** ~~These rules are to be cited as~~ The title of these rules is IDAPA 16.04.17, “Rules Governing Residential Habilitation Agencies”. ~~(7-1-95)~~(10-1-03)T

**02. Scope.** These rules contain and establish standards and minimum requirements for residential habilitation agencies which provide services to persons with developmental disabilities under agreement and in connection with programs funded in any part by the Department of Health and Welfare. The provisions are intended to regulate agencies so that services to ~~consumers~~ participants will optimize ~~consumer~~ participant opportunities for independence and self-determination while assuring adequate supports, services, ~~consumer~~ participant satisfaction and health and safety. As a component of the service delivery system in Idaho for persons with developmental disabilities, residential habilitation agencies will provide individualized services and supports encouraging ~~consumer~~ participant choice, providing the greatest degree of independence possible, enhancing the quality of life, and maintaining community integration and participation. Services provided by such agencies are intended to be person-centered and ~~consumer~~ participant-driven, and based on a person-centered plan to meet each ~~consumer's~~ participant's needs for self-sufficiency, medical care and personal development with goals that safely encourage each ~~consumer~~ participant to become a productive member of the community in which he lives. Access to these services must be prior authorized in accordance with IDAPA 16.03.13, “Prior Authorization for Behavioral Health Services”. ~~(7-1-95)~~(10-1-03)T

**002. ~~(RESERVED)~~ WRITTEN INTERPRETATIONS.**

There are no written interpretations for these rules. (10-1-03)T

**003. ADMINISTRATIVE APPEALS.**

Contested case hearings ~~shall~~ must be governed according to the provisions of IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings”. ~~(7-1-95)~~(10-1-03)T

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into this chapter of rules. (10-1-03)T

**005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (10-1-03)T

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (10-1-03)T

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (10-1-03)T

**04. Telephone.** The telephone number for of the Idaho Department of Health and Welfare is (208) 334-5500. (10-1-03)T

**05. Internet Website.** The Department's internet website is found at "<http://www2.state.id.us/dhw/>". (10-1-03)T

**006. PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.**

Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records". (10-1-03)T

**007. -- 009. (RESERVED).**

**010. DEFINITIONS -- A THROUGH N.**

For the purposes of these rules the following terms are used as defined below: (10-1-03)T

**01. Abuse.** Any conduct of an employee, affiliated residential habilitation provider or contractor of an agency as a result of which a person suffers verbal aggression or humiliation, skin bruising, bleeding, malnutrition, sexual molestation, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, or mental injury, and such condition or death is not justifiably explained, or where the history given concerning such condition or death, or the circumstances indicate that such condition or death, may not be the product of accidental occurrence ~~pursuant to~~ under Section 39-5202, Idaho Code. (~~7-1-95~~)(10-1-03)T

**02. Administrator.** The individual who is vested with primary responsibility for the direction and control of an agency, and who has power to legally bind the agency to contracts. (7-1-95)

**03. Advocate.** An authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a person with developmental disabilities. A ~~consumer~~ participant may act as his own advocate. (~~7-1-95~~)(10-1-03)T

**04. Agency.** Any business entity that directly provides or affiliates with residential habilitation providers who provide residential habilitation services under a Home and Community Based Services waiver for adults with developmental disabilities. (7-1-95)

**05. Appeal.** A method to insure personal, civil and human rights by receiving, investigating, resolving, and documenting complaints related to the provision or termination of services of the residential habilitation services agency in accordance with IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (7-1-95)

**06. Audit.** A methodical examination and review. (7-1-95)

**07. Board.** The Idaho State Board of Health and Welfare. (7-1-95)

**08. Business Entity.** A public or private organization owned or operated by one (1) or more persons. (7-1-95)

**09. Certificate.** A permit to operate a residential habilitation agency. (7-1-95)

**10. Certifying Agency.** Regional units of the Department that conduct inspections and surveys and issue certificates based on the residential habilitation agency's compliance with this chapter. (7-1-95)

- 11. Chemical Restraint.** The use of any medication that results or is intended to result in the modification of behavior without an accompanying behavior management program. (7-1-95)
- 12. Complaint Investigation.** An investigation of an agency to determine the validity of an allegation against it and to identify solutions to resolve conflicts between the complainant and the agency. (7-1-95)
- ~~**13. Consumer.** A person who is a recipient of residential habilitation services. (7-1-95)~~
- 143. Department.** The Idaho Department of Health and Welfare. (7-1-95)
- 154. Developmental Disability.** A developmental disability, as defined in Section 66-402, Idaho Code, means a chronic disability of a person which appears before the age of twenty-two (22) years of age and: ~~(7-1-95)~~(10-1-03)T
- a.** Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other conditions found to be closely related to or similar to one of these impairments that requires similar treatment or services or is attributable to dyslexia resulting from such impairments; and (7-1-95)
- b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (7-1-95)
- c.** Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and individually planned and coordinated. (7-1-95)
- 165. Deficiency.** A determination of non-compliance with a specific rule or part of a rule. (7-1-95)
- 176. Director.** Director of the Idaho Department of Health and Welfare or his designee. (7-1-95)
- 187. Exploitation.** An action which may include the misuse of a vulnerable ~~consumer's~~ participant's funds, property, services, or resources by another person for profit or advantage. ~~(7-1-95)~~(10-1-03)T
- 198. Full Certificate.** A certificate issued by the Department to residential habilitation agencies complying with this chapter. (7-1-95)
- ~~**2019. Governing Authority.** The designated person or persons who assume full responsibility for the conduct and operations of the residential habilitation services agency. (7-1-95)~~
- 240. Government Unit.** The state, or any county, municipality, or other political subdivision, or any department, division, board or other agency thereof. (7-1-95)
- 221. Guardian.** A legally-appointed person who has the care of the person or property of another, ~~pursuant to~~ under Section 66-404, Idaho Code. ~~(7-1-95)~~(10-1-03)T
- 232. Implementation Plan.** Written documentation of ~~consumers'~~ participants' needs, desires, goals and measurable objectives, including documentation of planning, ongoing evaluation, data-based progress and ~~consumer participant~~ satisfaction of the program developed, implemented, and provided by the agency specific to the Individual Support Plan of service. ~~(7-1-95)~~(10-1-03)T
- ~~**24. Individual Support Plan.** The written individualized plan approved by the Department, which must be based on a person centered planning and assessment process outlining the consumers' needs, desires, goals and objectives and include the specific types, amounts, frequency and duration of waiver services to be provided by the agency. (7-1-95)~~
- ~~**25. Individual Support Plan Team.** The participants who develop the Individual Support Plan, which includes at minimum the consumer and the service coordinator chosen by the consumer. The Individual Support Plan~~

~~team may include others identified by the consumer or agreed upon by the consumer and the Department as important to the process.~~ (7-1-95)

**011. DEFINITIONS -- M THROUGH Z.**

For the purposes of these rules the following terms are used as defined below: (10-1-03)T

~~2601.~~ **Measurable Objective.** A statement which specifically describes the skill to be acquired or service/support to be provided, includes quantifiable criteria for determining progress towards and attainment of the service, support or skill, and identifies a projected date of attainment. (7-1-95)

~~2702.~~ **Mechanical Restraint.** Any device that the ~~consumer~~ participant cannot remove easily that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body or environment. Excluded are devices used to achieve proper body position, balance, or alignment. (7-1-95)(10-1-03)T

~~2803.~~ **Medication.** Any substance or drug used to treat a disease, condition or symptoms which may be taken orally, injected or used externally and is available through prescription or over-the-counter. (7-1-95)

~~2904.~~ **Neglect.** The negligent failure to provide those goods or services which are reasonably necessary to sustain the life and health of a person ~~pursuant to~~ under Section 39-5302 (8), Idaho Code. (7-1-95)(10-1-03)T

~~305.~~ **Outcome-Based Review.** An on-site review conducted by a trained reviewer authorized by the Department to determine ~~consumer~~ participant satisfaction with the services received and improvement or impact upon his lifestyle following implementation of the ~~Individual Support P~~plan of service. (7-1-95)(10-1-03)T

~~06.~~ **Participant.** A person who receives health care services, is eligible for Medicaid, and who is receiving residential habilitation services. (10-1-03)T

~~3407.~~ **Person-Centered Planning Process.** ~~A Department approved means by which the consumer and his Individual Support Plan team assess the needs, desires, goals and objectives of the consumer to develop and implement an Individual Support Plan. A planning team of family and individuals who are significant to the participant and who collaborate with the participant to develop the plan of service. This team is convened and facilitated by a plan developer.~~ (7-1-95)(10-1-03)T

~~08.~~ **Person-Centered Planning Team.** The participants who develop the plan of service, which includes, at a minimum, the participant and the service coordinator or plan developer chosen by the participant. The person-centered planning team may include others identified by the participant or agreed upon by the participant and the Department as important to the process. (10-1-03)T

~~3209.~~ **Physical Restraint.** Any manual method that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body. Excluded are physical guidance and prompting techniques of brief duration. (7-1-95)

~~3310.~~ **Physician.** Any person licensed as required by Title 54, Chapter 18, Idaho Code. (7-1-95)

~~11.~~ **Plan Developer.** A paid or nonpaid person identified by the participant who is responsible for developing one (1) plan of service and subsequent addenda that cover all services and supports, based on a person-centered planning process. (10-1-03)T

~~12.~~ **Plan Monitor.** A person who oversees the provision of services on a paid or non-paid basis. The plan developer is the plan monitor unless there is a Service Coordinator, in which case the Service Coordinator assumes both roles. (10-1-03)T

~~13.~~ **Plan Of Service.** An initial or annual plan that identifies all services and supports based on a person-centered planning process. Plans are authorized annually every three hundred sixty-five (365) days. (10-1-03)T

**14. Provider Status Review.** The written documentation that identifies the participant's progress toward goals defined in the plan of service. (10-1-03)T

~~**3415. Psychosocial Information.** A combined summary of psychological and social histories of a consumer participant designed to inform provide the Individual Support Plan Team of and person-centered planning team with an accurate reflection of the consumer's participant's current skills, abilities, and needs.~~ (7-1-95)(10-1-03)T

~~**3516. Progress Note.** A written notation, dated and signed by a member of the Individual Support Plan person-centered planning team or service provider, that documents facts about the consumer's participant's assessment, services provided, and the consumer's participant's response during a given period of time.~~ (7-1-95)(10-1-03)T

~~**3617. Punishment.** Any procedure in which an adverse consequence is presented that is designed to produce a decrease in the rate, intensity, duration or probability of the occurrence of a behavior; or the administration of any noxious or unpleasant stimulus or deprivation of a consumer's participant's rights or freedom for the purpose of reducing the rate, intensity, duration, or probability of a particular behavior.~~ (7-1-95)(10-1-03)T

~~**3718. QMRP.** Qualified Mental Retardation Professional as defined in 42 CFR 483.430. (7-1-95)~~

~~**3819. Residential Habilitation.** Services consisting of an integrated array of individually-tailored services and supports furnished to an eligible consumer participant which are designed to assist them to reside successfully in their own homes, with their families, or alternate family home.~~ (7-1-95)(10-1-03)T

~~**3920. Reviewer.** A person or other entity authorized by the Department to conduct reviews to determine compliance with the program requirements and consumer participant satisfaction with the services.~~ (7-1-95)(10-1-03)T

~~**4021. Rule.** A requirement established by state, federal, or local government pursuant to under the law and having the effect of law.~~ (7-1-95)(10-1-03)T

~~**4122. Seclusionary Time Out.** The contingent removal of an individual from a setting in which reinforcement is occurring that is designed to result in a decrease in the rate, intensity, duration or probability of the occurrence of a response, and entails the removal of the individual to an isolated setting.~~ (7-1-95)

~~**4223. Substantial Compliance.** An agency is in substantial compliance with these rules when there are no deficiencies which would endanger the health, safety or welfare of the consumers participants.~~ (7-1-95)(10-1-03)T

~~**4324. Supervision.** Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity. (7-1-95)~~

~~**44. Targeted Service Coordinator.** A regionally enrolled provider of the Department who is qualified by training and experience to develop and coordinate individual supports and services for eligible consumers of the Department, as defined in IDAPA 16.03.09.118, "Rules Governing the Medical Assistance Program". (7-1-95)~~

**25. Service Coordination.** Service coordination is an activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. (10-1-03)T

**26. Service Coordinator.** An individual who provides service coordination to a Medicaid-eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 118. This includes Targeted Service Coordinators. (10-1-03)T

**27. Services.** Services paid for by the Department that enable the individual to reside safely and effectively in the community. (10-1-03)T

**28. Supports.** Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. (10-1-03)T

**4529. Transition Plan.** An interim plan developed by the residential habilitation agency defining activities to assist the ~~consumer~~ participant to transition out of residential habilitation services from that agency. (7-1-95)(10-1-03)T

**4630. Waiver Services.** Individually tailored services and supports as amended under Waiver Number 0076.90 (B) provided by an agency to an eligible recipient to prevent unnecessary institutional placement, to provide for the greatest degree of independence possible, to enhance the quality of life, to encourage choice, and to achieve and maintain community integration and participation. (7-1-95)

**0142. -- 099. (RESERVED).**

**100. CERTIFICATION - GENERAL REQUIREMENTS.**

After, July 1, 1995, no person, firm, partnership, association or corporation within the state and no state or local public agency ~~shall~~ may operate, establish, manage, conduct or maintain a residential habilitation agency without first obtaining a valid certificate issued by the certifying agency of the Department. (7-1-95)(10-1-03)T

**01. Application.** An application for a certificate ~~shall~~ must be made to the regional office of the Department upon forms provided by it and ~~shall~~ must contain such information as it reasonably requires, which ~~shall~~ must include affirmative evidence of ability to comply with such reasonable standards and rules as are lawfully adopted by the Board. (7-1-95)(10-1-03)T

**02. Issuance - Full Certificate.** Upon receipt of an application for certification, the certifying agency ~~shall~~ must issue a certificate if the applicant meets the requirements established under this chapter. ~~A certificate, unless suspended or revoked, must be renewed each and every year by the certifying agency.~~ A certificate to provide residential habilitation services ~~shall~~ must be issued specifically for the persons or governmental units named in the application and ~~shall~~ is not be transferable or assignable except with written approval of the certifying agency. Every agency ~~shall~~ must be designated by a distinctive name in applying for a certificate, and the name ~~shall~~ must not be changed without first notifying the certifying agency in writing at least thirty (30) days prior to the date the proposed change in name is to be effective. Certificates ~~shall~~ must be posted in a conspicuous place on the certified premises. (7-1-95)(10-1-03)T

**03. Denial.** The certifying agency may deny any application when persuaded by evidence that such conditions exist as to endanger the health or safety of any ~~consumer~~ participant. (7-1-95)(10-1-03)T

**a.** Additional causes for denial of certificate may include: (7-1-95)

**i.** The residential habilitation agency does not meet the needs of ~~consumers~~ participants as written on the ~~Individual Support~~ plans of service or Implementation Plans which will violate the ~~consumers'~~ participants' rights; or (7-1-95)(10-1-03)T

**ii.** The residential habilitation agency does not meet requirements for certification to the extent that it hinders its ability to provide quality services that comply with the rules for residential habilitation agencies; or (7-1-95)

**iii.** The residential habilitation agency has a history of repeat deficiencies. (7-1-95)

**b.** Before denial is final, the certifying agency ~~shall~~ must provide the opportunity for a hearing at which time the owner or sponsor of an agency may appear and show cause why the certificate should not be denied. A waiver of a specific rule or standard may be granted by the certifying agency in the event that good cause is shown for such a waiver and providing that said waiver does not endanger the health, safety or rights of any ~~consumer~~ participant. The decision to grant a waiver ~~shall~~ must not be considered as precedent or be given any force or effect in any other proceeding. Said waiver may be renewed annually if sufficient written justification is presented to the certifying agency. Contested case hearings, including denial and revocation, ~~shall~~ must be conducted ~~pursuant to~~ under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings".

~~(7-1-95)(10-1-03)T~~

**04. Revocation.** The certifying agency may revoke any certificate when persuaded by the evidence that such conditions exist which endanger the health, safety, or welfare of any ~~consumer~~ participant under the responsibility of the agency, or that the agency is not in substantial compliance with these rules. Additional causes for revocations of a certificate may include:

~~(7-1-95)(10-1-03)T~~

- a. The agency has a history of repeat deficiencies; or (7-1-95)
- b. The agency has been denied or has had revoked any certificate to operate a health or residential habilitation agency or has been convicted of operating any residential habilitation agency without a certificate or has been enjoined from operating such agency within two (2) years from the date of application; or (7-1-95)
- c. The agency lacks personnel sufficient in number or qualifications by training, experience, or judgment, to properly provide services to the proposed or actual numbers, and abilities and disabilities of ~~consumers~~ participants; or ~~(7-1-95)(10-1-03)T~~
- d. The agency has been guilty of fraud or deceit or misrepresentation in the preparation of the application or other documents required by the certifying agency; or (7-1-95)
  - i. Has been guilty of fraud or deceit or misrepresentation or dishonesty associated with the operation of a certified residential habilitation agency; or (7-1-95)
  - ii. Has been guilty of negligence or abuse or neglect or assault or battery while associated with the provision of services in its operation; or (7-1-95)
- e. The agency refuses to allow inspection of all residential habilitation records; or (7-1-95)
- f. The agency is not in substantial compliance with the provisions for services of ~~consumers'~~ participants' personal, civil or human rights outlined in Subsections 402.01.a. through 402.01.h.g.; or ~~(7-1-95)(10-1-03)T~~
- g. When the Department finds the public health, safety, or welfare imperatively require emergency action, a certificate may be summarily suspended pending proceedings for revocation or other action. (7-1-95)

**05. Emergency Powers Of The Director.** In the event of an emergency endangering the life or safety of a ~~consumer~~ participant receiving services from an agency, the Director may summarily suspend or revoke any residential habilitation certificate. As soon thereafter as practicable, the Director ~~shall~~ must provide an opportunity for a hearing. ~~(7-1-95)(10-1-03)T~~

**06. Injunction To Prevent Operation Without Certificate.** Notwithstanding the existence or pursuit of any other remedy, the Department may in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of an agency without a certificate required under this chapter. (7-1-95)

~~**07. Confidential Information.** Information received by the Department through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such a manner as to identify consumers of residential habilitation agencies except in a proceeding involving the question of certification. Public disclosure of information shall be governed by IDAPA 16.05.01, "Use and Disclosure of Department Records". Nothing in this chapter, however, shall be construed, nor shall any rule be promulgated under this section, as to impair, restrict, or alter the confidentiality and privilege afforded the consumer and physician communications, including without limitation, documentation thereof in records of agencies, or communications to and with assisting persons, or entities, nor shall this chapter be construed to amend by implication such physician consumer communication privilege as provided elsewhere in rule code, including without limitation, Section 9-320(4), Idaho Code, which shall remain inviolate. In addition to the information subject to public disclosure by law, the following information is also subject to disclosure:~~ ~~(7-1-95)~~

- ~~a.~~ *Name of agency, its owner(s), the administrator, and location; and* (7-1-95)
- ~~b.~~ *Official findings of deficiencies based on survey reports by the certifying agency; and* (7-1-95)
- ~~c.~~ *Plan of correction between the residential habilitation agency and the certifying agency; and* (7-1-95)
- ~~d.~~ *Comments furnished by the residential habilitation agency and the certifying agency.* (7-1-95)

**087. Conformity.** Applicants for certification and certified residential habilitation agencies ~~shall~~ must conform to all applicable rules of the Department. (7-1-95)(10-1-03)T

**098. Inspection Of Residential Habilitation Records.** The residential habilitation agency and all records required under these rules ~~shall~~ must be accessible at any reasonable time to authorized representatives of the Department for the purpose of inspection with or without prior notice. Refusal to allow such access ~~shall~~ must result in revocation of the residential habilitation agency's certificate. (7-1-95)(10-1-03)T

**109. Agency Provider Training.** The Department ~~shall~~ must assure that direct service providers of all residential habilitation service agencies receive ongoing training in the provision of services and supports to ~~consumers~~ participants. (7-1-95)(10-1-03)T

**101. CHANGE OF OWNERSHIP, ADMINISTRATOR OR LESSEE.**

**01. Notification To Department.** Because certificates are not transferable from one (1) individual to another or from one (1) lessee to another or from one (1) location to another, when a change of ownership, lease or locations is contemplated, the agency must be recertified and implement the same procedure as an agency that has never been certified. When a change of a certified agency's ownership, administrator, lessee, title, or address occurs, the owner or designee ~~shall~~ must notify the Department in writing. (7-1-95)(10-1-03)T

**02. New Application Required.** A new application must be submitted in the instance of a change of ownership or lessee to the certifying agency at least sixty (60) days prior to the proposed date of change. (7-1-95)

**03. Arms Length Agreement.** Because of the inherently close relationship between the lessee and the lessor, an application for change of ownership of an agency that is being leased from a person who is in litigation for failure to meet certification standards or who has had his certificate revoked, ~~shall~~ must include evidence that there is a bona fide arms length agreement and relationship between the two (2) parties. (7-1-95)(10-1-03)T

**102. -- 199. (RESERVED).**

**200. QUALITY ASSURANCE OUTCOME REVIEW.**

**01. Responsibilities.** The certifying agency ~~shall~~ must conduct an outcome-based review on each residential habilitation agency on a routine basis as specified in the service agreement. The outcome-based review ~~shall~~ must include at least the following: (7-1-95)(10-1-03)T

**a.** Review of ~~consumer participant~~ participant participation and satisfaction in residential habilitation services and identification, planning, and delivery; and (7-1-95)(10-1-03)T

**b.** An overall policy and administrative review and, if necessary, a clinical record review; and (7-1-95)

**c.** Assessment of the extent to which the agency's services meet the needs of the ~~consumer participant~~ participant as identified on the ~~Individual Support Plan~~ of service, and promote community integration and participation. (7-1-95)(10-1-03)T

**201. ADMINISTRATION.**

**01. Scope.** Each residential habilitation agency ~~shall~~ **must** be organized and administered under one authority. If other than a single owner or partnership, the agency ~~shall~~ **must** have a governing board which assumes full legal responsibility for the overall conduct of the agency. ~~(7-1-95)~~(10-1-03)T

**02. Structure.** The administrative responsibilities of the agency ~~shall~~ **must** be documented by means of a current organizational chart. ~~(7-1-95)~~(10-1-03)T

**03. Responsibilities.** The governing authority ~~shall~~ **must** assume responsibility for: ~~(7-1-95)~~(10-1-03)T

**a.** Adopting appropriate organizational bylaws and policies and procedures; and (7-1-95)

**b.** Appointing an administrator qualified to carry out the agency's overall responsibilities in relation to written policies and procedures and applicable state and federal laws. The administrator ~~shall~~ **must** participate in deliberation of policy decisions concerning all services; and ~~(7-1-95)~~(10-1-03)T

**c.** Providing a continuing and annual program of overall agency evaluation; and (7-1-95)

**d.** Assuring that appropriate training, space requirements, support services, and equipment for staff or affiliated residential habilitation providers are provided to carry out assigned responsibilities; and (7-1-95)

**e.** Cooperating in participating in a system by which to coordinate with other service providers continuity of the delivery of residential habilitation services in the ~~Individual Support Plan~~ plan of service. ~~(7-1-95)~~(10-1-03)T

**202. ADMINISTRATOR.**

~~As~~ The administrator ~~shall be~~ **is** responsible and accountable for implementing the policies and procedures approved by the governing authority. ~~(7-1-95)~~(10-1-03)T

**01. Administrator Qualifications.** Each agency ~~shall~~ **must** have a designated administrator who: ~~(7-1-95)~~(10-1-03)T

**a.** Is at least twenty-one (21) years of age; and (7-1-95)

**b.** Has not been convicted of any felony or fraudulent practices; and (7-1-95)

**c.** Has a minimum of three (3) years of experience in service delivery to persons with developmental disabilities with at least one (1) year having been in an administrative role. (7-1-95)

**02. Absences.** The administrator ~~shall~~ **must** designate, in writing, a qualified person to perform the functions of the administrator to act in his absence. ~~(7-1-95)~~(10-1-03)T

**03. Responsibilities.** The administrator, or his designee, ~~shall~~ **must** assume responsibility for: ~~(7-1-95)~~(10-1-03)T

**a.** Developing and implementing written administrative policies and procedures which comply with applicable rules; and (7-1-95)

**b.** Developing and implementing policies and procedures for staff and affiliated residential habilitation provider training, quality assurance, evaluation, and supervision; and (7-1-95)

**c.** Conducting regular staff and affiliated residential habilitation provider meetings to review program and general ~~consumer~~ participant needs and plan appropriate strategies for meeting those needs; and ~~(7-1-95)~~(10-1-03)T

**d.** Maintaining adequate financial accounting records according to government accepted accounting principles; and (7-1-95)

- e. Making all records available to the Department for review or audit; and (7-1-95)
- f. Developing and implementing a policy addressing safety measures to protect ~~consumers participants~~, staff, and affiliated residential habilitation providers as mandated by state and federal rules; and ~~(7-1-95)~~(10-1-03)T
- g. Ensuring that agency personnel, and affiliated providers including those providing services under arrangement, practice within the bounds set forth by the applicable state licensure boards. (7-1-95)

**203. STAFF AND AFFILIATED RESIDENTIAL HABILITATION PROVIDER TRAINING.**

Training ~~shall~~ must include orientation and ongoing training at a minimum as required ~~by rules and the waiver document under IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 143.~~ Training is to be a part of the orientation training and ~~shall be~~ is required initially prior to accepting ~~consumers participants~~. All required training must be completed within six (6) months of employment or affiliation with a residential habilitation agency and documented in the employee or affiliated residential habilitation provider record. The agency ~~shall~~ must ensure that all employees, affiliated residential habilitation providers, and contractors receive orientation training in the following areas: ~~(7-1-95)~~(10-1-03)T

- 01. **Rights.** Personal, civil, and human rights. (7-1-95)
- 02. **Disabilities.** Developmental disabilities commensurate with the skills of ~~consumers participants~~ served. ~~(7-1-95)~~(10-1-03)T
- 03. **Understanding Of ~~Consumers' Participants' Needs~~.** A basic understanding of the needs, desires, goals and objectives of ~~consumers participants~~ served. ~~(7-1-95)~~(10-1-03)T
- 04. **Supervision.** Appropriate methods of supervision. (7-1-95)
- 05. **Review Of Services.** A review of the specific services that the ~~consumer shall~~ participant requires. ~~(7-1-95)~~(10-1-03)T
- 06. **First Aid And CPR.** First aid, CPR, and universal precautions. (7-1-95)

**204. -- 299. RESERVED.**

**300. POLICY AND PROCEDURE MANUAL.**

A policy and procedure manual ~~shall~~ must be developed by the residential habilitation agency for effectively implementing its objectives. It ~~shall~~ must be approved by the governing authority. Policies and procedures ~~shall~~ must be reviewed annually and revised as necessary. The manual ~~shall~~ must, at a minimum, include policies and procedures reflecting the following: ~~(7-1-95)~~(10-1-03)T

- 01. **Scope Of Services And Area Served.** Scope of services offered and geographic area served. (7-1-95)
- 02. **Acceptance Standards.** Standards for acceptance of ~~consumers participants~~. ~~(7-1-95)~~(10-1-03)T
- 03. **Records Standards.** Standards for clinical records maintained. (7-1-95)
- 04. **Required Services.** Procedures that must be performed by each service. (7-1-95)
- 05. **~~Consumer Participant~~ Safety.** ~~Consumer Participant~~ safety assessment procedures. ~~(7-1-95)~~(10-1-03)T
- 06. **Emergency Care.** Emergency care measures and crisis and emergency planning. (7-1-95)
- 07. **Administrative Records.** Administrative records to be maintained. (7-1-95)

**08. Personnel.** Personnel qualifications, responsibilities, and job description. (7-1-95)

**09. ~~Consumer~~ Participant Rights.** Personal, civil, and human rights and dissemination of ~~consumer~~ participant rights policies. (~~7-1-95~~)(10-1-03)T

**301. PERSONNEL.**

**01. Policies.** The agency is responsible for the recruitment, hiring, training, supervision, scheduling, and payroll for its employees, subcontractors or agents; and training, supervision, and quality assurance for affiliated providers. Written personnel policies ~~shall~~ must be on file and provided to employees and affiliated residential habilitation providers which describe the employee's and affiliated residential habilitation provider's rights, responsibilities, and agency's expectations. (~~7-1-95~~)(10-1-03)T

**02. Work Schedules.** Coverage is scheduled to assure compliance with the Individual Support and Implementation Plans and all work schedules ~~shall~~ must be kept in writing. The agency ~~shall~~ must specify provisions and procedures to assure back-up coverage for those work schedules. (~~7-1-95~~)(10-1-03)T

**03. Personnel Records.** A record for each employee and affiliated residential habilitation provider ~~shall~~ must be maintained from date of hire or affiliation for not less than one (1) year after the employee or affiliated residential habilitation provider is no longer employed by the agency, and ~~shall~~ must include at least the following: (~~7-1-95~~)(10-1-03)T

- a. Name, current address and phone number of the employee; and (7-1-95)
- b. Social Security number; and (7-1-95)
- c. Education and experience; and (7-1-95)
- d. Other qualifications (if licensed in Idaho, the original license number and the date the current registration expires, or if certificated, a copy of the certificate); and (7-1-95)
- e. Date of employment or affiliation; and (7-1-95)
- f. Position in the agency; and (7-1-95)
- g. Date of termination of employment or affiliation and reason for termination, if applicable; and (7-1-95)
- h. Documentation of initial orientation and required training; and (7-1-95)
- i. Evidence of current CPR and First Aid certifications; and (7-1-95)
- j. Verification of completion of ~~the~~ criminal history checks ~~every five (5) years~~ in accordance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks"; and (~~7-1-95~~)(10-1-03)T
- k. Evidence that the employee or affiliated residential habilitation provider has received a job description and understands his duties. (7-1-95)

**302. SERVICE PROVISION PROCEDURES.**

**01. Admission Procedures.** The following criteria ~~shall~~ must apply to all ~~consumers~~ participants receiving services from a residential habilitation agency: (~~7-1-95~~)(10-1-03)T

a. Agreement to serve each ~~consumer~~ ~~shall~~ participant must be based on a recommendation of a person-centered planning process conducted by the ~~consumer's Individual Support Plan~~ participant's person-centered planning team, including his ~~targeted~~ service coordinator; (~~7-1-95~~)(10-1-03)T

b. The agency ~~shall~~ must obtain authorization from the Department for reimbursement for each Medicaid-covered eligible waiver service prior to providing residential habilitation services. (7-1-95)(10-1-03)T

**02. Implementation Plan.** Each ~~consumer shall~~ participant must have an implementation plan which ~~shall~~ includes goals and objectives specific to his ~~Individual Support Plan~~ plan of service residential habilitation program. (7-1-95)(10-1-03)T

**03. Periodic Review.** Review of services and ~~consumer~~ participant satisfaction ~~shall~~ must be conducted at least quarterly or more often if required by the ~~consumer's~~ participant's condition or program. (7-1-95)(10-1-03)T

**04. Medication Standards.** The agency ~~shall~~ must maintain a policy describing the program's system for handling ~~consumer~~ participant medications which is in compliance with the IDAPA 23.01.01, "Rules of the Board of Nursing". (7-1-95)(10-1-03)T

**05. Provider Status Review.** Residential Habilitation agencies must submit semiannual and annual status reviews reflecting the status of behavioral objectives or services identified on the plan of service to the plan monitor. Semiannual status reviews must remain in participant file and annual status reviews must be attached to annual plan of service. (10-1-03)T

**056. Termination Procedures.** The agency ~~shall~~ must terminate residential habilitation services if, as a result of a person-centered planning process conducted by the ~~Individual Support Plan~~ person-centered planning team, it is demonstrated that the ~~consumer~~ participant is no longer in need of or desires Residential Habilitation services. The agency must notify the client in writing that the termination of services will occur and must develop a transition plan for termination of those services. The ~~consumer~~ participant will be entitled to appeal the termination. The agency may not terminate services when to do so would pose a threat of endangerment to the ~~consumer~~ participant or others. (7-1-95)(10-1-03)T

303. -- 399. (RESERVED).

**400. CONSUMER PARTICIPANT RECORDS.**

**01. Participant Records.** Each agency ~~shall~~ must have and maintain a written policy outlining the required content of ~~consumer~~ participant records, criteria for completeness, and methodology to be used to ensure current and accurate records. An individual record ~~shall~~ must be maintained for each ~~consumer~~ participant and retained for a period of three (3) years following the ~~consumer's~~ participant's termination of services. All entries made into a ~~consumer~~ participant record ~~shall~~ must be dated and signed in ink. (10-1-03)T

**02. Required Information.** Records ~~shall~~ must include at least the following information: (7-1-95)(10-1-03)T

**01a.** Name, address and current phone number of the ~~consumer~~ participant. (7-1-95)(10-1-03)T

**02b.** Social Security and Medicaid ID numbers. (7-1-95)

**03c.** ~~Sex~~ Gender and marital status. (7-1-95)(10-1-03)T

**04d.** Date of birth. (7-1-95)

**05e.** ~~Emergency Contacts~~. Names, addresses, and current phone numbers of family, advocates, friends, and persons to be contacted in case of an emergency. (7-1-95)(10-1-03)T

**06f.** Physician, dentist, and other health care providers. (7-1-95)

**07g.** A list of medications, diet, and all other treatments prescribed for the ~~consumer~~ participant. (7-1-95)(10-1-03)T

- ~~08h.~~ Results of a history and physical when necessary. (7-1-95)
- ~~09i.~~ Results of an age appropriate functional assessment, and person centered plan. (7-1-95)
- ~~10j.~~ Psychosocial information. (7-1-95)
- ~~11k.~~ **Habilitation Program.** Habilitation program, including documentation of planning, continuous evaluation, and ~~consumer~~ participant satisfaction with the program. (~~7-1-95~~)(10-1-03)T
- ~~12l.~~ Record of significant incidents, accidents, illnesses, and treatments. (7-1-95)
- ~~13m.~~ Daily medication log when applicable. (7-1-95)
- ~~14n.~~ Daily record of the date, time, duration, and type of service provided. (7-1-95)
- ~~15o.~~ **Individual Support Plan.** The ~~Individual Support P~~plan of service including implementation plans maintained by the agency, and data-based progress notes. (~~7-1-95~~)(10-1-03)T

**401. CONFIDENTIALITY OF RECORDS (RESERVED).**

~~Any disclosure of information obtained by the Department is subject to the restrictions contained in IDAPA 16.05.01, "Use and Disclosure of Department Records". All consumer records shall be kept confidential and may be disclosed only with the written permission of the consumer, or the consumer's legal guardian, if one has been appointed or pursuant to Section 66-402, Idaho Code, in the event of any abuse, neglect, or exploitation reports. Any agency employee, affiliated residential habilitation provider or contractor shall report information about suspected abuse, neglect, or exploitation to adult protection workers and law enforcement officials, as required by law pursuant to Section 39-5202, Idaho Code, or to the Idaho Commission on Aging, Ombudsman Program, or the designated state protection and advocacy system for persons with developmental disabilities when applicable. (7-1-95)~~

**402. CONSUMER PARTICIPANT RIGHTS.**

**01. Responsibilities.** Each residential habilitation agency ~~shall~~ must develop and implement a written policy outlining the personal, civil, and human rights of all participants. ~~which shall~~ The policy protects and promotes the rights of each ~~consumer~~ participant and ~~includes~~ the following: (~~7-1-95~~)(10-1-03)T

**a.** Inform each ~~consumer~~ participant, or legal guardian, of the ~~consumer's~~ participant's rights and the rules of the agency; ~~and~~ (~~7-1-95~~)(10-1-03)T

**b.** Allow and encourage individual ~~consumers~~ participants to exercise their rights as ~~consumers~~ participants of the agency, and as citizens of the United States, including the right to file complaints, and the right to due process; ~~and~~ (~~7-1-95~~)(10-1-03)T

**c.** Inform each ~~consumer~~ participant, or legal guardian, of the services to be received, the expected benefits and attendant risks of receiving those services, and of the right to refuse services, and alternative forms of services available; ~~and~~ (~~7-1-95~~)(10-1-03)T

**d.** Provide each ~~consumer~~ participant with the opportunity for personal privacy and ensure privacy during provision of services; ~~and~~ (~~7-1-95~~)(10-1-03)T

**e.** Ensure that ~~consumers~~ participants are not compelled to perform services for the agency, its employees, affiliated residential habilitation providers or contractors and ensure that ~~consumers~~ participants who do work for the agency, its employees, affiliated residential habilitation providers or contractors, are compensated for their efforts at prevailing wages and commensurate with their abilities; ~~and~~ (~~7-1-95~~)(10-1-03)T

**f.** Ensure that ~~consumers~~ participants have access to telephones, if living in a place other than their own home or the home of their family, with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their ~~Individual Support P~~plans of service; and (~~7-1-95~~)(10-1-03)T

g. Ensure ~~consumers~~ that participants have the opportunity to participate in social, religious, and community group activities. ~~(7-1-95)(10-1-03)T~~

**403. CONSUMER PARTICIPANT FINANCES.**

When the residential habilitation agency or its employees, affiliated residential habilitation providers or contractors are designated as the payee on behalf of the ~~consumers~~ participants, the agency ~~shall~~ must establish and maintain an accounting system that: ~~(7-1-95)(10-1-03)T~~

**01. Consumer's Participant's Personal Finance Records.** Assures a full and complete accounting of ~~consumers'~~ participants' personal funds entrusted to the agency, or its employees, affiliated residential habilitation providers or contractors on behalf of ~~consumers~~ participants. Records of financial transactions ~~shall~~ must be sufficient to allow a thorough audit of the ~~consumer's~~ participant's funds. ~~(7-1-95)(10-1-03)T~~

**02. No Commingling Of Funds.** Precludes any commingling of ~~consumer~~ participant funds with agency funds. ~~(7-1-95)(10-1-03)T~~

**03. Availability Of Funds.** Ensures that the ~~consumer's~~ participant's financial records ~~shall~~ must be available on request to the ~~consumer~~ participant, ~~consumer's~~ participant's legal guardian or advocate. ~~(7-1-95)(10-1-03)T~~

**404. COMMUNICATION WITH CONSUMERS PARTICIPANTS, PARENTS, LEGAL GUARDIANS AND OTHERS.**

The residential habilitation agency ~~shall~~ must promote participation of ~~consumers~~ participants, legal guardians, relatives and friends in the process of providing services to a ~~consumer~~ participant unless their participation is unobtainable or inappropriate as prescribed by the ~~Individual Support P~~plan of service; and ~~(7-1-95)(10-1-03)T~~

**01. Reciprocal Communication.** Answer communications from ~~consumers'~~ participant's families and friends promptly and appropriately; and ~~(7-1-95)(10-1-03)T~~

**02. Promotion Of Visits And Activities.** Promote frequent and informal opportunities for visits, trips or vacations; and ~~(7-1-95)~~

**03. Notification Of Guardian Of Consumer's Participant's Condition.** Notify promptly the ~~consumer's~~ participant's legal guardian, if one exists, of any significant incidents, or changes in ~~consumer's~~ participant's condition including serious illness, accident, death, or abuse. ~~(7-1-95)(10-1-03)T~~

**405. TREATMENT OF CONSUMERS PARTICIPANTS.**

The residential habilitation agency ~~shall~~ must develop and implement written policies and procedures including definitions that prohibit mistreatment, neglect or abuse of the ~~consumer~~ participant to include at least the following: ~~(7-1-95)(10-1-03)T~~

**01. Interventions.** Positive behavior interventions ~~shall~~ must be used prior to and in conjunction with, the implementation of any restrictive intervention. ~~(7-1-95)(10-1-03)T~~

**02. No Abuse.** Employees, affiliated residential habilitation providers or contractors of the agency ~~shall~~ must not use physical, verbal, sexual, or psychological abuse or punishment. ~~(7-1-95)(10-1-03)T~~

**03. No Punishment.** Employees, affiliated residential habilitation providers or contractors of the agency ~~shall~~ must not withhold food or hydration that contributes to a nutritionally adequate diet. ~~(7-1-95)(10-1-03)T~~

**04. Reporting Violations.** ~~All allegations of mistreatment, neglect or abuse, as well as injuries of unknown origin, shall be reported immediately to the administrator and to other officials in accordance with state law through established procedures.~~ Any agency employee, affiliated residential habilitation provider or contractor must report immediately report all allegations of mistreatment, abuse, neglect, injuries of unknown origin, or exploitation to the administrator and to adult protection workers and law enforcement officials, as required by law under Section 39-5202, Idaho Code, or to the Idaho Commission on Aging, IDAPA 15.01.03, "Rules Governing

Ombudsman for the Elderly Program,” or the designated state protection and advocacy system for persons with developmental disabilities when applicable. (7-1-95)(10-1-03)T

**05. Providing Evidence Of Violation.** Agencies ~~shall~~ must provide evidence that all alleged violations are thoroughly investigated and ~~shall~~ must protect the ~~consumer~~ participant from the possibility of abuse while the investigation is in progress. (7-1-95)(10-1-03)T

**06. Reporting Results Of Investigations.** Results of all investigations ~~shall~~ must be reported to the administrator or designee and to other officials in accordance with state law, and, if the alleged violation is verified, appropriate corrective action ~~is~~ must be taken. (7-1-95)(10-1-03)T

**07. Proper Treatment Of ~~Consumers~~ Participants.** ~~Consumers shall~~ Participants must be treated with dignity and respect and their personal choices and preferences are respected and honored whenever possible and consistent with their well being and their ~~Individual Support P~~plan of service. (7-1-95)(10-1-03)T

**08. Use Of Restraint On ~~Consumers~~ Participants.** No restraints, other than physical restraint in an emergency, ~~shall~~ must be used on ~~consumers~~ participants prior to the use of positive behavior interventions. The following requirements apply to the use of restraint on ~~consumers~~ participants: (7-1-95)(10-1-03)T

a. Chemical restraint. Employees, affiliated residential habilitation providers or contractors of the agency ~~shall~~ must not use chemical restraint unless authorized by an attending physician. (7-1-95)(10-1-03)T

b. Mechanical restraint. (7-1-95)

i. Mechanical restraint may be used for medical purposes when authorized by an attending physician. (7-1-95)

ii. Mechanical restraint for non-medical purposes may be used only when a written behavior change plan is developed by the ~~consumer~~ participant, his ~~targeted~~ service coordinator, his team, and a QMRP or a behavior consultant/crisis management provider as qualified in IDAPA 16.03.09.143, “Rules Governing the Medical Assistance Program”. Informed ~~consumer~~ participant consent is required. (7-1-95)(10-1-03)T

c. Physical restraint. (7-1-95)

i. Physical restraint may be used in an isolated emergency to prevent injury to the ~~consumer~~ participant or others and ~~shall~~ must be documented in the ~~consumer’s~~ participant’s record. (7-1-95)(10-1-03)T

ii. Physical restraint may be used in a non-emergency setting when a written behavior change plan is developed by the ~~consumer~~ participant, his ~~targeted~~ service coordinator, his team, and a QMRP or a behavior consultant/crisis management provider as qualified in IDAPA 16.03.09.143, “Rules Governing the Medical Assistance Program”. Informed ~~consumer~~ participant consent is required. (7-1-95)(10-1-03)T

d. Seclusionary Time Out. Seclusionary time out may be used only when a written behavior change plan is developed by the ~~consumer~~ participant, his ~~targeted~~ service coordinator his team, and a QMRP or a behavior consultant/crisis management consultant as qualified in IDAPA 16.03.09.143, “Rules Governing the Medical Assistance Program”. Informed ~~consumer~~ participant consent is required. (7-1-95)(10-1-03)T

**406. -- 499. (RESERVED).**

**500. WAIVERS.**

~~Pursuant to~~ Under Section 39-2404, Idaho Code, waivers to these rules, may be granted by the Department as necessary provided that granting the waiver does not endanger the health or safety or rights of any ~~consumer~~ participant. The decision to grant a waiver ~~shall~~ must not be considered as precedent or be given any force or effect in any other proceeding. Said waiver may be renewed annually if sufficient written justification is presented to the Department. (7-1-95)(10-1-03)T

**501. -- 999. (RESERVED).**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.05.02 - RULES GOVERNING AUDITS OF PROVIDERS**

**DOCKET NO. 16-0502-0301 (CHAPTER REPEAL)**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 56-135, 56-202(b), 56-1003, and 67-2501, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

These rules were written to cover the Department's audits of institutional providers. The Department no longer conducts these audits, so the rules no longer have meaning and are being repealed.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule is no longer utilized and needs to be repealed.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Lloyd Forbes at (208) 364-1833.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before September 24, 2003.

DATED this 23rd day of July, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone  
(208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

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**IDAPA 16.05.02 IS BEING REPEALED IN ITS ENTIRETY.**

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.05.05 - RULES GOVERNING FEES FOR HEALTH OPERATING PERMITS, LICENSES, AND INSPECTION SERVICES**

#### **DOCKET NO. 16-0505-0301 (CHAPTER REPEAL)**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-1003 and 56-1007, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

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

This entire chapter of rules is being repealed. Sections of this chapter were moved into the Idaho Department of Environmental Quality rules IDAPA 58.01.14 "Rule Governing Fees for Environmental Operating Permits, Licenses and Inspection Services," leaving only a few substantive sections. Those remaining substantive sections are being added into relevant chapters of rules in this publication under Docket 16-0214-0301.

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

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: The fees in this chapter will be moved into the relevant chapter of rules IDAPA 16.02.14.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the repeal of this chapter is being made to minimize publication and duplication of rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Elke Shaw-Tulloch at (208) 334-5950.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before September 24, 2003.

DATED this 23rd day of July, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

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**IDAPA 16.05.05 IS BEING REPEALED IN ITS ENTIRETY.**

**IDAPA 18 – DEPARTMENT OF INSURANCE**  
**18.01.19 - INSURANCE RATES AND CREDIT RATING**  
**DOCKET NO. 18-0119-0301**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 41-211 and 41-1843, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be scheduled if requested in writing by at least twenty-five (25) persons, a political subdivision or an agency, not later than September 17, 2003.

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

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

This rule will implement Section 41-1843, Idaho Code, relating to the use of credit rating or credit history by insurers in determining rating and coverage of insurance, which became effective January 1, 2003. The proposed rule limits how insurers may use an insured's credit history as a basis for nonrenewing, canceling, or declining to issue certain types of policies, or charging a higher premium rate than would otherwise be charged. It is identical to the temporary rule IDAPA 18.01.19 that has been in effect since January 1, 2003.

In January 2003, the Department of Insurance adopted this rule as a temporary rule with an effective date of January 1, 2003. The temporary rule was published in the Idaho Administrative Bulletin, Volume 03-1, January 1, 2003, pages 156 through 158. With this publication the Department is initiating proposed rulemaking.

**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 conducted. The Notice of Negotiated Rulemaking was published in the June 5, 2002 Idaho Administrative Bulletin, Volume 02-6, page 41.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the proposed rule, contact Shad Priest at (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 September 24, 2003.

Dated this 23rd day of July, 2003.

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

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

This docket has been previously published as a Temporary Rule.  
The temporary effective date is January 1, 2003.

The original text of the Temporary Rule was published in the Idaho  
Administrative Bulletin, Volume 03-1, January 1, 2003,  
pages 156 through 158.

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0119-0301**

**IDAPA 18**  
**TITLE 01**  
**CHAPTER 19**

**18.01.19 - INSURANCE RATES AND CREDIT RATING**

**000. LEGAL AUTHORITY.**

This rule is promulgated pursuant to the authority granted by Title 41, Sections 41-211 and 41-1843, Idaho Code.

( )

**001. TITLE AND SCOPE.**

**01. Title.** This chapter shall be cited in full as IDAPA 18.01.19, "Insurance Rates and Credit Rating".

( )

**02. Scope.** This rule implements Section 41-1843, Idaho Code, enacted as Senate Bill No. 1408 by the legislature in 2002 relating to the use of credit rating or credit history by insurers in determining rating and coverage of insurance.

( )

**002. WRITTEN INTERPRETATIONS.**

The Department of Insurance may have written statements that pertain to the interpretation of the rules in this chapter. Any written statements shall be available for review at the Department of Insurance, 700 W. State Street, Boise, ID 83720.

( )

**003. ADMINISTRATIVE APPEALS.**

All hearings before the Director of the Department of Insurance shall be governed by Chapter 2, Title 41, and Chapter 52, Title 67, Idaho Code. Any appeal from a decision of the Director can be taken to District Court pursuant to Chapter 52, Title 67, Idaho Code and the Idaho Rules of Civil Procedure.

( )

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into these rules.

( )

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

This office is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The department's mailing address is: Idaho Department of Insurance, PO Box 83720, Boise, Idaho 83720-0043. The principal place of business is 700 West State Street, 3<sup>rd</sup> Floor, Boise, Idaho 83702-0043.

( )

**006. PUBLIC RECORDS.**

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter

3, and Title 41, Idaho Code. ( )

**007. – 009. (RESERVED).**

**010. DEFINITIONS.**

As used in this rule, unless the context requires otherwise, the following words shall have the following meanings: ( )

**01. Consumer Report.** Any written, oral, or other communication of any information by a consumer reporting agency regulated under the federal Fair Credit Reporting Act (15 U.S.C. 1681) that bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. ( )

**02. Credit Factor.** A factor or criterion that consists of or is derived from information obtained from a consumer report that is used by an insurer in determining policy premium rates, or in determining whether to issue, cancel or nonrenew a policy. ( )

**03. Department.** The Idaho Department of Insurance. ( )

**04. Noncredit Factor.** Any factor other than a credit factor that is reasonably expected to affect the risk assumed by an insurer and is used by the insurer in determining policy premium rates, or in determining whether to issue, cancel or nonrenew a policy. ( )

**05. Policy.** A contract for property or casualty insurance, as defined by Chapter 5, Title 41, Idaho Code, that is purchased or maintained primarily for personal, family or household purposes. ( )

**06. Weight.** The consideration given by an insurer to a particular credit or noncredit factor relative to other factors considered in the underwriting or rating process. ( )

**011. -- 099. (RESERVED).**

**100. USE OF CREDIT FACTORS.**

**01. Prohibited Acts.** An insurer shall not charge a higher premium than would otherwise be charged, or cancel, nonrenew or decline to issue a policy, based in any part upon credit factors unless: ( )

**a.** The decision is also based on a noncredit factor or factors; and ( )

**b.** The aggregate weight given to the noncredit factors considered in making the decision is at least as great as the aggregate weight given to the credit factors considered in making the decision. ( )

**02. Application Of Rule.** To determine whether a decision to issue, nonrenew or cancel a policy, or to charge a higher rate than would otherwise be charged, is based primarily upon a credit factor or factors, the Department will apply the following criteria: ( )

**a.** If an insurer declines to issue, nonrenews or cancels a policy based in any part upon a credit factor, the insurer must be able to show that it also relied upon a noncredit factor or combination of noncredit factors in making the decision and that the noncredit factor(s) played at least as great a role in the decision as did the credit factor. ( )

**b.** If an insurer relies in any part upon a credit factor in establishing an initial rate for new business, the insurer must be able to show that it also considered noncredit factors in establishing the initial rate and that not more than one-half (1/2) of the premium rate is attributable to the credit factor. ( )

**c.** If an insurer relies in any part upon a credit factor to impose an increase in premium rate for a customer, the insurer must be able to show that the increase was also based upon a change in at least one noncredit factor and that not more than one-half (1/2) of the increase is attributable to the credit factor. ( )

**03. Information Used In Reviewing Insurer's Decision.** To evaluate whether an underwriting or rating decision was based primarily upon credit factors, the department may require the insurer to explain in detail the insurer's underwriting or rating process, identify all factors considered in the process, and describe how the process was applied in the case under review. The department may also require the insurer to apply its underwriting or rating process to hypothetical cases submitted to the insurer by the Department. ( )

**101. -- 199. (RESERVED).**

**200. OTHER LAWS OR RULES.**

Nothing in this rule shall be construed to limit or modify any other laws or rules imposing restrictions regarding rating, issuing, canceling or nonrenewing a policy. ( )

**201. -- 299. (RESERVED).**

**300. TRADE SECRETS.**

Any information submitted by an insurer pursuant to this rule that the insurer considers to be a trade secret as defined by Section 9-340D, Idaho Code, and not subject to public disclosure, shall be clearly identified as such at the time it is submitted to the department. ( )

**301. -- 399. (RESERVED).**

**400. RETENTION OF RECORDS.**

Insurers subject to this rule shall document the factors and criteria considered in underwriting and rating decisions and shall retain the documentation for at least five (5) years from the date of the decision. ( )

**401. -- 499. (RESERVED).**

**500. VIOLATIONS.**

A failure to comply with this rule is a violation of Section 41-1843, Idaho Code. ( )

**501. -- 999. (RESERVED).**

**IDAPA 18 - DEPARTMENT OF INSURANCE**  
**18.01.53 - RULES GOVERNING CONTINUING EDUCATION**

**DOCKET NO. 18-0153-0301**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rule changes are effective January 1, 2004.

**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 41-211, 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 September 17, 2003.

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 is being amended to meet national uniformity standards set forth by the NAIC by changing the continuing education requirement for resident licensed insurance producers to a standard fixed amount of twenty-four hours of continuing education per two-year licensing period and to require a minimum of three hours in the subjects of insurance law and/or ethics for each two year licensing period. In addition, obsolete references to brokers and agents are changed to "producers."

**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 rule confers a benefit to the public.

**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 change adopts standards prescribed by the National Association of Insurance Commissioners and reduces the number of continuing education hours required for licensed insurance producers.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule contact Jim Genetti at (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 September 24, 2003.

Dated this 24th day of July, 2003.

Mary L. Hartung, Director  
Idaho Department of Insurance  
700 West State Street – 3<sup>rd</sup> floor  
P.O. Box 83720  
Boise, Idaho 83720-0043  
Telephone No. (208) 334-4250  
Fax: (208) 334-4398

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0153-0301

**001. TITLE AND SCOPE.**

The purpose of this rule is to help protect the public by maintaining high standards of professional competence in the insurance industry, and to maintain and improve the insurance skills and knowledge of ~~agents, brokers, and consultants~~ producers licensed by the Department of Insurance by prescribing a minimum education in approved subjects that a licensee must periodically complete, procedures and standards for the approval of such education, and a procedure for establishing that continuing education requirements have been met. (7-1-98)(1-1-04)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**012. BASIC REQUIREMENTS.**

**01. Proof Of Completion.** As a condition for the continuation of a license, a licensee must furnish the Director of the Department of Insurance ("Director"), on or before the licensing renewal date, proof of satisfactory completion of approved subjects or courses meeting the following requirements: (4-5-00)

a. ~~Forty~~ Twenty-four (24) hours of continuing education credit during each ~~of the first three (3)~~ licensing periods, which licensing period is for two (2) years. (4-5-00)(1-1-04)T

b. ~~After the third license renewal period at least twelve (12) hours of continuing education credits must be earned for each line of licensure during each successive renewal period, with a maximum of forty (40) hours for all lines held.~~ At least three (3) hours of continuing education credit in insurance law and/or ethics must be earned each licensing period. (4-5-00)(1-1-04)T

**02. Relicensing Procedures After Voluntary Termination Of License.** An insurance agent who voluntarily terminates his/her license can apply to be relicensed without testing if the application is received by the Department within twelve (12) months after the termination and if the continuing education requirements were completed during the licensing period prior to voluntary termination. Non-resident insurance agents who were former resident agents and who wish to obtain a resident license once again, will be subject to the continuing education requirements on a pro-rata basis. (4-5-00)

~~**03. Carry Over Of Credits.** A licensee may carry over credit hours that have been earned in excess of the hours needed to fulfill the continuing education requirement. However, a licensee may only use carry over credits to fulfill one-half (1/2) of the continuing education requirement. The licensee should submit only the required number of hours and indicate dates of completion. It is the responsibility of the licensee to keep track of earned credit hours and documentation to verify proof of completion.~~ (4-5-00)

**043. Completion Within Two Years.** Each course to be applied toward satisfaction of the continuing education requirement must have been completed within the two (2) year period immediately preceding renewal of the license, ~~except carryover credits as defined in Subsection 012.03.~~ Courses may not have been duplicated in the same renewal period. The date of completion for a self-study course is the date of successful completion of exam. (5-3-03)(1-1-04)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**016. PROGRAMS WHICH QUALIFY.**

**01. Requirements Of Acceptable Program.** A specific program will qualify as an acceptable continuing education program if it is a formal program of learning which contributes directly to the professional competence of a licensee. It will be left to each individual licensee to determine the course of study to be pursued. All programs must meet the standards outlined in Section 018. (7-1-93)

**02. Subjects Which Qualify.** (7-1-93)

**a.** The following general subjects are acceptable as long as they contribute to the knowledge and professional competence of an individual licensee as ~~an agent, broker, or consultant,~~ a producer and demonstrate a direct and specific application to insurance. ~~(4-5-00)~~(1-1-04)T

- i. Insurance, annuities, and risk management. (7-1-93)
- ii. Insurance laws and rules. (7-1-93)
- iii. Mathematics, statistics, and probability. (7-1-93)
- iv. Economics. (7-1-93)
- v. Business law. (7-1-93)
- vi. Finance. (7-1-93)
- vii. Taxes, Trusts, Estate Planning. (4-5-00)
- viii. Business environment, management, or organization. (7-1-93)
- ix. Securities. (7-1-98)

**b.** Areas other than those listed above may be acceptable if the licensee can demonstrate that they contribute to professional competence and otherwise meet the standards set forth in this rule. The responsibility for substantiating that a particular program meets the requirements of this rule rests solely upon the licensee. (7-1-93)

## IDAPA 18 - DEPARTMENT OF INSURANCE

### 18.01.59 - RULE TO IMPLEMENT THE RECOGNITION OF THE 2001 CSO MORTALITY TABLE FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES AND NONFORFEITURE BENEFITS

DOCKET NO. 18-0159-0301 (NEW CHAPTER)

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2004.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 41-211, 41-612 and 41-1927 Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

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

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the supporting reasons for temporary rulemaking:

This is a temporary and proposed rule to recognize, permit and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with Sections 41-612(4)(a)(iii) and 41-1927(9)(d)(viii)(B)(6), Idaho Code, IDAPA 18.01.47.005.01 and 005.02.

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

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is based on a model rule developed nationally with the participation of interested parties and is being adopted by states throughout the country.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary and proposed rule, contact Martha Hopper at (208) 334-4250.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

Dated this 23rd day of July, 2003.

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

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0159-0301

**IDAPA 18**  
**TITLE 01**  
**CHAPTER 59**

**18.01.59 - RULE TO IMPLEMENT THE RECOGNITION OF THE 2001 CSO MORTALITY**  
**TABLE FOR USE IN DETERMINING MINIMUM RESERVE**  
**LIABILITIES AND NONFORFEITURE BENEFITS**

**000. LEGAL AUTHORITY.**

This rule is promulgated and adopted pursuant to the authority granted by Sections 41-211, 41-612 and 41-1927, Idaho Code. (1-1-04)T

**001. TITLE AND SCOPE.**

**01. Title.** This chapter shall be cited in full as IDAPA 18.01.59, "Recognition of the 2001 CSO Mortality Table for Use In Determining Minimum Reserve Liabilities and Nonforfeiture Benefits". (1-1-04)T

**02. Scope.** The purpose of this rule is to recognize, permit and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with Sections 41-612(4)(a)(iii) and 41-1927(9)(d)(viii)(B)(6), Idaho Code, and IDAPA 18.01.47, "Valuation of Life Insurance Policies Including the Introduction and Use of New Select Mortality Factors," Subsections 005.01 and 005.02. (1-1-04)T

**002. WRITTEN INTERPRETATIONS.**

The Department of Insurance may have written statements that pertain to the interpretation of the rules in this chapter. Any written statements shall be available for review at the Department of Insurance, 700 W. State Street, Boise, ID 83720. (1-1-04)T

**003. ADMINISTRATIVE APPEALS.**

All hearings before the Director of the Department of Insurance shall be governed by Chapter 2, Title 41, and Chapter 52, Title 67, Idaho Code. Any appeal from a decision of the Director can be taken to District Court pursuant to Chapter 52, Title 67, Idaho Code and the Idaho Rules of Civil Procedure. (1-1-04)T

**004. INCORPORATION BY REFERENCE.**

The Director of the Department of Insurance adopts by reference the 2001 CSO Mortality Table. The table is available on the internet by accessing the department's website at <http://www.doi.state.id.us/company/18.01.59.aspx>. (1-1-04)T

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

This office is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The department's mailing address is: Idaho Department of Insurance, PO Box 83720, Boise, Idaho 83720-0043. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83702-0043. (1-1-04)T

**006. PUBLIC RECORDS.**

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, and Title 41, Idaho Code. (1-1-04)T

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

As used in this rule, unless the context requires otherwise, the following words shall have the following meanings: (1-1-04)T

**01. 2001 CSO Mortality Table.** That mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic

Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the "Proceedings of the NAIC (2nd Quarter 2002)". Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest birthday and age-last-birthday bases of the mortality tables. (1-1-04)T

**02. 2001 CSO Mortality Table (F).** Mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table. (1-1-04)T

**03. 2001 CSO Mortality Table (M).** Mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table. (1-1-04)T

**04. Composite Mortality Tables.** Mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers. (1-1-04)T

**05. Smoker And Nonsmoker Mortality Tables.** Mortality tables with separate rates of mortality for smokers and nonsmokers. (1-1-04)T

**011. -- 099. (RESERVED).**

**100. 2001 CSO MORTALITY TABLE.**

**01. Election Of The Company.** At the election of the company for any one (1) or more specified plans of insurance and subject to the conditions stated in this rule, the 2001 CSO Mortality table may be used as the minimum standard for policies issued on or after January 1, 2004 and before the date specified in Subsection 004.02 to which Sections 41-612(4)(a)(iii) and 41-1927(9)(d)(viii)(B)(6), Idaho Code, IDAPA 18.01.47.005.01 and 005.02 are applicable. If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes. (1-1-04)T

**02. Minimum Standards For Policies.** Subject to the conditions stated in this rule, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which Sections 41-612(4)(a)(iii) and 41-1927(9)(d)(viii)(B)(6), Idaho Code, IDAPA 18.01.47.005.01 and 005.02 are applicable. (1-1-04)T

**101. -- 199. (RESERVED).**

**200. CONDITIONS.**

**01. Plans With Separate Rates For Smokers And Nonsmokers.** For each plan of insurance with separate rates for smokers and nonsmokers an insurer may use: (1-1-04)T

**a.** Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits; (1-1-04)T

**b.** Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by Section 41-612(10), Idaho Code, and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or (1-1-04)T

**c.** Smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits. (1-1-04)T

**02. Plans Without Separate Rates For Smokers And Nonsmokers.** For plans of insurance without separate rates for smokers and nonsmokers the composite mortality tables shall be used. (1-1-04)T

**03. Determining Minimum Reserve Liabilities And Minimum Cash Surrender Values And**

**Amounts Of Paid-Up Nonforfeiture Benefits.** For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of Section 006 of this rule and IDAPA 18.01.47 relative to use of the select and ultimate form. (1-1-04)T

**04. The 2001 CSO Mortality Table Is The Minimum Reserve Standard.** When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for a company, the actuarial opinion in the annual statement filed with the director shall be based on an asset adequacy analysis as specified in IDAPA 18.01.77.005.08. The director may exempt a company from this requirement if it only does business in this state and in no other state. (1-1-04)T

**201. -- 299. (RESERVED).**

**300. APPLICABILITY OF THE 2001 CSO MORTALITY TABLE TO IDAPA 18.01.47.**

**01. Use Of The 2001 CSO Mortality Table.** The 2001 CSO Mortality Table may be used in applying IDAPA 18.01.47 in the following manner, subject to the transition dates for use of the 2001 CSO Mortality Table referenced in Section 004 of this rule. Unless otherwise noted, the references in this Section are to Subsections of IDAPA 18.01.47. Nothing in this section shall be construed to expand the applicability of IDAPA 18.01.47 to include life insurance policies exempted under IDAPA 18.01.47.001.04: (1-1-04)T

**a.** IDAPA 18.01.47.001.04.a.ii.(2): The net level reserve premium is based on the ultimate mortality rates in the 2001 CSO Mortality Table. (1-1-04)T

**b.** IDAPA 18.01.47.004.02: All calculations are made using the 2001 CSO Mortality Rate, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in Subsection 006.01.d. of this rule. The value of "qx+k-1" is the valuation mortality rate for deficiency reserves in policy year k+t, but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves. (1-1-04)T

**c.** IDAPA 18.01.47.005.01: The 2001 CSO Mortality Table is the minimum standard for basic reserves. (1-1-04)T

**d.** IDAPA 18.01.47.005.02: The 2001 CSO Mortality Table is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in Subsections 18.01.47.005.02.c.i. to 005.02.c.ix. In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the combination is explicitly required by rule or necessary to be in compliance with relevant Actuarial Standards of Practice. (1-1-04)T

**e.** IDAPA 18.01.47.006.03: The valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table. (1-1-04)T

**f.** IDAPA 18.01.47.006.05.d.: The calculations specified in Subsection 006.05 shall use the ultimate mortality rates in the 2001 CSO Mortality Table. (1-1-04)T

**g.** IDAPA 18.01.47.006.06.d.: The calculations specified in Subsection 006.06 shall use the ultimate mortality rates in the 2001 CSO Mortality Table. (1-1-04)T

**h.** IDAPA 18.01.47.006.07.b.: The calculations specified in Subsection 006.07 shall use the ultimate mortality rates in the 2001 CSO Mortality Table. (1-1-04)T

**i.** IDAPA 18.01.47.007.01.a.ii.: The one (1) year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table. (1-1-04)T

**301. -- 399. (RESERVED).**

**400. GENDER-BLENDED TABLES.**

**01. Minimum Cash Surrender Values And Amounts Of Paid-Up Nonforfeiture Benefits.** For any ordinary life insurance policy delivered or issued for delivery in Idaho on and after January 1, 2004, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by Subsection 400.01 of this chapter. (1-1-04)T

**02. Blended Table Choices.** The company may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002. (1-1-04)T

**03. Sex-Distinct And Sex-Neutral Policy Issuance.** It shall not, in and of itself, be a violation of Title 41, Chapter 13, Idaho Code for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis. (1-1-04)T

**401. -- 499. (RESERVED).**

**500. SEPARABILITY.**

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected. (1-1-04)T

**501. -- 599. (RESERVED).**

**600. EFFECTIVE DATE.**

This chapter shall become effective January 1, 2004. (1-1-04)T

**601. -- 999. (RESERVED).**

## **IDAPA 20 - DEPARTMENT OF LANDS**

### **20.06.01 - RULES OF PRACTICE AND PROCEDURE FOR CONTESTED CASES AND RULEMAKING BEFORE THE IDAHO BOARD OF SCALING PRACTICES**

#### **DOCKET NO. 20-0601-0301 (CHAPTER REPEAL)**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 38-1208, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

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

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

Repeal of chapter in its entirety to eliminate rules that are no longer needed. Rules relating to informal hearings will be incorporated in a different chapter (IDAPA 20.06.02).

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

No fees or charges are involved.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the chapter repeal simply eliminates unnecessary and outdated rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Ernest H. Bauer at (208) 769-1445.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 18th day of July, 2003

Ernest H. Bauer  
Executive Director  
Idaho Board of Scaling Practices  
3780 Industrial Avenue South  
Coeur d'Alene, Idaho 83815-8918  
Phone: (208) 769-1445  
Fax: (208) 769-1485

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**IDAPA 20.06.01 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 20 - DEPARTMENT OF LANDS

### 20.06.02 - GENERAL RULES, LICENSING, AND CHECK SCALES OF THE IDAHO BOARD OF SCALING PRACTICES

DOCKET NO. 20-0602-0301

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 38-1208, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

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

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

Eliminate reference to chapter being repealed; update and correct Idaho Code statute citations; incorporate rules relating to informal hearings from the chapter being repealed.

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

No fees or charges are involved.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the simple nature of the proposed rule changes (incorporation of existing rules from a chapter being repealed and statute citation corrections).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Ernest H. Bauer at (208) 769-1445.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 18th day of July, 2003.

Ernest H. Bauer  
Executive Director  
Idaho Board of Scaling Practices  
3780 Industrial Avenue South  
Coeur d'Alene, Idaho 83815-8918  
Phone: (208) 769-1445  
Fax: (208) 769-1485

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0602-0301

**003. ADMINISTRATIVE APPEALS.**

Appeals of check scaling reports to the Board are governed by the provisions of Sections 38-1222 and 67-5201, et seq, Idaho Code, ~~and IDAPA 20.06.01, "Rules of Practice and Procedure for Contested Cases and Rulemaking Before the Idaho Board of Scaling Practices"~~. (4-15-98)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

- 01. Board.** The duly authorized and appointed members of the Board of Scaling Practices. ( )
- 042. Check Scaling.** The comparison of scaling practices between a Board-appointed check scaler and any other scaler. (4-15-98)
- 023. Combination Log.** Any multiple-segment log involving more than one (1) product classification. (4-15-98)
- 04. Complaint.** A statement alleging a violation of the Idaho Scaling Law, Title 38, Chapter 12, Idaho Code. ( )
- 05. Complainant.** A person or entity who submits a complaint to the Board. ( )
- 036. Decimal "C".** A log rule that uses tens of board feet as its basic unit of measure; one (1) decimal "C" equals ten (10) board feet. The standard Scribner Coconino decimal "C" volumes as listed in the Appendix, Table I, IDAPA 20.06.03, "Measurement Rules for Forest Products of the State Board of Scaling Practices". (4-15-98)
- 047. Gross Scale.** The log rule volume of timber products before deductions are made for defects. (4-15-98)
- 058. Gross Weight.** The actual weight of the products hauled. (4-15-98)
- 09. Informal Hearing.** Any hearing directly before the Board of Scaling Practices, as opposed to a formal hearing before a hearing officer designated by the Board. ( )
- 0610. Log Brands.** A unique symbol or mark placed on or in forest products for the purpose of identifying ownership. (4-15-98)
- 0711. Net Scale.** The remaining log rule volume of timber products after deductions are made for defects, based on the product classification that is used. (4-15-98)
- 08.12 Official Seal.** An official seal of the Idaho Board of Scaling Practices is hereby adopted. The seal shall be round, of a diameter of at least one and one-half inches (1-1/2"), and be so constructed that it may readily be imprinted on paper. The seal appears in the appendix hereto. (4-15-98)
- 0913. Prize Logs.** As described in Section 38-809, Idaho Code. (4-15-98)
- 104. Product Classification.** Classification as sawlog, pulp log, or cedar products log for purposes of check scaling. (4-15-98)
- 145. Purchaser.** The principal individual, partnership, or corporation entitled to ownership at the first determination of scale for forest products harvested in Idaho. Purchaser shall also include the owner of the timber as provided in Section 38-1209(b), Idaho Code. (4-15-98)

- ~~126.~~ **Requested Check Scale.** A check scale performed pursuant to Section 820 of these rules. (4-15-98)
- ~~137.~~ **Relicense Check Scale.** A check scale requested and scheduled in advance, by a licensed scaler, for purposes of license renewal. (4-15-98)
- ~~148.~~ **Routine Check Scale.** A check scale that is not a relicense, temporary permit, or requested check scale. (4-15-98)
- ~~19.~~ **Respondent.** The person or entity accused of violating the Idaho Scaling Law, Title 38, Chapter 12, Idaho Code. ( )
- ~~1520.~~ **Temporary Permit Check Scale.** A check scale performed pursuant to provisions of Section 240 of these rules. (4-15-98)
- ~~1621.~~ **Written Scaling Specifications.** A written document provided to the scaler that states the information necessary to scale logs in accordance with a contractual scaling agreement. (4-15-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**050. ASSESSMENT.**

In accordance with provisions of Section 38-1209, Idaho Code, the Board is authorized and directed to levy an assessment. (4-15-98)

- 01. Purchaser.** The purchaser, as defined in Subsection 010.1~~75~~, shall pay the assessment levied by the Board. (~~4-15-98~~)( )
- 02. Assessment.** The assessment shall be transmitted to the Board on or before the twentieth (20th) day of each month for all timber harvested during the previous month. Forms provided by the Board shall be completed and submitted with the assessment. (4-15-98)
- 03. Weight.** On forest products harvested and purchased solely on the basis of weight, no levy of assessment is applicable. (4-15-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. PAYMENT FOR LOGGING OR HAULING.**

Provisions of Section 38-12~~020~~(~~eb~~), Idaho Code, govern payment for logging or hauling. (~~4-15-98~~)( )

- 01. Gross Scale Determination.** Gross scale shall be determined in accordance with IDAPA 20.06.03, "Measurement Rules for Forest Products of the Idaho Board of Scaling Practices". (4-15-98)
- 02. Compliance With Gross Scale Determination.** Notwithstanding the mensuration criteria contained in IDAPA 20.06.03, "Measurement Rules for Forest Products of the Idaho Board of Scaling Practices," compliance shall be determined to have been met when check scale results on gross scale comparisons are within allowable standards of variation as contained in these rules. (4-15-98)

**101. -- 1~~909~~. (RESERVED).**

**110. INFORMAL HEARINGS -- SCOPE AND AUTHORITY.**

Sections 110 through 180 shall apply to all informal hearings before the Board of Scaling Practices. These rules are adopted pursuant to Sections 38-1208 and 67-5201, Idaho Code et sequitur, and are intended to facilitate the Board in

executing its duties and responsibilities under Title 38, Chapter 12, Idaho Code. These rules shall be construed to effectuate the intent of the legislature in adopting the Idaho Scaling Law in a reasonable, fair and expeditious manner. ( )

**111. -- 119. (RESERVED).**

**120. COMPLAINTS.**

**01. Submittal Of Complaint.** The complaint shall be submitted in writing in the name of the primary complainant. ( )

**02. Contents Of Complaint.** The complaint shall state: ( )

**a.** The name and address of the person or entity actually aggrieved. ( )

**b.** A short and plain statement of the nature of the complaint, including the location and date of the alleged violation. ( )

**c.** The complainant's notarized signature. ( )

**d.** The complainant shall submit, with the complaint, written or documentary evidence in support of the alleged violation. ( )

**03. Payment Of Gross Scale.** Complaints which allege violations of Section 38-1220(b), Idaho Code, requiring payment by gross scale shall include the following: ( )

**a.** A notarized complaint or statement in accord with Subsection 120.02.d. ( )

**b.** A readable copy of the contract, payment slips, and scale tickets for each transaction involved in the alleged complaint. ( )

**121. -- 129. (RESERVED).**

**130. RESPONSE TO COMPLAINT.**

**01. Response.** The respondent shall submit to the Board a written response to the allegations of the complaint, with supporting evidence, within thirty (30) days after receiving a copy of the same from the Board. The Board shall presume that the respondent received such complaint and evidence within three (3) days after mailing by the Board, unless the respondent submits evidence to the contrary to the Board. ( )

**02. Consideration Of Complaint.** The Board shall consider a complaint in its next meeting following the timely response of the respondent or the respondent's failure to respond within the time limit of Subsection 130.01. ( )

**131. -- 139. (RESERVED).**

**140. CONDUCT OF INFORMAL HEARINGS.**

**01. Hearing Procedure.** The chairman of the Board shall minimize, where possible, the use or application of formal court rules of procedure and evidence in the spirit of an informal hearing consistent with the intent of these rules, fairness to the parties, and the interests of justice. The chairman shall conduct the informal hearing in an expeditious manner and shall control testimony and questioning to avoid unnecessary debate between the complainant and the respondent, including, without limitation, such as may result from cross examination. ( )

**02. Statements.** The complainant and the respondent may make a brief statement concerning the allegation(s) and may introduce new evidence in support of or in opposition to the allegation(s). Statements shall be concise, specific, relevant to the allegation(s), and limited to ten (10) minutes per party, unless the specific

allegation(s) as determined by the chairman clearly requires greater time to address the same. ( )

**03. Questions Directed To The Board.** All questions at the hearing shall be directed to the Board. The Board shall consider written or oral questions from the complainant or respondent at the hearing or take such questions under advisement. ( )

**04. Questions Asked By The Board.** Only the Board may ask questions of the complainant or respondent and may call witnesses. ( )

**05. Representation By Counsel.** The complainant and the respondent may be represented by counsel. ( )

**141. -- 149. (RESERVED).**

**150. TIME FOR BOARD DETERMINATION.**

After submission of the complaint and supporting documentation for evidence in accord with Section 130, and after an informal hearing on a complaint wherein the parties have had opportunity to respond to these allegations and to present testimony, documentation, or other evidence thereon in accord with Section 140, the Board may thereafter make its determination or take the matter under advisement and reach its determination within thirty (30) days. ( )

**151. -- 159. (RESERVED).**

**160. FINAL DETERMINATION.**

**01. Board Decision Final.** The Board's determination shall be final, subject to appeal pursuant to Title 67, Chapter 52, Idaho Code. ( )

**02. Elements Of Board Decision.** The Board's determination may include the following: ( )

**a.** That the complaint failed to state a violation of the scaling law. ( )

**b.** That the complaint and supporting evidence failed to adequately show a probable violation of the scaling law. ( )

**c.** That the complaint and supporting documentation indicate a probable violation of the Idaho Scaling Law. ( )

**161. -- 169. (RESERVED).**

**170. BOARD ACTION UPON DETERMINATION OF PROBABLE VIOLATION.**

In the event that the Board determines that the complaint and supporting evidence indicate a probable violation of the Idaho Scaling Law, the Board shall, within thirty (30) days, transmit the complaint and supporting documentation to the prosecutor of the county where the violation occurred. ( )

**171. -- 179. (RESERVED).**

**180. ACCESS TO RECORDS.**

The Board shall provide to the respondent or his counsel a copy of the complaint and any supporting evidence to which the respondent does not have access, at the earliest date after the Board has received the same. The Board shall provide the complainant or his counsel a copy of any answer or response and supporting evidence thereof to which the complainant does not have access, at the earliest date after the Board has received the same. ( )

**181. -- 199. (RESERVED).**

# IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

## 31.71.03 - RAILROAD SAFETY/SANITATION RULES

### DOCKET NO. 31-7103-0301

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given of the Public Utilities Commission's proposed rulemaking. This action is authorized pursuant to Sections 61-515 and 61-113, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be scheduled only if requested in writing by twenty-five (25) persons, political subdivision, or an agency, no later than September 17, 2003. The hearing site will be accessible to persons with disabilities. Requests for accommodations must be made no later than five (5) days prior to the hearing, to the Commission's address set out below.

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

In March 2003, the U.S. Department of Transportation in conjunction with the Department of Homeland Security issued new rules to enhance the security of hazardous materials transported by railroads. The amended safety rules (to be codified in scattered sections in 49 C.F.R. Part 172) require shippers of hazardous materials and railroads to develop and implement security plans. 68 Fed. Reg. 14510 (March 25, 2003). Briefly, security plans are to address risk assessments, personnel security, unauthorized access to materials, and in-route transportation safety. In addition, the federal rules require shippers and transporters of hazardous materials to provide security awareness training to their employees. The Commission proposed to adopt these new safety rules by incorporation.

**FEE SUMMARY:** There are no fees associated with this proposed rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.0811, negotiated rulemaking was not conducted because the proposed rule merely adopts existing federal safety regulations applicable to shippers and transporters of hazardous materials by rail.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Donald L. Howell, II, Deputy Attorney General at (208) 334-0312.

Anyone may submit written comments regarding these proposed rules. All written comments concerning the proposed rules must be delivered to the Commission Secretary at the address identified below or must be postmarked on or before September 24, 2003.

DATED at Boise, Idaho this 25th day of July, 2003.

Jean D. Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID 83720-0074  
Telephone: (208) 334-0338  
Facsimile: (208) 334-3762

Street address for express delivery:  
472 W Washington  
Boise, Idaho 83702-5983

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 31-7103-0301

**103. TRANSPORTATION OF HAZARDOUS MATERIAL BY RAIL (Rule 103).**

**01. Hazardous Material Defined.** “Hazardous material” means a substance or material which has been determined by the United States Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated by the Secretary of Transportation. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials as defined in 49 C.F.R. Section 171.8, materials designated as hazardous under the provisions of 49 C.F.R. Section 172.101, and materials that meet the defining criteria for hazardous classes and divisions in 49 C.F.R. Part 173. (3-30-01)

**02. Adoption Of Federal Safety Regulations.** The Commission hereby adopts by reference 49 C.F.R. Parts 107, 171, 172, 173, 174, 178, 179, and 180 (October 1, 2000~~3~~). All customers offering hazardous materials for shipment by rail and all railroads operating in Idaho that transport hazardous materials listed in, defined by, or regulated by the adopted federal safety regulations must comply with 49 C.F.R. Parts 107, 171, 172, 173, 174, 178, 179 and 180. (~~3-30-01~~)(\_\_\_\_)

**03. Recognition Of Federal Exemptions.** Whenever a railroad or shipper has applied to a federal agency and has been granted an exemption from the transportation or packaging requirements of the federal safety regulations adopted in Subsection 103.02, the federal exemption will also be recognized under these rules. The Commission shall not administer a program to duplicate consideration or approval of federal exemptions on a state level. (3-30-01)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0102-0302

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

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:

With the enactment of HB 400 in 2003 the sales tax rate became 6%. Sales tax administrative rules 041, 047, 063, 073, 110, and 126 needed to be amended because they contain examples with the 5% tax rate. Changes also include technical corrections that have been made.

**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 proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 31st day of July, 2003.

Jim Husted, Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Bl., Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410

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#### THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-0302

#### 041. FOOD, MEALS, OR DRINKS (Rule 041).

**01. In General.** This rule covers the imposition of tax on sales of food, meals, or drinks by commercial establishments, college campuses, conventions, nonprofit organizations, private clubs, and similar organizations.

(7-1-93)

**02. Commercial Establishments.** Sales tax is imposed on the amount paid for food, meals, or drinks furnished by any restaurant, cafeteria, eating house, hotel, drugstore, diner, club, or any other place or organization regardless of whether meals are regularly served to the public. (7-1-93)

**03. Clubs And Organizations.** Private clubs, country clubs, athletic clubs, fraternal, and other similar organizations are retailers of tangible personal property sold by them, even if they make sales only to members. Such organizations must obtain an Idaho seller's permit and report and pay retail sales tax on all sales. Taxability of membership dues depends upon the nature of the club. See Rule 030 of these rules. Special rules apply to religious organizations. See Rule 086 of these rules. (3-15-02)

**a.** When an organization holds a function in its own quarters, maintains its own kitchen facilities, and sells tickets which include items such as meals, dancing, drinks, entertainment, speakers, and registration fees (convention), the charges may be separated and tax collected on meals, drinks, and admission fees when the ticket is sold. For example:

Dinner, dancing, etc.	\$ 8.00
Tax	<del>.408</del>
Registration, speakers, etc.	\$ 6.60
Total Ticket	<del>\$15.008</del>

Meals and the use of recreational facilities are taxable. Registration fees, speaker fees, and similar charges are not taxable. (~~7-1-93~~)(\_\_\_\_\_)

**b.** The organization holding the function or convention must obtain a seller's permit and remit tax to the state. When the charges are not separated, the total price of the ticket is taxable. (7-1-93)

**c.** When an organization holds a function in facilities operated by a restaurant or motel and sells tickets for meals, drinks, and other services, no sales tax applies to these sales if the organization pays the restaurant or hotel sales tax on the meals and drinks furnished and all other services performed. The hotel, restaurant, or caterer will remit the tax to the state. (7-1-93)

**04. Colleges, Universities, And Schools.** A cafeteria operated by a state university, junior college district, public school district, or any other public body is treated the same as a cafeteria operated by a private enterprise. Purchases of food for resale are not taxable; meals sold are taxable. (7-1-93)

**a.** If a meal is paid for by cash or a meal ticket is sold to the student, tax is computed on the total sales price of the meal. If meals are sold as part of a room and board fee, the amount paid for board must be separated from the amount paid for the room. Tax is calculated and collected on that part of the total fee allocated to the purchase of meals. (7-1-93)

**b.** Sales of meals by public or private schools under the Federal School Lunch Program are exempted by Section 63-3622J, Idaho Code. (7-1-93)

**05. Fraternities, Sororities, And Cooperative Living Group.** Fraternities and sororities generally purchase and prepare food for their own consumption. The food is prepared and served in a cooperative manner by members of the fraternity or by employees hired by the group for this purpose. Purchases made by the fraternity or sorority are for consumptive use and subject to sales tax. There is no sale of meals to fraternity or sorority members and no sales tax imposed on any allocated charge for them whether stated separately or included as part of a lump sum charge for board and room. (7-1-93)

**a.** If a concessionaire is retained by the fraternity or sorority to furnish meals, the concessionaire is a retailer engaged in the business of selling meals; food purchases are for resale and meals supplied by the concessionaire to members of the fraternity or sorority are subject to sales tax. (7-1-93)

b. If the fraternity or sorority regularly furnishes meals for a consideration to nonmembers, these meals become subject to tax and the fraternity or sorority must obtain an Idaho seller's permit. (7-1-93)

c. Cooperative living groups are normally managed in much the same manner as fraternities and sororities. Food is purchased and meals prepared and served by members of the group or their employees. The same conditions outlined above for fraternities and sororities apply to cooperative living groups. (7-1-93)

**06. Boarding Houses.** Sales of meals furnished by boarding houses are subject to tax, when they are charged separately. This applies whether or not the meals are served exclusively to regular boarders. Where no separate charge or specific amount is paid for meals furnished, but is included in the regular board and room charges, the boarding house or other place is not considered to be selling meals, but is the consumer of the items used in preparing such meals. (7-1-93)

**07. Honor System Snack Sales.** Honor system snack sales are those items of individually sized prepackaged snack foods, such as candy, gum, chips, cookies or crackers, which customers may purchase by depositing the purchase price into a collection receptacle. Displays containing these snacks are generally placed in work or office areas and are unattended. Customers are on their honor to pay the posted price for the article removed from the display. Purchases from these snack displays are subject to sales tax. (7-1-93)

a. Sales tax applies to the gross receipts. The posted price must include a statement that sales tax is included. (7-1-93)

b. The formula for computing the taxable amount effective ~~July 1, 1986~~ May 1, 2003, is: (Gross Receipts) / (one hundred ~~five six~~ percent (10~~56~~%) = Taxable Sales. (Taxable Sales) x (~~five six~~ one hundredths percent (~~56~~%) = Tax Due. (7-1-93)(    )

**08. Church Organization.** Special rules apply to religious organizations. See Rule 086 of these rules. (3-15-02)

**09. Senior Citizens.** Meals sold under programs that provide nutritional meals for the aging under Title III-C of the Older Americans Act, Public Law 93-29, are exempted from the sales tax by Section 63-3622J, Idaho Code. Organizations selling such meals must obtain an Idaho seller's permit and collect sales tax when selling meals to purchasers who are not senior citizens. (7-1-93)

**10. Nontaxable Purchases By Establishments Selling Meals Or Beverages.** Persons who serve food, meals, or drinks for a consideration may purchase tangible personal property without paying tax if the property is for resale to their customers, is included in the fee charged to the customer, and is directly consumed by the customer in such a way that it cannot be reused. A resale certificate must be provided to the vendor when the establishment purchases such items for resale. See Rule 128 of these rules. Examples of items which are purchased for resale and directly consumed by customers include: (3-15-02)

a. Disposable containers, such as milkshake containers, paper or styrofoam cups and plates, to-go containers and sacks, pizza cartons, and chicken buckets. (7-1-93)

b. Disposable supplies included in the price of the meal or drink, such as drinking straws, stir sticks, paper napkins, paper placemats, and toothpicks. (7-1-93)

c. Candies, popcorn, drinks, or food, when included in the consideration paid for other food, meals, or drinks. (7-1-93)

**11. Taxable Purchases By Establishments Selling Meals Or Beverages.** Tangible personal property which is not included in the fee charged to the customer and not directly consumed by the customer is subject to the tax when purchased by the restaurant, bar, food server, or similar establishment. Tangible personal property which is not directly consumed by the customer includes property that is nondisposable in nature or property that is depreciated in the books and records of the restaurant, bar, or similar establishment. Examples of taxable purchases include: (7-1-93)

- a. Waxed paper, stretch wrap, foils, paper towels, garbage can liners, or other paper products consumed by the retailer, as well as linens, silverware, glassware, tablecloths, towels, and nondisposable napkins, furniture, fixtures, cookware, and menus. (7-1-93)
- b. Any tangible personal property available to the general public, such as restroom supplies and matches. (7-1-93)
- c. Complimentary candies, popcorn, drinks, or food, when patrons are not required to purchase other food, meals, or drinks in order to receive the complimentary goods. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**047. OUTFITTERS, GUIDES, AND LIKE OPERATIONS (Rule 047).**

**01. In General.** Fees charged for services performed by outfitters, guides, dude ranches, hunting and fishing lodges, or camps are charges for the use of, or privilege of using, tangible personal property or other facilities for recreation. Fees charged by outfitters and like operations for providing outdoor recreational services are subject to sales tax. (7-1-93)

a. An outfitter is any person who holds himself out to the public for hire to conduct outdoor recreational activities, including: hunting animals or birds; float or power boating of rivers, lakes, and streams; fishing; hiking; skiing; hazardous desert or mountain excursions; and other recreational activities. (7-1-93)

b. A guide is a person employed by an outfitter to furnish personal services for the conduct of outdoor recreational activities. (7-1-93)

**02. Services Performed In More Than One State.** When an outfitter's service to a client takes place in more than one (1) state, and the customer receives an invoice from the outfitter that separately displays the Idaho portion of the charges from those of the other states, only the Idaho portion is subject to Idaho sales tax. (7-1-93)

a. When an outfitter's service to a client takes place in more than one (1) state and the outfitter fails to separately state the Idaho portion of the charges from those of other states, sales tax must be charged on the total amount. (7-1-93)

b. If the service takes place on a river which divides Idaho from another state, tax must be charged on fifty percent (50%) of the fee attributed to that portion of the trip. (7-1-93)

c. Example: A one hundred (100) mile float trip consists of fifty (50) miles on Idaho rivers, twenty (20) miles on another state's river, and thirty (30) miles on a river which divides Idaho from another state. If the outfitter's invoice to his client separately states the Idaho portion of the charge from the out-of-state charges, only the Idaho fees will be subject to Idaho sales tax. The invoice should show the following:

FLOAT TRIP	FEE	IDAHO SALES TAX
50 miles Idaho river	\$500	<del>\$25.00</del> 30.00 (on 100%)
20 miles out-of-state	\$200	\$ 0.00 (none)
30 miles border river	\$300	<del>\$ 7.50</del> 9.00 (on 50%)

(7-1-93)( )

**03. Charter Aircraft.** When an outfitter hires a charter aircraft to transport his customer within Idaho,

the outfitter must charge the customer tax on the fee for the charter service. The outfitter will provide the vendor of the services with a properly completed resale certificate. (7-1-93)

**04. Government Use Fee.** Land and water use fees imposed on outfitters, such as the three percent (3%) fee paid to the U.S. Forest Service, are not subject to the sales tax when separately stated on the customer's invoice. (6-23-94)

**05. Prepaid Travel Expense.** When an outfitter's invoice separately states prepaid travel expenses such as lodging, and the outfitter has paid sales tax, when applicable, to vendors providing the travel services, the outfitter will not be required to tax that portion of his bill to the customer. Example: An outfitter's bill to a client for a seven (7) day hunt and prepaid travel expenses should read:

SEVEN-DAY HUNT	FEE	IDAHO SALES TAX
Airline Ticket (New York/Boise)	\$ 500	\$ 0.00 (none)
1 Night Lodging, Motel X Boise (Outfitter has paid tax to Motel X)	\$ 50	\$ 0.00 (none)
7 Day Hunt	\$1,500	<del>\$75.00</del> <u>90.00</u> (on 100%)

(7-1-93)( )

**06. Lodging.** If an outfitter provides overnight lodging for a client at a facility operated by the outfitter, charges for the lodging are subject to sales tax and hotel/motel taxes as provided by Idaho Hotel/Motel Room Sales Tax Rule IDAPA 35.01.06.011. (6-23-94)

**07. Equipment Rental.** When an outfitter rents equipment such as ground sheets, sleeping bags, rain gear, boots and dry bags, to his client for use during the recreational activity, sales tax must be charged on the equipment rental. (7-1-93)

**08. Game Processing, Packing, And Taxidermy.** When an outfitter bills a client for game processing, packing, or taxidermy services, sales tax must be charged on the entire fee to the client. The outfitter will provide the vendor of the services with a properly completed resale certificate. (7-1-93)

**09. Preurchased Hunting And Fishing Licenses.** When an outfitter purchases a hunting or fishing license for a client and separately states the fee on the billing to the client, no sales tax applies to the license fee. (7-1-93)

**10. Travel Agency Services.** (7-1-93)

**a.** When outfitter services are purchased by a client through a travel agency and the outfitter bills the travel agency for the fee, the amount billed to the travel agency is subject to tax. In this case, the agency is acting as an agent for the client and the additional fee charged by the agency to the client is not subject to the sales tax. (7-1-93)

**b.** When outfitter services are arranged for a client by a travel agency but the outfitter bills the client, the amount billed to the client is subject to tax. In this case, the agency is acting as the agent of the outfitter and the fee paid to the travel agency by the outfitter cannot be deducted from the measure of the taxable sale. Even if the outfitter separately states the travel agency fee on his billing to the client, he must charge tax on the total amount. (7-1-93)

**c.** When an outfitter, Outfitter X, books a client and hires a second outfitter, Outfitter Y, to provide the services to the client, Outfitter X must charge the client tax on the full fee. Outfitter Y must obtain a resale certificate from Outfitter X. If this form is not obtained, Outfitter Y must charge sales tax on the services provided to Outfitter X. (7-1-93)

**11. Purchases By Outfitters And Like Operations.** (7-1-93)

**a.** Outfitters must pay tax when purchasing equipment and supplies for use in their business. Examples include boats, rafts, oars, motors, horses, tack, llamas, transportation equipment, camp gear, cooking gear, animal feed, brochures, and promotional give-away items. (7-1-93)

**b.** When an outfitter purchases food that will be prepared and furnished to clients, no sales tax applies if the outfitter provides a resale certificate. (7-1-93)

**c.** When an outfitter maintains an inventory of gear, such as ground sheets, sleeping bags, boots, rain gear, and dry bags, which is exclusively held for rental to clients, the outfitter may purchase the gear without tax in the manner previously described. The outfitter may purchase gear without paying tax ~~ONLY~~ only if the gear is rented to clients as a separate line item on the invoice to the client and sales tax is charged to the client. If gear is provided to clients as a part of the outfitter package fee, the outfitter must pay tax when purchasing the gear. (~~7-1-93~~)(      )

**d.** When an outfitter purchases the services of a charter aircraft to transport his clients within Idaho, he will not pay tax to the charter service by providing the service with a properly completed resale certificate. The outfitter must then charge tax to his client on this fee. (7-1-93)

**e.** When an outfitter arranges travel accommodations for his client and pays the vendors of the meals and services, he must pay sales tax, as well as other applicable hotel/motel taxes, to the vendors. (7-1-93)

**f.** When an outfitter purchases the services of a taxidermist or meat processor on behalf of his client, he should not pay tax to the vendor by providing the vendor with a properly completed resale certificate. The outfitter must charge tax to his client on this fee. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**063. BAD DEBTS AND REPOSSESSIONS (Rule 063).**

**01. In General.** Sales tax must be collected on an accrual basis. The tax is owed to the state at the time of sale, regardless of when the payment is made by the customer. (7-1-93)

**02. Rules For Unsecured Credit Sales.** The following rules apply to unsecured credit sales: (7-1-93)

**a.** When a seller cannot collect accounts receivable arising from an unsecured credit sale of tangible personal property subject to sales tax, he may make an adjustment on his sales tax return or apply for a refund of taxes according to this rule. (7-1-93)

**b.** The adjustment or refund may be claimed on the sales tax return for the month in which the bad debt adjustment is made on the books and records of the taxpayer. The tax for which the credit or refund is sought must be included in the amount which is financed and which is charged off as a bad debt for income tax purposes. (6-23-94)

**c.** A written claim for the refund may also be filed with the State Tax Commission within three (3) years ~~after the due date of the applicable sales tax return~~ from the time the tax was paid to the State Tax Commission. ~~All such claims will be reviewed by~~ The State Tax Commission will review all such refund claims. See *Idaho Sales Tax Administrative Rule 117* of these rules, Refund Claims. (~~3-30-01~~)(      )

**03. Rules For Secured Credit Sales.** The following rules apply to secured credit sales: (7-1-93)

**a.** If the collateral is not repossessed, the seller may treat a bad debt the same as an unsecured credit sale. (7-1-93)

**b.** If the collateral is repossessed and not seasonably resold at a public or private sale, its retention is considered to satisfy the debt and no bad debt adjustment is allowed. (7-1-93)

**c.** If the collateral is repossessed and seasonably resold at public or private sale, then the seller is entitled to a bad debt adjustment. However, before calculating the amount of tax that may be credited or refunded, the taxpayer must reduce the amount claimed as worthless by the amount realized from the sale of the collateral. (3-30-01)

**d.** If merchandise is repossessed and is subsequently resold at retail, sales tax is computed on the sales price and collected and remitted the same as on other retail sales. (7-1-93)

**04. Application To Taxpayers.** The following rules apply to taxpayers who remit sales tax on an accrual basis but report income tax on a cash basis or are not required to file income tax returns. (7-1-93)

**a.** Retailers are required to remit sales tax on an accrual basis, even though their accounting records and income tax returns may be prepared on the cash basis of accounting. (7-1-93)

**b.** For taxpayers who keep their records and file income tax returns on a cash basis, a worthless account cannot be written off as a bad debt because it has not been recognized as income in the taxpayer's books. These retailers may still claim a bad debt for sales tax purposes. The claim should be made at the same time and in the same way discussed in Subsections 063.02 and 063.03 of this rule, even though the bad debt does not appear on the retailer's income tax return. (7-1-93)

**c.** For taxpayers who are not required to file income tax returns, the claim should be made the same way discussed in Subsections 063.02 and 063.03 of this rule. (6-23-94)

**d.** As these claims cannot be verified against the income tax returns of these taxpayers, sufficient evidence must be attached to the sales tax return to prove that the account has become worthless, that the tax was remitted by the retailer, and that the retailer did not receive payment of the tax from the buyer. (7-1-93)

**05. Amount Of Credit Allowed.** The amount of credit that can be claimed is the amount of sales tax that is uncollectible. If both nontaxable and taxable items are financed, credit may be taken only for that portion of the bad debt which represents unpaid sales tax. (7-1-93)

**a.** Example: A ~~taxable sale is made of~~ retailer sells a thirty thousand dollar (\$30,000) forklift, for thirty-one thousand ~~five~~ eight hundred dollars (\$31,~~5~~800) including sales tax, ~~with~~ The purchaser pays a five thousand dollar (\$5,000) down payment, ~~financing and finances~~ the balance ~~on a sixty (60) month contract~~. The ~~forklift is repossessed by purchaser later defaults and~~ the retailer ~~after twenty (20) months and sold~~ repossesses the forklift and sells it at a public ~~sale auction~~ for six thousand dollars (\$6,000). ~~The remaining principal balance owed on the contract is~~ At the time of repossession ~~is~~ the purchaser owes seventeen thousand ~~two~~ five hundred forty-five dollars (\$17,~~2~~545) including the financed sales tax. After the ~~collateral is sold the amount deemed worthless~~ sale the amount that the retailer writes off is eleven thousand ~~two~~ five hundred forty-five dollars (\$11,~~2~~545). The sales tax bad debt write off is ~~five~~ six hundred ~~thirty-five~~ fifty-three dollars (\$~~5,3~~5653).

Total taxable sale	\$30,000
<del>5</del> <u>6</u> % sales tax	\$1, <del>5</del> <u>8</u> 00
Total sale	\$31, <del>5</del> <u>8</u> 00
Down payment	(\$5,000)
Total financed	\$26, <del>5</del> <u>8</u> 00
Payment to principal after sale	(\$9,255)
Amount realized at public sale	(\$6,000)
Total bad debt	\$11, <del>2</del> <u>5</u> 45

Sales tax portion of bad debt $\$11,2545 - (11,2545 / 1.056) = \$535\ 653$
OR
$\$11,245 - \$10,710 = \$535$
$(\$10,710 + 5\% \text{ tax} = \$11,245)$

(3-30-01)( )

b. Example: A car dealer makes a taxable sale of an automobile for ~~fifteen~~ fourteen thousand ~~nine~~ nine hundred dollars (~~\$15,090~~) along with an extended warranty for five hundred dollars (\$500), a documentation fee of one hundred dollars (\$100), a title fee of eight dollars (\$8) and credit insurance for one hundred dollars (\$100). The customer pays one thousand dollars (\$1,000) cash and trades in a car worth ten thousand dollars (\$10,000) which is pledged as security for an earlier outstanding loan of six thousand dollars (\$6,000). The customer, therefore, has to borrow enough to pay off the old loan on the trade-in. The customer defaults on the new ten thousand ~~eight~~ nine hundred ~~fifty~~ eight dollar (~~\$10,850~~908) loan after paying five hundred dollars (\$500) towards the principal. The customer damages the automobile in an accident leaving the collateral worthless. The car dealer may take an adjustment for only that portion of the bad debt representing the taxable percentage of the total sales price of the car. Only five thousand dollars (\$5,000) of the total fifteen thousand ~~eight~~ nine hundred ~~fifty~~ eight dollar (~~\$15,850~~908) cost was taxable.

Sales price of vehicle	<del>\$15,000</del> <u>14,900</u>
Documentation fee	\$100
Extended warranty	\$500
Credit insurance	\$100
Title fee	\$8
Trade-in	(\$10,000)
Sales tax	<del>\$250</del> <u>300</u>
Subtotal	<del>\$5,850</del> <u>5,908</u>
Down payment	(\$1,000)
Invoice total	<del>\$4,850</del> <u>4,908</u>
Amount financed	<del>\$4,850</del> <u>10,908</u>
Payment to principal after sale	(\$500)
Amount of bad debt	<del>\$4,350</del> <u>10,408</u>
Amount of down payment used to pay sales tax $(250\ 300 / 5,850\ 5,908) = 4.27\ 5.08\%$ $.0427\ .0508 \times \$1,000 = \$42.70\ 50.80$	
Amount of sales tax financed $\$250\ 300 - \$42.70\ 50.80 = \$207.30\ 249.20$	
Percentage of loan representing sales tax $\$207.30\ 249.20 / \$4,850\ 10,908 = 4.94\ 2.28\%$	
Sales tax paid by payments to principal $\$500 \times .0494\ .0228 = \$9.55\ 11.40$	

Amount of bad debt write-off $\$207.30 \underline{249.20} - \$9.55 \underline{11.40} = \$197.75 \underline{237.80}$
--

(3-30-01)( )

**06. Bad Debt Collected At A Later Date.** If a bad debt account is collected later, the retailer must pay tax on the amount collected. (7-1-93)

**07. To Claim Credit For A Bad Debt.** Credit for bad debts for sales tax purposes may be claimed by the retailer that made the original sale and paid the sales tax to the state. Financial institutions or other third parties who are the assignees of the retailer may claim a bad debt for sales tax on property for which they provided financing, if the amount financed includes the sales tax remitted on the sale of the property. The person claiming the credit must be the person who ultimately bears the loss if the purchaser of the property defaults on the obligation to repay. (3-30-01)

**08. Cross-Reference.** Rescinded Sale. See *Idaho Sales Tax Administrative Rule 045 of these rules.* (6-23-94)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**073. TANGIBLE PERSONAL PROPERTY BROUGHT OR SHIPPED TO IDAHO (Rule 073).**

**01. Equipment Brought Into Idaho.** Equipment or other tangible personal property brought or shipped to Idaho by residents or nonresidents is presumed to be for storage, use, or other consumption in this state. Generally, tangible personal property is subject to use tax on its fair market value when it is first used in Idaho. Special rules apply to transient equipment present in Idaho for ninety (90) days or less in any consecutive twelve (12) month period. See Section 63-3621A, Idaho Code, and Subsection 073.03, below. For property a contractor fabricates to install into Idaho real property, see *ISTC Rule 012 of these rules.* (7-1-93)( )

**02. Substantive Use.** Any substantive use of the property in Idaho is sufficient to subject the property to use tax. Use is defined in Section 63-3615, Idaho Code, and *ISTC Rule 072 of these rules.* The use tax does not apply to the use of items purchased before July 1, 1965, or the use of items excluded from tax by Idaho Code. (7-1-93)( )

**03. Transient Equipment.** Transient equipment means equipment that is: owned by the user, which is a business based in another state; a depreciable asset for income tax purposes and treated as such on the owner's income tax returns; brought to Idaho and kept here for ninety (90) days or less in any consecutive twelve (12) months; and either was not taxed in another state or, if tax was paid to another state, the amount paid was less than the amount of Idaho use tax due. (7-1-93)

**a.** *Beginning July 1, 1992, a* A nonresident business that brings transient equipment to Idaho may elect to pay use tax on either the fair market value of the equipment at the time it enters Idaho, or the fair market rental value of transient equipment for the time it is kept in Idaho. Fair market rental value is the amount it would cost to rent or lease similar equipment from an unrelated equipment rental company. (7-1-93)( )

**b.** Businesses that elect to pay use tax on the rental value of transient equipment may do so without the approval of the Tax Commission as long as the use tax due on the first month's rental is paid in a timely manner. If the owner fails to pay the tax timely, he must get written approval from the Tax Commission to use this option. (7-1-93)

**c.** Equipment which remains in Idaho for more than ninety (90) days in any consecutive twelve (12) months is no longer transient. This equipment becomes subject to Idaho use tax on its fair market value at that time. No credit may be taken for use tax paid on fair market rentals against the use tax due at the time equipment ceases to qualify as transient. (7-1-93)

d. Example: A Wyoming contractor brings transient equipment, with a fair market value of one hundred thousand dollars (\$100,000), to Idaho for use on a ninety (90) day project. The fair market rental value of the equipment for the ninety (90) days totals fifteen thousand dollars (\$15,000). Idaho use tax on the fair market rental value, at the rate of ~~five~~ six percent (~~5~~6%), totals ~~seven~~ nine hundred ~~fifty~~ dollars (~~\$75900~~). The contractor paid three thousand five hundred dollars (\$3,500) of sales tax to the state of Wyoming when he bought the equipment new. The contractor is not required to pay tax to Idaho since the tax paid to Wyoming exceeds the amount of Idaho use tax due. (7-1-93)( )

e. Example: The same contractor takes a second job in Idaho within the same twelve (12) months and brings the same equipment, now with a fair market value of ninety-five thousand dollars (\$95,000), to Idaho for the job. As the equipment has now exceeded the ninety (90) day rule for transient equipment, it is subject to Idaho's ~~five~~ six percent (~~5~~6%) use tax on its fair market value ninety-five thousand dollars (\$95,000) x ~~five~~ six percent (~~5~~6%) = ~~four~~ five thousand seven hundred ~~fifty~~ dollars (~~\$45,7500~~). Credit of two thousand ~~seven~~ six hundred ~~fifty~~ dollars (~~\$2,75600~~) is allowed for sales tax paid to Wyoming, three thousand five hundred dollars (\$3,500) less the ~~seven~~ nine hundred ~~fifty~~ dollar (~~\$75900~~) credit already used on rentals. The contractor owes ~~two~~ three thousand one hundred dollars (~~\$23,0100~~) of use tax to Idaho. (7-1-93)( )

**04. Licensed Motor Vehicles.** A motor vehicle licensed in a nonresident's home state and brought to Idaho to use for ninety (90) days or less in any consecutive twelve (12) months is not subject to Idaho use tax. Once the vehicle is used here more than ninety (90) days during any consecutive twelve (12) months, use tax applies to the fair market value of the vehicle at that time unless tax was paid to another state in an amount equal to, or greater than, the tax owed to Idaho. Special rules apply to new residents of Idaho. See ~~ISTC~~ Rule 107 of these rules. (7-1-93)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**110. RETURNS FILED BY COUNTY ASSESSORS AND FINANCIAL INSTITUTIONS (Rule 110).**

**01. Filing Returns.** Upon collection of sales tax on applications for certificate of title to a motor vehicle, trailer, or other titled property, or initial application for registration processed by the county assessor, the assessor shall complete and submit to the Commission, Form ST-852, Idaho Sales Tax Return County Assessors or Sheriffs, no less than monthly. The assessor may, at his discretion, submit the form more frequently. But at no time shall the amount of tax collected during any month be submitted later than the twentieth day of the month following the month in which the tax was collected. (7-1-93)

**02. Separate Forms For Each Tax Rate.** It is possible for an assessor to collect tax at more than one (1) rate. This can happen when a person purchases a vehicle in a state with a lower tax rate and soon thereafter registers the vehicle in Idaho. A separate Form ST-852 must be prepared for each rate of tax collected. ~~For example, if the majority of the transactions were collections of tax at five percent (5%), but one (1) transaction was the collection of tax at one percent (1%), as the applicant had paid tax to another state at the rate of four percent (4%), the assessor will prepare two (2) returns. One (1) for the transactions at five percent (5%) and one (1) for the transactions at one percent (1%).~~ (7-1-93)( )

**03. Reimbursement.** The assessor will be reimbursed at the rate of one dollar (\$1) for each application for certificate of title or initial registration of a motor vehicle, trailer, or other titled property, and each Form ST-108, Truck Camper, Transport Trailer, Office Trailer and Untitled Boat Certificate, processed by the assessor except those upon which any sales or use tax due has been previously collected by a retailer or paid by the purchaser. (3-15-02)

**04. Financial Institutions.** Financial institutions collecting tax on tangible personal property which they are financing, whether sold by the financial institution or another, must remit the tax to the Commission no later than the twentieth day of the month following the month in which the tax was collected from the purchaser of the tangible personal property. Failure to remit the tax on a timely basis will result in the addition of penalties and interest as provided by Sections 63-3632 and 63-3634, Idaho Code. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

126. SALES TAX COLLECTED BY THE STATE LIQUOR DISPENSARY (Rule 126).

**01. Liquor Subject To Sales Tax.** All sales of liquor which includes alcohol, spirits, beer, and wine as defined in Sections 23-105(g), 23-1303(a), and 23-1001(a), Idaho Code, unless specifically exempt, are subject to the tax measured by the sales price. (7-1-93)

**02. Sales For Resale.** In the case of sales to persons licensed under the provisions of Title 23, Chapter 9, Idaho Code, only those purchases for resale by an establishment licensed to sell liquor will be exempt from the tax. If the licensee purchases liquor for any purpose other than for resale, the licensee is subject to the use tax. (7-1-93)

**03. Posting Amount Of Tax.** The liquor dispensaries shall cause to be posted, in addition to the current price, the amount of the tax and the total cost including the tax. For example:

Brand X Whiskey	\$7.00
Idaho Sales Tax	<del>.3542</del>
Total Price	<del>\$7.3542</del>

(7-1-93)( )

**04. Identifying Code.** If codes are used to identify the brands and/or prices of liquor, the price might be posted as follows:

Code 64	\$7.00
Idaho Sales Tax	<del>.3542</del>
Total Price	<del>\$7.3542</del>

(7-1-93)( )

**05. Reporting.** The superintendent of the State Liquor Dispensary shall forward monthly to the Tax Commission a report of all sales tax collected for the preceding month. All sales tax collected by the superintendent of the State Liquor Dispensary and by contract private liquor stores, when the product is supplied by the State Liquor Dispensary, shall be credited directly to the liquor account, and shall not become a part of the sales tax account. (7-1-93)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0102-0303 (FEE RULE)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

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

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

#### **Rule 109**

Section 63-3623B, Idaho Code, imposes a permit fee of \$35 per year per machine on the owners or operators of coin operated amusement devices. Subsection 63-3623B, Idaho Code, states: Such permit fee may be increased in a proportionate amount by the commission if the state sales tax rate increases.

The Tax Commission is proposing that the following formula is to be used to calculate the fee:  $\$700 \times \text{current tax rate}$ . At the 5% rate this formula would impose the \$35 fee specified in the statute.

Changes also include technical corrections that have been made.

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

Under this formula the fee will be increased to \$42, an increase proportional to the tax rate increase enacted by the Legislature with HB 400 in 2003. With this formula the fee will automatically be reduced to \$35 when the sales tax rate returns to 5%.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 31st day of July, 2003.

Jim Husted, Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-0303

109. AMUSEMENT DEVICES (Rule 109).

**01. Currency Operated Amusement Devices.** "Amusement device" means all currency or token operated machines and devices used for amusement or entertainment. This definition includes, but is not limited to, game machines; pool tables; jukeboxes; electronic games; video or cinematic viewing devices; crane, rotary, and pusher machines; and similar devices. It does not include vending machines that are used to sell tangible personal property or noncurrency operated machines or games described in Subsection 109.03 of this rule. (6-30-95)

**02. Requirement To Obtain Permit.** The owner or operator of amusement devices is required to obtain a seller's permit if he is making retail sales other than the use of currency or token operated amusement devices. If the owner or operator is not making such other retail sales, he need not obtain a seller's permit, but must obtain an amusement device permit for each device in service. (6-30-95)

**a.** ~~On or after~~ From July 1, 1995 to June 30, 2004, owners or operators of amusement devices ~~are~~ were required to pay a fee of thirty-five dollars (\$35) per machine in service or use. The fee for permits purchased for the year beginning July 1, 2004, is forty-two dollars (\$42). The fee will change by an amount proportional to any change in the sales tax rate. The formula to apply to calculate the permit fee is seven hundred dollars (\$700) x tax rate. For a six percent (6%) tax rate the amount is therefore seven hundred dollars (\$700) x six percent (6%) = forty-two dollars (\$42). ( )

**b.** Upon receiving the appropriate payment, the Tax Commission will issue to the owner or operator of one or more amusement devices, a permit for each such device in service. A separate permit on each device in service is required. The permit shall be affixed near the currency slot of the machine in such a manner that it is easily visible. Permits are transferable from one person to another after written notice of the transfer is received and acknowledged by the Tax Commission. Permits may be transferred from a machine that is no longer in service to another machine owned or operated by the same person. An amusement device permit is not valid unless the name and business address of the owner or operator is typed or printed in black ink on the face of the permit. ~~(7-1-98)~~( )

**bc.** Video amusement devices may have more than one (1) monitor and be designed to be operated independently by more than one (1) person. In such cases a separate permit is required for each monitor. (6-30-95)

**ed.** Amusement device permits must be renewed annually. Annual permits are valid from July 1 through June 30. Permits must be renewed on or before July 1 by the owner or operator of the amusement devices. Amusement devices acquired after July 1 or placed in service before the next July 1 will require the appropriate fee ~~for a full-year, thirty five dollar (\$35) permit.~~ ~~(7-1-97)~~( )

**03. Noncoin Operated Amusement Machines Or Games.** Charges for the use of amusement machines or games which are not currency or token operated are subject to tax at the prevailing rate times one hundred percent (100%) of the gross proceeds received for the use of the device. This applies regardless of the method the owner or operator uses to determine the charge, such as by the hour or by the game. The owner or operator of noncurrency or nontoken operated amusement machines or games is required to obtain a seller's permit if he is charging for the use of such machines. (6-30-95)

**04. Cross-Reference.** See ~~Idaho Sales Tax Administrative~~ Rule 095 of these rules regarding purchases of Money-Operated Dispensing Equipment. ~~(6-23-94)~~( )

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.05 - IDAHO MOTOR FUELS TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0105-0301**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

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

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

Rule 270 is being amended to clarify which motor fuel users who have single storage tanks cannot use the proration method granted in Subsection 270.05 of that rule. The amended language in this rule is actually less restrictive than the current language of this rule. To remove reference to 26,000 pounds maximum gross weight and list which motor fuels users who do not qualify to use the proration method because of other recordkeeping requirements. To correct a misspelled word.

**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 proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Randy Nilson, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 31st day of July, 2003.

Randy Nilson, Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Bl., Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0105-0301**

**270. REFUND CLAIMS--DOCUMENTATION (Rule 270).**

**01. Refunds To Consumers.** Any buyer of motor fuels, claiming a refund under Chapter 24, Title 63, Idaho Code, must retain in his records the original invoices from the seller, showing the number of gallons purchased.

All invoices, except those prepared by a computer or similar machine, shall be prepared in ink or a double-faced carbon must be used between the original and first duplicate. Only one (1) original invoice may be issued for each delivery. In addition to the requirements outlined above, each invoice must contain or show the following: (7-1-98)

- a. A preprinted serial number; (7-1-98)
- b. Name and address of seller; (7-1-98)
- c. Name of purchaser; (7-1-98)
- d. Date of delivery; (7-1-98)
- e. Type of motor fuel; (7-1-98)
- f. Gallons invoiced; (7-1-98)
- g. Price per gallon; (7-1-98)
- h. At least one (1) of the following to establish that tax has been charged: (7-1-98)
  - i. The amount of Idaho state fuels tax; (7-1-98)
  - ii. The rate of Idaho state fuels tax; or (7-1-98)
  - iii. A statement that the Idaho state fuels tax is included in the price. (7-1-98)

**02. Corrected Invoices.** No altered or corrected invoice will be accepted for refund purposes. When errors occur, the original invoice must not be altered or corrected, but must be voided and a new original invoice issued. All altered or corrected invoices must be marked as voided and retained by the seller for at least three (3) years from the date issued. (7-1-98)

**03. Invoice Retention.** The original invoices required by Subsection 270.01 of this rule shall be retained for the greater of either three (3) years or the time during which the taxpayer's Idaho income tax return is subject to adjustment by either the State Tax Commission or by voluntary action of the taxpayer. (7-1-98)

**04. Refund Documents.** For refund claims under Section 63-2410(5)(c), Idaho Code, an original invoice includes any duplicate of the original that is created with the same impression as the original, for example, with carbon paper or NCR paper, if the original is retained by the seller and only the duplicate is provided to the customer. An original invoice does not include any document produced by a copy machine or similar device capable of producing a copy of an existing document. (7-1-98)

**05. Records Required For Motor Fuels Tax Refunds.** Each claimant shall maintain records that are sufficient to prove the accuracy of the fuels tax refund claim. Such records shall include all motor fuels receipts, the gallons of tax-paid fuel used in each type of equipment, both refundable and nonrefundable, and other uses. The records must show the date of receipt or disbursements and identify the equipment into which the tax-paid fuel is dispensed. Failure of the claimant to maintain the required records and to provide them for examination is a waiver of all rights to the refund. The following rules shall govern records maintained to support claims for refund. (7-1-98)

a. Use of Fuel from a Single Storage Tank. Tax-paid fuel (other than fuel purchased by persons who operate motor vehicles that are ~~over twenty-six thousand (26,000) pounds maximum gross weight~~ licensed under IFTA or by persons who operate non-IFTA motor vehicles who claim refunds for nontaxable uses of motor fuels in motor vehicles granted in Rule 292 of these rules) purchased and delivered into a single bulk storage tank and withdrawn for both nontaxable and taxable uses must be accounted for using either the proration provided by this paragraph or by records showing actual taxable and nontaxable usage. If the proration is used, sixty percent (60%) of all taxed diesel fuel or twenty-five percent (25%) of all taxed gasoline delivered into bulk storage shall be presumed to be for exempt uses unless another percentage is requested by the taxpayer and authorized by the State Tax Commission. The request shall itemize anticipated uses by type of equipment based on previously experienced use.

The State Tax Commission will refund taxes paid on the percentage of taxed fuel presumed to be exempt. If refunds are claimed based on records of actual use, the records must be made available upon request. In either case, invoices showing the fuel purchases on which tax was paid must be retained to support each refund claim. The proration or another percentage granted by this paragraph cannot be used if you have separate storage tanks for undyed diesel and dyed diesel. (7-1-98)( )

**b.** Use of Fuel from Multiple Storage Tanks. When separate bulk storage tanks are maintained for both exempt and taxable uses, the seller must mark the invoices at the time of delivery, identifying the storage tanks into which the fuel was delivered. Detailed withdrawal records will only be required if fuel is used by motor vehicles licensed under IFTA or by persons who operate non-IFTA motor vehicles who claim refunds for nontaxable uses of motor fuels in motor vehicles granted in Rule 292 of these rules. All fuel invoices must be retained as required by Subsection 270.03 of this rule. Exempt fuel may not be used in motor vehicles licensed or required to be licensed. (7-1-98)( )

**c.** Use of Fuel for Other Than Bulk Storage. Fuel dispensed into small containers for use in, or into the supply tank of, stationary engines, equipment, commercial motorboats, or vehicles other than licensed motor vehicles, must be identified on the purchase invoice. No other records will be required. (7-1-98)

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.02.47 - RULES GOVERNING REVOCATION OF VEHICLE REGISTRATION FOR FAILURE TO COMPLY WITH A MOTOR VEHICLE EMISSION INSPECTION ORDINANCE

DOCKET NO. 39-0247-0301

#### NOTICE OF RULEMAKING - PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 49-201(1) and 49-202(12)f, 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 Idaho Administrative Bulletin, Volume 03-7, pages 71 through 73.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Amy Smith, Vehicle Services Manager, 334-8660.

DATED this 30th day of July, 2003.

Linda L. Emry, Management Assistant  
Office of Budget, Policy, Intergovernmental Relations  
Idaho Transportation Department  
P. O. Box 7129  
Boise ID 83707-1129  
Phone: 208-334-8810  
FAX: 208-334-8195

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#### IDAPA 39, TITLE 02, CHAPTER 47

### RULES GOVERNING REVOCATION OF VEHICLE REGISTRATION FOR FAILURE TO COMPLY WITH A MOTOR VEHICLE EMISSION INSPECTION ORDINANCE

**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 03-7, July 2, 2003, pages 71 through 73.](#)**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## **IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**

### **39.03.16 - RULES GOVERNING OVERSIZE PERMITS FOR NON-REDUCIBLE VEHICLES AND/OR LOADS**

**DOCKET NO. 39-0316-0301**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 40-312 and 49-1004, 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 Idaho Administrative Bulletin, Volume 03-7, pages 74 through 76.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Alan Frew, Port of Entry Manager, 334-8694.

DATED this 30th day of July, 2003.

Linda L. Emry, Management Assistant  
Office of Budget, Policy, Intergovernmental Relations  
Idaho Transportation Department  
P. O. Box 7129  
Boise ID 83707-1129  
Phone: 208-334-8810  
FAX: 208-334-8195

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### **IDAPA 39, TITLE 03, CHAPTER 16**

#### **RULES GOVERNING OVERSIZE PERMITS FOR NON-REDUCIBLE VEHICLES AND/OR LOADS**

**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 03-7, July 2, 2003, pages 74 through 76.](#)**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.03.43 - RULES GOVERNING UTILITIES ON STATE HIGHWAY RIGHT-OF-WAY

DOCKET NO. 39-0343-0301

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 40-312(3) and 67-5229, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

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 adds new sections required by the Office of Administrative Rules and removes language that is included in the incorporated document. The document incorporated by reference has been updated. It retains the basic information but reorganizes and reformats the content in a more user-friendly style. The incorporated document was updated with input from the affected parties and has been reviewed and approved by the utility companies and FHWA. Internal procedural information was moved into a staff manual. Some guidelines were made less restrictive to provide more flexibility in issuing permits to the utility providers.

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

**NEGOTIATED RULEMAKING:** Formal negotiated rulemaking was not conducted. However, interested parties impacted by this rule were involved in the review and update of the document incorporated by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Jonathan Lenhart, Utility/Railroad Engineer, 332-7894.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 30th day of July, 2003.

Linda L. Emry, Management Assistant  
Budget, Policy, Intergovernmental Relations  
Idaho Transportation Department  
3311 West State Street  
P O Box 7129  
Boise ID 83707-1129  
Phone – 208-334-8810  
FAX – 208-334-8195

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0343-0301

**000. LEGAL AUTHORITY.**

Under authority of Sections 40-312(3) and 67-5229, Idaho Code, the Idaho Transportation Board ~~incorporates by reference its 1990 publication titled, "A Policy for the Accommodation of Utilities within the Right of Way of the State Highway System in the state of Idaho"~~ adopts this rule. (3-19-99)( )

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be known as IDAPA 39, Title 03, Chapter 43, "Rules Governing Utilities On State Highway Right-of-Way". ( )

**02. Scope.** The purpose of the policy is to regulate the location, design and methods for installing, relocating, adjusting and maintaining utilities on State highway right-of-way when such use and occupancy is legal, in the public interest and will not adversely affect the highway or its users. The policy applies to new utility installations, to existing utility installations to be retained, relocated, maintained or adjusted because of highway construction or reconstruction, and to the relocation of utility facilities which are found to constitute a definite hazard to the traveling public. (6-4-99)( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for this chapter. ( )

**003. ADMINISTRATIVE APPEALS.**

Administrative appeals under this chapter shall be governed by the rules of "Administrative Appeal" procedure of IDAPA 39.03.42.003, "Rules Governing Highway Right-of-Way Encroachments on State Right-of-Way". ( )

**004. INCORPORATION BY REFERENCE.**

The Idaho Transportation Department incorporates by reference the July 2003 Edition of "Utility Accommodation Policy". This publication is available for public inspection and copying at the Office of the Utilities/Railroad Engineer at the Idaho Transportation Department central office, or the District offices, or the Idaho Transportation Department WEB site <http://www2.state.id.us/itd/index.htm>. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.**

**01. Street And Mailing Address.** The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P O Box 7129, Boise ID 83707-1129. ( )

**02. Office Hours.** Daily office hours are 8 a.m. to 5 p.m. except Saturday, Sunday and state holidays. ( )

**03. Telephone And FAX numbers.** The central office may be contacted during office hours by phone at 208-332-7894 or by fax at 208-334-8025. ( )

**04. Idaho Transportation Department District Offices** are at the following locations: ( )

**a. Idaho Transportation Department District 1**  
600 W. Prairie, Coeur d'Alene  
Mailing address - P.O. Box D  
Coeur d'Alene, Idaho 83814  
Office Hours - 7:00 a.m. to 4:00 p.m., Pacific Time Zone  
Phone - (208) 772-1200 ( )

**b. Idaho Transportation Department District 2**  
2600 North and South Highway, Lewiston  
Mailing address - P.O. Box 837  
Lewiston, Idaho 83501  
Office Hours - 7:00 a.m. to 4:00 p.m., Pacific Time Zone  
Phone - (208) 799-5090 ( )

- c.** Idaho Transportation Department District 3  
8150 Chinden Blvd., Boise  
Mailing address - P.O. Box 8028  
Boise, Idaho 83707  
Office Hours - 8:00 a.m. to 5:00 p.m., Mountain Time Zone  
Phone - (208) 334-8300 ( )
- d.** Idaho Transportation Department District 4  
216 Date Street, Shoshone  
Mailing address - P.O. Box 2-A  
Shoshone, Idaho 83352  
Office Hours - 8:00 a.m. to 5:00 p.m., Mountain Time Zone  
Phone - (208) 886-7800 ( )
- e.** Idaho Transportation Department District 5  
5151 South 5th, Pocatello  
Mailing address - P.O. Box 4700  
Pocatello, Idaho 83201  
Office Hours - 8:00 a.m. to 5:00 p.m., Mountain Time Zone  
Phone - (208) 239-3300 ( )
- f.** Idaho Transportation Department District 6  
206 North Yellowstone, Rigby  
Mailing address - P.O. Box 97  
Rigby, Idaho 83442  
Office Hours - 8:00 a.m. to 5:00 p.m., Mountain Time Zone  
Phone - (208) 745-7781 ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. ( )

~~002.—099. (RESERVED).~~

~~100. GENERAL.~~

~~01. **Policy.** "A Policy for the Accommodation of Utilities within the Right of Way of the State Highway System in the State of Idaho," as adopted by the Idaho Transportation Board on January 19, 1990, is hereby adopted and incorporated by reference as the official policy for governing the occupancy of state highway right-of-way by utility facilities. Copies of the policy may be obtained from the Department's Headquarters Office in Boise or from a District Office in Coeur d'Alene, Lewiston, Boise, Shoshone, Pocatello or Rigby. (3-19-99)~~

~~02. **Application Of Policy.** The policy applies to new utility installations, to existing utility installations to be retained, relocated, maintained or adjusted because of highway construction or reconstruction, and to the relocation of utility facilities which are found to constitute a definite hazard to the traveling public. (6-4-90)~~

~~03. **Hearing Requirements.** The Idaho Transportation Board is authorized to order relocation of utilities after notice and opportunity for a hearing. When required, the Department will: (3-19-99)~~

~~a. Request utility hearings; (3-19-99)~~

~~b. Present the Department's viewpoint at such hearings; and (3-19-99)~~

~~e. Issue orders to proceed with utility relocations. (3-19-99)~~

~~04. **Relocation Cost.** Relocation costs will be determined as follows: (6-4-90)~~

~~a. Where the utility company has a right of occupancy for its facilities by reason of holding the fee, an easement or other property interest, the cost of relocation will normally be borne by the Department. (6-4-90)~~

~~b. Where the utility facility occupies a public highway right of way, or land acquired for highway right of way, through sufferance or by actual encroachment, the cost of relocation will normally be borne by the utility company. (6-4-90)~~

~~e. Where there is a combination of the above conditions, the cost of relocation will be pro-rated between the Department and the utility company. (6-4-90)~~

~~d. In computing the cost of relocation at Department expense, credits shall be allowed for betterments, salvaged materials and expired service life. (6-4-90)~~

~~05. **Agreements.** An agreement shall be entered into between the Department and the utility company when the cost of utility adjustments and relocations are at Department expense. (6-4-90)~~

~~06. **Permit Requirements.** New utility installations which are to occupy existing highway right of way shall require a written permit from the Department. All utility facilities, whether new, relocated or existing, which are located within the right of way of a highway construction project shall require a written permit from the Department. (6-4-90)~~

~~101007. -- 999. (RESERVED).~~

## IDAPA 48 - DEPARTMENT OF COMMERCE

### 48.01.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

DOCKET NO. 48-0103-0301

#### NOTICE OF RULEMAKING - PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, 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 Sections 67-4715, 67-4717, and 67-4718, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule.

To revise the existing rules to increase the limit at which grantees can shift ITC dollars (\$2,500) between line items during a grant cycle. To raise the formal bid requirement for projects greater than \$2,500. To utilize the same electronic format as grant applications for application amendments.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-1, pages 215 through 221.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Idaho Department of Commerce, Carl Wilgus (208) 334-2470.

DATED this 3rd day of July, 2003.

Carl Wilgus  
Administrator, Tourism Development  
Department of Commerce  
700 W. State St.  
PO Box 83720  
Boise ID 83720-0093  
(208) 334-2470; FAX (208) 334-2631

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### IDAPA 48, TITLE 01, CHAPTER 03

#### RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT 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 03-1, January 1, 2003, pages 215 through 221.](#)**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## IDAPA 48 - DEPARTMENT OF COMMERCE

### 48.01.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

DOCKET NO. 48-0103-0302

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is May 13, 2003.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 67-4715, 67-4717, and 67-4718, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

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

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

To change the existing, required radio advertising credit statement and replace with a message driven, Idaho Travel Council approved statement.

**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: Conferring a benefit.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: NA

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with Idaho Department of Commerce staff and designated advertising agency, the Idaho Travel Council, and industry participants of the ITC grant program during industry meetings in 2002 - 2003. Discussion was generated to revise and improve the existing rules in regards to the required credit statement and finalized at the Idaho Travel Council meeting April 29, 2003 in Worley, Idaho.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Idaho Department of Commerce, Carl Wilgus (208) 334-2470.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 25th Day of July, 2003.

Carl Wilgus  
Administrator, Tourism Development  
Department of Commerce  
700 W. State St.  
PO Box 83720  
Boise ID 83720-0093  
(208) 334-2470; FAX (208) 334-2631.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 48-0103-0101**

**204. PLAN REQUIREMENTS.**

Applicants must follow these requirements: (2-22-93)

- 01. Goals/Objectives.** The needs of the plan must be consistent with the ITC Strategic Objectives. (2-22-93)
- 02. Adequate Management.** The applicant must show his/her ability to properly operate and maintain the management and accounting system for the plan. (7-1-98)
- 03. Previous Grant Versus New Application.** The ITC encourages successful applicants to complete all grants in a timely fashion. When considering applicants for funding, the ITC will scrutinize the applicant's historic grant record in terms of timeliness and effectiveness of implementation. (2-22-93)
- 04. Application Completeness.** The applicant must submit applications to the Department of Commerce on the appropriate forms which will be provided by the department. The application must include a complete plan, grant summary sheet signed by the grantee, a detailed scope of work and a budget which includes sufficient funds for sales tax and an audit. (7-1-98)
- 05. Application Amendments/Withdraws.** Amendments to either the scope of work or the budget on grant applications will be allowed only if changes are submitted to the Department of Commerce ten (10) working days prior to the grant awards utilizing the same format as the application submittal. Any other changes must occur on the floor during awards by the Council and can only be amended by a member of the Council. Applicants wishing to withdraw applications must provide written notice to the Department of Commerce ten (10) working days prior to grant awards. (10-3-02)T
- 06. Plan Duration.** Applicants are encouraged to limit the duration of their plan to fourteen (14) months or less. (2-22-93)
- 07. Local/Regional Support.** Applicants may show local/regional support of the plan by submitting up to three (3) letters of support. One (1) letter summarizing local match must be submitted with the application. (2-22-93)
- 08. Credit Logo And Printing Identification.** All plans funded by the Idaho Regional Travel and Convention Grant Program shall credit said program. (5-3-03)
  - a.** A logo, as determined and provided by the ITC, with the following guidelines, will be placed on all ITC funded brochures. Special permission to adjust the size of the approved ITC logo, except where specified in these rules, must be granted by the state. (5-3-03)
    - i.** The approved ITC logo will be used in all publications in a color in keeping with the design of the piece and must be pre-approved by ITC staff before final printing. (5-3-03)
    - b.** Eight and one-half by eleven inch (8 1/2" x 11") or larger brochures will incorporate the use of a one-half inch (1/2") logo; eight by ten inch (8" x 10") or smaller brochures, will incorporate the use of a one-fourth inch (1/4") logo. (5-3-03)
  - c.** Printing Identification: ITC grant year, assigned ITC grant number, printed quantity. (5-3-03)
  - d.** State 800 Telemarketing Number: "For additional information on Idaho, call 1-800-VISIT-ID." (2-22-93)
  - e.** The word "IDAHO" shall appear prominently on the front of the brochure. The ITC approved logo

will appear on either the front cover, the inside front cover, or the back cover of the brochure. (5-3-03)

**f.** Other printed materials, web sites, and print advertising shall include the approved ITC logo. Size of logo to be proportional to the size of website or publication. See [www.idoc.state.id.us](http://www.idoc.state.id.us) for current downloadable graphic elements. (5-3-03)

**i.** Slide shows, videos, films, TV productions or commercials will include the approved ITC logo. Size to be proportional to the size of the grantee approved content. (5-3-03)

**ii.** Radio advertisements will include the following ITC acknowledgement: "~~Paid Idaho Travel~~ Council Visit Scenic Idaho". (~~5-3-03~~)(5-13-03)T

**iii.** Billboards will include the approved ITC logo. Size to be proportional to the size of the display. (5-3-03)

**iv.** Trade show booths will display the approved ITC logo in a size and location easily viewable by the public. (5-3-03)

**g.** Fams funded by the Idaho Regional Travel and Convention Grant Program will credit that program with the approved ITC logo in materials appropriate to the event. (5-3-03)

**h.** Failure to comply with crediting the ITC for project funding could jeopardize payment for that project and future plan funding. (2-22-93)

**09. Consultants.** Indirect personnel costs are inherently eligible when applying for a specific project to be subcontracted to a consultant. The following regulations apply to hiring a consultant: (7-1-98)

**a.** The contract between the consultant and the grantee must be approved by the Department of Commerce and shall include language stating the contractor has sufficient Workmen's Compensation or liability insurance. Payment will not be reimbursed until the Department of Commerce has approved the contract. (2-22-93)

**b.** Consultant's billing must be itemized. Lump sum billings will not be eligible for payment. (2-22-93)

**c.** The Council will not fund retainers or other regular ongoing fees for consultant services or pay a consultant to administer a grant. (2-22-93)

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

**DOCKET NO. 58-0000-0302**

**NOTICE OF FINAL DECISION ON THE ST. JOE AND ST. MARIES TMDL**

**AUTHORITY:** In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the St. Joe/St. Maries Total Maximum Daily Load (TMDL).

**DESCRIPTIVE SUMMARY:** The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the St. Joe/St. Maries TMDL. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the St. Joe/St. Maries TMDL (Hydrologic Unit Code 17010304) addresses fourteen (14) water body segments within the St. Joe River subbasin and seventeen (17) water body segments within the St. Maries portion of the subbasin on Idaho's 1998 Section 303(d) list. DEQ has submitted this TMDL to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

**AVAILABILITY OF THE TMDL:** Electronic copy of the TMDL can be obtained at [www.deq.state.id.us/water/tmdls/stjoe\\_stmaries/stjoe\\_stmaries\\_tmdl\\_final.htm](http://www.deq.state.id.us/water/tmdls/stjoe_stmaries/stjoe_stmaries_tmdl_final.htm) or by contacting Marti Bridges, TMDL Program Manager, 208-373-0382, [mbridges@deq.state.id.us](mailto:mbridges@deq.state.id.us).

Dated this 3rd day of September, 2003.

Paula J. Gradwohl  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418  
Fax No. (208)373-0481  
[pgradwoh@deq.state.id.us](mailto:pgradwoh@deq.state.id.us)

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0000-0303

### NOTICE OF FINAL DECISION ON THE WEISER FLAT (BROWNLEE RESERVOIR) TMDL

**AUTHORITY:** In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Weiser Flat Total Maximum Daily Load (TMDL).

**DESCRIPTIVE SUMMARY:** The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Weiser Flat TMDL. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the Weiser Flat TMDL (Hydrologic Unit Code 17050201) addresses five (5) water body segments within the Brownlee Reservoir portion of the Lower Snake River Basin on Idaho's 1998 Section 303(d) list. DEQ has submitted this TMDL to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

**AVAILABILITY OF THE TMDL:** Electronic copy of the TMDL can be obtained at [www.deq.state.id.us/water/tmdls/weiser\\_flat/weiserflat\\_watershed\\_tmdl\\_final.htm](http://www.deq.state.id.us/water/tmdls/weiser_flat/weiserflat_watershed_tmdl_final.htm) or by contacting Marti Bridges, TMDL Program Manager, 208-373-0382, [mbridges@deq.state.id.us](mailto:mbridges@deq.state.id.us).

Dated this 3rd day of September, 2003.

Paula J. Gradwohl  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418  
Fax No. (208)373-0481  
[pgradwoh@deq.state.id.us](mailto:pgradwoh@deq.state.id.us)

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# LEGAL NOTICE

## Summary of Proposed Rulemakings

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### PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

#### **IDAPA 02 – DEPARTMENT OF AGRICULTURE PO Box 790, Boise, ID 83701**

**02-0212-0301, Bonded Warehouse Rules; 02-0215-0301, Rules Governing the Seed Indemnity Fund; 02-0213-0301, Commodity Dealers' Rules.** Changes include one or more of the following: Adds request for insurance calculation reduction; clarifies scale weight ticket requirements, guidelines for issuance of a single bond, irrevocable letter of credit and certificate of deposit, NPE (No Price Established Contracts) requirements, and assessment remittance deadline. Comment by: 9/24/03.

**\*\*02-0214-0301, Rules for Weights and Measures.** Establishes annual licensing and fees for weighing and measuring devices and administration of those licenses; changes incorporation by reference and updates the fees for special request testing. Comment by: 9/24/03.

**02-0403-0301, Rules Governing Animal Industry.** Rewrite of chapter. Comment by: 9/24/03.

**02-0424-0301, Rules Governing Tuberculosis.** New chapter replaces and updates the rules regarding tuberculosis to reflect current state laws, federal regulations, and cooperative disease control programs. Comment by: 9/24/03.

**\*\*02-0425-0301, Rules Governing Private Feeding of Big Game Animals.** New chapter designates portions of eastern Idaho where the private feeding of big game animals is prohibited to reduce disease transmission. Comment by: 9/24/03.

**\*\*02-0426-0301, Rules Governing Livestock Marketing.** Changes address disease surveillance, record keeping, and animal movement related to buying stations and livestock dealers.

**\*\*02-0427-0301, Rules Governing Deleterious Exotic Animals.** New chapter specifies which animals are classified as deleterious exotic animals and how they are regulated. Comment by: 9/24/03.

#### **IDAPA 09 – IDAHO DEPARTMENT OF LABOR 317 W. Main Street, Boise, ID 83735**

**09-0135-0301, Rules of the Employer Accounts Bureau.** Change removes restriction for assessing penalty once a tax lien is filed, but while the tax is still delinquent; eliminates the specific reference to a time period for notification of change for transfer of tax rate; and requires a mandatory transfer of rate for employers when there is a continuity of ownership or management between the predecessor and successor. Comment by: 9/24/03.

#### **IDAPA 11 – IDAHO STATE POLICE P.O. Box 700, Meridian, ID 83680-0700**

**11-1101-0301, Rules of the Idaho Peace Officer Standards and Training Council.** Establishes the minimum employment standards that juvenile probation officers must meet to qualify for mandatory certification. Comment by: 9/24/03.

**11-1301-0301, *The Motor Carrier Rules*.** Incorporates by reference part of 39 CFR governing commercial vehicle load securement and driver hours of service. Comment by: 8/24/03.

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE  
PO Box 83720, Boise, ID 83720-0036**

**16-0214-0301, *Rules Governing Construction and Operation of Public Swimming Pools in Idaho*.** Adds fees and information on fee waivers. Comment by: 9/24/03.

**16-0303-0301, *Rules Governing Child Support Services*.** Complies with Idaho Code for the enforcement of the health coverage provision in a child support order and sets forth administrative procedures for providing information on securing medical support information, the obligor parent's ability to request, and administrative review and enforcement. Comment by: 9/24/03.

**16-0309-0306, *Rules Governing the Medical Assistance Program*.** Crisis case management hours are reduced from 4 to 3 hours and ongoing non-crisis case management hours are increased from 4 to 5 hours for the mentally ill. Comment by: 9/24/03.

**\*\*16-0309-0307, *Rules Governing the Medical Assistance Program*.** Changes support the implementation of Department's new prior authorization process found in chapter 16.03.13. Comment by: 10/22/03.

**\*\*16-0313-0301, *Prior Authorization for Behavioral Health Services*.** Covers prior authorization for Developmental Disability program services for eligible adults that are reimbursed by Idaho Medicaid. Comment by: 10/22/03.

**\*\*16-0323-0301, *Rules Governing Uniform Assessments For State-Funded Clients*.** Change identifies the standard adopted by the Department to assess individuals with a developmental disability for determination of eligibility and determination of a participant budget for authorization of services. Comment by: 10/22/03.

**\*\*16-0411-0301, *Rules Governing Developmental Disabilities Agencies*.** Establishes the requirement for Developmental Disabilities agencies to obtain prior authorization for DDA services for all adult participants and that DDAs submit provider status reviews semiannually and annually. Comment by: 10/22/03.

**\*\*16-0417-0301, *Rules Governing Residential Habilitation Agencies*.** Establishes the requirement that access to Residential Habilitation Agency services be prior authorized and that Residential Habilitation agencies submit provider status reviews semiannually and annually. Comment by: 10/22/03.

**16-0502-0301, *Rules Governing Audits of Providers*.** Repeal of chapter. Comment by: 9/24/03.

**16-0505-0301, *Rules Governing Fees for Health Operating Permits, Licenses, and Inspection Services*.** Repeal of chapter. Comment by: 9/24/03.

**IDAPA 18- DEPARTMENT OF INSURANCE  
PO Box 83720, Boise, ID 83720-0043**

**18-0119-0301, *Insurance Rates and Credit Rating*.** Limits how insurers may use an insured's credit history as a basis for nonrenewing, canceling, or declining to issue certain types of policies, or charging a higher premium rate than would otherwise be charged. Comment by: 9/24/03.

**18-0153-0301, *Rules Governing Continuing Education*.** Changes continuing education requirement for resident licensed insurance producers to a standard fixed amount of 24 hours of continuing education per 2-year licensing period and to require a minimum of 3 hours in the subjects of insurance law and/or ethics for each 2-year licensing period as set by NAIC; obsolete references to brokers and agents are changed to "producers". Comment by: 9/24/03.

**18-0159-0301, *Rule to Implement the Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits*.** New chapter recognizes, permits and prescribes the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table. Comment by: 9/24/03.

**IDAPA 20 – DEPARTMENT OF LANDS - IDAHO BOARD OF SCALING PRACTICES****3780 Industrial Ave South, Coeur d'Alene, Id 83815-8918**

*20-0601-0301, Rules of Practice and Procedure for Contested Cases and Rulemaking Before the Idaho Board of Scaling Practices.* Repeal of chapter. Comment by: 9/24/03.

*20-0602-0301, General Rules, Licensing, and Check Scales of the Idaho Board of Scaling Practices.* Updates and corrects statute citations; incorporate rules relating to informal hearings from chapter being repealed; removes obsolete references. Comment by: 9/24/03.

**IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION****PO Box 83720, Boise, ID 83720-0074**

31-7103-0301, Railroad Safety/Sanitation Rules. Incorporated by reference federal regulations to enhance the security of hazardous materials transported by railroads. Comment by: 9/24/03.

**IDAPA 35 - STATE TAX COMMISSION****P.O. Box 36, Boise, ID 83722-0410**

*35-0102-0302, Idaho Sales And Use Tax Administrative Rules.* Changes examples of sales tax usage from 5% to 6%. Comment by: 9/24/03.

*35-0102-0302, Idaho Sales And Use Tax Administrative Rules.* Imposes a permit fee of \$35 per year per machine on the owners or operators of coin operated amusement devices. Comment by: 9/24/03.

*35-0105-0301, Idaho Motor Fuels Tax Administrative Rules.* Clarifies which motor fuel users who have single storage tanks cannot use the proration method. Comment by: 9/24/03.

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT****PO Box 7129, Boise ID 83707-1129**

*39-0343-0301, Rules Governing Utilities On State Highway Right-Of-Way.* Incorporates by reference the July 2003 Edition of "Utility Accommodation Policy" and removes obsolete sections of the rule. Comment by: 9/24/03.

**IDAPA 48 - DEPARTMENT OF COMMERCE****PO Box 83720, Boise ID 83720-0093**

*48-0103-0302, Rules of the Idaho Regional Travel and Convention Grant Program.* Changes the existing, required radio advertising credit statement and replace with a message driven, Idaho Travel Council approved statement. Comment by: 9/24/03.

**\*\*PUBLIC HEARINGS HAVE BEEN SCHEDULED FOR THESE DOCKETS.**

Please refer to the Idaho Administrative Bulletin, **September 3, 2003, Volume 03-9** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact names.

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and includes negotiated, temporary, proposed, pending  
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and vacated rulemaking notices.**

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