

# IDAHO ADMINISTRATIVE BULLETIN

August 2, 2017 - Vol. 17-8

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# IDAHO ADMINISTRATIVE BULLETIN

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# PREFACE

The Idaho Administrative Bulletin is an electronic-only, online monthly publication of the Office of the Administrative Rules Coordinator, Department of Administration, that is published pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all official rulemaking notices, official rule text, executive orders of the Governor, and all legislative documents affecting rules that are statutorily required to be published in the Bulletin. It may also include other rules-related documents an agency may want to make public through the Bulletin.

State agencies are required to provide public notice of all rulemaking actions and must invite public input. This is done through negotiated rulemaking procedures or after proposed rulemaking has been initiated. The public receives notice that an agency has initiated proposed rulemaking procedures through the Idaho Administrative Bulletin and a legal notice (Public Notice of Intent) that publishes in authorized newspapers throughout the state. The legal notice provides reasonable opportunity for the public to participate when a proposed rule publishes in the Bulletin. Interested parties may submit written comments to the agency or request public hearings of the agency, if none have been scheduled. Such submissions or requests must be presented to the agency within the time and manner specified in the individual “Notice of Rulemaking - Proposed Rule” for each proposed rule that is published in the Bulletin.

Once the comment period closes, the agency considers fully all comments and information submitted regarding the proposed rule. Changes may be made to the proposed rule at this stage of the rulemaking, but changes must be based on comments received and must be a “logical outgrowth” of the proposed rule. The agency may now adopt and publish the pending rule. A pending rule is “pending” legislative review for final approval. The pending rule is the agency’s final version of the rulemaking that will be forwarded to the legislature for review and final approval. Comment periods and public hearings are not provided for when the agency adopts a temporary or pending rule.

## CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is identified by the calendar year and issue number. For example, Bulletin **13-1** refers to the first Bulletin issued in calendar year **2013**; Bulletin **14-1** refers to the first Bulletin issued in calendar year **2014**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **13-1** refers to January 2013; Volume No. **13-2** refers to February 2013; and so forth. Example: The Bulletin published in January 2014 is cited as Volume **14-1**. The December 2015 Bulletin is cited as Volume **15-12**.

## RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

The **Idaho Administrative Code** is an electronic-only, online compilation of all final and enforceable administrative rules of the state of Idaho that are of full force and effect. Any temporary rule that is adopted by an agency and is of force and effect is codified into the Administrative Code upon becoming effective. All pending rules that have been approved by the legislature during the legislative session as final rules and any temporary rules that are extended supplement the Administrative Code. These rules are codified into the Administrative Code upon becoming effective. Because proposed and pending rules are not enforceable, they are published in the Administrative Bulletin only and cannot be codified into the Administrative Code until approved as final.

To determine if a particular rule remains in effect or whether any amendments have been made to the rule, refer to the **Cumulative Rulemaking Index**. Link to it on the Administrative Rules homepage at [adminrules.idaho.gov](http://adminrules.idaho.gov).

## THE DIFFERENT RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

Idaho’s administrative rulemaking process, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises distinct rulemaking actions: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings incorporate or require all of these actions. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the required statutory criteria and agencies must, when feasible, engage in negotiated rulemaking at the beginning of the process to facilitate consensus building. In the majority of cases, the process begins with proposed rulemaking and ends with the final rulemaking. The following is a brief explanation of each type of rule.

## **1. NEGOTIATED RULEMAKING**

Negotiated rulemaking is a process in which all interested persons and the agency seek consensus on the content of a rule through dialogue. Agencies are required to conduct negotiated rulemaking whenever it is feasible to do so. The agency files a “Notice of Intent to Promulgate - Negotiated Rulemaking” for publication in the Administrative Bulletin inviting interested persons to contact the agency if interested in discussing the agency’s intentions regarding the rule changes. This process is intended to result in the formulation of a proposed rule and the initiation of regular rulemaking procedures. One result, however, may also be that regular (proposed) rulemaking is not initiated and no further action is taken by the agency.

## **2. PROPOSED RULEMAKING**

A proposed rulemaking is an action by an agency wherein 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 Rulemaking - Proposed Rule” in the Bulletin. This notice must include very specific information regarding the rulemaking including all relevant state or federal statutory authority occasioning the rulemaking, a non-technical description of the changes being made, any associated costs, guidance on how to participate through submission of written comments and requests for public hearings, and the text of the proposed rule in legislative format.

## **3. TEMPORARY RULEMAKING**

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

- a) 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 one or more of these criteria, and with the Governor’s approval, the agency may adopt and make a temporary rule effective prior to receiving legislative authorization and without allowing for any public input. The law allows an agency to make a temporary rule immediately effective upon adoption. A temporary rule expires at the conclusion of the next succeeding regular legislative session unless the rule is extended by concurrent resolution, is replaced by a final rule, or expires under its own terms.

## **4. 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 Rulemaking - Pending Rule.” This includes a statement giving the reasons for adopting the rule, a statement regarding when the rule becomes effective, a description of how it differs from the proposed rule, and identification of any fees being imposed or changed.

Agencies are required to republish the text of the pending 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 change 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.

## **5. FINAL RULEMAKING**

A final rule is a rule that has been adopted by an agency under the regular rulemaking procedures and is of full force and effect.

## 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 schematic. 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 that are further subdivided into subsections. An example IDAPA number is as follows:

### **IDAPA 38.05.01.200.02.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.

1. “**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”

“**200.**” refers to Major Section **200**, “Content of the Invitation to Bid”

“**02.**” refers to Subsection **200.02**.

“**c.**” refers to Subsection **200.02.c**.

“**ii.**” refers to Subsection **200.02.c.ii**.

## DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. Each rulemaking that is filed with the Coordinator is assigned a “DOCKET NUMBER.” The docket number is a series of numbers separated by a hyphen “-”, (**38-0501-1401**). Rulemaking dockets are published sequentially by IDAPA number (the two-digit agency code) in the Bulletin. The following example is a breakdown of a typical rule docket number:

### **“DOCKET NO. 38-0501-1401”**

“**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**).

“**1401**” denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rulemaking action published in **calendar year 2014**. A subsequent rulemaking on this same rule chapter in calendar year 2014 would be designated as “**1402**”. The docket number in this scenario would be **38-0501-1402**.

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)**

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2017**

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
17-1	January 2017	<b>*November 25, 2016</b>	January 4, 2017	January 25, 2017
17-2	February 2017	January 6, 2017	February 1, 2017	February 22, 2017
17-3	March 2017	February 3, 2017	March 1, 2017	March 22, 2017
17-4	April 2017	March 3, 2017	April 5, 2017	April 26, 2017
17-5	May 2017	April 7, 2017	May 3, 2017	May 24, 2017
17-6	June 2017	May 5, 2017	June 7, 2017	June 28, 2017
17-7	July 2017	June 9, 2017	July 5, 2017	July 26, 2017
17-8	August 2017	July 7, 2017	August 2, 2017	August 23, 2017
17-9	September 2017	August 4, 2017	September 6, 2017	September 27, 2017
17-10	October 2017	<b>**September 1, 2017</b>	October 4, 2017	October 25, 2017
17-11	November 2017	October 6, 2017	November 1, 2017	November 22, 2017
17-12	December 2017	November 3, 2017	December 6, 2017	December 27, 2017

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2018**

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
18-1	January 2018	<b>*November 24, 2017</b>	January 3, 2018	January 24, 2018
18-2	February 2018	January 5, 2018	February 7, 2018	February 28, 2018
18-3	March 2018	February 2, 2018	March 7, 2018	March 28, 2018
18-4	April 2018	March 2, 2018	April 4, 2018	April 25, 2018
18-5	May 2018	April 6, 2018	May 2, 2018	May 23, 2018
18-6	June 2018	May 4, 2018	June 6, 2018	June 27, 2018
18-7	July 2018	June 8, 2018	July 4, 2018	July 25, 2018
18-8	August 2018	July 6, 2018	August 1, 2018	August 22, 2018
18-9	September 2018	August 3, 2018	September 5, 2018	September 26, 2018
18-10	October 2018	<b>**August 31, 2018</b>	October 3, 2018	October 24, 2018
18-11	November 2018	October 5, 2018	November 7, 2018	November 28, 2018
18-12	December 2018	November 2, 2018	December 5, 2018	December 26, 2018

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

***\*\*Last day to submit a proposed rule in order to have the rulemaking completed and submitted for review by legislature.***

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<b>IDAPA 40</b>	<b>Arts</b> , Idaho Commission on the
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<b>IDAPA 17</b>	<b>Industrial Commission</b>
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<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS</b>	
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<b>IDAPA 54</b>	<b>Treasurer, Office of the State</b>
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<b>IDAPA 42</b>	<b>Wheat Commission</b>

**IDAPA 02 – DEPARTMENT OF AGRICULTURE  
IDAHO SHEEP AND GOAT HEALTH BOARD**

**02.08.01 – SHEEP AND GOAT RULES OF THE IDAHO SHEEP AND GOAT HEALTH BOARD**

**DOCKET NO. 02-0801-1701**

**NOTICE OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Title 25, chapter 1, including section 25-128, Idaho Code.

**METHOD OF PARTICIPATION:** Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by August 18, 2017.

Should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

Failure of interested persons to respond to this notice of intent or the lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event, the agency shall have sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

Upon the conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted on the agency website.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

This rule is to require that all intact rams entering the state of Idaho have a *Brucella Ovis* test. This protects the owners bringing them in so that they know they have a healthy ram and that it will not transmit *Brucella Ovis* to other rams. For those individuals that have rams that cross state line going from Idaho and returning there would be only a yearly test for *Brucella Ovis*. There would also be a 30 day temporary entry exemption for rams entering shows or passing through the state.

**ASSISTANCE ON TECHNICAL QUESTIONS, MEETING ACCOMMODATIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this negotiated rulemaking, requests for special meeting accommodations or accessibility, or to obtain a preliminary draft copy of the rule text (if available), contact Brandy Kay, (208) 334-3115. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Idaho Sheep and Goat Health Board/IWGA website at the following web address: <https://sites.google.com/view/idahowool/home>.

DATED this 6th day of July, 2017.

Brandy Kay, Executive Secretary  
Idaho Sheep and Goat Health Board  
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# **IDAPA 08 – STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

## **08.02.03 – RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-1702**

### **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 33-105, 33-1612 and 33-1617, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 16, 2017.

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 amends College Entrance Exam requirements to allow students who took the Compass exam before the final November 2016 test administration to use the Compass to meet the college entrance exam graduation requirement. This rule will also add language to update the college entrance exam graduation requirements for students on an Individualized Learning Plan (IEP). Additionally, rule language will be added to give students another option if they were unable to participate in the ACT or the statewide test day administration of the SAT.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2017, Idaho Administrative Bulletin, [Volume 17-4, pages 30-31](#).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Karlynn Laraway, Director of Assessment, at (208) 332-6976 or [klaraway@sde.idaho.gov](mailto:klaraway@sde.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2017.

DATED this 15th Day of June, 2017.

Sherri Ybarra  
Superintendent of Public Instruction  
650 West State Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0027  
Office: (208) 332-6800  
Fax: (208) 334-2228

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1702**  
**(Only Those Sections With Amendments Are Shown.)**

**105. HIGH SCHOOL GRADUATION REQUIREMENTS.**

A student must meet all of the requirements identified in this section before the student will be eligible to graduate from an Idaho high school. The local school district or LEA may establish graduation requirements beyond the state minimum. (5-8-09)

**01. Credit Requirements.** The State minimum graduation requirement for all Idaho public high schools is forty-six (46) credits and must include twenty-nine (29) credits in core subjects as identified in Paragraphs 105.01.c. through 105.01.i. (3-12-14)

**a.** Credits. (Effective for all students who enter the ninth grade in the fall of 2010 or later.) One (1) credit shall equal sixty (60) hours of total instruction. School districts or LEA's may request a waiver from this provision by submitting a letter to the State Department of Education for approval, signed by the superintendent and chair of the board of trustees of the district or LEA. The waiver request shall provide information and documentation that substantiates the school district or LEA's reason for not requiring sixty (60) hours of total instruction per credit. (3-29-10)

**b.** Mastery. Notwithstanding the credit definition of Subsection 105.01.a., a student may also achieve credits by demonstrating mastery of a subject's content standards as defined and approved by the local school district or LEA. (3-29-17)

**c.** Secondary Language Arts and Communication. Nine (9) credits are required. Eight (8) credits of instruction in Language Arts. Each year of Language Arts shall consist of language study, composition, and literature and be aligned to the Idaho Content Standards for the appropriate grade level. One (1) credit of instruction in communications consisting of oral communication and technological applications that includes a course in speech, a course in debate, or a sequence of instructional activities that meet the Idaho Speech Content Standards requirements. (3-29-10)

**d.** Mathematics. Six (6) credits are required. Secondary mathematics includes Applied Mathematics, Business Mathematics, Algebra, Geometry, Trigonometry, Fundamentals of Calculus, Probability and Statistics, Discrete Mathematics, and courses in mathematical problem solving and reasoning. AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering courses may also be counted as a mathematics credit if the student has completed Algebra II standards. Students who choose to take AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering may not concurrently count such courses as both a math and science credit. (3-12-14)

**i.** Students must complete secondary mathematics in the following areas: (3-12-14)

(1) Two (2) credits of Algebra I or courses that meet the Idaho Algebra I Content Standards as approved by the State Department of Education; (3-29-10)

(2) Two (2) credits of Geometry or courses that meet the Idaho Geometry Content Standards as approved by the State Department of Education; and (3-29-10)

(3) Two (2) credits of mathematics of the student's choice. (3-29-10)

**ii.** Two (2) credits of the required six (6) credits of mathematics must be taken in the last year of high school in which the student intends to graduate. For the purposes of this subsection, the last year of high school shall include the summer preceding the fall start of classes. Students who return to school during the summer or the following fall of the next year for less than a full schedule of courses due to failing to pass a course other than math are not required to retake a math course as long as they have earned six (6) credits of high school level mathematics. (3-12-14)

iii. Students who have completed six (6) credits of math prior to the fall of their last year of high school, including at least two (2) semesters of an Advanced Placement or dual credit calculus or higher level course, are exempt from taking math during their last year of high school. High School math credits completed in middle school shall count for the purposes of this section. (3-12-14)

e. Science. Six (6) credits are required, four (4) of which will be laboratory based. Secondary sciences include instruction in applied sciences, earth and space sciences, physical sciences, and life sciences. Up to two (2) credits in AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering may be used as science credits. Students who choose to take AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering may not concurrently count such courses as both a math and science credit. (3-12-14)

i. Secondary sciences include instruction in the following areas: biology, physical science or chemistry, and earth, space, environment, or approved applied science. Four (4) credits of these courses must be laboratory based. (3-29-10)

f. Social Studies. Five (5) credits are required, including government (two (2) credits), United States history (two (2) credits), and economics (one (1) credit). Courses such as geography, sociology, psychology, and world history may be offered as electives, but are not to be counted as a social studies requirement. (3-29-10)

g. Humanities. Two (2) credits are required. Humanities courses include instruction in visual arts, music, theatre, dance, or world language aligned to the Idaho content standards for those subjects. Other courses such as literature, history, philosophy, architecture, or comparative world religions may satisfy the humanities standards if the course is aligned to the Idaho Interdisciplinary Humanities Content Standards. (3-29-10)

h. Health/Wellness. One (1) credit is required. Course must be aligned to the Idaho Health Content Standards. Effective for all public school students who enter grade nine (9) in Fall 2015 or later, each student shall receive a minimum of one (1) class period on psychomotor cardiopulmonary resuscitation (CPR) training as outlined in the American Heart Association (AHA) Guidelines for CPR to include the proper utilization of an automatic external defibrillator (AED) as part of the Health/Wellness course. (3-12-14)

i. Students participating in one (1) season in any sport recognized by the Idaho High School Activities Association or club sport recognized by the local school district, or eighteen (18) weeks of a sport recognized by the local school district may choose to substitute participation up to one (1) credit of physical education. Students must show mastery of the content standards for Physical Education in a format provided by the school district. (4-1-15)

**02. Content Standards.** Each student shall meet locally established subject area standards (using state content standards as minimum requirements) demonstrated through various measures of accountability including examinations or other measures. (3-29-10)

**03. College Entrance Examination.** (Effective for all public school students who enter grade nine (9) in Fall 2012 or later.) (3-12-14)

a. A student must take one (1) of the following college entrance examinations before the end of the student's eleventh grade year: SAT or ACT. Students graduating who participated in the Compass assessment prior to 2017 its final administration may also use the Compass to meet this requirement. Students receiving special education services through a current Individualized Education Plan (IEP) may utilize the ACCUPLACER placement exam in lieu of the SAT or ACT. ( )

b. A student who misses the statewide administration of the college exam during the student's grade eleven (11) for one (1) of the following reasons, may take the examination during their grade twelve (12) to meet this requirement: (3-25-16)

i. Transferred to an Idaho school district during grade eleven (11) and has not previously participated in one of the allowed college entrance exams outlined in Subsection 03.a; (3-12-14)( )

- ii. Was homeschooled during grade eleven (11) and is enrolled in an Idaho high school as a diploma seeking student; or ~~(3-12-14)~~( )
- iii. Missed the spring statewide administration of the college entrance exam dates for documented medical reasons. (3-12-14)
- ~~b.c.~~ A student may elect an exemption in ~~grade eleven (11)~~ from the college entrance exam requirement if the student is: ~~(3-12-14)~~( )
  - i. ~~Enrolled in a special education program and has an~~ Receiving special education services through a current Individual Education Plan (IEP) that specifies ~~accommodations not allowed for a reportable score on the approved tests~~ the student meets the alternate assessment eligibility criteria; ~~(3-12-14)~~( )
  - ii. Enrolled in a Limited English Proficient (LEP) program for three (3) academic years or less; or (3-12-14)
  - iii. ~~Enrolled for the first time in grade twelve (12) at~~ Transferring from out of state to an Idaho high school ~~after the fall statewide administration of the college entrance exam in grade twelve (12).~~ (4-1-15)( )
- d. A school district, on behalf of a student, on a form established by the State Department of Education, may submit an appeal application requesting the Superintendent of Public Instruction or their designee consider another college entrance exam or college placement exam to fulfill this requirement, or exempt the student due to extenuating circumstances. ( )

**04. Senior Project.** A student must complete a senior project by the end of grade twelve (12). The project must include a written report and an oral presentation. Additional requirements for a senior project are at the discretion of the local school district or LEA. (3-12-14)

**05. Civics and Government Proficiency.** Pursuant to Section 33-1602, Idaho Code, each LEA may establish an alternate path for determining if a student has met the state civics and government content standards. Alternate paths are open to all students in grades seven (7) through twelve (12.) Any student who has been determined proficient in the state civics and government content standards either through the completion of the civics test or an alternate path shall have it noted on the student's high school transcript. (3-29-17)

**06. Middle School.** A student will have met the high school content and credit area requirement for any high school course if the requirements outlined in Subsections 105.05.a. through 105.05.c. of this rule are met. (3-25-16)

- a. The student completes such course with a grade of C or higher before entering grade nine (9); (3-12-14)
- b. The course meets the same content standards that are required in high school for the same course; and (3-25-16)
- c. The course is taught by a teacher properly certified to teach high school content and who meets the federal definition of highly qualified for the course being taught. (3-25-16)
- d. The student shall be given a grade for the successful completion of that course and such grade and the number of credit hours assigned to the course shall be transferred to the student's high school transcript. Notwithstanding this requirement, the student's parent or guardian shall be notified in advance when credits are going to be transcribed and may elect to not have the credits and grade transferred to the student's high school transcript. Courses taken in middle school appearing in the student's high school transcript, pursuant to this subsection, shall count for the purpose of high school graduation. However, the student must complete the required number of credits in all high school core subjects as identified in Subsections 105.01.c. through 105.01.h. except as provided in 105.01.d.iii. The transcribing high school is required to verify the course meets the requirements specified in Subsections 105.05.a. through 105.05.b. of this rule. (3-25-16)

**07. Special Education Students.** A student who is eligible for special education services under the Individuals With Disabilities Education Improvement Act must, with the assistance of the student's Individualized Education Program (IEP) team, refer to the current Idaho Special Education Manual for guidance in addressing graduation requirements. (4-11-06)

**08. Foreign Exchange Students.** A foreign exchange student may be eligible for graduation by completing a comparable program as approved by the school district or LEA. (4-11-06)

# IDAPA 08 – STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

## 08.02.03 – RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1711

### 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 33-105, 33-1612, and 33-2002, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 16, 2017.

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:

In 2011, Idaho joined the National Center and State Collaborative (NCSC) to implement a new alternate assessment for special education students. The alternate assessment was developed to ensure that all students with significant cognitive disabilities are able to participate in an assessment that is a measure of what they know and can do in relation to the grade-level Idaho Content Standards. This rule maintains alternate assessment achievement levels and corresponding performance level descriptors established by the NCSC. The NCSC achievement levels 1, 2, 3, and 4 are the same as the achievement levels on the Idaho Standards Achievement Test authored by Smarter Balanced. This rule is necessary to be in compliance with the Individuals with Disabilities Education Act and the Elementary and Secondary Education Act. The Idaho State Board of Education approved this proposed rule on June 15, 2017.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the standards were approved as a temporary rule in September 2015 and again in October 2016. The standards were developed by the National Center and State Collaborative, and the rule is necessary for compliance with the Individuals with Disabilities Education Act and the Elementary and Secondary Education Act.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Changes to the old standards include new achievement levels in four reporting categories (Level 1, Level 2, Level 3 and Level 4) and new achievement level descriptors corresponding to the achievement levels for each grade level.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dr. Charlie Silva, Director of Special Education, at (208) 332-6806 or [csilva@sde.idaho.gov](mailto:csilva@sde.idaho.gov). Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2017.

DATED this 15<sup>th</sup> Day of June, 2017.

Sherri Ybarra  
Superintendent of Public Instruction  
Office: (208) 332-6800 / Fax: (208) 334-2228

650 West State Street, 2<sup>nd</sup> Floor  
P.O. Box 83720  
Boise, ID 83720-0027

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1711  
(Only Those Sections With Amendments Are Shown.)

**004. INCORPORATION BY REFERENCE.**

The following documents are incorporated into this rule: (3-30-07)

**01. The Idaho Content Standards.** The Idaho Content Standards as adopted by the State Board of Education. Individual subject content standards are adopted in various years in relation to the curricular materials adoption schedule. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (3-29-10)

- a.** Arts and Humanities Categories: (3-24-17)
  - i.** Dance, as revised and adopted on August 11, 2016; (3-24-17)
  - ii.** Interdisciplinary Humanities, as revised and adopted on August 11, 2016; (3-24-17)
  - iii.** Media Arts, as adopted on August 11, 2016. (3-24-17)
  - iv.** Music, as revised and adopted on August 11, 2016; (3-24-17)
  - v.** Theater, as revised and adopted on August 11, 2016; (3-24-17)
  - vi.** Visual Arts, as revised and adopted on August 11, 2016; (3-24-17)
  - vii.** World languages, as revised and adopted on August 11, 2016. (3-24-17)
- b.** Computer Science, adopted on November 28, 2016. (3-24-17)
- c.** Driver Education, as revised and adopted on August 21, 2008. (3-29-10)
- d.** English Language Arts/Literacy, as revised and adopted on November 28, 2016. (3-24-17)
- e.** Health, as revised and adopted on August 11, 2016. (3-24-17)
- f.** Information and Communication Technology, as revised and adopted on April 22, 2010. (4-7-11)
- g.** Limited English Proficiency, as revised and adopted on August 21, 2008. (3-29-10)
- h.** Mathematics, as revised and adopted on August 11, 2016. (3-24-17)
- i.** Physical Education, as revised and adopted on August 11, 2016. (3-24-17)
- j.** Science, as revised and adopted on December 15, 2016. (12-15-16)T
- k.** Social Studies, as revised and adopted on November 28, 2016. (3-24-17)
- l.** Career Technical Education Categories: (3-29-17)
  - i.** Agricultural and Natural Resources, as adopted on June 16, 2016. (3-29-17)
  - ii.** Business and Marketing Education, as adopted on June 16, 2016. (3-29-17)

- iii. Engineering and Technology Education, as adopted on June 16, 2016. (3-29-17)
- iv. Family and Consumer Sciences, as adopted on June 16, 2016. (3-29-17)
- v. Skilled and Technical Sciences, as adopted on June 16, 2016. (3-29-17)
- vi. Workplace Readiness, as adopted on June 16, 2016. (3-29-17)
- 02. The English Language Development (ELD) Standards.** The World-Class Instructional Design and Assessment (WIDA) 2012 English Language Development (ELD) Standards as adopted by the State Board of Education on August 16, 2012. Copies of the document can be found on the WIDA website at [www.wida.us/standards/eld.aspx](http://www.wida.us/standards/eld.aspx). (4-4-13)
- 03. The Limited English Proficiency Program Annual Measurable Achievement Objectives (AMAOs) and Accountability Procedures.** The Limited English Proficiency Program Annual Measurable Achievement Objectives and Accountability Procedures as adopted by the State Board of Education on November 11, 2009. Copies of the document can be found on the State Department of Education website at [www.sde.idaho.gov](http://www.sde.idaho.gov). (4-7-11)
- 04. The Idaho English Language Proficiency Assessment (ELPA) Achievement Standards.** The Idaho English Language Proficiency Assessment (ELPA) Achievement Standards as adopted by the State Board of Education on April 20, 2017. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (4-20-17)T
- 05. The Idaho Standards Achievement Tests (ISAT) Achievement Level Descriptors.** Achievement Level Descriptors as adopted by the State Board of Education on April 14, 2016. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (3-29-17)
- 06. The Idaho Extended Content Standards.** The Idaho Extended Content Standards as adopted by the State Board of Education on April 17, 2008. Copies of the document can be found at the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (5-8-09)
- 07. The Idaho Alternate Assessment Achievement Standards.** Alternate Assessment Achievement Standards as adopted by the State Board of Education on ~~May 8, 2017~~ June 15, 2017. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (~~3-29-17~~)(    )
- 08. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Deaf or Hard of Hearing.** As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (4-2-08)
- 09. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Blind or Visually Impaired.** As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (4-2-08)
- 10. The Idaho Special Education Manual.** The Idaho Special Education Manual as adopted by the State Board of Education on November 28, 2016. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (3-29-17)

**IDAPA 10 – BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS**

**10.01.01 – RULES OF PROCEDURE**

**DOCKET NO. 10-0101-1701**

**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 54-1208, Idaho Code.

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

**PUBLIC HEARING**  
**Wednesday, August 30, 2017 – 10:00 a.m.**

**1510 E. Watertower Street**  
**Meridian, ID 83642**

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:

The amendments will add a new provision clarifying the Board's website is used for informational and legal purposes; correct grammar and code citations; and remove the Washington Accord from the list of unconditionally approved international engineering education accrediting organizations.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

There is no fiscal impact to the state general fund or the agency dedicated fund because the amendment displays the intent of the Board's website which is already developed and used for the purposes stated, and the corrected words and citations are housekeeping in nature. International applicants for professional engineering licensure may incur costs for and independent review of their education credential if the Board is unable to determine whether the engineering coursework meets the engineering education requirements stated in the existing rule.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2017 Idaho Administrative Bulletin, [Volume 17-6, page 33](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Keith Simila, (208) 373-7210.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 30, 2017.

DATED this 3rd day of July, 2017.

Keith Simila, P.E.  
Executive Director  
[keith.simila@ipels.idaho.gov](mailto:keith.simila@ipels.idaho.gov)

Board Of Professional Engineers & Professional Land Surveyors  
1510 Watertower Street, Meridian, Idaho 83642  
Phone: (208) 373-7210 / Fax: (208) 373-7213

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 10-0101-1701**  
**(Only Those Sections With Amendments Are Shown.)**

**013. PUBLICATIONS.**

**01. Annual Report.** An annual report shall be submitted to the governor, the contents of which shall comply with the provisions of Section 54-1210, Idaho Code. (7-1-93)

**02. Roster.** A roster of professional engineers, professional land surveyors, engineer interns, land surveyor interns, and engineering and land surveying business entities in good standing and licensees and certificate holders in the retired status as provided in these rules shall be maintained in an electronic format available to the public. Those licensees who choose to place their license in retired status shall be listed as retired in the roster. (3-25-16)

**03. News Bulletins and Online Information.** News bulletins shall be published at least two (2) times each year. The news bulletins and other news postings may be made available online to all licensees and certificate holders for the purpose of sharing information on board activities and actions. (3-25-16)

**04. Website and Outreach.** The Board will maintain a website providing online information to current and prospective licensees and certificate holders including, but not limited to, applications, laws and rules, guidelines, publications, calendar, forms and outreach information for students and prospective licensees. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**017. EXAMINATIONS.**

**01. Special or Oral Examination.** Examinations for licensure as a professional engineer or professional land surveyor, or certification as an engineer intern or land surveyor intern will be held on dates and at times and places to be determined by the Board. Special oral or written examinations may be given by the Board as necessary. (3-29-10)

**02. Eligibility for Examinations, Educational Requirements.** The application for licensure as a professional engineer or professional land surveyor together with a passing score on the written ethics questionnaire or Idaho specific land surveying examination, shall be considered in the determination of the applicant's eligibility. Each applicant must meet the minimum requirements as set forth in Section 54-1212, Idaho Code, before being assigned to any professional examination. (3-25-16)

**a.** In regard to educational requirements, the Board will consider as unconditionally approved only those engineering programs that are accredited *either* by the Engineering Accreditation Commission (EAC) of ABET, Inc., or the Canadian Engineering Accrediting Board, or those engineering programs that are accredited by official organizations signatory to the "Washington Accord." recognized by the U.K. Engineering Council. Non-EAC/ABET accredited engineering programs, related science programs, and engineering technology programs will be considered by the Board on their specific merits, but are not considered equal to engineering programs accredited by EAC/ABET. The Board may continue consideration of an application for valid reasons for a period of one (1) year, without forfeiture of the application fee. ~~(3-25-16)~~( )

**b.** An applicant who has completed a four (4) year bachelor degree program in engineering not accredited by EAC/ABET or a four (4) year bachelor degree program in engineering technology, or in a related science degree program other than engineering must have completed the following before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(3)(b), Idaho Code, for certification as an Engineer Intern or

as required by Section 54-1212(1)(b), Idaho Code, for assignment to the examination for licensure as a professional engineer: (3-25-16)

i. Thirty-two (32) college semester credit hours of higher mathematics and basic sciences. The credits in mathematics must be beyond algebra and trigonometry and must emphasize mathematical concepts and principles rather than computation. Courses in differential and integral calculus are required. Additional courses may include differential equations, linear algebra, numerical analysis, probability and statistics and advanced calculus. The credits in basic sciences must include at least two (2) courses. These courses must be in general chemistry, general calculus-based physics, or general biological sciences; the two (2) courses may not be in the same area. Additional basic sciences courses may include earth sciences (geology, ecology), advanced biology, advanced chemistry, and advanced physics. Computer skills and/or programming courses may not be used to satisfy mathematics or basic science requirements. Basic engineering science courses or sequence of courses in this area are acceptable for credit but may not be counted twice. (3-25-16)

ii. Sixteen (16) college credit hours in a general education component that complements the technical content of the curriculum. Examples of traditional courses in this area are philosophy, religion, history, literature, fine arts, sociology, psychology, political science, anthropology, economics (micro and macro), professional ethics, social responsibility. Examples of other general education courses deemed acceptable include management (such as organizational behavior), accounting, written and oral communications, business, and law. No more than six (6) credit hours may come from courses in management, accounting, business, or law. Courses in engineering economics, engineering management, systems engineering/ analysis, production, and industrial engineering/management will not be counted. Language courses in the applicant's native language are not acceptable for credit; no more than six (6) credit hours of foreign language courses are acceptable for credit. Native language courses in literature and civilization may be considered in this area. Courses which instill cultural values are acceptable, while routine exercises of personal craft are not. (3-25-16)

iii. Forty-eight (48) college credit hours of engineering science and/or engineering design courses. Courses in engineering science shall be taught within the college / faculty of engineering having their roots in mathematics and basic sciences but carry knowledge further toward creative application of engineering principles. Examples of approved engineering science courses are mechanics, thermodynamics, heat transfer, electrical and electronic circuits, materials science, transport phenomena, and computer science (other than computer programming skills). Courses in engineering design stress the establishment of objectives and criteria, synthesis, analysis, construction, testing, and evaluation. Graduate level engineering courses may be included to fulfill curricular requirements in this area. Engineering technology courses cannot be considered to meet engineering topic requirements. (3-25-16)

iv. The Board may require detailed course descriptions for seminar, directed study, special problem and similar courses to ensure that the above requirements are met. (3-25-16)

c. In regard to educational requirements, the Board will consider as unconditionally approved only those surveying programs that are accredited either by the Engineering Accreditation Commission (EAC), the Applied Science Accreditation Commission (ASAC) or the Engineering Technology Accreditation Commission (ETAC) of ABET, Inc. An applicant who has completed a four (4) year bachelor degree program in a related program must have completed a minimum of the following college level academic courses, or their equivalents as determined by the Board, before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum as required by Section 54-1212(4)(b), Idaho Code, for certification as a Land Surveyor Intern or as required by Section 54-1212(2)(b), Idaho Code, for assignment to the examination for licensure as a professional land surveyor: (3-29-17)

i. Eighteen (18) college semester credit hours of mathematics and basic sciences. A minimum of twelve (12) credits in mathematics must be beyond basic mathematics, but the credits include college algebra or higher mathematics. These courses must emphasize mathematical concepts and principles rather than computation. Mathematics courses may include college algebra, trigonometry, analytic geometry, differential and integral calculus, linear algebra, numerical analysis, probability and statistics, and advanced calculus. A minimum of six (6) credits must be in basic sciences. These courses must cover one or more of the following topics: general chemistry, advanced chemistry, life sciences (biology), earth sciences (geology, ecology), general physics, and advanced physics. Computer skills and/or programming courses may not be used to satisfy mathematics or basic science requirements;

(3-29-17)

ii. Sixteen (16) college semester credit hours in a general education component that complements the technical content of the curriculum. Examples of traditional courses in this area are religion, history, literature, fine arts, sociology, psychology, political science, anthropology, economics, professional ethics, and social responsibility. No more than six (6) credit hours of languages other than English or other than the applicant's native language are acceptable for credit. English and foreign language courses in literature and civilization may be considered in this area. Courses that instill cultural values are acceptable, while routine exercises of personal craft are not; (3-29-17)

iii. Thirty (30) college semester credit hours of surveying science and surveying practice. Courses shall be taught by qualified surveying faculty. Examples of surveying courses are basic surveying, route surveying, geodesy, geographic information systems, land development design and planning, global positioning systems, photogrammetry, mapping, survey adjustment and coordinates systems, cartography, legal descriptions, and remote sensing. Required courses will include a minimum of basic surveying, route surveying, geodesy, surveying law, public land survey system and global positioning systems. Graduate-level surveying courses can be included to fulfill curricular requirements in this area. (3-29-17)

d. The Board may require an independent evaluation of the engineering education of an applicant who has a non-EAC/ABET accredited engineering degree or a non-engineering degree. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant to ensure that the applicant has completed the coursework requirements of Subsection 017.02.b. The Board may take action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. (4-11-15)

**03. Excused Non-Attendance at Exam.** In the event that an applicant cannot attend an examination, he shall immediately notify the Board to that effect and shall state the reason for non-attendance. Normally, no more than one (1) valid excuse and reassignment shall be granted to an applicant. If an applicant fails to appear for two (2) administrations of an examination their application may be terminated and they may be required to submit a new application and pay a new application fee in order to be reconsidered. (3-30-01)

**04. Two Examinations for Engineering Licensure.** The complete examining procedure for licensure as a professional engineer normally consists of two (2) separate written examinations. The first is the Fundamentals of Engineering examination for engineer intern certification, and the second is the Principles and Practice of Engineering for professional engineer licensure. The examination shall be a duration as determined by the Board. Normally, applicants are eligible to take the Fundamentals of Engineering examination during the last or second-to-last semester of or after graduation from an accredited bachelor of science engineering program. A certificate as an Engineer Intern will be issued only to those student applicants who earn a passing grade on the examination and who receive a degree. Having passed the Fundamentals of Engineering examination, applicants will be required to take the Principles and Practice of Engineering examination at a later date when qualified by ~~experience~~ the Board. (3-29-10)( )

**05. Fundamentals of Engineering.** The Fundamentals of Engineering examination will cover such subjects as are ordinarily given in engineering college curricula and which are common to all fields of practice. The examination may also cover subject matters that are specific to the engineering discipline of the applicants' education. (5-8-09)

**06. Principles and Practice of Engineering -- Disciplines.** The Principles and Practice of Engineering examination will cover the practice of engineering to test the applicant's fitness to assume responsibility for engineering works affecting the public health, safety and welfare. Separate examinations will be given to test the applicant's fitness in any discipline for which there is an examination which, in the opinion of the Board, meets the requirements of duration and difficulty necessary to adequately test the applicant's fitness to practice in that particular discipline. The Board may use examinations prepared by the National Council of Examiners for Engineering and Surveying (NCEES) or it may prepare or commission the preparation of, or utilize other state examinations in disciplines other than those for which examinations may be available from NCEES. (3-25-16)

**07. Two Examinations for Land Surveying Licensure.** The complete examining procedure for licensure as a professional land surveyor consists of ~~two (2)~~ three (3) separate written examinations. The first is the

Fundamentals of Surveying examination for land surveyor intern certification, and the second is the Principles and Practice of Surveying, and the third is the Idaho specific professional land surveying examination. All examinations are required for professional land surveyor licensure. The examination shall be a duration as determined by the Board. Having passed the Fundamentals of Surveying examination, applicants will be required to take the Principles and Practice of Surveying examination at a later date when qualified by experience the Board. The examination shall cover the theory and principles of surveying, the practice of land surveying and the requirements of legal enactments. The Principles and Practice of Surveying examination may consist of separate modules, each of which must be passed. Having passed the Principles and Practice of Surveying examination, applicants will be required to pass the Idaho specific professional land surveying examination, which tests for knowledge of the laws and rules of Idaho, and the legal and technical aspects of land surveying in Idaho. (3-29-10)( )

**08. Oral or Unassembled Examinations.** An oral examination or unassembled written examination, in addition to the prescribed written examination, may be required for professional engineer and professional land surveyor applicants. (7-1-93)

**09. Special Examinations.** A special examination, written or oral or both, may be required in certain instances where the applicant is seeking licensure through comity or reciprocity with another state or political entity having required written examinations that are not wholly comparable in length, nature or scope. This examination supplements the certified qualifying record of the applicant and establishes a more common basis for judging the application and awarding a certificate of qualification or licensure in this state. The length of these special examinations shall be determined by the Board, but shall in no case exceed the lengths specified for the regular examination. Special examinations may be given at any date and need not conform with regular examination dates. (5-8-09)

**10. Grading.** Each land surveyor intern, engineer intern and professional engineer applicant must normally attain a scaled score of seventy (70) or above on the entire examination or modules as determined by the Board, before being awarded certification or licensure. Examinees on the Principles and Practice of Land Surveying examination must normally attain a scaled score of seventy (70) or above on each module of the examination. (3-29-10)

**11. Use of NCEES Examinations.** Examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES) for professional engineer, engineer intern, professional land surveyors, and land surveyor intern may be used by the Board. The examination for the Idaho specific professional land surveyor shall be the examination as determined by the Board. (3-25-16)

**12. Review of Examination by Examinee.** Due to security concerns about the examinations, examinees shall not be allowed to review their examinations. Examinees who fail an examination will be provided a diagnostic analysis of their performance on the examination if such an analysis is available to the Board. (3-20-04)

**13. Proctoring of Examinations.** Unless otherwise approved, the Board will not proctor an examination for another jurisdiction except State-specific examinations, nor will they request another jurisdiction to proctor an examination for an Idaho applicant. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**019. LICENSEES OR CERTIFICATE HOLDERS OF OTHER STATES, BOARDS, AND COUNTRIES.**

**01. Interstate Licensure Evaluation.** Each application for an Idaho professional engineer license or professional land surveyor license submitted by an applicant who is licensed as a professional engineer, or licensed as a professional land surveyor, respectively, in one (1) or more states, possessions or territories or the District of Columbia, shall be considered by the Board on its merits, and the application evaluated for substantial compliance with respect to the requirements of the Idaho law related to experience, examination, and education. A minimum of four (4) years of progressive experience after graduation with a bachelor of science degree is required for licensure. Individuals who have passed the National Council of Examiners for Engineering and Surveying (NCEES) examinations for professional engineering or professional land surveying shall be considered to have satisfied the

examination requirement for issuance of a license as a professional engineer or professional land surveyor provided that land surveyor applicants also pass the Idaho specific professional land surveying examination. Prescriptive education requirements are as follows: (4-11-15)

a. Graduates from programs accredited by the Engineering Accreditation Commission of the ABET, Inc., (EAC/ABET), or graduates of university engineering programs accredited by the Canadian Engineering Accrediting Board, or official organizations in countries signatory to the Washington Accord, recognized by the U.K. Engineering Council, or graduates of engineering programs with coursework evaluated by the board as being substantially equivalent to EAC/ABET degrees, shall be considered to have satisfied the educational requirement for issuance of a license as a professional engineer. (4-11-15)(    )

b. The Board may require an independent evaluation of the engineering education of an applicant who has a non-EAC/ABET accredited four (4) year bachelor degree. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant to ensure that they have completed the coursework requirements of Subsection 019.01.c. Such evaluation shall not be required if the applicant has been licensed in another jurisdiction of the United States for an minimum of ten (10) years and has not had any disciplinary action against them and there is none pending, and possesses the education, experience and examination credentials that were specified in the applicable registration chapter in effect in this state at the time such certification was issued. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. (4-11-15)

c. An applicant who was originally licensed in another jurisdiction after June 30, 1996 and who has completed a four (4) year bachelor degree program in engineering technology, or in a related science degree program other than engineering must have completed the following before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(1)(b), Idaho Code: (4-11-15)

i. Thirty-two (32) college semester credit hours of higher mathematics and basic sciences. The credits in mathematics must be beyond algebra and trigonometry and must emphasize mathematical concepts and principles rather than computation. Courses in differential and integral calculus are required. Additional courses may include differential equations, linear algebra, numerical analysis, probability and statistics and advanced calculus. The credits in basic sciences must include at least two (2) courses. These courses must be in general chemistry, general calculus-based physics, or general biological sciences; the two (2) courses may not be in the same area. Additional basic sciences courses may include earth sciences (geology, ecology), advanced biology, advanced chemistry, and advanced physics. Computer skills and/or programming courses may not be used to satisfy mathematics or basic science requirements. Basic engineering science courses or sequence of courses in this area are acceptable for credit but may not be counted twice. (3-25-16)

ii. Sixteen (16) college credit hours in a general education component that complements the technical content of the curriculum. Examples of traditional courses in this area are philosophy, religion, history, literature, fine arts, sociology, psychology, political science, anthropology, economics (micro and macro), professional ethics, social responsibility. Examples of other general education courses deemed acceptable include management (such as organizational behavior), accounting, written and oral communications, business, and law. No more than six (6) credit hours may come from courses in management, accounting, business, or law. Courses in engineering economics, engineering management, systems engineering/ analysis, production, and industrial engineering/management will not be counted. Language courses in the applicant's native language are not acceptable for credit; no more than six (6) credit hours of foreign language courses are acceptable for credit. Native language courses in literature and civilization may be considered in this area. Courses which instill cultural values are acceptable, while routine exercises of personal craft are not. (3-25-16)

iii. Forty-eight (48) college credit hours of engineering science and engineering design courses. Courses in engineering science shall be taught within the college / faculty of engineering having their roots in mathematics and basic sciences but carry knowledge further toward creative application of engineering principles. Examples of approved engineering science courses are mechanics, thermodynamics, heat transfer, electrical and electronic circuits, materials science, transport phenomena, and computer science (other than computer programming skills). Courses in engineering design stress the establishment of objectives and criteria, synthesis, analysis,

construction, testing, and evaluation. Graduate level engineering courses may be included to fulfill curricular requirements in this area. Engineering technology courses cannot be considered to meet engineering topic requirements. (3-25-16)

d. In regard to educational requirements, the Board will consider as unconditionally approved only those surveying programs that are accredited either by the Engineering Accreditation Commission (EAC), the Applied Science Accreditation Commission (ASAC) or the Engineering Technology Accreditation Commission (ETAC) of ABET, Inc. An applicant who has completed a four (4) year bachelor degree program in a related program must have completed a minimum of the following college level academic courses, or their equivalents as determined by the Board, before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum as required by Section 54-1212(2)(b), Idaho Code, for licensure as a professional land surveyor: (3-29-17)

i. Eighteen (18) college semester credit hours of mathematics and basic sciences. A minimum of twelve (12) credits in mathematics must be beyond basic mathematics, but the credits include college algebra or higher mathematics. These courses must emphasize mathematical concepts and principles rather than computation. Mathematics courses may include college algebra, trigonometry, analytic geometry, differential and integral calculus, linear algebra, numerical analysis, probability and statistics, and advanced calculus. A minimum of six (6) credits must be in basic sciences. These courses must cover one or more of the following topics: general chemistry, advanced chemistry, life sciences (biology), earth sciences (geology, ecology), general physics, and advanced physics. Computer skills and/or programming courses may not be used to satisfy mathematics or basic science requirements; (3-29-17)

ii. Sixteen (16) college semester credit hours in a general education component that complements the technical content of the curriculum. Examples of traditional courses in this area are religion, history, literature, fine arts, sociology, psychology, political science, anthropology, economics, professional ethics, and social responsibility. No more than six (6) credit hours of languages other than English or other than the applicant's native language are acceptable for credit. English and foreign language courses in literature and civilization may be considered in this area. Courses that instill cultural values are acceptable, while routine exercises of personal craft are not; (3-29-17)

iii. Thirty (30) college semester credit hours of surveying science and surveying practice. Courses shall be taught by qualified surveying faculty. Examples of surveying courses are basic surveying, route surveying, geodesy, geographic information systems, land development design and planning, global positioning systems, photogrammetry, mapping, survey adjustment and coordinates systems, cartography, legal descriptions, and remote sensing. Required courses will include a minimum of basic surveying, route surveying, geodesy, surveying law, public land survey system and global positioning systems. Graduate-level surveying courses can be included to fulfill curricular requirements in this area. (3-29-17)

**02. International Engineering Licensure Evaluation - Countries or Jurisdictions with Board Approved Licensure Process.** The board may determine the professional engineering licensure process in other countries or jurisdictions within other countries is substantially equivalent to that required 54-1219 Idaho Code. As such, the board may waive prescriptive education and examination requirements if the applicant possesses a professional engineer license credential, attains a minimum of eight (8) years of experience after licensure, provided the applicant has no criminal or outstanding disciplinary action in any country or jurisdiction, and is in good standing with the licensing board within that country or jurisdiction. A bona fide licensing process in another country must include requirements of experience, education, testing, a code of professional responsibility, regulation of licensees including the ability take disciplinary action and the willingness, availability, and capacity of a foreign board to release information to the Idaho board in English. (4-11-15)

**03. International Engineering Licensure Evaluation - Countries or Jurisdictions without a Board Approved Licensure Process.** Each application for an Idaho professional engineer license submitted by an applicant who is licensed as a professional engineer in one (1) or more foreign countries or jurisdictions within a country, shall be considered by the Board on its merits, and the application evaluated for substantial compliance with the requirements of Idaho law with respect to experience, examination, and education. A minimum of four (4) years of progressive experience after graduation is required for licensure. The Board will require two (2) years of experience working in the United States or two (2) years of experience working on projects requiring the knowledge and use of codes and standards similar to those utilized in the United States where the experience is validated by a professional

engineer licensed in the United States. The Board may postpone acting on or deny an application for a license by comity if disciplinary or criminal action related to the applicant's practice has been taken or is pending in any country or jurisdiction. Applicants must have passed a professional engineering examination administered by NCEES. Applicants who meet the residency requirements of 54-1212, Idaho Code, may be assigned to an examination in Idaho ~~only after four (4) years of experience~~ when qualified by the Board after graduation from a program that meets the education requirements of the board. Prescriptive education requirements are as follows: (4-11-15)( )

a. Graduates of engineering university programs accredited by the Canadian Engineering Accrediting Board, or official organizations ~~in countries signatory to the Washington Accord~~ recognized by the U.K. Engineering Council, or graduates of engineering university programs accredited by EAC/ABET or evaluated by the board as being substantially equivalent to EAC/ABET programs shall be considered to have satisfied the educational requirement for issuance of a license as a professional engineer. (4-11-15)( )

b. The Board may require an independent credentials evaluation of the engineering education of an applicant ~~who was~~ educated outside the United States ~~whose university engineering program is not accredited by an official organization in countries signatory to the Washington Accord or~~ who has a non-EAC/ABET accredited engineering degree. Such evaluation shall be done through NCEES or another organization approved by the board and shall be done at the expense of the applicant. (4-11-15)( )

c. The Board may require an independent credentials evaluation of the education for an applicant who has completed a four (4) year bachelor degree program outside the United States in engineering technology, or in a related science degree program other than engineering and must demonstrate completion of the requirements of Subsection 019.01.c. before the Board will consider the applicant to possess the knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(1)(b), Idaho Code. Such evaluation shall be done through NCEES or another organization approved by the Board and shall be done at the expense of the applicant. (4-11-15)

**04. Waiver of Prescriptive Engineering Licensure Evaluation for Unique International Expertise.** The Board may waive the prescriptive licensure evaluation requirements of 019.03 for international applicants who, in the Board's opinion, are qualified by reason of education and experience and offer unique technical expertise, provided the licensee meets the requirements of 54-1219 Idaho Code. (4-11-15)

**05. Denials or Special Examinations.** An application from a licensee of another state, possession or territory, District of Columbia, or foreign country may be denied by the Board for any just cause and the application fee retained; or the Board may approve the applicant for a special written and/or oral examination. (4-11-15)

**06. Business Entity Requirements.** No application for a certificate of authorization to practice or offer to practice professional engineering or professional land surveying, or both, in Idaho by a business entity authorized to practice professional engineering or professional land surveying, or both, in one (1) or more states, possessions or territories, District of Columbia, or foreign countries shall be considered by the Board unless such application includes the name and address of the individual or individuals, duly licensed to practice professional engineering or professional land surveying or both in this state, who will be in responsible charge of the engineering or land surveying services, or both, as applicable, to be rendered by the business entity in Idaho. The said individual or individuals must certify or indicate to the Board their willingness to assume responsible charge. (4-11-15)

**IDAPA 10 – BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS**

**10.01.04 – RULES OF CONTINUING PROFESSIONAL DEVELOPMENT**

**DOCKET NO. 10-0104-1701**

**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 54-1208, Idaho Code.

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

**PUBLIC HEARING**  
**Wednesday, August 30, 2017 – 10:00 a.m.**

**1510 E. Watertower Street**  
**Meridian, ID 83642**

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:

The amendments repeals a section of the rule that exempts engineers and land surveyors residing in other countries from the requirements of completing continuing professional development. With the advent of online professional development offerings, this exemption is no longer needed.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

There is no fiscal impact to the state general fund or the agency dedicated fund because the amendment does not increase or decrease the workload of the agency. The rule change will require more effort for licensees residing in other countries to obtain the required continuing professional development offerings of 30 professional development hours every two years.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2017 Idaho Administrative Bulletin, [Volume 17-6, page 34](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Keith Simila, (208) 373-7210.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 30, 2017.

DATED this 3rd day of July, 2017.

Keith Simila, P.E.  
Executive Director  
[keith.simila@ipels.idaho.gov](mailto:keith.simila@ipels.idaho.gov)

Board of Professional Engineers & Professional Land Surveyors  
1510 Watertower St., Meridian, Idaho 83642  
Phone: (208) 373-7210 / Fax: (208) 373-7213

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 10-0104-1701**  
**(Only Those Sections With Amendments Are Shown.)**

**009. EXEMPTIONS.**

A Licensee may be exempt from the continuing professional development requirements for one (1) of the following reasons: (7-1-99)

**01. First Renewal Period.** New Licensees by way of examination or comity shall be exempt from compliance with these rules during the time between issuance of the license and the due date of their first renewal following the issuance of the license. (5-8-09)

**02. Active Duty in the Armed Forces.** A Licensee serving on active duty in the armed forces of the United States, or a civilian deployed with the military, and temporarily assigned duty at a location other than their normal home station for a period of time exceeding one hundred twenty (120) consecutive days in a renewal period or the two (2) calendar year period closest to the renewal biennium shall be exempt from obtaining the professional development hours required during that renewal period or the two (2) calendar year period closest to the renewal biennium. (3-29-12)

**03. Extenuating Circumstances.** A Licensee experiencing physical disability, serious illness, or other extenuating circumstances accepted by the board. (7-1-99)

**04. Retired.** A Licensee who has chosen "Retired" status shall be exempt from the professional development hours required. In the event such a person elects to return to active practice of professional engineering or professional land surveying, professional development hours must be earned before returning to active practice. Thirty (30) PDH's must be earned for an exempted period less than four (4) years prior to the reinstatement request date. The thirty (30) PDH's earned must be earned within the previous two (2) years of the reinstatement request date. Sixty (60) PDH's must be earned for exempted periods of four (4) years or more prior to the reinstatement request date. The sixty (60) PDH's must be earned within the previous four (4) years of the reinstatement request date. All PDH's earned must comply with the requirements of this chapter. (3-25-16)

**05. Expired License.** A Licensee who has chosen to allow his license to expire shall be exempt from the professional development hours required. In the event such a person elects to reinstate the license, professional development hours must be earned and documented before reinstating the license. The requirements for PDH's are the same as shown for retired licensees in Subsection 009.04. (3-25-16)

~~**06. Licensees Residing Outside the United States of America.** Licensees employed and residing outside the United States may delay the time required for fulfilling the continuing professional development requirements for a maximum of two (2) biennia or four (4) calendar years until the end of the six (6) month period beginning upon their return to the United States. This subsection shall not apply to permanent non-residents of the United States. (4-4-13)~~

# **IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**

## **16.03.09 – MEDICAID BASIC PLAN BENEFITS**

### **DOCKET NO. 16-0309-1701**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 1, 2017.

**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: 56-202(b), 56-264, and 56-1610, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 16, 2017.

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 Medicaid Advisory Committee and schools held negotiations concerning the issue of schools not being able to receive Medicaid reimbursement for Medicaid services provided between the time the need was identified by the school and the time a recommendation or referral from a physician or practitioner of the healing arts could be obtained. Amendments to these rules will allow schools to bill for services identified as needed retroactively, up to 30 days, once a recommendation or referral for a Medicaid reimbursable service delivered in a school setting is received. This time frame aligns with the Department's therapy rules in Section 733 of this chapter.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule confers a benefit as it provides for the schools to be reimbursed by Medicaid for certain services.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

The Department estimates that there will be no general fund impact for the 30-day retroactive billing period for Medicaid reimbursable services for the 2017-18 school year. Schools provide their own matching dollars for these services. The estimated total fiscal impact is \$994,000 of which the federal share is \$695,500; and the school matching share is \$298,500.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was held by video conference throughout the state and a live meeting in Boise, on May 23, 2017. The Notice of Negotiated Rulemaking published in the May 3, 2017, Idaho Administrative Rules, [Vol. 17-5, page 65](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Angie Williams at (208) 287-1169.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2017.

DATED this 10th day of July, 2017.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500  
Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 16-0309-1701  
(Only Those Sections With Amendments Are Shown.)**

**853. SCHOOL-BASED SERVICE: COVERAGE AND LIMITATIONS.**

The Department will pay school districts and charter schools for covered rehabilitative and health-related services. Services include medical or remedial services provided by school districts or other cooperative service agencies, as defined in Section 33-317, Idaho Code. (7-1-13)

**01. Excluded Services.** The following services are excluded from Medicaid payments to school-based programs: (3-30-07)

**a.** Vocational Services. (3-30-07)

**b.** Educational Services. Educational services (other than health related services) or education-based costs normally incurred to operate a school and provide an education. Evaluations completed for educational services only cannot be billed. (3-30-07)

**c.** Recreational Services. (3-30-07)

**d.** Payment for school-related services will not be provided to students who are inpatients in nursing homes or hospitals. (7-1-16)

**02. Evaluation And Diagnostic Services.** Evaluations to determine eligibility or the need for health-related services may be reimbursed even if the student is not found eligible for health-related services. Evaluations completed for educational services only cannot be billed. Evaluations completed must: (3-30-07)

**a.** Be recommended or referred by a physician or other practitioner of the healing arts. A school district or charter school may not seek reimbursement for services provided more than thirty (30) days prior to ~~receiving a~~ the signed and dated recommendation or referral; (7-1-13)(8-1-17)T

**b.** Be conducted by qualified professionals for the respective discipline as defined in Section 855 of these rules; (3-20-14)

**c.** Be directed toward a diagnosis; (7-1-16)

**d.** Include recommended interventions to address each need; and (7-1-16)

**e.** Include name, title, and signature of the person conducting the evaluation. (7-1-16)

**03. Reimbursable Services.** School districts and charter schools can bill for the following health-related services provided to eligible students when the services are provided under the recommendation of a physician or other practitioner of the healing arts for the Medicaid services for which the school district or charter school is seeking reimbursement. A school district or charter school may not seek reimbursement for services provided more than thirty (30) days prior to ~~receiving a~~ the signed and dated recommendation or referral. The recommendations or referrals are valid up to three hundred sixty-five (365) days. ~~(7-1-13)~~(8-1-17)T

**a. Behavioral Intervention.** Behavioral Intervention is used to promote the student's ability to participate in educational services, as defined in Section 850 of these rules, through a consistent, assertive, and continuous intervention process to address behavior goals identified on the IEP. It includes the development of replacement behaviors by conducting a functional behavior assessment and behavior implementation plan with the purpose of preventing or treating behavioral conditions for students who exhibit maladaptive behaviors. Services include individual or group behavioral interventions. (7-1-16)

i. Group services must be provided by one (1) qualified staff providing direct services for a maximum of three (3) students. (7-1-16)

ii. As the number and severity of the students with behavioral issues increases, the staff-to-student ratio must be adjusted accordingly. (7-1-16)

iii. Group services should only be delivered when the child's goals relate to benefiting from group interaction. (7-1-13)

**b. Behavioral Consultation.** Behavioral consultation assists other service professionals by consulting with the IEP team during the assessment process, performing advanced assessment, coordinating the implementation of the behavior implementation plan and providing ongoing training to the behavioral interventionist and other team members. (7-1-13)

i. Behavioral consultation cannot be provided as a direct intervention service. (7-1-13)

ii. Behavioral consultation must be limited to thirty-six (36) hours per student per year. (7-1-13)

**c. Medical Equipment and Supplies.** Medical equipment and supplies that are covered by Medicaid must be medically necessary, ordered by a physician, and prior authorized. Authorized items must be for use at the school where the service is provided. Equipment that is too large or unsanitary to transport from home to school and back may be covered, if prior authorized. The equipment and supplies must be for the student's exclusive use and must be transferred with the student if the student changes schools. All equipment purchased by Medicaid belongs to the student. (7-1-16)

**d. Nursing Services.** Skilled nursing services must be provided by a licensed nurse, within the scope of his or her practice. Emergency, first aid, or non-routine medications not identified on the plan as a health-related service are not reimbursed. (7-1-16)

**e. Occupational Therapy and Evaluation.** Occupational therapy and evaluation services for vocational assessment, training or vocational rehabilitation are not reimbursed. (3-30-07)

**f. Personal Care Services.** School based personal care services include medically oriented tasks having to do with the student's physical or functional requirements. Personal care services do not require a goal on the plan of service. The provider must deliver at least one (1) of the following services: (7-1-16)

i. Basic personal care and grooming to include bathing, care of the hair, assistance with clothing, and basic skin care; (7-1-13)

ii. Assistance with bladder or bowel requirements that may include helping the student to and from the bathroom or assisting the student with bathroom routines; (7-1-16)

iii. Assistance with food, nutrition, and diet activities including preparation of meals if incidental to

- medical need; (7-1-13)
- iv. Assisting the student with physician-ordered medications that are ordinarily self-administered, in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsection 490.05; (7-1-13)
- v. Non-nasogastric gastrostomy tube feedings, if the task is not complex and can be safely performed in the given student care situation, and the requirements are met in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Subsection 303.01. (7-1-13)
- g.** Physical Therapy and Evaluation. (3-30-07)
- h.** Psychological Evaluation. (3-30-07)
- i.** Psychotherapy. (3-30-07)
- j.** Community Based Rehabilitation Services (CBRS) Services and Evaluation. Community Based Rehabilitation Services and evaluation services that are interventions to reduce the student's disability by assisting in gaining and utilizing skills necessary to participate in school. Training in behavior control, social skills, communication skills, appropriate interpersonal behavior, symptom management, activities of daily living, and coping skills are types of interventions that may be reimbursed. This service is to prevent placement of the student into a more restrictive educational situation. (7-1-16)
- k.** Speech/Audiological Therapy and Evaluation. (3-30-07)
- l.** Social History and Evaluation. (3-30-07)
- m.** Transportation Services. School districts and charter schools can receive reimbursement for mileage for transporting a student to and from home and school when: (7-1-16)
- i. The student requires special transportation assistance, a wheelchair lift, an attendant, or both, when medically necessary for the health and safety of the student *and recommended by a physician or other practitioner of the healing arts*; ~~(7-1-16)~~ (8-1-17)T
- ii. The transportation occurs in a vehicle specifically adapted to meet the needs of a student with a disability; (3-30-07)
- iii. The student requires and receives another Medicaid reimbursable service billed by the school-based services provider, other than transportation, on the day that transportation is being provided; (3-30-07)
- iv. Both the Medicaid-covered service and the need for the special transportation are included on the student's plan; and (3-30-07)
- v. The mileage, as well as the services performed by the attendant, are documented. See Section 855 of these rules for documentation requirements. (3-20-14)
- n.** Interpretive Services. Interpretive services needed by a student who is deaf or does not adequately speak or understand English and requires an interpreter to communicate with the professional or paraprofessional providing the student with a health-related service may be billed with the following limitations: (7-1-13)
- i. Payment for interpretive services is limited to the specific time that the student is receiving the health-related service; documentation for interpretive service must include the Medicaid reimbursable health-related service being provided while the interpretive service is provided. (7-1-16)
- ii. Both the Medicaid-covered service and the need for interpretive services must be included on the student's plan; and (3-30-07)
- iii. Interpretive services are not covered if the professional or paraprofessional providing services is able to communicate in the student's primary language. (3-30-07)

**854. SCHOOL-BASED SERVICE: PROCEDURAL REQUIREMENTS.**

The following documentation must be maintained by the provider and retained for a period of five (5) years: (7-1-16)

**01. Individualized Education Program (IEP) and Other Service Plans.** School districts and charter schools may bill for Medicaid services covered by a current Individualized Education Program (IEP), transitional Individualized Family Service Plan (IFSP), or Services Plan (SP) defined in the [Idaho Special Education Manual](#) on the State Department of Education website for parentally placed private school students with disabilities when designated funds are available for special education and related services. The plan must be developed within the previous three hundred sixty-five (365) days which indicates the need for one (1) or more medically-necessary health-related service, and lists all the Medicaid reimbursable services for which the school district or charter school is requesting reimbursement. The IEP and transitional IFSP must include: (7-1-16)

- a. Type, frequency, and duration of the service(s) provided; (7-1-13)
- b. Title of the provider(s), including the direct care staff delivering services under the supervision of the professional; (7-1-13)
- c. Measurable goals, when goals are required for the service; and (7-1-13)
- d. Specific place of service, if provided in a location other than school. (7-1-16)

**02. Evaluations and Assessments.** Evaluations and assessments must support services billed to Medicaid, and must accurately reflect the student's current status. Evaluations and assessments must be completed at least every (3) years. (7-1-13)

**03. Service Detail Reports.** A service detail report that includes: (7-1-13)

- a. Name of student; (7-1-13)
- b. Name, title, and signature of the person providing the service; (7-1-16)
- c. Date, time, and duration of service; (7-1-13)
- d. Place of service, if provided in a location other than school; (7-1-13)
- e. Category of service and brief description of the specific areas addressed; and (7-1-13)
- f. Student's response to the service when required for the service. (7-1-13)

**04. One Hundred Twenty Day Review.** A documented review of progress toward each service plan goal completed at least every one hundred twenty (120) days from the date of the annual plan. (7-1-13)

**05. Documentation of Qualifications of Providers.** (7-1-13)

**06. Copies of Required Referrals and Recommendations.** Copies of required referrals and recommendations. (7-1-13)

a. School-based services must be recommended or referred by a physician or other practitioner of the healing arts for all Medicaid services for which the school district or charter school is receiving reimbursement. (7-1-13)

b. A recommendation or referral must be obtained ~~prior to~~ **within thirty (30) days of** the provision of services for which the school district or charter school is seeking reimbursement. Therapy requirements for the physician's order are identified in Section 733 of these rules. ~~(7-1-16)~~ **(8-1-17)T**

c. A recommendation or referral must be obtained for the service at least every three hundred sixty-

five (365) days.

(7-1-16)

**07. Parental Notification.** School districts and charter schools must document that parents were notified of the health-related services and equipment for which they will bill Medicaid. Notification must comply with the requirements in Subsection 854.08 of this rule. (3-20-14)

**08. Requirements for Cooperation with and Notification of Parents and Agencies.** Each school district or charter school billing for Medicaid services must act in cooperation with students' parent or guardian, and with community and state agencies and professionals who provide like Medicaid services to the student. (7-1-16)

**a.** Notification of Parents. For all students who are receiving Medicaid reimbursed services, school districts and charter schools must document that parents are notified of the Medicaid services and equipment for which they will bill Medicaid. Notification must describe the service(s), service provider(s), and state the type, location, frequency, and duration of the service(s). The school district must document that they provided the student's parent or guardian with a current copy of the child's plan and any pertinent addenda; and (7-1-16)

**b.** Primary Care Physician (PCP). School districts and charter schools must request the name of the student's primary care physician and request a written consent to release and obtain information between the PCP and the school from the parent or guardian. (7-1-16)

**c.** Other Community and State Agencies. Upon receiving a request for a copy of the evaluations or the current plan, the school district or charter school must furnish the requesting agency or professional with a copy of the plan or appropriate evaluation after obtaining consent for release of information from the student's parent or guardian. (7-1-13)

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**

**16.03.10 – MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1701**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is September 1, 2017.

**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: 56-202(b), 56-264, and 56-1610, Idaho Code.

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

**PUBLIC HEARING**  
**Tuesday, August 22, 2017 – 1:00 pm (Local)**

**Central Idaho – DHW Office**  
**3232 Elder Street**  
**Conference Room D – East**  
**Boise, ID 83705**

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

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Providers have expressed their concerns about the difficulties they have entering the market due to the rate methodology related to starting a Behavioral Care Unit. A rule change is needed to facilitate increasing the number of Behavioral Care Unit facilities in Idaho and improving access to behavioral health care.

Currently, a provider must self-fund the first year of operations in order to generate a full year of cost reporting. After the initial year, reimbursement for providing services as a Behavioral Care Unit can commence. These rule changes will shorten the cost reporting period from a full year to a minimum of sixty (60) calendar days. The expedited reimbursement will allow more providers to enter the market and reduce access issues throughout the state.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that this temporary adoption of rule confers a benefit as it will make it easier for providers who wish to start up Behavioral Care Units to enter the market.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

There is no fiscal impact to the General Fund or dedicated funds. While more providers would enter the market, and receive reimbursement more rapidly, the Department will save money as a result of fewer patients staying in hospitals due to increased access to Behavioral Care Units.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 3, 2017, Idaho Administrative Bulletin, [Vol. 17-5, page 66](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact KayLee Leavitt at (208) 287-1175.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2017.

DATED this 10th day of July, 2017.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500  
Fax: (208) 334-6558 fax  
E-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 16-0310-1701  
(Only Those Sections With Amendments Are Shown.)**

**267. NURSING FACILITY: TREATMENT OF NEWLY LICENSED FACILITIES WITH BEHAVIORAL CARE UNITS (BCUS).**

**01. Criteria to Qualify as a New BCU.** ~~A nursing facility provider must meet the following criteria to qualify as a new BCU nursing facility provider:~~ Facilities licensed subsequent to September 1, 2017, must meet the qualifications for a BCU described in Subsections 266.02, 266.03, and 266.05 through 266.15 of these rules. BCU facilities existing prior to this date that receive a new license due to a change in ownership will not be subject to the provisions of this rule. (4-4-13)(9-1-17)T

~~a. BCU days from the cost report period, regardless of payer source, are divided by the total occupied days in the nursing facility, and that calculation must equal or exceed a minimum of twenty percent (20%).~~ (4-4-13)

~~b. A qualifying cost report must demonstrate that the nursing facility provider has a qualifying program in place with residents.~~ (4-4-13)

~~02. First Cost Reporting Year. No BCU eligibility, or increased direct care cost limit will be allowed in the first cost reporting year the BCU program is added.~~ (4-4-13)

~~03. Qualifying Report in Tandem with BCU Eligibility. Once a qualifying cost report is submitted for the BCU program, and the nursing facility provider qualifies in tandem with the BCU eligibility criteria, the cost report will be used to set a prospective rate effective the following July 1 rate period with the increased direct care cost limit.~~ (4-4-13)

**02. Reimbursement for Years One (1) Through Three (3).** Beginning with the first day of the first month following approval of the BCU license and when the provider can demonstrate that BCU days from a minimum of sixty (60) calendar days, regardless of payer source, divided by total census days for that same sixty-day (60) period, equals or exceeds a minimum of twenty percent (20%), the provider's rate will change to reflect BCU services. The provider will be reimbursed at the median rate for BCU facilities of that type, either freestanding or hospital-based, for the remaining period within the first three (3) full years of operation. If there are no facilities of the

same type (for example, no other hospital-based BCUs), the provider will receive the median rate for their type, but the direct care portion of the rate will be revised to the median rate of existing BCUs. The rate change to reflect BCU services will not be retroactive to rate quarters paid prior to meeting the twenty percent (20%) BCU occupancy requirement. (9-1-17)T

a. A nursing facility must apply for BCU eligibility on an annual basis in accordance with Subsection 266.07 of these rules. If the provider did not meet the BCU qualifications described in Section 266 of these rules, with the exception of Subsections 266.01 and 266.04, for a full cost report year corresponding to the initial application year, the twenty percent (20%) BCU day requirement will apply only to days beginning with the first day of BCU eligibility to the end of the year. (9-1-17)T

b. During the period of limitation, the facility's rate will be modified annually on July 1st to reflect the current median rate for skilled care facilities of that type. After the first three (3) complete years of operations, the facility will have its rate established at the next July 1st with the existing facilities in accordance with Subsections 266.03 and 266.05 of these rules. (9-1-17)T

c. During the period of limitation, providers must demonstrate annually that BCU days were equal to or exceeded twenty percent (20%), as described in Subsection 267.02 of this rule. Providers must provide a report to the Department with a calculation of BCU days for each month during the period being reviewed. If the twelve-month (12) average falls below twenty percent (20%), then the BCU reimbursement will revert back to the median rate per Section 260 of these rules. Once the Department has established the provider has met the requirements of Subsection 267.01 of this rule they will be eligible for a new rate outlined in Subsection 267.02.b. of this rule. (9-1-17)T

**268. NURSING FACILITY: EXISTING PROVIDER ELECTS TO ADD BEHAVIORAL CARE UNIT (BCU).**

An existing nursing facility provider that elects to add a BCU on or after July 1, 2011 ~~September 1, 2017~~, may be deemed eligible after meeting the following requirements: (4-4-13)(9-1-17)T

~~01. **Qualifying Cost Report.** A qualifying cost report that demonstrates a qualifying program is in place with residents and meets the criteria in Section 282 of these rules.~~ (4-4-13)

**021. Meet Criteria for BCU.** The nursing facility provider must meet the criteria for a BCU described in Section 266 of these rules. (4-4-13)

**02. BCU Eligible Days.** The provider must demonstrate that BCU days from a minimum of sixty (60) calendar days, regardless of payer source, divided by total census days for that same sixty (60) day period, equals or exceeds a minimum of twenty percent (20%). (9-1-17)T

**03. BCU Payments.** ~~No BCU payments or increased direct care cost limits will be allowed in the first cost reporting year the program is added. Once a qualifying cost report is submitted, and the provider qualifies in tandem with the BCU criteria, the cost report will be used to set a prospective rate, effective with the following July 1 rate period with the increased direct care cost limit. Once the provider has met the requirements of Subsections 268.01 and 268.02 of this rule, beginning with the first day of the first quarter following approval of the BCU license, the provider's rate will change to reflect BCU services. At no time will the rate be adjusted mid-quarter. The rate will be calculated as follows.~~ (4-4-13)(9-1-17)T

a. The indirect costs, costs exempt from limitations, and property cost will be reimbursed in the same manner as all other providers in accordance with reimbursement provisions contained in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (9-1-17)T

b. The direct cost portion of the rate will be reimbursed as a prospective rate not subject to a change from an interim rate to a final rate. The direct care portion of the rate will be calculated by determining the median direct care rate for BCU facilities of that type (freestanding or hospital-based) effective on July 1 of the rate year. If there are no facilities of the same type (for example no other hospital-based BCUs), the direct care portion of the rate will be set at the median rate of existing BCUs. The direct care portion of the rate will be updated on July 1 of each rate year until the provider has a qualifying twelve-month (12) cost report, as described in Section 268.03.d. of this

rule. (9-1-17)T

c. The provider's total calculated rate will be subject to customary charge limitations and any other rate reductions implemented for other providers. (9-1-17)T

d. Once the provider has a twelve-month (12) cost report that contains a full year of BCU costs, their rate will be calculated in the same manner as other providers in accordance with IDAPA 16.03.10. "Medicaid Enhanced Plan Benefits." (9-1-17)T

e. A nursing facility must apply for BCU eligibility on an annual basis in accordance with Section 266 of these rules. If the provider was not a BCU for a full cost report year, the twenty percent (20%) BCU day requirement will apply only to days beginning with the first day of BCU eligibility to the end of the year. (9-1-17)T

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**  
**16.04.17 – RULES GOVERNING RESIDENTIAL HABILITATION AGENCIES**  
**DOCKET NO. 16-0417-1701 (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 39-4605, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held at the below DHW Office as follows:

<b>PUBLIC HEARING Friday, August 11, 2017 1:00 p.m. (Local)</b>	<b>PUBLIC HEARING Monday, August 14, 2017 1:30 p.m. (Local)</b>	<b>PUBLIC HEARING Thursday, August 17, 2017 1:30 p.m. (Local)</b>
<b>Northern Idaho 1120 Ironwood Drive, Ste. 102 Large Conference Rm. Coeur d’Alene, ID 83814</b>	<b>Central Idaho 3232 W. Elder Street Conf. Rm D - West/East Boise, ID 83705</b>	<b>Southeastern Idaho 1070 Hiline Road Room 230 Pocatello, ID 83201</b>

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

This chapter of rules is being repealed under this docket and completely rewritten under companion Docket No. 16-0417-1702.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

There is no anticipated fiscal impact to the state general fund or any other funds related to this rulemaking. These changes are intended to be cost-neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 7, 2016, Idaho Administrative Bulletin, [Vol. 16-12, pages 74 and 75](#); in the January 4, 2017, Idaho Administrative Bulletin, [Vol. 17-1, page 125](#); and in the February 1, 2017, Idaho Administrative Bulletin, [Vol. 17-2, page 29](#). Six negotiated meetings were conducted around the state in Boise, Twin Falls, Pocatello, Idaho Falls, Lewiston, and Coeur d’Alene from December 2016 through February 2017. The Department also held earlier negotiated meetings in 2016.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Eric Brown at (208) 334-0649.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2017.

DATED this 10th day of July, 2017.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
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**IDAPA 16.04.17 IS BEING REPEALED IN ITS ENTIRETY**

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**  
**16.04.17 – RULES GOVERNING RESIDENTIAL HABILITATION AGENCIES**  
**DOCKET NO. 16-0417-1702 (CHAPTER REWRITE)**  
**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 39-4605, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held at the below DHW Offices as follows:

<b>PUBLIC HEARING Friday, August 11, 2017 1:00 p.m. (Local)</b>	<b>PUBLIC HEARING Monday, August 14, 2017 1:30 p.m. (Local)</b>	<b>PUBLIC HEARING Thursday, August 17, 2017 1:30 p.m. (Local)</b>
<b>Northern Idaho 1120 Ironwood Drive, Ste. 102 Large Conference Rm. Coeur d’Alene, ID 83814</b>	<b>Central Idaho 3232 W. Elder Street Conf. Rm D - West/East Boise, ID 83705</b>	<b>Southeastern Idaho 1070 Hiline Road Room 230 Pocatello, ID 83201</b>

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

This chapter of rules is being completely rewritten to meet current best practices for residential habilitation agencies operating in Idaho and to update and revise the certification requirements for these agencies. The rules have not been updated for several years and amending these requirements for certification and removing obsolete language will make them more user-friendly.

- The new chapter amends and updates:
1. Legal and informational sections;
  2. Terms and Definitions;
  3. Certification requirements; and
  4. Enforcement remedies.

The current chapter is being repealed under companion Docket No. 16-0417-1701 to make way for this rewrite.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

There is no anticipated fiscal impact to the state general fund or any other funds related to this rulemaking. These changes are intended to be cost-neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 7, 2016, Idaho Administrative Bulletin, [Vol. 16-12, pages 74 and 75](#); in the January 4, 2017, Idaho Administrative Bulletin, [Vol. 17-1, page 125](#); and in the February 1, 2017, Idaho Administrative Bulletin, [Vol. 17-2, page 29](#). Six negotiated meetings were conducted around the state in Boise, Twin Falls, Pocatello, Idaho Falls, Lewiston, and Coeur d’Alene from December 2016 through February 2017. The Department also held earlier negotiated meetings in 2016.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Eric Brown at (208) 334-0649.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2017.

DATED this 10th day of July, 2017.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0417-1702**  
**(This Chapter is Being Rewritten in its Entirety.)**

**IDAPA 16**  
**TITLE 04**  
**CHAPTER 17**

**16.04.17 - RULES GOVERNING RESIDENTIAL HABILITATION AGENCIES**

**000. LEGAL AUTHORITY.**

The Idaho Board of Health and Welfare is authorized under the Developmental Disabilities Services and Facilities Act, Sections 39-4601 et seq., Idaho Code, and under Section 56-1003, Idaho Code, to adopt and enforce rules, standards, and certification criteria for Residential Habilitation Agencies and provide for the delivery of appropriate services of habilitation and rehabilitation to the eligible population. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies." ( )

**02. Scope.** These rules govern: ( )

**a.** The certification of residential habilitation agencies; and ( )

**b.** Establish standards and minimum requirements for residential habilitation agencies that provide supported living services to adults living in their own homes that are not provider-owned, leased, or rented residences. The provisions are intended to regulate agencies so that services to participants will optimize participant opportunities for independence and self-determination while assuring adequate supports, services, participant satisfaction, and health and safety. Residential habilitation agencies will provide individualized services and supports

encouraging 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 participant-driven, and based on a person-centered plan to meet each participant's needs for self-sufficiency, medical care, and personal development with goals that safely encourage each participant to become a productive member of the community in which he lives. Access to these services must be authorized in accordance to the procedures of the paying entity. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for these rules. ( )

**003. ADMINISTRATIVE APPEALS.**

Contested case hearings are governed according to the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into this chapter of rules. ( )

**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. ( )

**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. ( )

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ( )

**04. Telephone.** The telephone number for of the Idaho Department of Health and Welfare is (208) 334-5500. ( )

**05. Internet Website.** The Department's internet website is <http://www.healthandwelfare.idaho.gov/>. ( )

**06. Division of Licensing and Certification.** The Department's Division of Licensing and Certification Unit is located at 3232 Elder Street, Boise, ID 83705; Phone: (208) 334-6626. ( )

**07. Division Webpage.** The Division of Licensing and Certification's website is <http://www.healthandwelfare.idaho.gov/Medical/LicensingCertification>. ( )

**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." ( )

**007. -- 008. (RESERVED)**

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Verification of Compliance.** The agency must verify that all employees and subcontractors delivering residential habilitation agency services have complied with IDAPA 16.05.06, "Criminal History and Background Checks." ( )

**02. Requirement to Report Additional Criminal Convictions, Pending Investigations, or Pending Charges.** Once an employee or subcontractor delivering residential habilitation agency services has received a criminal history clearance, any additional criminal convictions, pending investigations, or pending charges must be reported to the Department or its designee when the agency learns of the convictions, investigations, or charges. ( )

**010. DEFINITIONS -- A THROUGH N.**

For the purposes of these rules the following terms are used as defined below: ( )

**01. Abuse.** The non-accidental act of sexual, physical, verbal, or mental mistreatment, or injury of a resident through the action or inaction of another individual. ( )

**02. Administrator.** The individual who has primary responsibility for the direction and control of an agency. ( )

**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 participant may act as his own advocate. ( )

**04. Agency.** Any business entity that directly provides residential habilitation supported living services to adults with disabilities. ( )

**05. Board.** The Idaho Board of Health and Welfare. ( )

**06. Certificate.** A permit to operate a residential habilitation agency. ( )

**07. Complaint.** A formal expression of dissatisfaction, discontent, or unhappiness by or on behalf of a participant concerning the services provided by the agency. This expression can be oral, in writing, or by alternative means of communication. ( )

**08. Complaint Investigation.** An investigation of an agency to determine the validity of allegations of non-compliance with applicable state rules. ( )

**09. Deficiency.** A determination of non-compliance with a specific rule, or part of a rule. ( )

**10. Department.** The Idaho Department of Health and Welfare, or a person authorized to act on behalf of the Department. ( )

**11. Direct Service Staff.** Any individual employed by the agency that provides direct services and supports to the participant. ( )

**12. Director.** Director of the Idaho Department of Health and Welfare, or his designee. ( )

**13. Exploitation.** An action that may include, but is not limited to, the unjust or improper use of a vulnerable participant's financial power of attorney, funds, property, or resources by another person for profit or advantage. ( )

**14. Functional Assessment.** An evaluation of the participant's strengths, needs, and interests that guides the development of program plans or plan of care. ( )

**15. Governing Authority.** The designated person or persons (i.e., board) who assume full responsibility for the conduct and operations of the residential habilitation services agency. ( )

**16. Guardian.** A legally-appointed person who has decision-making responsibility for the care or property of another, under Section 66-404, Idaho Code. ( )

**17. Habilitation services.** Service 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: self-direction, money management, daily living skills, socialization, mobility, and behavior-shaping and management. ( )

**18. Immediate Jeopardy.** A situation in which the provider's non-compliance with one (1) or more requirements in this chapter of rules has caused, or is likely to cause, serious injury, harm, impairment, or death to a

participant. ( )

**19. Inadequate Care.** The failure to provide the services required to meet the terms of the plan of service. ( )

**011. DEFINITIONS -- M THROUGH Z.**

For the purposes of these rules the following terms are used as defined below: ( )

**01. Measurable Objective.** A statement that specifically describes the skill to be acquired or the service or 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. ( )

**02. Medication.** Any substance or drug used to treat a disease, condition, or symptoms that may be taken orally, injected, or used externally, and is available through prescription or over-the-counter. ( )

**03. Neglect.** The failure to provide food, clothing, shelter, or medical care reasonably necessary to sustain the life and health of a vulnerable adult. ( )

**04. Owner.** Any person or entity, having legal ownership of the agency as an operating business, regardless of who owns the real property. ( )

**05. Participant.** An adult who is receiving residential habilitation supported living services. ( )

**06. 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. ( )

**07. Physician.** Any person licensed as required by Title 54, Chapter 18, Idaho Code. ( )

**08. Plan of Service.** An initial or annual plan that identifies all services and supports based on a planning process. Plans are authorized annually. ( )

**09. Program Plan.** The participant's plan that details how the participant's individualized goals will be addressed. ( )

**10. Progress Note.** A written notation, recording participant response to program objective, date, time, duration, and type of service signed and dated by the staff that provided services. ( )

**11. PRN (Pro Re Nata) Medication.** A medication that is given "as needed" or "as the circumstances warrant" to treat a symptom of a medical or psychiatric condition that has a periodic, episodic, or breakthrough presentation. The assistance with medications for PRN medications must be providing as outlined in IDAPA 23.01.01, "Rules for the Idaho Board of Nursing-Unlicensed Assistive personnel (UAP)." ( )

**12. Provisional Certificate.** A certificate issued by the Department to a residential habilitation agency with deficiencies that do not adversely affect the health or safety of participants. A provisional certificate is issued contingent upon the correction of deficiencies in accordance with an agreed-upon plan. A provisional certificate is issued for a specific period of time, up to, but not to exceed, six (6) months. ( )

**13. Quarterly.** For the purpose of these rules, quarterly is defined as every three (3) months. ( )

**14. Residential Habilitation.** Services consisting of an integrated array of individually tailored services and supports furnished to an eligible participant that are designed to assist him to reside successfully in his own home, with his family, or alternate family home. Residential habilitation includes habilitation services, personal care services, and skill training. Individuals who provide residential habilitation supported living services in the home of the participant must be employed by a residential habilitation agency. ( )

**15. Residential Habilitation Professional.** An individual who has at least one (1) year of experience working directly with individuals with intellectual disabilities or developmental disabilities, and meets the

requirements in 42 CFR 483.430 (a). ( )

**16. 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 a secluded setting monitored consistently by staff. ( )

**17. Self-Neglect.** The failure of a vulnerable adult to provide food, clothing, shelter, or medical care reasonably necessary to sustain the life and health for himself. ( )

**18. Services.** Paid services authorized on the plan of service that enable the individual to reside safely and effectively in his own home. ( )

**19. Skill Training.** To train direct service staff to teach the participant how 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. ( )

**20. Substantial Compliance.** An agency is in substantial compliance with these rules when none of the following issues have been cited against the agency: ( )

**a.** Abuse; ( )

**b.** Neglect; ( )

**c.** Exploitation; ( )

**d.** Inadequate care; ( )

**e.** A situation in which the agency has operated more than thirty (30) days without an administrator or a residential habilitation professional; or ( )

**f.** Surveyors denied access to records, participants, or agency premises. ( )

**21. Supervision.** Initial and ongoing oversight of service and support elements by the residential habilitation professional or designee. The designee will report directly to the residential habilitation professional. ( )

**22. Supported Living.** One (1), two (2), or three (3) participants who live in their own home or participants who live with a family member or other natural support who is not receiving payment for their care and require staff assistance. A residence is considered to be the participant's own home when it is owned or rented by the participant. The home is defined to be owned or rented by the participant when the participant has entered into a valid mortgage, lease, or rental agreement for the residence and when the participant is able to provide the Department with a copy of the agreement when requested. When two (2) or three (3) participants reside in the same home, services may be provided through individual or group staffing arrangements as approved by the Department. The agency owner, administrator, or personnel are prohibited from owning, leasing, or renting the home. ( )

**23. Survey.** A review conducted by a surveyor to determine an agency's compliance with statutes and rules. ( )

**24. Surveyor.** A person authorized by the Department to conduct surveys or complaint investigations to determine compliance with statutes and rules. ( )

**012. -- 099. (RESERVED)**

**100. TYPES OF CERTIFICATES ISSUED.**

The Department issues certificates that are in effect for a period of no longer than three (3) years. The types of

certificates issued are as follow: ( )

**01. Initial Certificate.** When the Department determines that all application requirements have been met, an initial certificate is issued for a period of up to six (6) months from the initiation of services. The Department will survey the agency prior to the certificate expiration date to ensure the agency's ongoing capability to provide services and is in substantial compliance with these rules. When the agency is determined to be in substantial compliance, a one (1) year certificate will be granted. ( )

**02. One-Year Certificate.** A one (1) year certificate is issued by the Department when it determines the agency is in substantial compliance with these rules, following an initial or provisional certificate, or when there may be areas of deficient practice which would impact the agency's ability to provide adequate care. An agency is prohibited from receiving consecutive one (1) year certificates. ( )

**03. Three-Year Certificate.** A three (3) year certificate is issued by the Department when it determines the agency requesting certification is in substantial compliance with these rules. ( )

**04. Provisional Certificate.** When an agency is found to be out of substantial compliance with these rules, but does not have deficiencies that jeopardize the health or safety of participants, a provisional certificate may be issued by the Department for up to a six (6) month period. A provisional certificate is issued contingent upon the correction of deficiencies in accordance to a plan developed by the agency and approved by the Department. Before the end of the provisional certification period, the Department will determine whether areas of concern have been corrected and whether the agency is in substantial compliance with these rules. If the Department determines the agency is in compliance, a one (1) year certificate will be issued. If the agency is determined to be out of compliance, the certificate will be revoked. ( )

**101. CERTIFICATION – GENERAL REQUIREMENTS FOR AGENCIES.**

**01. Certificate Required.** ( )

**a.** No agency may provide services within this state until the Department has approved the application for certification and issued the agency a certificate. No agency may provide services within this state without a current certificate. ( )

**b.** The Department is not required to consider the application of any operator, administrator, or owner of an agency whose license or certification has been revoked until five (5) years have lapsed from the date of revocation. ( )

**02. Application.** An application for a certificate must be made to the Department on forms provided by the Department at: [www.ddacertification.dhw.idaho.gov](http://www.ddacertification.dhw.idaho.gov). The application must contain the following to be considered complete: ( )

**a.** Application form that contains the name, address, and telephone number of the agency, type of services to be provided, the geographic service area of the agencies, and the anticipated date for the initiation of services; ( )

**b.** An accurate and complete statement of all business names of the agency as filed with the Secretary of State, whether an assumed business name, partnership, corporation, limited liability company, or other entity, that identifies each owner of the agency, and the management structure of the agency; ( )

**c.** A statement that the agency will comply with these rules and all other applicable local, state, and federal requirements, including an assurance that the agency complies with pertinent state and federal requirements governing equal opportunity and nondiscrimination; ( )

**d.** A copy of the proposed organizational chart or plan for staffing of the agency; ( )

**e.** Staff qualifications including resumes, job descriptions, verification of satisfactory completion of criminal history checks in accordance with IDAPA 16.05.06, "Criminal History and Background Checks," and copies

of state licenses and certificates for staff, when applicable; ( )

**f.** Written policies and procedures for the development and implementation of staff training to meet the requirements of Section 204 of these rules. ( )

**g.** Staff and participant illness policy, communicable disease policy, and other health-related policies and procedures required in Section 300 of these rules; ( )

**h.** Written policies and procedures that address special medical or health care needs of participants required in Section 300 of these rules; ( )

**i.** Written transportation safety policies and procedures required in Section 300 of these rules; ( )

**j.** Written participant grievance policies and procedures to meet requirements in Section 300 of these rules; ( )

**k.** Written medication policies and procedures to address medication standards and requirements to meet requirements in Section 302 of these rules; ( )

**l.** Written policies and procedures that address the development of participants' social skills and the management of participants' maladaptive behavior to meet requirements in Section 303 of these rules; ( )

**m.** Written termination policies and procedures in accordance with Section 400 of these rules; ( )

**n.** Written policies and procedures for reporting incidents to the adult protection authority and to the Department to meet requirements in Section 404 of these rules; ( )

**o.** Written description of the program records system including a completed sample of a program plan, and a monitoring record; ( )

**p.** Written description of the fiscal record system including a sample of program billing; ( )

**q.** Written description of the agency's quality assurance program developed to meet requirements in Section 405 of these rules; ( )

**r.** Any other policies, procedures, or requirements as outlined in these rules; and ( )

**s.** All referenced forms. ( )

**03. Applications Must Be Complete.** Incomplete applications will not be considered and will be returned to the applicant. An applicant may submit an application up to three (3) times within a three hundred sixty-five (365) day period starting on the date of the first submission. If the application is incomplete upon a third submission, the application will be denied. The applicant may not resubmit an application for six (6) months from the date of the denial notice. ( )

**04. Conformity.** Applicants for certification and certified residential habilitation agencies must conform to all applicable rules of the Department. ( )

**05. Inspection of Residential Habilitation Records.** The agency and all records required under these rules 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 may result in revocation of the agency's certificate. ( )

**102. DENIAL OF AN APPLICATION.** The Department may deny any application. ( )

**01. Causes for Denial.** Causes for denial of an application may include: ( )

- a. The application does not meet all rule requirements; or ( )
- b. The 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 ( )
- c. The application is incomplete; or ( )
- d. The applicant, owner, operator, or provider has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining a certificate; ( )
- e. The applicant, owner, operator, or provider has been denied or has had revoked any license or certificate for a health facility, residential care or assisted living facility, certified family home, or residential habilitation agency; or ( )
- f. The applicant, owner, operator, or provider has been convicted of operating a health facility, residential care or assisted living facility, certified family home, or residential habilitation agency without a license or certificate; or ( )
- g. A court has ordered that the applicant, owner, operator, or provider must not operate a health facility, residential care or assisted living facility, certified family home, or residential habilitation agency. ( )
- h. The Department will not review an application of an applicant who has an action, either current or in process, against a certificate held by the applicant either in Idaho or any other state or jurisdiction. ( )

**02. Before Denial is Final.** Before denial is final, the Department will advise the individual or provider in writing of the denial and his right and method to appeal. Contested case hearings, including denial and revocation, must be conducted under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

**103. RENEWAL AND EXPIRATION OF CERTIFICATE.**

An agency must request, through a Department-approved process, renewal of its certificate no less than ninety (90) days before the expiration date of the certificate, to ensure there is no lapse in certification. ( )

**01. Renewal of Certificate.** A certificate may be renewed by the Department when it determines the agency requesting recertification is in substantial compliance with the provisions of this chapter of rules. A certificate 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. ( )

**02. Expiration of Certificate Without Timely Request for Renewal.** Expiration of a certificate without a timely request for renewal automatically rescinds the agency's certification to deliver services under these rules. ( )

**03. Availability of Certificate.** The certificate must be available upon request by the Department, a participant, his guardian, and members of the public. ( )

**104. CERTIFICATE NOT TRANSFERABLE.**

The certificate is issued only to the agency named in the application, only for the period specified, only for the location indicated in the application, and only to the owners or operators as expressed on the application submitted to the Department. The certificate may not be transferred or assigned to any other person or entity. The certificate is nontransferable from one (1) location to another. ( )

**105. RETURN OF CERTIFICATE.**

The certificate is the property of the state and must be returned to the state if it is revoked or suspended or voluntarily closed. ( )

**106. CHANGE OF OWNERSHIP, ADMINISTRATOR, OR LOCATION.**

**01. Notification to Department.** When a change of ownership, 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, or address is contemplated, the owner or designee must notify the Division of Licensing and Certification in writing through the Department-approved process. ( )

**02. New Application Required.** In the instance of a change of ownership or lessee the new owner must submit a new application to the Department at least sixty (60) days prior to the proposed date of change. The new application must be submitted to the Division of Licensing and Certification through the Department-approved process and must contain the required information under Section 101.02 of these rules. ( )

**107. -- 199. (RESERVED)**

**200. AGENCY GOVERNING AUTHORITY.**

Each agency must be organized and administered under one governing (1) authority. The governing authority may be a named individual or a number of individuals that will assume full legal responsibility for the overall conduct of the agency. ( )

**01. Structure.** The agency must document an organizational chart that identifies the individuals acting as its governing authority, the administrator, the residential habilitation professional, and all other agency employees with administrative responsibilities. This organizational chart must be provided at the time of the application, updated at least annually or upon significant change to the agency's organizational structure, and available to the Department upon request. ( )

**02. Responsibilities.** The governing authority must assume responsibility for: ( )

**a.** Adopting appropriate organizational bylaws and policies and procedures; ( )

**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 must participate in deliberation of policy decisions concerning all services; ( )

**c.** Ensuring the agency administrator fulfills the duties and obligations outlined in Section 201 of these rules. Any failure on part of the Administrator is the ultimate responsibility of the agency and its governing body. ( )

**d.** Conducting and documenting that it performed an annual review of the agency for compliance with these rules; ( )

**e.** Developing and implementing written administrative policies and procedures that comply with applicable state and federal rules; and ( )

**f.** Developing and implementing policies and procedures in accordance with these rules. All policies and procedures must be reviewed at least annually and revised as necessary. ( )

**201. AGENCY ADMINISTRATOR.**

An administrator for an agency is accountable for the overall operations of the agency including ensuring compliance with these rules, overseeing and managing staff, and administering the agency's policies and procedures, and quality assurance program. ( )

**01. Administrator Qualifications.** Each agency must employ a designated administrator who: ( )

**a.** Is at least twenty-one (21) years of age; ( )

**b.** Has satisfactorily completed a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; and ( )

**c.** Has a minimum of three (3) years of experience in service delivery with the population served with ( )

at least one (1) year having been in an administrative role. ( )

**02. Absences.** The administrator must designate, in writing, a qualified employee to perform the functions of the administrator to act in his absence. This document must be available upon request. ( )

**03. Responsibilities.** The administrator must: ( )

**a.** Document and review the overall program and general participant needs on at least a quarterly basis, or more often as necessary, to plan and implement appropriate strategies for meeting those needs; ( )

**b.** Make all records available to the Department for review or audit; ( )

**c.** Implement all policies addressing safety measures for the protection of participants and staff as mandated by state and federal rules; ( )

**d.** Ensure agency personnel, including those providing services, practice within the scope of their certificate or license; ( )

**e.** Conduct satisfaction surveys at least annually with each participant or guardian, as applicable. ( )

**f.** Assure training, support services, and equipment for agency staff are provided to carry out assigned responsibilities; ( )

**g.** Schedule coverage to assure compliance with the Plan of Service and Program Plans. Work schedules reflecting the daily adjustments of employees must be maintained to show the personnel on duty for the scheduled shift. The agency must specify provisions and procedures to assure back-up coverage for those work schedules; and ( )

**h.** Coordinate with other service providers to assure continuity of the delivery of residential habilitation services in the plan of service. ( )

**202. QUALIFICATIONS AND RESPONSIBILITIES OF A RESIDENTIAL HABILITATION PROFESSIONAL.**

**01. Education and Experience.** To be qualified as a residential habilitation professional, a person must: ( )

**a.** Have at least one (1) year of experience professionally supervised with the population served; and ( )

**b.** Meet the qualifications of a Qualified Intellectual Disabilities Professional (QIDP) as described in 42 CFR 483.430(a). ( )

**c.** Experience writing and implementing behavior and skill training program plans; or ( )

**i.** The agency must provide documentation the employee received such training from an experienced residential habilitation professional; and ( )

**ii.** Demonstrate the ability to write and implement behavior and skill training program plans. ( )

**02. Criminal History and Background Check.** A residential habilitation professional must have satisfactorily completed a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." ( )

**03. First Aid and CPR Certification.** A residential habilitation professional must be certified in first aid and Cardio-Pulmonary Resuscitation (CPR) appropriate for the age of participants he serves prior to providing direct service to participants and maintain current certification thereafter. ( )

**04. Responsibilities of a Residential Habilitation Professional.** A residential habilitation professional must be employed by the agency on a continuous and regularly scheduled basis. A residential habilitation professional must perform the following: ( )

**a.** Provide all skill training to agency direct service staff necessary to fulfill each participant's plan of service; ( )

**b.** Complete or obtain an age appropriate functional assessment for participants served within thirty (30) days of initiation of the supported living service; ( )

**c.** Develop participant program plans according to the current authorized plan of service for each participant; and ( )

**d.** Supervise habilitation services of the agency at least quarterly or more often as necessary to include: ( )

**i.** The review of direct services performed by direct service staff to ensure that staff are implementing the programs as written and demonstrate the necessary skills to correctly provide the services; and ( )

**ii.** Monitoring participant progress and documenting changes when necessary to ensure revisions are made for progress, regression, or inability to maintain independence. ( )

**05. Direct Service Qualifications.** If a residential habilitation professional is providing any type of direct service, he must meet the qualifications of direct service staff as defined in Section 203 of these rules. ( )

**203. DIRECT SERVICE STAFF.**

Each direct service staff person for an agency must meet all of the following minimum qualifications: ( )

**01. Age.** Be at least eighteen (18) years of age. ( )

**02. Education.** Be a high school graduate, or have a GED or demonstrate the ability to provide services according to a plan of service. ( )

**03. First Aid and CPR Certification.** Be certified in first aid and Cardio-Pulmonary Resuscitation (CPR) appropriate for the age of participants he serves prior to providing direct care or services to participants and maintain current certification thereafter. ( )

**04. Health.** Have signed a statement maintained by the agency that he is free from communicable disease, understands universal precautions, and follows agency policies and procedures regarding communicable disease. ( )

**05. "Assistance with Medications" Course.** Each staff person assisting with participant medications must successfully have completed and follow the "Assistance with Medications" course available through the Idaho Division of Career-Technical Education, or other Department-approved training. A copy of the certificate or other verification of successful completion must be maintained by the agency in the employee record. ( )

**06. Criminal History Check.** Have satisfactorily completed a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." ( )

**07. Documentation of Job Description.** Have signed and received a copy of his job description from the agency stating that the requirements of his position have been explained. ( )

**08. Documentation of Training Requirements.** Have documentation maintained by the agency showing he has met all training requirements as outlined in Section 204 of these rules. ( )

**204. DIRECT SERVICE STAFF TRAINING.**

Each agency must ensure that all staff who provide direct services have completed training in accordance with these rules. ( )

**01. Training Documentation.** ( )

**a.** Training documentation must include the following: ( )

i. Direct service staff receiving the training; ( )

ii. Individual conducting the training; ( )

iii. Name of the participant; ( )

iv. Description of the content trained; and ( )

v. Date and duration of the training. ( )

**b.** Documentation of training must be available for review by the Department, and retained in each employee's record. ( )

**02. Orientation Training.** Orientation training must be completed prior to working with participants. The orientation training must include: ( )

**a.** Purpose and philosophy of services; ( )

**b.** Policies and procedures; ( )

**c.** Proper conduct in working with participants; ( )

**d.** Handling of confidential and emergency situations that involve the participant; ( )

**e.** Participant rights to include personal, civil, and human rights; ( )

**f.** Universal Precautions; ( )

**g.** Body mechanics and lifting techniques; ( )

**h.** Housekeeping techniques; ( )

**i.** Maintenance of a clean, safe, and healthy environment; and ( )

**j.** Skills training specific to the needs of each participant served must be provided by a residential habilitation professional and include the following: ( )

i. Instructional techniques including correct and consistent implementation of the participant's program plan or plan of care; ( )

ii. Managing behaviors including techniques and strategies for teaching adaptive behaviors; and ( )

iii. Accurate record keeping procedures. ( )

**03. Ongoing Training.** The residential habilitation professional must provide and document ongoing training of direct service staff when changes are made to the participant's plan of service and corresponding program plans. Additionally, the agency will be responsible for providing on-going training to direct service staff when there are changes to the participant's physical, medical, and behavioral status. ( )

205. -- 299. (RESERVED)

**300. AGENCY POLICIES AND PROCEDURES.**

A policy and procedure manual must be developed by the agency to effectively implement its objectives. It must be approved by the governing authority. The manual must, at a minimum, include policies and procedures reflecting the following: ( )

**01. Scope of Services and Area Served.** The agency must define the scope of services offered and the geographic area served by the agency. ( )

**02. Acceptance Standards.** The agency must develop and implement written policies and procedures that specify the agency will only accept and retain participants for whom the agency is adequately equipped to provide appropriate services according to the participant's plan of care. The agency will not accept or retain participants when the agency does not have the personnel appropriate in number and with appropriate knowledge and skill to provide the services needed by each participant according to each participant's plan of care. ( )

**03. Participant Records.** Each agency must develop and implement written policies and procedures that describe the content, maintenance, and storage of participant records. Each agency must maintain accurate, current, and complete participant records. These records must be maintained for at least five (5) years following the participant's termination of services, or to the extent required by other federal or state requirements. Each agency must have a participant records system to include past and current information and to safeguard participant confidentiality under these rules. ( )

**04. Required Services.** Each agency must develop and implement written policies and procedures that describe how the agency will assess and provide residential habilitation services. Residential habilitation services consist of an integrated array of individually tailored services and supports. These services and supports are designed to assist the participants to reside in their own homes. Residential habilitation includes 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, and include training in one (1) or more of the following areas: ( )

**a.** 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; ( )

**b.** Money management, including training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; ( )

**c.** 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; ( )

**d.** Socialization, including training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. ( )

**i.** Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities, and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. ( )

**ii.** Socialization training does not include participation in non-therapeutic activities that are merely diversional or recreational in nature); ( )

**e.** 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; ( )

**f.** 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. ( )

**g.** Personal Assistance Services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the participant or the participant's primary caregiver(s) are unable to accomplish on his own behalf. ( )

**h.** Skills training conducted by direct service staff to teach the participant how 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. ( )

**05. Participant Safety.** Each agency must develop and implement a policy and procedure for assessing participant environmental and structural safety risks. ( )

**06. Disaster/Emergency Care.** Each agency must develop and implement emergency planning and care policies and procedures that include situational and environmental emergencies. The policy and procedure must include an emergency preparedness plan to follow in the event of an emergency. ( )

**07. Administrative Records.** Each agency must maintain all administrative records, including all written policies and procedures, for at least five (5) years or to the extent necessary to meet any other federal or state requirements. Administrative records must include, at a minimum: ( )

**a.** Administrative structure must include an organizational chart; ( )

**b.** Legal authority must be identified in organizational bylaws and other documentation of legal authority of ownership; ( )

**c.** Fiscal records must verify service delivery prior to request for payment. ( )

**08. Personnel.** Each agency must develop and implement written personnel policies and procedures. The agency is responsible for the recruitment, hiring, training, supervision, scheduling, and payroll for its employees. Written personnel policies that describe the employee's rights, responsibilities, and agency's expectations must be on file and provided to employees. The record must contain documentation supporting staff qualifications. A record for each employee must be maintained from date of hire for not less than five (5) year(s) after the employee is no longer employed by the agency or as necessary to meet other requirements. ( )

**09. Participant Rights.** Each agency must develop and implement written policies that include a clear definition of personal, civil, and human rights. Upon initiation of services, the agency must provide each participant or guardian, where applicable, with written and verbal information outlining participant rights. This information must be in easily understood terms. The policy and procedure must include the following rights: ( )

**a.** Humane care and treatment; ( )

**b.** Not be put in isolation; ( )

**c.** Be free of restraints, unless necessary for the safety of that person or for the safety of others;( )

**d.** Be free of mental and physical abuse; ( )

**e.** Voice grievances and recommend changes in policies or services being offered; ( )

**f.** Have the opportunity to participate in social, religious, and community activities of his choice; ( )

**g.** Wear his own clothing and retain and use personal possessions; ( )

- h.** Be informed of his habilitative condition, services available at the agency; ( )
- i.** Reasonable access to all records concerning himself; ( )
- j.** Refuse services; ( )
- k.** Exercise all civil rights, unless limited by prior court order; ( )
- l.** Privacy and confidentiality; ( )
- m.** Receive courteous treatment; ( )
- n.** Receive a response from the agency to any request made within (14) business days; ( )
- o.** Receive services that enhance the participant's personal competencies and, whenever possible, promote inclusion in the community; ( )
- p.** Refuse to perform services for the agency. If the participant is hired to perform services for the agency, the wage paid must be consistent with state and federal law; ( )
- q.** Review the results of the most recent survey conducted by the Department and the accompanying plan of correction; ( )
- r.** All other rights established by law; and ( )
- s.** Be protected from harm. ( )
- 10. Health.** Each agency must develop and implement written policies and procedures that: ( )
  - a.** Define how the agency will train each direct service staff on procedures to follow for communicable diseases or infected skin lesions; ( )
  - b.** Describe how the agency will protect participants from exposure to individuals exhibiting symptoms of illness; ( )
  - c.** Address any special medical or health care needs specific to each participant; and ( )
  - d.** Implement medication standards and requirements in accordance with Section 302 of these rules. ( )
- 11. Transportation.** Each agency must develop and implement transportation policies that include the following: ( )
  - a.** Preventative Maintenance Program. Establish a preventive maintenance program, including vehicle inspections and other regular maintenance, for all agency-owned vehicles used to transport participants to ensure participant safety. ( )
  - b.** Transportation Safety Policy. Develop and implement a written transportation safety policy. ( )
  - c.** Licenses and Certifications for Drivers and Vehicles. Obtain and maintain licenses and certifications for drivers and vehicles required by public transportation laws, regulations, and ordinances that apply to the agency to conduct business and to operate the types of vehicles used to transport participants. Agencies must maintain documentation of appropriate licensure for all employees who operate vehicles. ( )
  - d.** Applicable Laws, Rules, and Regulations. Adhere to all laws, rules, and regulations applicable to drivers and vehicles of the type used. ( )

e. **Liability Insurance.** Continuously maintain liability insurance that covers all passengers and meets the minimum liability insurance requirements under Idaho law. If an agency employee transports participants in the employee's personal vehicle, the agency must ensure that adequate liability insurance coverage is carried to cover those circumstances. ( )

12. **Quality Assurance.** Each agency must develop and implement policies and procedures that describe the Purpose of the Quality Assurance Program that, at minimum, address the components of Section 405 of these rules. ( )

13. **Grievance.** Each agency must develop and implement policies and procedures that describe the agencies methodology for accepting and responding to grievances presented by participants or their guardians.( )

**301. PERSONNEL RECORDS.**

The record for each employee must contain at least the following: ( )

01. **Name, Current Address, and Phone Number of the Employee;** ( )

02. **Social Security Number;** ( )

03. **Education and Experience;** ( )

04. **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; ( )

05. **Date of Employment;** ( )

06. **Job Description.** Documentation that the employee signed and received a copy of his job description stating that the requirements of his position have been explained to him; ( )

07. **Date of Termination of Employment and Reason for Termination, If Applicable;** ( )

08. **Documentation of the Employee's Initial Orientation and Required Training;** ( )

09. **Evidence of Current Age-Appropriate CPR and First Aid Certifications;** ( )

10. **Current Assistance With Medications Certification, If Applicable; and** ( )

11. **Criminal History Check.** Verification of satisfactory completion of criminal history checks in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." ( )

**302. AGENCY MEDICATION STANDARDS AND REQUIREMENTS.**

The agency must develop and implement written policy and procedures describing the program's system for handling participant medications that is in compliance with the IDAPA 23.01.01, "Rules of the Board of Nursing." ( )

01. **Medication Policy.** Each agency must develop written medication policies and procedures that outline in detail how the agency will ensure appropriate handling and safeguarding of medications. An agency that chooses to assist participants with medications to include PRN medications must also develop specific policies and procedures to ensure this assistance is safe and is delivered by qualified, fully-trained staff. Documentation of training must be maintained in the staff personnel record. ( )

02. **Handling of Participant's Medication.** ( )

a. The medication must be in the original pharmacy-dispensed container, or in an original over-the-counter container, or placed in a unit container by a licensed nurse and be appropriately labeled with the name of the medication, dosage, time to be taken, route of administration, and any special instructions. Each medication must be packaged separately, unless in a Mediset, blister pack, or similar system. ( )

b. Evidence of the written order for the medication from the physician or other practitioner of the

healing arts must be maintained in the participant's record. Medisets, blister pack, or similar system filled and labeled by a pharmacist or licensed nurse can serve as written evidence of the order. An original prescription bottle labeled by a pharmacist describing the order and instructions for use can also serve as written evidence of an order from the physician or other practitioner of the healing arts. ( )

c. The agency is responsible to safeguard the participant's medications when assuming the responsibility for assisting with medications. ( )

d. Medications that are expired or no longer used by the participant must not be retained by the agency or agency staff for longer than thirty (30) calendar days. ( )

**03. Self-Administration of Medication.** When the participant is responsible for administering his own medication without assistance, a written approval stating that the participant is capable of self-administration must be obtained from the participant's primary physician or other practitioner of the healing arts. The participant's record must also include documentation that a physician or other practitioner of the healing arts, or a licensed nurse has evaluated the participant's ability to self-administer medication and has found that the participant: ( )

- a. Understands the purpose of the medication; ( )
  - b. Knows the appropriate dosage and times to take the medication; ( )
  - c. Understands expected effects, adverse reactions or side effects, and action to take in an emergency; ( )
- and
- d. Is able to take the medication without assistance. ( )

**04. Assistance with Medication.** An agency may choose to assist participants with medications; however, only a licensed nurse or other licensed health professional may administer medications. Prior to unlicensed agency staff assisting participants with medication, the following conditions must be in place: ( )

- a. Each staff person assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Division of Career-Technical Education, or other Department-approved training; ( )
- b. The participant's health condition is stable; ( )
- c. The participant's health status does not require nursing assessment, as outlined in IDAPA 23.01.01, "Rules for the Idaho Board of Nursing," before receiving the medication or nursing assessment of the therapeutic or side effects after the medication is taken; ( )
- d. The medication is in the original pharmacy-dispensed container with proper label and directions, or in an original over-the-counter container, or the medication has been placed in a unit container by a licensed nurse. Proper measuring devices must be available for liquid medication that is poured from a pharmacy-dispensed container; ( )
- e. Written and oral instructions from a licensed physician or other practitioner of the healing arts, pharmacist, or nurse concerning the reason(s) for the medication, the dosage, expected effects, adverse reactions or side effects, and action to take in an emergency have been reviewed by the staff person; ( )
- f. Written instructions are in place that outline required documentation of assistance and who to call if any doses are not taken, overdoses occur, or actual or potential side effects are observed; ( )
- g. Procedures for disposal or destruction of medications must be documented and consistent with procedures outlined in the "Assistance with Medications" course or local medication destruction programs. ( )

**05. Administration of Medications.** Only a licensed nurse or another licensed health professional working within the scope of his license may administer medications. Administration of medications must comply

with IDAPA 23.01.01, “Rules of the Idaho Board of Nursing.” ( )

**303. AGENCY POLICIES AND PROCEDURES REGARDING DEVELOPMENT OF SOCIAL SKILLS AND MANAGEMENT OF MALADAPTIVE BEHAVIOR.**

Each agency must develop and implement written policies and procedures that address the development of participants’ social skills and management of maladaptive behavior. These policies and procedures must include statements that address: ( )

**01. Adaptive and Maladaptive Behavior.** The agency must address possible underlying causes or function of a behavior and identify what the participant may be attempting to communicate by the behavior. ( )

**02. Behavior Intervention.** Positive behavior interventions must be used prior to and in conjunction with, the implementation of any restrictive intervention. Interventions must address the following: ( )

**a.** Social Skills Development. Focus on developing or increasing participants’ social skills. ( )

**b.** Prevention Strategies. Ensure and document the use of positive approaches to increase social skills and decrease maladaptive behavior while using least restrictive alternatives and consistent, proactive responses to behaviors. ( )

**c.** Behavior replacement. Ensure that programs to assist participants with managing maladaptive behavior include teaching of alternative adaptive skills to replace the maladaptive behavior. ( )

**d.** Protected Rights. Ensure the safety, welfare, and human and civil rights of participants are adequately protected. ( )

**e.** Objectives and Programs. Ensure 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 that significantly interfere with participants’ independence or ability to participate in the community. Ensure that reinforcement selection is individualized and appropriate to the task and not contraindicated for medical reasons. ( )

**f.** Participant Involvement. Ensure programs developed by the agency involve the participants, to the best of their ability, in developing the plan to increase social skills and to manage maladaptive behavior. ( )

**g.** Written Informed Consent. Ensure programs developed by an agency to assist participants with managing maladaptive behaviors are conducted only with the written informed consent of the participant, or legal guardian, where applicable. When programs used by the agency are developed by another service provider the agency must obtain a copy of the informed consent. ( )

**h.** Review and Approval. Programs developed by an agency to manage maladaptive behavior are implemented after the review and written approval of the residential habilitation professional. If the program contains restrictive or aversive components, an individual working within the scope of his license or certification must also review and approve, in writing, the program prior to implementation. When programs implemented by the agency are developed by another service provider, the agency must obtain a copy of these reviews and approvals. ( )

**03. Appropriate Use of Interventions.** Employees of the agency must not use physical, verbal, sexual, or psychological abuse, or punishment. For the purposes of these rules, punishment is 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 participant’s rights or freedom for the purpose of reducing the rate, intensity, duration, or probability of a particular behavior. Employees of the agency must not withhold food or hydration that contributes to a nutritionally adequate diet. The agency must ensure that interventions used to manage participants’ maladaptive behavior are never used: ( )

**a.** For disciplinary purposes; ( )

- b. For the convenience of staff; ( )
- c. As a substitute for a needed training program; or ( )
- d. By untrained or unqualified staff. ( )

**04. Use of Restraint on Participants.** No restraints, other than physical restraint in an emergency, must be used on participants prior to the use of positive behavior interventions. The following requirements apply to the use of restraint on participants: ( )

a. Chemical restraint. A chemical restraint is any medication used to control behavior or to restrict freedom of movement and is not a standard treatment for the resident's condition. Employees or contractors of the agency must not use chemical restraint unless authorized by an attending physician. ( )

b. Mechanical restraint. A mechanical restraint is a device 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. ( )

i. Mechanical restraint may be used for medical purposes when authorized by an attending physician. ( )

ii. Mechanical restraint for non-medical purposes may be used only when a written behavior change plan is developed by the participant or guardian if applicable, his team and a qualified residential habilitation professional. Informed participant consent is required. ( )

c. Physical restraint. ( )

i. Physical restraint may be used in an isolated emergency to prevent injury to the participant or others and must be documented and reviewed in the participant's record by the direct service staff and the residential habilitation professional. ( )

ii. Physical restraint may be used in a non-emergency setting when a written behavior change plan is developed by the participant or his guardian if applicable, his team and a qualified residential habilitation professional. Informed participant consent is required. ( )

d. Seclusionary Time Out. Seclusionary time out may be used only when a written behavior change plan is developed by the participant or his guardian if applicable, his team, and a qualified residential habilitation professional. Informed participant consent is required. ( )

**304. -- 399. (RESERVED)**

**400. AGENCY PARTICIPANT RECORD REQUIREMENTS.**

Each agency certified under these rules must maintain accurate, current, and complete participant and administrative records. Each participant record must clearly document the date, time, duration, and type of service, and include the signature of the individual providing the service, for each service provided. Each participant record must contain the following information: ( )

**01. Profile Sheet.** Each participant record must include a profile sheet containing the following: ( )

a. Name, current address, and current phone number of the participant; ( )

b. Medicaid ID number; ( )

c. Gender and marital status; ( )

d. Date of birth; ( )

- e.** Names, addresses, and current phone numbers of legal guardian if applicable, family, advocates, friends, and persons to be contacted in case of an emergency; ( )
- f.** Names, addresses, and current phone number of physician, pharmacy, dentist, and other health care providers as applicable; ( )
- g.** A list, or an attached list, of current medications, diet, and all other treatments prescribed for the participant; and ( )
- h.** Current diagnoses or reference to a current history and physical. ( )
- 02. Authorized Plan of Service.** The agency must obtain a current authorized plan of service from the paying entity. ( )
- 03. Participant Rights.** Each agency must document upon initiation of services, that each participant and his guardian, where applicable, have been informed of his rights, access to grievance procedures, and the names, addresses, and telephone numbers of protection and advocacy services. This information must be provided in easily understood terms both verbally and in writing. ( )
- 04. History and Physical.** Results of a most current history and physical. ( )
- 05. Functional Assessment.** An age-appropriate functional assessment must be completed or obtained by the agency within thirty (30) days of the initiation of the supported living service. The functional assessment must be used for the development of program plans and include: ( )
- a.** An assessment reflecting the person's functional abilities in the following areas: self-direction, money management, daily living skills, socialization, mobility, behavior shaping, and other therapeutic programs; and ( )
- b.** The results and summary signed with credentials and dated by the qualified residential habilitation professional. ( )
- 06. Psychological or Psychiatric Assessment.** When a participant has had a psychological or psychiatric assessment for the purpose of treatment, the results of the assessment must be maintained in the participant's record and used when developing program objectives. ( )
- 07. Program Plan.** Each participant must have a program plan that includes goals and objectives specific to his authorized residential habilitation program. Program plans that include participant's name, baseline statement, measurable objectives, start date, written instructions to staff, service environments, and target date. ( )
- 08. Record of Significant Incidents, Accidents, Illnesses, and Treatments.** ( )
- 09. Daily Medication Log, When Applicable.** ( )
- 10. Daily Record of the Date, Time, Duration, and Type of Service Provided.** ( )
- 11. Service Delivery and Progress Notes.** Documentation of service delivery and progress notes that correspond with the program plans when services are delivered to the participant. ( )
- 12. Status Review.** Residential habilitation agencies must review each participant's progress to ensure revisions are made for progress, regression, or inability to maintain independence. The review of progress must be documented on a status review document. The status review document identifies the participant's progress toward goals defined in the plan of service. ( )
- 13. Termination Procedures.** The agency must develop and implement termination policies and procedures that address how the agency will ensure safety of the participant and community to the extent possible in the event that emergency conditions exist or the participant no longer in need of or desires services. ( )

a. In the instance where the participant is no longer in need of or desires services, the agency must ensure that the procedures include written notice of no less than thirty (30) days for termination and include a transition plan. For the purposes of this chapter, a transition plan is an interim plan developed by the agency defining activities to assist the participant to transition out of residential habilitation services from that agency. ( )

b. Services may be terminated prior to thirty (30) days if both parties agree in writing to the termination conditions. The agency may not terminate services when to do so would pose a threat of endangerment to the participant or others. The participant is entitled to appeal the termination utilizing the agencies grievance process. ( )

c. The agency must notify the participant or his guardian no less than thirty (30) days prior to a change of ownership in order to have informed choice in the services they receive. ( )

**401. -- 402. (RESERVED)**

**403. PARTICIPANT FINANCES.**

**01. Written Policy and Procedure.** Each agency must develop and implement a written policy and procedure that describes the management of participant funds. In order for an agency to manage participant's funds, they must have written designation as a payee by either Social Security Administration or the participant's guardian or conservator if they are not a recipient of Social Security funds. ( )

**02. Participant's Personal Finance Records.** When the agency, or its employees or contractors, are designated as the payee on behalf of the participants, the agency must establish and maintain an accounting system that assures a full and complete accounting of participants' personal funds entrusted to the agency, its employees, or contractors on behalf of participants. Records of financial transactions must be sufficient to allow a thorough audit of the participant's funds. An agency that manages participant funds must: ( )

a. Not commingle of participant funds with agency funds. Borrowing between participant accounts is prohibited; ( )

b. Document any financial transactions. A separate transaction record must be maintained for each participant; ( )

c. Restore funds to the participant if the agency cannot produce proper accounting records of participant's funds or property; and ( )

d. Provide access to the participant's funds to the participant or his legal guardian or conservator. ( )

**404. AGENCY REPORTING AND COMMUNICATION REQUIREMENTS.**

Each agency must develop and implement written policies and procedures outlining how the agency will document reporting and other communications for the following: ( )

**01. Reciprocal Communication.** Communication with the legal guardian and other authorized individuals; and ( )

**02. Reporting Requirements.** Any agency employee or contractor must report all incidents and 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 39-5304, Idaho Code, or the designated state protection and advocacy system for persons with developmental disabilities when applicable; and ( )

a. The agency administrator must investigate and document in the participant's records his investigation of all alleged violations. The agency must protect the participant from the possibility of abuse while the investigation is in progress. The administrator must ensure the events and the agency response to the events are

documented in the participant record. ( )

**b.** If the agency administrator verifies the alleged violation, appropriate corrective action must be taken and reported to law enforcement, the Department, and adult protection as required by law under Section 39-5304, Idaho Code. ( )

**03. Participant's Condition.** The agency administrator must notify the participant's legal guardian within twenty-four (24) hours, if one exists, of any significant incidents, or changes in participant's condition including serious illness, accident, death, or abuse. ( )

**04. Notification to Department of a Participant's Condition.** Through a Department-approved process, the agency administrator must notify the Department by the close of the next business day of any significant incidents including: death, hospitalization, or if the participant is arrested or incarcerated. The Department will investigate or cause to be investigated any such incident that indicates there was a violation of the rules or statute. ( )

**405. AGENCY QUALITY ASSURANCE PROGRAM.**

Each agency must develop and implement a quality assurance program. ( )

**01. What the Quality Assurance Program Verifies.** The quality assurance program is an ongoing, proactive, internal review of the agency designed to verify: ( )

**a.** Services are provided in accordance with these rules; ( )

**b.** Sufficient staff are available to meet the needs of each person served; ( )

**c.** Skill training activities are conducted as written in the program plans. ( )

**d.** The rights of a person with disabilities are protected and each person is provided opportunities and training to make informed choices. ( )

**02. Quality Assurance Program Components.** Each agency's written quality assurance program must include: ( )

**a.** Goals and procedures to be implemented to achieve the purpose of the quality assurance program; ( )

**b.** Person, discipline, or department responsible for each goal; ( )

**c.** A system to ensure the correction of problems identified within a specified period of time; ( )

**d.** A method for assessing participant satisfaction at least annually including minimum criteria for participant response and alternate methods to gather information if minimum criteria is not met; ( )

**e.** An annual review of agency's policy and procedure manual signed and dated by the administrator that specifies content of revisions made; and ( )

**f.** An annual review of participant and employee records for complete and current content to meet rules. ( )

**406. COMPLAINTS AND INVESTIGATIONS.**

**01. Filing a Complaint.** Any person who believes that the agency has failed to meet any provision of the rules or statute may file a complaint with the Department. All complaints must have a basis in rule or statutory requirements. In the event that it does not, the complainant will be referred to the appropriate entity or agency. ( )

**02. Investigation Survey.** The Department will investigate, or cause to be investigated the following: ( )

- a. Any complaint alleging a violation of the rules or statute; and ( )
- b. Any reportable incident which indicates there was a violation of the rules or statute. ( )
- 03. Disclosure of Complaint Information.** The Department will not disclose the name or identifying characteristics of a complainant unless: ( )
  - a. The complainant consents in writing to the disclosure; ( )
  - b. The investigation results in a judicial proceeding and disclosure is ordered by the court; or ( )
  - c. The disclosure is essential to prosecution of a violation. The complainant is given the opportunity to withdraw the complaint before disclosure. ( )
- 04. Method of Investigation.** The nature of the complaint will determine the method used to investigate the complaint. ( )
- 05. Statement of Deficiencies.** If violations of these rules are identified, depending on the severity, the Department may send the agency a statement of deficiencies. ( )
- 06. Public Disclosure.** Information received by the Department through filed reports, inspection, or as otherwise authorized under the law, must not be disclosed publicly in such a manner as to identify individual residents except in a proceeding involving a question of certification. ( )
- 07. List of Deficiencies.** A current list of deficiencies including plans of correction will be available to the public upon request to the agency or by written request to the Department. ( )
- 08. Notification to Complainant.** The Department will inform the complainant of the results of the investigation survey when the complainant has provided a name and address. ( )
- 407. -- 499. (RESERVED)**
- 500. ENFORCEMENT PROCESS.**  
The Department may impose a remedy or remedies when it determines an agency is not in compliance with these rules. ( )
  - 01. Determination of Remedy.** In determining which remedy or remedies to impose, the Department will consider the agency's compliance history, change of ownership, the number of deficiencies, the scope and severity of the deficiencies, and the potential risk to participants. Subject to these considerations, the Department may impose any of the remedies in Subsection 500.02 of this rule, independently or in conjunction with others, subject to the provisions of these rules for notice and appeal. ( )
  - 02. Enforcement Remedies.** If the Department determines that an agency is out of compliance with these rules, it may impose any of the following remedies according to Section 500.01 of this rule. ( )
    - a. Require the agency to submit a plan of correction that must be approved in writing by the Department; ( )
    - b. Issue a provisional certificate with a specific date for correcting deficient practices; ( )
    - c. Ban enrollment of all participants with specified diagnoses; ( )
    - d. Ban any new enrollment of participants; ( )
    - e. Revoke the agency's certificate; or ( )

f. Summarily suspend the certificate and transfer participants. ( )

**03. Immediate Jeopardy.** If the Department finds an agency's deficiency or deficiencies immediately jeopardize the health or safety of its participants, the Department may summarily suspend the agency's certificate. ( )

**04. No Immediate Jeopardy.** If the Department finds that the agency's deficiency or deficiencies do not immediately jeopardize participant health or safety, the Department may impose one (1) or more of the remedies specified in Subsections 500.02.a. through 500.02.e. of this rule. ( )

**05. Repeat Deficiencies.** If the Department finds a repeat deficiency in an agency, it may impose any of the remedies listed in Subsection 500.02 of this rule as warranted. The Department may monitor the agency on an "as needed" basis, until the agency has demonstrated to the Department's satisfaction that it is in compliance with requirements governing residential habilitation agencies and that it is likely to remain in compliance. ( )

**06. Failure to Comply.** The Department may impose one (1) or more of the remedies specified in Subsection 500.02 of this rule if: ( )

a. The agency has not complied with any requirement in these rules within three (3) months after the date it was notified of its failure to comply with such requirement; or ( )

b. The agency has failed to correct the deficiencies stated in the agency's accepted plan of correction and as verified by the Department, via resurveys. ( )

**501. REVOCATION OF CERTIFICATE.**

**01. Revocation of the Agency's Certificate.** The Department may revoke an agency's certificate when persuaded by the preponderance of the evidence that the agency is not in substantial compliance with the requirements in this chapter of rules. ( )

**02. Causes for Revocation of the Certificate.** The Department may revoke any agency's certificate for any of the following causes: ( )

a. The certificate holder has willfully misrepresented or omitted information on the application for certification or other documents pertinent to obtaining a certificate; ( )

b. Conditions exist in the agency that endanger the health or safety of any participant; ( )

c. Any act adversely affecting the welfare of participants is being permitted, performed, or aided and abetted by the person or persons supervising the provision of services in the agency. Such acts include neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, or exploitation; ( )

d. The provider has demonstrated or exhibited a lack of sound judgment that jeopardizes the health, safety, or well-being of participants; ( )

e. The agency has failed to comply with any of the conditions of a provisional certificate; ( )

f. The agency has one (1) or more major deficiencies. A major deficiency is a deficiency that endangers the health, safety, or welfare of any participant; ( )

g. An accumulation of minor deficiencies that, when considered as a whole, indicate the agency is not in substantial compliance with these rules; ( )

h. Repeat deficiencies by the agency of any requirement of these rules or of the Idaho Code; ( )

i. The agency lacks adequate personnel, as required by these rules or as directed by the Department, to properly care for the number and type of participants served at the agency; ( )

**j.** The agency is not in substantial compliance with the provisions for services required in these rules or with the participants' rights under Subsection 300.09 of these rules; or ( )

**k.** The certificate holder refuses to allow the Department or protection and advocacy agencies full access to the agency environment, agency records, or the participants. ( )

**502. NOTICE OF ENFORCEMENT REMEDY.**

The Department will notify the following of the imposition of any enforcement remedy on an agency: ( )

**01. Notice to the Agency.** The Department will notify the agency in writing, transmitted in a manner that will reasonably ensure timely receipt. ( )

**02. Notice to Public.** The Department will notify the public by sending the agency printed notices to post. The agency must post all the notices on their premises in plain sight in public areas where they will readily be seen by participants and their representatives, including exits and common areas. The notices must remain in place until all enforcement remedies have been officially removed by the Department. ( )

**03. Notice to the Professional Licensing Boards.** The Department will notify professional licensing boards, as appropriate. ( )

**503. -- 509. (RESERVED)**

**510. EMERGENCY POWERS OF THE DIRECTOR.**

In the event of an emergency endangering the life or safety of a participant receiving services from an agency, the Director may summarily suspend or revoke any residential habilitation certificate. As soon thereafter as practicable, the Director must provide an opportunity for a hearing. ( )

**511. 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. For the purposes of these rules, a governmental unit is the state, or any county, municipality, or other political subdivision, or any department, division, board, or other agency thereof. ( )

**512. -- 599. (RESERVED)**

**600. WAIVERS.**

Waivers to these rules may be granted by the Department as needed provided that granting the waiver does not endanger the health or safety or rights of any participant. The decision to grant a waiver is not precedent or given any force or effect of law in any other proceeding. Any waiver granted by the Department may be renewed annually if sufficient written justification is presented to the Department. Waivers granted by the Department must be given in writing and signed by the Department's Licensing and Certification program manager. ( )

**601. -- 999. (RESERVED)**

## IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

### 18.01.75 – CREDIT FOR REINSURANCE RULES

DOCKET NO. 18-0175-1701

### 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) 41-211 and 41-515, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 16, 2017.

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

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

To revise and update IDAPA 18.01.75 to include current NAIC Credit for Reinsurance Model Regulation #786 provisions supporting the modernization of reinsurance regulation. This proposed rulemaking sets forth rules and procedural requirements necessary to carry out the provisions of Section 41-515, Idaho Code, as amended in 2017 by H0101.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2017, Idaho Administrative Bulletin, [Vol. 17-6, p. 52](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Following the NAIC model rule promotes consistency among states and predictability for reinsurers in determining acceptable securities to be held and standards applicable to letters of credit as referenced in Subsections 061.02, 081.05 and 081.06.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Thomas A. Donovan, [tom.donovan@doi.idaho.gov](mailto:tom.donovan@doi.idaho.gov), (208) 334-4214.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered either by hard copy or via email to the same email address for questions set forth above on or before August 23, 2017.

DATED this 7th day of July, 2017

Dean L. Cameron, Director  
Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID 83702-0043  
Phone: (208) 334-4250 / Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0175-1701  
(Only Those Sections With Amendments Are Shown.)

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as Rules of the Department of Insurance, IDAPA 18.01.75, "Credit for Reinsurance Rules." (7-1-99)

**02. Scope.** The purpose of this rule is to set forth rules and procedural requirements which the director deems necessary to carry out the Credit for Reinsurance provision, Section 41-51-45, Idaho Code. The actions and information required by this rule are hereby declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state. (7-1-99)( )

(BREAK IN CONTINUITY OF SECTIONS)

**003. ADMINISTRATIVE APPEALS.**

All contested cases shall be governed by ~~the provisions~~ Chapter 2, Title 41, Idaho Code, the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (7-1-96)( )

**004. INCORPORATION BY REFERENCE.**

Consistent with National Association of Insurance Commissioners (NAIC) model regulation 786, the following documents applicable to letters of credit as referenced in subsections 061.02, 081.05 and 081.06 of this rule, are incorporated by reference. ( )

**01. Documents.** Copies of the following documents may be obtained by contacting our office. ( )

**a.** The Purposes and Procedures Manual of the NAIC Investment Analysis Office, NAIC Securities Valuation Office and NAIC Structured Securities Group, December 31, 2016, edition, as referenced in subsection 061.02. ( )

**b.** The Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 600 (UCP 600), July 1, 2007, edition, as referenced in subsection 081.05. ( )

**c.** The International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), 1998 edition, as referenced in subsection 081.06. ( )

**005. OFFICE – OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS – WEB ADDRESS.**

The Department of Insurance is located at 700 W State St., Third Floor, Boise, ID 83702. The mailing address is PO Box 83720, Boise, ID 83720. The web address is www.doi.idaho.gov. Office hours are Monday-Friday, 8:00 am-5:00 pm. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

This rule is subject to and in compliance with the Public Records Act, Title 74, Chapter 1, Idaho Code. ( )

~~0047.~~ -- ~~01009.~~ (RESERVED)

**010. DEFINITIONS.**

**01. Beneficiary.** When used in trust agreements qualified under this rule, the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes, and is limited to, the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator). ( )

**02. Grantor.** The entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer. ( )

**03. Mortgage-Related Security.** Means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the securities valuation office of the NAIC and that either: ( )

**a.** Represents ownership of one (1) or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that: ( )

**i.** Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; ( )

**ii.** Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Section 1703; or ( )

**b.** Is secured by one (1) or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of subparagraphs 010.03.a.i. and 010.03.a.ii. ( )

**04. Obligation.** ( )

**a.** Losses Paid But Not Recovered. Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer; ( )

**b.** Reserves for Reinsured Losses Reported and Outstanding; ( )

**c.** Reserves for Reinsured Losses Incurred But Not Reported; and ( )

**d.** Reserves for Allocated Reinsured Loss Expenses and Unearned Premiums. ( )

**05. Promissory Note.** When used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument. ( )

**011. CREDIT FOR REINSURANCE – REINSURER LICENSED IN THIS STATE.**

Pursuant to Section 41-5145(+2)(a), Idaho Code, the director shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers which were licensed in this State as of ~~the date of the ceding insurer's~~ statutory financial statement credit for reinsurance is claimed. (7-1-96)( )

012. -- 020. (RESERVED)

**021. CREDIT FOR REINSURANCE -- ACCREDITED REINSURERS.**

**01. Accredited Reinsurers.** Pursuant to Section 41-5145(+2)(b), Idaho Code, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which is accredited as a reinsurer in this state as of the date ~~of the ceding insurer's~~ on which statutory financial statement credit for reinsurance is claimed. An

accredited reinsurer ~~is one which must:~~ (7-1-96)( )

a. ~~Has filed File~~ with the Idaho Department of Insurance ~~an application to act as an accredited reinsurer in this state, on forms and in the format provided by the director and received written notice of accreditation by the department~~ a properly executed form AR-1 (attached as an exhibit to this rule) as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records; (7-1-99)( )

b. File with the director a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one (1) state, or in the case of a U.S. branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one (1) state. ( )

~~b.c.~~ Files annually with the director a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and (7-1-96)( )

~~ed.~~ Maintains a surplus as regards policyholders in an amount not less than twenty million dollars (\$20,000,000) ~~and whose accreditation has not been denied by the director within ninety (90) days of its submission or, in the case of companies with a surplus as regards policyholders of less than twenty million dollars (\$20,000,000), whose accreditation has been approved by the director~~ or obtain the affirmative approval of the director upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. (7-1-96)( )

02. **Denial of Accreditation.** If the director determines that the assuming insurer has failed to meet or maintain any of these qualifications, he may upon written notice and hearing, suspend or revoke the accreditation. ~~No~~ ecredit shall not be allowed a domestic ceding insurer under this section with respect to reinsurance ceded after 9/1/97 if the assuming insurer's accreditation has been denied or revoked by the director, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the director after notice and hearing. (7-1-96)( )

022. -- 030. (RESERVED)

**031. CREDIT FOR REINSURANCE -- REINSURER DOMICILED AND LICENSED IN ANOTHER STATE.**

Pursuant to Section 41-51~~45~~(+2)(c), Idaho Code, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which ~~as of the date of the ceding insurer's statutory financial statement~~ any date on which statutory financial statement credit for reinsurance is claimed: (7-1-96)( )

01. **Applicable Domicile and License.** Is domiciled and licensed in (or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed in) a state which employs standards regarding credit for reinsurance substantially similar to those applicable under ~~the Act~~ Section 41-515, Idaho Code, and this rule; (7-1-96)( )

02. **Maintains Surplus.** Maintains a surplus as regards policyholders in an amount not less than twenty million dollars (\$20,000,000); and (7-1-96)

03. **Proper AR-1 Form Filed.** Files a properly executed Form AR-1 with the director as evidence of its submission to this state's authority to examine its books and records. (7-1-96)

04. **Provisions.** The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards which the director determines equal or exceed the standards of Section 41-51~~45~~, Idaho Code, and this rule. (7-1-96)( )

032. -- 040. (RESERVED)

**041. CREDIT FOR REINSURANCE -- REINSURERS MAINTAINING TRUST FUNDS.**

01. **Trust Fund.** Pursuant to Section 41-5145(12)(d), Idaho Code, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer ~~which that~~, as of ~~the any~~ date ~~of the ceding insurer's on which~~ statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified United States financial institution as defined in Section 41-5145(4), Idaho Code, for the payment of the valid claims of its United States ~~policyholders and domiciled~~ ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the director substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the director to determine the sufficiency of the trust fund.

(7-1-96)( )

02. **Requirements.** The following requirements apply to the following categories of assuming insurer:  
(7-1-96)

a. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to ~~business written in the~~ reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars (\$20,000,000), except as provided for in paragraph 041.02.b. of this section.

(7-1-96)( )

~~b. The trust fund for a group which includes incorporated and individual unincorporated underwriters shall consist of funds in trust in an amount not less than the group's aggregate liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of the United States ceding insurers of any member of the group. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the director annual certifications by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter member of the group. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three (3) full years, the director or commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flow, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.~~

(7-1-96)( )

~~c. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of ten billion dollars (\$10,000,000,000) (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall consist of funds in trust in an amount not less than the assuming insurers' liabilities attributable to business ceded by United States ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group and, in addition, the group shall maintain a joint trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall file a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination. The group shall make available to the director annual certifications by the members' domiciliary regulators and their independent public accountants of the solvency of each member of the group. The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:~~

(7-1-96)( )

~~i. For insurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group;~~

( )

ii. For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and ( )

iii. In addition to these trusts, the group shall maintain a trusteed surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account. ( )

d. The incorporated members of the group within the scope of paragraph 041.02.c. of this section shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the director: ( )

i. An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or ( )

ii. If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group. ( )

e. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of ten billion dollars (\$10,000,000,000) (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the NAIC) and that has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall: ( )

i. Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group; ( )

ii. Maintain a joint trusteed surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group; and ( )

iii. File a properly executed form AR-1 as evidence of the submission to the Idaho Department of Insurance's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination. ( )

f. Within ninety (90) days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the director an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group. ( )

**03. Acceptable Form.** ~~The trust shall be established in a form approved by the director and complying with Section 41-514(1), Idaho Code, and this section. The trust instrument shall provide that:~~ (7-1-96)( )

a. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the director or commissioner of the state where the trust is domiciled or the director or commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the director and commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that: ( )

i. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States. (7-1-96)

~~bii.~~ Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ~~policyholders and~~ ceding insurers, their assigns and successors in interest. ~~(7-1-96)~~( )

~~eiii.~~ The trust shall be subject to examination as determined by the director. (7-1-96)

~~iv.~~ The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; ~~and~~ (7-1-96)

~~ev.~~ No later than February 28 of each year the trustees of the trust shall report to the director in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31. (7-1-96)

~~f.~~ ~~No amendment to the trust shall be effective unless reviewed and approved in advance by the director.~~ (7-1-96)

~~b.~~ Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the director or commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the director or commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund. ( )

~~c.~~ The assets shall be distributed by and claims shall be filed with and valued by the director or commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies. ( )

~~d.~~ If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the director or commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement. ( )

~~e.~~ The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision. ( )

~~04.~~ Liabilities. For purposes of this section, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include: ( )

~~a.~~ For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance: ( )

~~i.~~ Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer; ( )

~~ii.~~ Reserves for losses reported and outstanding; ( )

~~iii.~~ Reserves for losses incurred but not reported; ( )

~~iv.~~ Reserves for allocated loss expenses; and ( )

~~v.~~ Unearned premiums. ( )

~~b.~~ For business ceded by domestic insurers authorized to write life, health and annuity insurance: ( )

i. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums: ( )

ii. Aggregate reserves for accident and health policies: ( )

iii. Deposit funds and other liabilities without life or disability contingencies; and ( )

iv. Liabilities for policy and contract claims. ( )

**05. Assets.** Assets deposited in trusts established pursuant to Section 41-515(2), Idaho Code, and section 041 of these rules shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution as defined in Section 41-515(4)(a), Idaho Code, clean, irrevocable, unconditional and “evergreen” letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in Section 41-515(4)(a), Idaho Code, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent (5%) of total investments. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under paragraphs 041.05.a.v., 05.c., 05.e.ii. or 05.f. of this rule, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of Section 41-515(2), Idaho Code, shall be invested only as follows: ( )

**a.** Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by: ( )

i. The United States or by any agency or instrumentality of the United States; ( )

ii. A state of the United States; ( )

iii. A territory, possession or other governmental unit of the United States; ( )

iv. An agency or instrumentality of a governmental unit referred to in subparagraphs 041.05.a.ii. and 041.05.a.iii. if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or ( )

v. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC. ( )

**b.** Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations: ( )

i. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated; ( )

ii. Are insured by at least one (1) authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or ( )

- iii. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC. ( )
- c. Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC. ( )
- d. An investment made pursuant to the provisions of paragraph 041.05.a., 041.05.b., or 041.05.c. of this subsection shall be subject to the following additional limitations: ( )
- i. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent (5%) of the assets of the trust: ( )
- ii. An investment in any one mortgage-related security shall not exceed five percent (5%) of the assets of the trust: ( )
- iii. The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent (25%) of the assets of the trust; and ( )
- iv. Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under subparagraphs 041.05.b.i. and 05.b.iii. of this subsection, but shall not exceed two percent (2%) of the assets of the trust. ( )
- e. Equity interests: ( )
- i. Investments in common shares or partnership interests of a solvent U.S. institution are permissible if: ( )
- and (1) Its obligations and preferred shares, if any, are eligible as investments under paragraph 041.05.e.; ( )
- (2) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. Sections 78a to 78kk or otherwise registered pursuant to that act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under paragraph 041.05.e. an amount exceeding one percent (1%) of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company; ( )
- ii. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if: ( )
- (1) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and ( )
- (2) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development. ( )
- iii. An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent (1%) of the assets of the trust. The cost of an investment in equity interests made pursuant to paragraph 041.05.e., when added to the aggregate cost of other investments in equity interests then held pursuant to paragraph 041.05.e., shall not exceed ten percent (10%) of the assets in the trust. ( )
- f. Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC. ( )

g. Investment companies: ( )

i. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. Section 80a, are permissible investments if the investment company: ( )

(1) Invests at least ninety percent (90%) of its assets in the types of securities that qualify as an investment under paragraph 041.05.a., 041.05.b., or 041.05.c. of this subsection or invests in securities that are determined by the director to be substantively similar to the types of securities set forth in paragraph 041.05.a., 041.05.b., or 041.05.c. of this subsection; or ( )

(2) Invests at least ninety percent (90%) of its assets in the types of equity interests that qualify as an investment under subparagraph 041.05.e.i. of this subsection; ( )

ii. Investments made by a trust in investment companies under paragraph 041.05.e. shall not exceed the following limitations: ( )

(1) An investment in an investment company qualifying under subparagraph 041.05.g.i.(1) of this subsection, shall not exceed ten percent (10%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent (25%) of the assets in the trust; and ( )

(2) Investments in an investment company qualifying under subparagraph 041.05.g.i.(2) of this subsection, shall not exceed five percent (5%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to subparagraph 041.05.e.i. of this subsection. ( )

h. Letters of Credit: ( )

i. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the director), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced. ( )

ii. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence or willful misconduct, or both. ( )

06. Security by an Unauthorized Assuming Insurer. A specific security provided to a ceding insurer by an assuming insurer pursuant to section 051 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section. ( )

**042. CREDIT FOR REINSURANCE – CERTIFIED REINSURERS.**

01. Certification and Security. Pursuant to Section 41-515(2)(e), Idaho Code, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under section 042 of this rule. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the director. The security shall be in a form consistent with the provisions of Section 41-515(2)(e) and (3), Idaho Code, and sections 071, 081, or 091 of this rule the amount of security required in order for full credit to be allowed shall correspond with the following requirements:

<b>Rating</b>	<b>Security Required</b>
Secure - 1	0%

<u>Rating</u>	<u>Security Required</u>
<u>Secure - 2</u>	<u>10%</u>
<u>Secure - 3</u>	<u>20%</u>
<u>Secure - 4</u>	<u>50%</u>
<u>Secure - 5</u>	<u>75%</u>
<u>Vulnerable - 6</u>	<u>100%</u>

( )

b. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions. ( )

c. The director shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer. ( )

d. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one (1) year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the director. The one (1) year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral: ( )

i. Line 1: Fire. ( )

ii. Line 2: Allied Lines. ( )

iii. Line 3: Farm owners multiple peril. ( )

iv. Line 4: Homeowners multiple peril. ( )

v. Line 5: Commercial multiple peril. ( )

vi. Line 9: Inland Marine. ( )

vii. Line 12: Earthquake. ( )

viii. Line 21: Auto physical damage. ( )

e. Credit for reinsurance under section 042 shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to section 042 with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract. ( )

f. Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under section 042. ( )

02. Certification procedure: ( )

a. The director shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The

director may not take final action on the application until at least thirty (30) days after posting the notice required by paragraph 042.02.a. ( )

b. The director shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with subsection 042.01. The director shall publish a list of all certified reinsurers and their ratings. ( )

c. In order to be eligible for certification, the assuming insurer shall meet the following requirements: ( )

i. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the director pursuant to subsection 042.03. ( )

ii. The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred fifty million dollars (\$250,000,000) calculated in accordance with subparagraph 042.02.d.viii. of this section. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least two hundred fifty million dollars (\$250,000,000) and a central fund containing a balance of at least two hundred fifty million dollars (\$250,000,000). ( )

iii. The assuming insurer must maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by the director. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one (1) factor used by the director in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following: ( )

(1) Standard & Poor's; ( )

(2) Moody's Investors Service; ( )

(3) Fitch Ratings; ( )

(4) A.M. Best Company; or ( )

(5) Any other nationally recognized statistical rating organization. ( )

iv. The certified reinsurer must comply with any other requirements reasonably imposed by the director. ( )

d. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following: ( )

i. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The director shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two (2) financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

<b>Rating</b>	<b>Best</b>	<b>S&amp;P</b>	<b>Moody's</b>	<b>Fitch</b>
<u>Secure - 1</u>	<u>A++</u>	<u>AAA</u>	<u>Aaa</u>	<u>AAA</u>
<u>Secure - 2</u>	<u>A+</u>	<u>AA+, AA, AA-</u>	<u>Aa1, Aa2, Aa3</u>	<u>AA+, AA, AA-</u>

<b>Rating</b>	<b>Best</b>	<b>S&amp;P</b>	<b>Moody's</b>	<b>Fitch</b>
<u>Secure - 3</u>	<u>A</u>	<u>A+, A</u>	<u>A1, A2</u>	<u>A+, A</u>
<u>Secure - 4</u>	<u>A-</u>	<u>A-</u>	<u>A3</u>	<u>A-</u>
<u>Secure - 5</u>	<u>B++, B+</u>	<u>BBB+, BBB, BBB-</u>	<u>Baa1, Baa2, Baa3</u>	<u>BBB+, BBB, BBB-</u>
<u>Vulnerable - 6</u>	<u>B, B-, C++, C+, C, C-, D, E, F</u>	<u>BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R</u>	<u>Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C</u>	<u>BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD</u>

( )

ii. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations; ( )

iii. For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers); ( )

iv. For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) (attached as exhibits to this rule); ( )

v. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership; ( )

vi. Regulatory actions against the certified reinsurer; ( )

vii. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in following subparagraph 042.02.d.viii.; ( )

viii. For certified reinsurers not domiciled in the U.S., audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or with the permission of the state insurance director, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the director will consider audited financial statements for the last three (3) years filed with its non U.S. jurisdiction supervisor ( )

ix. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding; ( )

x. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The director shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and ( )

xi. Any other information deemed relevant by the director. ( )

e. Based on the analysis conducted under subparagraph 042.02.d.v. of a certified reinsurer's reputation for prompt payment of claims, the director may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the director shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subparagraph 042.02.d.i. if the director finds that: ( )

i. More than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more that are not in dispute and that exceed one

hundred thousand dollars (\$100,000) for each cedent; or ( )

ii. The aggregate amount of reinsurance recoverables on paid losses that are not in dispute that are overdue by ninety (90) days or more exceeds fifty million dollars (\$50,000,000). ( )

f. The assuming insurer must submit a properly executed form CR-1 (attached as an exhibit to this rule) as evidence of its submission to the jurisdiction of this state, appointment of the director as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The director shall not certify any assuming insurer that is domiciled in a jurisdiction that the director has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards. ( )

g. The certified reinsurer must agree to meet applicable information filing requirements as determined by the director, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers that is not otherwise public information subject to disclosure shall be exempted from disclosure under Title 74, Chapter 1, Idaho Code, and shall be withheld from public disclosure. The applicable information filing requirements are, as follows: ( )

i. Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefor; ( )

ii. Annually, Form CR-F or CR-S, as applicable per instructions adopted by the Idaho Department of Insurance. ( )

iii. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in following subparagraph 042.02.g.iv.; ( )

iv. Annually, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the director, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three (3) years filed with the certified reinsurer's supervisor; ( )

v. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers; ( )

vi. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and ( )

vii. Any other information that the director may reasonably require. ( )

h. Change in Rating or Revocation of Certification. ( )

i. In the case of a downgrade by a rating agency or other disqualifying circumstance, the director shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of subparagraph 042.02.d.i. ( )

ii. The director shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the director to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations. ( )

iii. If the rating of a certified reinsurer is upgraded by the director, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the director shall require the certified

reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the director, the director shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer. ( )

iv. Upon revocation of the certification of a certified reinsurer by the director, the assuming insurer shall be required to post security in accordance with section 061 of this rule in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with section 041 of this rule, the director may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the director to be at high risk of uncollectibility. ( )

**03. Qualified Jurisdictions.** ( )

a. If, upon conducting an evaluation under section 042 of this rule with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the director determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the director shall publish notice and evidence of such recognition in an appropriate manner. The director may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified. ( )

b. In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The director shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the director as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the director with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the director, include, but are not limited to, the following: ( )

- i. The framework under which the assuming insurer is regulated. ( )
- ii. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance. ( )
- iii. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction. ( )
- iv. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used. ( )
- v. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the director in particular. ( )
- vi. The history of performance by assuming insurers in the domiciliary jurisdiction. ( )
- vii. Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the director has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards. ( )
- viii. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization. ( )
- ix. Any other matters deemed relevant by the director. ( )

c. A list of qualified jurisdictions shall be published through the NAIC committee process. The director shall consider this list in determining qualified jurisdictions. If the director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director shall provide thoroughly documented justification with respect to the criteria provided under subparagraphs 042.03.b.i. through 042.03.b.ix. of this subsection. ( )

d. U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions. ( )

**04. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.** ( )

a. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the director has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 and such additional information as the director requires. The assuming insurer shall be considered to be a certified reinsurer in this State. ( )

b. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this State as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the director of any change in its status or rating within ten (10) days after receiving notice of the change. ( )

c. The director may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with paragraph 042.02.h. of this subsection. ( )

d. The director may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the director suspends or revokes the certified reinsurer's certification in accordance with paragraph 042.02.h, the certified reinsurer's certification shall remain in good standing in this State for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this State. ( )

**05. Mandatory Funding Clause.** In addition to the clauses required under section 101 of this rule, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer. ( )

**06. Notification Requirements.** The director shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions. ( )

~~0423.~~ -- 050. (RESERVED)

**051. CREDIT FOR REINSURANCE REQUIRED BY LAW.**

Pursuant to Section 41-51~~45~~(~~42~~)(~~ef~~), Idaho Code, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 41-51~~45~~(~~42~~)(a), (b), (c), ~~or~~ (d), or (e), Idaho Code, but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district or territory of the United States and any lawful national government. (~~7-1-96~~)( )

052. -- 060. (RESERVED)

**061. ASSET OR REDUCTION FROM LIABILITY FOR REINSURANCE CEDED TO AN UNAUTHORIZED ASSUMING INSURER NOT MEETING THE REQUIREMENT OF SECTIONS 011, 021, 031, 041, 042, AND 051.**

Pursuant to Section 41-51~~45~~(~~23~~), Idaho Code, the director shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 41-51~~45~~(~~42~~), Idaho Code, in an amount not exceeding the liabilities carried by the ceding insurer. ~~Such~~ The reduction shall be in the amount of funds

held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations ~~thereunder~~ the reinsurance contract. ~~Such~~ The security ~~must shall~~ be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in Section 41-51~~45~~4(b), Idaho Code. This security may be in the form of any of the following: (7-1-96)( )

01. **Cash.** (7-1-96)

02. **Securities.** Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the NAIC Investment Analysis Office NAIC Securities Valuation Office and NAIC Structured Securities Group, and qualifying as admitted assets: (7-1-96)( )

03. **Letters of Credit.** Clean, irrevocable, unconditional and “evergreen” letters of credit issued or confirmed by a qualified United States institution, as defined in Section 41-51~~45~~34(a), Idaho Code, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding ~~company~~ insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution’s subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs: or (7-1-96)( )

04. ~~Any Other Form of Security Acceptable to the Director.~~ Any Other Form of Security Acceptable to the Director. (7-1-96)( )

05. **Other Provisions Applicable.** An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to section 061 shall be allowed only when the requirements of sections 101 ~~and the applicable portions of Sections 101~~ and the applicable portions of sections 074, 075, 076, 081, and 091 of this rule are met. (7-1-99)( )

062. -- ~~069~~70. (RESERVED)

~~070~~1. **TRUST AGREEMENTS QUALIFIED UNDER IDAPA 18.01.75.061**  
Sections 074, 075, and 076 apply to trust agreements qualified under section 061. ( )

~~071. **BENEFICIARY.**~~  
~~Beneficiary means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).~~ (7-1-96)

~~072. **GRANTOR.**~~  
~~Grantor means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.~~ (7-1-96)

~~073. **OBLIGATIONS.**~~  
~~Obligations, as used in IDAPA 18.01.75, “Credit for Reinsurance Rules,” means:~~ (7-1-99)

~~01. **Losses Paid but Not Recovered.** Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;~~ (7-1-99)

~~02. **Reserves for Reinsured Losses Reported and Outstanding;**~~ (7-1-96)

~~03. **Reserves for Reinsured Losses Incurred but Not Reported; and**~~ (7-1-96)

~~04. **Reserves for Allocated Reinsured Loss Expenses and Unearned Premiums.**~~ (7-1-96)

**072. -- 073. (RESERVED)**

**074. REQUIRED CONDITIONS.**

**01. Who Shall Enter the Agreement.** The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as defined in Section 41-5145(4)(b), Idaho Code. (7-1-99)(    )

**02. Trust Account.** The trust agreement shall create a trust account into which assets shall be deposited. (7-1-99)

**03. Who Shall Hold Assets in Trust Account.** All assets in the trust account shall be held by the trustee at the trustee's office in the United States, ~~except that a bank may apply for the director's permission to use a foreign branch office of such bank as trustee for trust agreements established pursuant to this section. If the director approves the use of such foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in Subsection 074.04.d. must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.~~ (7-1-99)(    )

**04. Provisions of Trust Agreement.** The Trust Agreement shall provide that: (7-1-99)

**a.** The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee; (7-1-96)

**b.** No other statement or document is required to be presented ~~in order~~ to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets; (7-1-96)(    )

**c.** It is not subject to any conditions or qualifications outside of the trust agreement; and (7-1-96)

**d.** It shall not contain references to any other agreements or documents except as provided for under subsections 074.11 and 074.12. (7-1-99)(    )

**05. Sole Benefit of Beneficiary.** The Trust Agreement shall be established for the sole benefit of the beneficiary. (7-1-99)

**06. Required of Trustee.** The Trust Agreement shall require the trustee to: (7-1-99)

**a.** Receive assets and hold all assets in a safe place; (7-1-96)

**b.** Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity; (7-1-96)

**c.** Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter; (7-1-96)

**d.** Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account; (7-1-96)

**e.** Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and (7-1-96)

**f.** Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account. (7-1-96)

07. **Written Notification of Termination.** The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary. (7-1-99)

08. **Subject to Laws of State in Which Trust is Established.** The trust agreement shall be made subject to and governed by the laws of the state in which the trust is *established domiciled*. (7-1-99)( )

09. **Prohibit Invasion of Trust Corpus.** The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the director), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced. (7-1-99)( )

10. **Trustee Shall Be Liable.** The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence or willful misconduct, or both. (7-1-99)( )

11. **Purposes for Applying Amounts Drawn Upon Trust Account.** Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, ~~such a~~ the trust agreement may, ~~notwithstanding any other conditions in this rule,~~ provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes: (7-1-99)( )

a. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer; (7-1-96)

b. To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred two percent (102%) of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or (7-1-96)

c. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in Section 41-5145(4)(b), Idaho Code, apart from its general assets, in trust for such uses and purposes specified in subsections 074.11.a. and 074.11.b. as may remain executory after such withdrawal and for any period after the termination date. (7-1-99)( )

12. **Reinsurance Agreement Provisions.** ~~The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by Subsection 076.01.b., so long as these required conditions are included in the trust agreement.~~ Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of section 061 in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes: (7-1-99)( )

a. To pay or reimburse the ceding insurer for: ( )

i. The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on

account of cancellations of the policies; and ( )

ii. The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement; ( )

b. To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or ( )

c. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in paragraphs 074.12.a. and 074.12.b. of this subsection as may remain executory after withdrawal and for any period after the termination date. ( )

**13. Trust Account Assets.** Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this paragraph must be included in the reinsurance agreement. ( )

#### 075. PERMITTED CONDITIONS.

**01. Resignation of Trustee.** The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after receipt by the trustee and the beneficiary of the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee. (7-1-99)

**02. Grantor's Rights.** The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name. (7-1-99)

**03. Trustee's Authority to Invest.** The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in paragraph 076.01.b. (7-1-99)( )

**04. Transfer of Assets.** The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets. (7-1-99)

**05. Termination of Trust Account.** The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor. (7-1-99)

#### 076. ADDITIONAL CONDITIONS APPLICABLE TO REINSURANCE AGREEMENTS.

**01. Reinsurance Agreement ~~in Conjunction With Trust Agreement~~.** A reinsurance agreement, ~~which is entered into in conjunction with a trust agreement and the establishment of a trust account,~~ may contain provisions that: ~~(7-1-99)~~ ( )

**a.** Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover; (7-1-96)

~~**b.** Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by the Insurance Code or any combination of the above, provided that such investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement; (7-1-96)~~

~~**eb.** Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity; (7-1-96)~~

~~**ec.** Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and (7-1-96)~~

~~**ed.** Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes: (7-1-96)~~

~~i. To pay or reimburse the ceding insurer for: the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies; (7-1-96) ( )~~

~~(1) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies; ( )~~

~~(2) The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and ( )~~

~~(3) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; ( )~~

~~ii. To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer. (7-1-96) ( )~~

~~iii. To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses and unearned premium reserves; and (7-1-96)~~

~~iv. To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.~~

~~(7-1-96)~~

**02. Other Provisions of Reinsurance Agreement.** The Reinsurance Agreement may also contain provisions that: (7-1-99)

a. Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided: ~~(7-1-96)~~( )

i. The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the current fair market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or ~~(7-1-96)~~( )

ii. After withdrawal and transfer, the current fair market value of the trust account is no less than one hundred and two percent (102%) of the required amount. ~~(7-1-96)~~( )

~~iii. The ceding insurer shall not unreasonably or arbitrarily withhold its approval. (7-1-96)~~

b. Provide for: the return of any amount withdrawn in excess of the actual amounts required for paragraph 076.01.d. and for interest payments, at a rate not in excess of the prime rate of interest on such amounts. ~~(7-1-96)~~( )

~~i. The return of any amount withdrawn in excess of the actual amounts required for Subsections 076.01.e.i., or 076.01.e.ii., or 076.01.e.iii., or in the case of Subsection 076.01.e.iv., any amounts that are subsequently determined not to be due; and (7-1-99)~~

~~ii. Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Subsection 076.01.e. (7-1-99)~~

c. Permit the award by any arbitration panel or court of competent jurisdiction of: (7-1-96)

i. Interest at a rate different from that provided in paragraph 076.02.b.; (7-1-99)

ii. Court of arbitration costs; (7-1-96)

iii. Attorney's fees, and (7-1-96)

iv. Any other reasonable expenses. (7-1-96)

**03. Financial Reporting.** A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this regulation when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure. (7-1-96)

**04. Existing Agreements.** Notwithstanding the effective date of this rule, any trust agreement or underlying reinsurance agreement in existence prior to July 1, 1996 will continue to be acceptable until 7/1/96, at which time the agreements will have to be in full compliance with this rule for the trust agreement to be acceptable. (7-1-96)

**05. Failure to Identify Beneficiary.** The failure of any trust agreement to specifically identify the beneficiary as defined in section ~~071~~10 of this section shall not be construed to affect any actions or rights which the director may take or possess pursuant to the provisions of the laws of this state. ~~(7-1-99)~~( )

**077. -- 080. (RESERVED)**

**081. LETTERS OF CREDIT QUALIFIED UNDER SECTION 061.**

**01. Letters of Credit Under Section 061.** The letter of credit must be clean, irrevocable and unconditional and issued or confirmed by a qualified United States financial institution as defined in Section 41-51-~~5~~~~(34)~~~~(a)~~, Idaho Code. The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in ~~Subsections~~ ~~subparagraph~~ 081.0~~98~~.a.i. As used in this section, “beneficiary” means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator). ~~(7-1-96)~~(    )

**02. Heading of Letter.** The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only. (7-1-96)

**03. Statement.** The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto. (7-1-96)

**04. Term of Letter.** The term of the letter of credit shall be for at least one (1) year and shall contain an “evergreen clause” which prevents the expiration of the letter of credit without due notice from the issuer. The “evergreen clause” shall provide for a period of no less than thirty (30) days’ notice prior to the expiration date or nonrenewal. (7-1-96)

**05. Disclosure Statement.** The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce ~~(Publication 5600)~~ ~~(UCP 600)~~ ~~or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98)~~, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution. ~~(7-1-96)~~(    )

**06. Letter Subject to Uniform Customs and Practice.** If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce ~~(Publication 5600)~~ ~~(UCP 600)~~ ~~or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98)~~, then the letter of credit shall specifically address and ~~make provision~~ ~~provide~~ for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article ~~4936~~ of Publication ~~5600~~ occur. ~~(7-1-96)~~(    )

~~**07. Issued or Confirmed by Authorized Institution.** The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to Section 41-514(3), Idaho Code. (7-1-96)~~

**087. Exception.** If the letter of credit is issued by a ~~qualified~~ United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection 081.0~~7~~~~1~~, then the following additional requirements shall be met: ~~(7-1-96)~~(    )

**a.** The issuing ~~qualified United States~~ financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts, and ~~(7-1-96)~~(    )

**b.** The “evergreen clause” shall provide for thirty (30) days’ notice prior to the expiration date for nonrenewal. (7-1-96)

**098. Reinsurance Agreement Provisions.** (7-1-96)

a. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions ~~which~~ that: (7-1-96)( )

i. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover. (7-1-96)

ii. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons: (7-1-96)

~~(1) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies; (7-1-96)~~

~~(2) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement; (7-1-96)~~

~~(3) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and (7-1-96)~~

~~(4) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement. (7-1-96)~~

(1) To pay or reimburse the ceding insurer for: ( )

(a) The assuming insurer's share under the specific reinsurance agreement of premiums returned but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies; ( )

(b) The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and ( )

(c) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; ( )

(2) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount, and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in subparagraph 081.08.a.ii. as may remain after withdrawal and for any period after the termination date. ( )

iii. All of the foregoing provisions of ~~subsection paragraph~~ 081.098.a. should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer. (7-1-96)( )

b. Nothing contained in ~~subsection paragraph~~ 081.098.a. shall preclude the ceding insurer and assuming insurer from providing for: (7-1-96)( )

i. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to ~~subsection paragraph~~ 081.098.a.ii.(3); ~~and/or~~ (7-1-96)( )

ii. The return of any amounts drawn down on the letters of credit in excess of the actual amounts

required for the above or, ~~in the case of Subsection 081.09.a.ii.(4),~~ any amounts that are subsequently determined not to be due. (7-1-96)(    )

~~e. When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of Subsection 081.09.a.ii., require that the parties enter into a "Trust Agreement" which may be incorporated into the reinsurance agreement or be a separate document. (7-1-96)~~

~~10. **No Reduction in Liability.** A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure. (7-1-96)~~

082. -- 090. (RESERVED)

091. OTHER SECURITY.

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control. (7-1-96)

092. -- 100. (RESERVED)

101. REINSURANCE CONTRACT.

Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of sections 011, 021, 031, 041, 042, or 061 or otherwise in compliance with Section 41-51-~~4~~5(~~1~~2), Idaho Code, after the adoption of this rule unless the reinsurance agreement: (7-1-96)(    )

~~01. **Insolvency Clause.** Includes ~~an~~ a proper insolvency clause ~~which provides that stipulates, in substance, the following: that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to Chapter 33, Title 41, Idaho Code;~~ (7-1-96)(    )~~

~~a. In the event of the ceding insurer's insolvency, the reinsurance afforded by the reinsurance agreement shall be payable by the assuming insurer directly to the ceding insurer or its domiciliary liquidator, on the basis of and at the time the ceding insurer's liability is determined in the liquidation proceedings, without diminution because of the ceding insurer's insolvency or because its liquidator has failed to pay all or a portion of any claim, except: (7-1-96)~~

~~i. Where the contract specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or (7-1-96)~~

~~ii. Where the assuming insurer, with the consent of the direct insured(s), has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees. (7-1-96)~~

~~b. The ceding insurer's liquidator, shall give written notice to the assuming insurer of the pendency of a claim against the insolvent ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose in the proceeding where the claim is to be adjudicated, at its own expense, any defense that it may deem available to the ceding insurer or its liquidator. The expense thus incurred by the assuming insurer shall be chargeable against the ceding insurer, subject to court approval, as part of the expense of liquidation to the extent of proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two (2) or more assuming companies are involved in the same claim and a majority in interest elect to interpose a defense to such claim, each assuming insurer's share of the expense thus incurred shall be determined in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer. (7-1-96)~~

02. ~~Other Provision~~ **Jurisdiction**. Includes a provision pursuant to Section 41-5145(~~12~~)(f), Idaho Code, whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of such court or panel: ~~and (7-1-96)( )~~

03. **Reinsurance Intermediary Clause**. Includes a proper reinsurance intermediary clause, if applicable, that stipulates that the credit risk for the intermediary is carried by the assuming insurer. ( )

102. -- 110. (RESERVED)

111. **CONTRACTS AFFECTED.**

All new and renewal reinsurance transactions entered into after July 1, 1996 shall conform to the requirements of the Idaho Code and this rule if credit is to be given to the ceding insurer for such reinsurance. (7-1-96)

112. **SEVERABILITY CLAUSE**

If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this rule which can be given effect without the invalid provision or application, and to that end the provisions of this rule are severable. ( )

1123. -- 999. (RESERVED)

**FORM AR 1**  
**CERTIFICATE OF ASSUMING INSURER**

I, (name of officer) \_\_\_\_\_, \_\_\_\_\_  
of \_\_\_\_\_, \_\_\_\_\_  
\_\_\_\_\_ the assuming insurer  
(name of assuming insurer)  
under a reinsurance agreement(s) with one or more insurers domiciled in  
(name of state) \_\_\_\_\_, hereby certify that  
\_\_\_\_\_ ("Assuming Insurer"):  
(name of assuming insurer)

1. ~~Submits to the jurisdiction of any court of competent jurisdiction in Idaho for the adjudication of any issues arising out of the reinsurance agreement(s), agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement(s) to arbitrate their disputes if such an obligation is created in the agreement(s).~~

2. ~~Designates the Director of the Idaho Department of Insurance as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.~~

3. ~~Submits to the authority of the Insurance Commissioner of \_\_\_\_\_ to examine its books and records \_\_\_\_\_ (ceding insurer's state of domicile) and agrees to bear the expense of any such examination.~~

4. ~~Submits with this form a current list of insurers domiciled in Idaho reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.~~

Dated: \_\_\_\_\_  
\_\_\_\_\_  
BY: \_\_\_\_\_  
\_\_\_\_\_  
(name of officer)  
(title of officer)

Credit for Reinsurance Model Regulation

FORM AR-1

CERTIFICATE OF ASSUMING INSURER

I, \_\_\_\_\_, \_\_\_\_\_  
(name of officer) (title of officer)

of \_\_\_\_\_, the assuming insurer  
(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in

\_\_\_\_\_, hereby certify that  
(name of state)

\_\_\_\_\_, (“Assuming Insurer”):  
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in \_\_\_\_\_  
(ceding insurer’s state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer’s rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of \_\_\_\_\_  
(ceding insurer’s state of domicile)

as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of \_\_\_\_\_ to examine  
(ceding insurer’s state of domicile)  
its books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in \_\_\_\_\_  
(ceding insurer’s state of domicile)

reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: \_\_\_\_\_  
(name of assuming insurer)

BY: \_\_\_\_\_  
(name of officer)

\_\_\_\_\_  
(title of officer)

Model Regulation Service—January 2012

FORM CR-1

CERTIFICATE OF CERTIFIED REINSURER

I, \_\_\_\_\_, \_\_\_\_\_  
(name of officer) (title of officer)

of \_\_\_\_\_, the assuming insurer  
(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in \_\_\_\_\_,  
in order to be considered for approval in this state, hereby certify that (name of state)

\_\_\_\_\_  
(name of assuming insurer) (“Assuming Insurer”):

1. Submits to the jurisdiction of any court of competent jurisdiction in \_\_\_\_\_  
(ceding insurer’s state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer’s rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of \_\_\_\_\_  
(ceding insurer’s state of domicile)  
as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to provide security in an amount equal to 100% of liabilities attributable to U.S. ceding insurers if it resists enforcement of a final U.S. judgment or properly enforceable arbitration award.

4. Agrees to provide notification within 10 days of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in its rating by an approved rating agency, including a statement describing such changes and the reasons therefore.

5. Agrees to annually file information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with [cite relevant provision of the state equivalent of the Credit for Reinsurance Model Regulation].

6. Agrees to annually file the report of the independent auditor on the financial statements of the insurance enterprise.

7. Agrees to annually file audited financial statements, regulatory filings, and actuarial opinion in accordance with [cite relevant provision of the state equivalent of the Credit for Reinsurance Model Regulation]

8. Agrees to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.

9. Is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction.

Credit for Reinsurance Model Regulation

Dated: \_\_\_\_\_

\_\_\_\_\_  
(name of assuming insurer)

BY: \_\_\_\_\_  
(name of officer)

\_\_\_\_\_  
(title of officer)

Model Regulation Service—January 2012

**Form CR-F – PART 1**  
Assumed Reinsurance as of December 31, Current Year (000 Omitted)

1 Company Code or ID Number	2	3 Name of Reinsured	4 Domiciliary Jurisdiction	5 Assumed Premium	6 Paid Losses and Loss Adjustment Expenses	7 Reinsurance On		9 Contingent Commissions Payable	10 Assumed Premiums Receivable	11 Unearned Premium	12 Funds Held By or Deposited With Reinsured Companies	13 Letters of Credit Posted	14 Amount of Assets Pledged or Compensating Balances to Secure Letters of Credit	15 Amount of Assets Pledged or Pledged or Collateral Filed in Trust
						8 Known Case Losses and LAE	8 Cols. 6 + 7							
9999999 Totals														

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786-37

Credit for Reinsurance Model Regulation  
**Form CR-F – PART 2**  
 Ceded Reinsurance as of December 31, Current Year (000 Omitted)

1 Company Code or ID Number	2	3 Name of Reinsurer	4 Domiciliary Jurisdiction	5 Reinsurance Contracts Ceding 10% or More of Direct Premiums Written	6 Reinsurance or Premiums Ceded	Reinsurance Recoverable On							Reinsurance Payable			18 Net Amount Recoverable From Reinsurers Cols. 15-17	19 Funds Held by Company Under Reinsurance Trusts
						7 Paid Losses	8 Paid LAE	9 Known Case Loss Reserves	10 Known Case LAE Reserves	11 IBNR Loss Reserves	12 IBNR LAE Reserves	13 Unearned Premiums	14 Contingent Commissions	15 C.L. 7 through 14 Totals	16 Ceded Balances Payable		
<b>9999999 Totals</b>																	













**IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE**  
**18.01.81 – CORPORATE GOVERNANCE ANNUAL DISCLOSURE**  
**DOCKET NO. 18-0181-1701 (NEW CHAPTER)**  
**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 41-211 and 41-6404, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 16, 2017.

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:

House Bill No. 102 created Title 41, Chapter 64 Corporate Governance Annual Disclosure requiring companies to file a Corporate Governance Annual Disclosure (CGAD). The addition of a new rule following the enactment of Title 41 Chapter 64 will provide insurers with more detailed procedures for submitting the required CGAD filing and would include the contents that are deemed necessary by the Director of Insurance to carry out the provisions of Chapter 64.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2017, Idaho Administrative Bulletin, [Vol. 17-6, p. 53](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The National Association of Insurance Commissioners (NAIC) Financial Analysis Handbook is incorporated by reference as the proposed rule refers to procedures outlined in the handbook for determining the lead state for an insurance group.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Thomas A. Donovan, [tom.donovan@doi.idaho.gov](mailto:tom.donovan@doi.idaho.gov) (208) 334-4214.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered either by hard copy or via email to the same email address for questions set forth above on or before August 23, 2017.

DATED this 7th day of July, 2017.

Dean L. Cameron, Director  
Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID 83702-0043  
Phone: (208) 334-4250 / Fax: (208) 334-4398

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0181-1701**  
**(New Chapter)**

**IDAPA 18**  
**TITLE 01**  
**CHAPTER 81**

**18.01.81 – CORPORATE GOVERNANCE ANNUAL DISCLOSURE**

**000. LEGAL AUTHORITY.**

This rule is promulgated pursuant to the authority granted by Title 41, Chapters 2 and 64, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited in full as Idaho Department of Insurance Rule IDAPA 18.01.81, “Corporate Governance Annual Disclosure.” ( )

**02. Scope.** This rule sets forth the procedures for filing and the required contents of the Corporate Governance Annual Disclosure (CGAD), deemed necessary by the director to carry out the provisions of Title 41, Chapter 64, Idaho Code. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of this rule, or to the documentation of compliance with this rule. These documents will be available for public inspection and copying in accordance with the public records act. ( )

**003. ADMINISTRATIVE APPEALS.**

All administrative appeals shall be governed by Title 41, Chapter 2, Idaho Code, and the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” ( )

**004. INCORPORATION BY REFERENCE.**

The most recent National Association of Insurance Commissioners (NAIC) Financial Analysis Handbook (2016 Annual / 2017 Quarterly edition) is hereby incorporated by reference into IDAPA 18.01.81. Copies of this handbook, may be viewed at: ( )

**01. Department.** Idaho Department of Insurance, 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043; ( )

**02. NAIC Documents.** NAIC Executive Headquarters, 2301 McGee Street, Suite 800 Kansas City, MO 64108-2662. NAIC website at [http://www.naic.org/prod\\_serv\\_publications.htm](http://www.naic.org/prod_serv_publications.htm). ( )

**005. OFFICE – OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS – WEB SITE.**

**01. Office Hours.** The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. ( )

**02. Mailing Address.** The department’s mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ( )

**03. Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83702-0043. ( )

**04. Web Site Address.** The department's website is <http://www.doi.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with this rule are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code, as well as applicable exemptions. ( )

**007. – 009. (RESERVED)**

**010. DEFINITIONS.**

The Idaho Department of Insurance adopts the definitions set forth in Section 41-6402, Idaho Code. In addition, the following terms are defined as used in this chapter. ( )

**01. Director.** The insurance director of the State. ( )

**02. Senior Management.** Any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and shall include, for example and without limitation, the chief executive officer (CEO), chief financial officer (CFO), chief operations officer (COO), chief procurement officer (CPO), chief legal officer (CLO), chief information officer (CIO), chief technology officer (CTO), chief revenue officer (CRO), chief visionary officer (CVO), or any other chief or "C" level executive. ( )

**011. FILING PROCEDURES.**

**01. Filing Deadline.** An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by chapter 64, title 41, Idaho Code, shall, no later than June 1 of each calendar year, submit to the director a CGAD that contains the information described in Section 012 of this rule. ( )

**02. Signature.** The CGAD must include a signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the CGAD has been provided to the insurer's or insurance group's board of directors (board) or the appropriate committee thereof. ( )

**03. Format.** The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by this rule and is permitted to customize the CGAD to provide the most relevant information necessary to permit the director to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer or insurance group. ( )

**04. Providing Information.** For purposes of completing the CGAD, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting. ( )

**05. Completion on Insurance Group Level.** Notwithstanding Subsection 011.01, and as outlined in Section 41-6403, Idaho Code, if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent financial analysis handbook adopted by the NAIC. In these instances, a copy of the CGAD must also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request. ( )

**06. Referencing.** An insurer or insurance group may comply with this section by referencing other existing documents (e.g., Own Risk Solvency Assessment (ORSA) summary report, holding company form B or F filings, Securities and Exchange Commission (SEC) proxy statements, foreign regulatory reporting requirements, etc.) if the documents provide information that is comparable to the information described in Section 012. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the regulator. ( )

**07. Filing of Amended Versions.** Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state. ( )

**012. CONTENTS OF CORPORATE GOVERNANCE ANNUAL DISCLOSURE.**

**01. Detail.** The insurer or insurance group shall be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices. ( )

**02. GCAD Considerations.** The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following: ( )

**a.** The board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs (e.g., ultimate control level, intermediate holding company, legal entity, etc.). The insurer or insurance group shall describe and discuss the rationale for the current board size and structure; and ( )

**b.** The duties of the board and each of its significant committees and how they are governed (e.g., bylaws, charters, informal mandates, etc.), as well as how the board's leadership is structured, including a discussion of the roles of chief executive officer (CEO) and chairman of the board within the organization. ( )

**03. Factors.** The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors: ( )

**a.** How the qualifications, expertise and experience of each board member meet the needs of the insurer or insurance group. ( )

**b.** How an appropriate amount of independence is maintained on the board and its significant committees. ( )

**c.** The number of meetings held by the board and its significant committees over the past year as well as information on director attendance. ( )

**d.** How the insurer or insurance group identifies, nominates and elects members to the board and its committees. The discussion should include, for example: ( )

i. Whether a nomination committee is in place to identify and select individuals for consideration. ( )

ii. Whether term limits are placed on directors. ( )

iii. How the election and re-election processes function. ( )

iv. Whether a board diversity policy is in place and if so, how it functions. ( )

**e.** The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any board or committee training programs that have been put in place). ( )

**04. Additional Factors.** The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of the following factors: ( )

**a.** Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including: ( )

**i.** Identification of the specific positions for which suitability standards have been developed and a description of the standards employed. ( )

**ii.** Any changes in an officer's or key person's suitability as outlined by the insurer 's or insurance group's standards and procedures to monitor and evaluate such changes. ( )

**b.** The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example: ( )

**i.** Compliance with laws, rules, and regulations; and ( )

**ii.** Proactive reporting of any illegal or unethical behavior. ( )

**c.** The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the director to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk taking. Elements to be discussed may include, for example: ( )

**i.** The board's role in overseeing management compensation programs and practices. ( )

**ii.** The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid; ( )

**iii.** How compensation programs are related to both company and individual performance over time; ( )

**iv.** Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels; ( )

**v.** Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; ( )

**vi.** Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees. ( )

**d.** The insurer's or insurance group's plans for CEO and senior management succession. ( )

**05. Oversight.** The insurer or insurance group shall describe the processes by which the board, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of: ( )

**a.** How oversight and management responsibilities are delegated between the board, its committees and senior management; ( )

**b.** How the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks; ( )

c. How reporting responsibilities are organized for each critical risk area. The description should allow the director to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include, for example, the following critical risk areas of the insurer: ( )

i. Risk management processes (An ORSA summary report filer may refer to its ORSA summary report pursuant to Chapter 63, Title 41, Idaho Code); ( )

ii. Actuarial function; ( )

iii. Investment decision-making processes; ( )

iv. Reinsurance decision-making processes; ( )

v. Business strategy/finance decision-making processes; ( )

vi. Compliance function; ( )

vii. Financial reporting/internal auditing; and ( )

viii. Market conduct decision-making processes. ( )

**013. SEVERABILITY CLAUSE.**

If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this rule which can be given effect without the invalid provision or application, and to that end the provisions of this rule are severable. ( )

**014. – 999. (RESERVED)**

## **IDAPA 22 – BOARD OF MEDICINE**

### **22.01.13 – RULES FOR THE LICENSURE OF DIETITIANS**

**DOCKET NO. 22-0113-1701**

#### **NOTICE OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. The action is authorized Pursuant to Section 54-3505(2), Idaho Code.

**MEETING SCHEDULE:** A public meeting on this negotiated rulemaking will be held as follows:

**PUBLIC MEETING**  
**Tuesday, August 8, 2017 – 1:00 to 2:00 pm**

**Idaho State Board of Medicine**  
**1755 Westgate Drive, Suite 140**  
**Boise, ID 83704**

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

**METHOD OF PARTICIPATION:** Persons wishing to participate in the negotiated rulemaking must do the following:

All written comments received on or before Tuesday, August 8, 2017, will be included for the Board's consideration at its next meeting. For those planning to attend the open, public meeting, written and verbal comments will be accepted by Board Staff.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency's website.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

The purpose of this negotiated rulemaking is to update and clarify the Board's rules regarding Dietetic licensure and practice, to ensure that the Dietetic rules are consistent with the Dietetic Practice Act, which was updated during the 2017 Legislative Session. These rules update Dietitians' scope of practice, definitions, and organizational titles, and they add the options for licensure by endorsement and annual or biannual licensure renewal.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the negotiated rulemaking, contact Anne K. Lawler, Executive Director, (208) 327-7000. Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 8, 2017.

DATED this 12th day of July, 2017.

Anne K. Lawler, JD, RN  
Executive Director  
1755 Westgate Drive, Suite 140  
Boise, ID 83704  
Phone: (208) 327-7000  
Fax (208) 327-7005

**IDAPA 27 – BOARD OF PHARMACY**

**27.01.01 – RULES OF THE IDAHO STATE BOARD OF PHARMACY**

**DOCKET NO. 27-0101-1701**

**(SECOND) NOTICE OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 54-1717, Idaho Code.

**MEETING SCHEDULE:** A public meeting on the negotiated rulemaking will be held as follows:

**Wednesday, August 30, 2017  
9:00 a.m. (MDT)**

**PUBLIC MEETING  
VIA TELECONFERENCE CALL-IN**

**DIAL-IN: 1-877-820-7831  
PASSCODE: 381637**

Requests for accommodations for any persons with disabilities, if needed, must be made not later than five (5) days prior to the meeting to the agency address below.

**METHOD OF PARTICIPATION:** Persons wishing to participate in the negotiated rulemaking must do the following:

All written comments received by August 25, 2017 will be included in the Board’s distributed meeting materials for consideration. For those planning to participate in the open, public conference call, verbal comments will be accepted by the Board.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted on the agency website.

**DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE:** The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

The Board of Pharmacy is considering dividing its current rulebook into different chapters grouped by subject matter. The Board does not intend to add any new regulatory requirements as part of this rulemaking; instead, as the Board better organizes its rules into chapters, it aims to simultaneously eliminate outdated regulations and those that stifle the emergence of new technology or practice models that can improve public health. A fuller description of the scope of the Board’s rulemaking is described in the June 7, 2017 Idaho Administrative Bulletin, [Vol. 17-6, pages 54 through 56](#).

This meeting will serve as the second negotiated rulemaking session the Board will host. The purpose of this meeting is to provide an opportunity to receive additional public input and resolve any remaining issues from the first negotiated rulemaking session.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this negotiated rulemaking or to obtain a preliminary draft copy of the rules text, if available, contact Alex Adams at (208) 334-2356. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Board of Pharmacy website at the following web address: <https://bop.idaho.gov>.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered as described above.

DATED this 5th day of July 2017.

Alex Adams, Pharm D, MPH  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

## IDAPA 35 – STATE TAX COMMISSION

### 35.01.02 – IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1701

#### NOTICE OF RULEMAKING – PROPOSED RULES

**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 63-105(2), 63-3624(a), 63-3635, and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 16, 2017.

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:

Sales Tax Rule 067 – Real Property. We are proposing changing this rule to clearly state that data cabling that is installed in a building will be presumed to be an improvement to real property.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking published in the May 3, 2017, Idaho Administrative Bulletin, [Vol. 17-5, pages 74-75](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tom Shaner at (208) 334-7518 or [tom.shaner@tax.idaho.gov](mailto:tom.shaner@tax.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2017.

DATED this 10 Day of June, 2017.

Tom Shaner  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7846

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1701  
(Only Those Sections With Amendments Are Shown.)

**067. REAL PROPERTY (RULE 067).**  
Sections 63-3609, 63-3612, & 63-3616, Idaho Code.

( )

- 01. Improvements or Fixtures.** Improvements or fixtures to real property include: (7-1-93)
- a.** Property which is physically attached to the land or other improvements affixed to the land in such a manner that it may not be removed without materially damaging the real property or is of such a nature that it would normally be expected to be sold together with the land. (7-1-93)
  - b.** Property which increases the market value of the land or increases the ability of the possessor of the land to use it more productively. (7-1-93)
  - c.** Property which increases the market value or productivity on a relatively permanent basis. (7-1-93)
- 02. Three Factor Test.** A three (3) factor test may be applied to determine whether a particular article has become a fixture to real property. The three (3) tests to be applied are: (7-1-93)
- a.** Annexation to the realty, either actual or constructive. (7-1-93)
  - b.** Adoption or application to the use or purpose to which that part of the realty to which it is connected is suitable. (7-1-93)
  - c.** Intention to make the article a permanent addition to the realty. (7-1-93)
- 03. Example 1:** The original builder or owner of an apartment building installs draperies. The draperies meet the three (3) factor test of a fixture to realty. First, they are constructively annexed to the realty when attached to the drapery rod. Although the draperies are not affixed to the realty, they comprise a necessary, integral, or working part of the object to which they are attached. Second, they appropriately adapt to the purpose of the realty to which they are connected. Window coverings are necessary in order to maintain occupancy of the apartment. The third and controlling factor in this example is the intention with which the installation was made. The intention must be determined from the surrounding circumstances at the time of installation. It is not the undisclosed purpose of the annexor, but rather the intention implied and manifested by his act. The builders intended that the drapes would remain as long as they served their purpose. (7-1-93)
- 04. Example 2:** The three (3) factor test would not be met in Subsection 067.03 of this rule, if the drapes were installed by a tenant of an apartment leased for a term with no agreement as to ownership. The tenant would be expected to remove or sell the drapes to an incoming tenant, and his intention would be the controlling factor. The draperies would not be considered as fixtures to the real property. (5-8-09)
- 05. Personal Property Incidental to the Sale of Real Property.** This rule does not affect the provisions of Section 63-3609(b), Idaho Code. (7-1-93)
- 06. Store Fixtures.** Store fixtures are items that are affixed to a building and used by retailers in the conduct of their business. The term "store fixtures" includes display cases, trophy cases, clothing racks, shelving, modular displays, kiosks, wall cases, register stands, and check-out counters. If store fixtures only benefit the particular business occupying a building, they are not adapted to the use of the real estate and are therefore personal property. A store fixture will only be deemed to be a real property improvement if: (5-8-09)
- a.** It is affixed to the real estate and its removal would cause significant structural damage to the building itself; or (5-8-09)

b. It is affixed to the real estate and is of benefit to the land or building regardless of the particular business conducted on the premises. (5-8-09)

~~07. **Abandoned Cable.** The National Electrical Code requires the removal of certain abandoned fiber optic and communication cable. Such cable therefore is not intended to become a permanent part of a building. If a contractor installs such cable, he is installing personal property. In this case he must separately state the charges for the cable and collect sales tax on that amount. Raceways and other materials that are intended to permanently remain in place are fixtures to realty. Contractors installing both personal property and improvements to realty must account for each separately as required by Section 63-3610(e), Idaho Code. (5-8-09)~~

**07. Fiber Optic and Communication Cable.** Fiber optic and communication cable installed in a building is presumed to be a real property improvement. ( )

**IDAPA 35 – STATE TAX COMMISSION**  
**35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0103-1708**  
**NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2017.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 67-5224 and 67-5291, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

Rule 020 – Value Of Recreational Vehicles For Annual Registration And Taxation Of Unregistered Recreational Vehicles - House bill 156 (2017) effective July 1, 2017 adds park model recreational vehicles to the definition of “Recreational Vehicles”(PMRV)(49-119(6). Current Rule 35.01.03.612 provides that the value of PMRVs for registration purposes be computed in accordance with 35.01.03.020. The method for computing the value of PMRVs for registration purposes is explained in the following Rule 20.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1), 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, and confers a benefit to taxpayers.

**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:** For assistance on technical questions concerning the temporary rule, contact Alan Dornfest (208) 334-7742.

DATED this 19th Day of July 2017.

Alan Dornfest  
Tax Policy Supervisor  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 35-0103-1708  
(Only Those Sections With Amendments Are Shown.)

**020. VALUE OF RECREATIONAL VEHICLES FOR ANNUAL REGISTRATION AND TAXATION OF UNREGISTERED RECREATIONAL VEHICLES (RULE 020).**

Section 49-446, Idaho Code

**01. Value of Recreational Vehicle For Registration Fees.** For the types of recreational vehicles shown in the “Depreciation Schedule for RVs,” beginning with registration fees for calendar year 2004, the County assessors shall administer and collect the recreational vehicle (RV) registration fee based on the market value calculated from the following depreciation schedule. For all other types of recreational vehicles, the assessor shall use any available standard industry indices of retail value to determine the market value. If no such indices are available, the assessor shall determine market value from sale price or by using appraisal procedures as defined in Rule 217 of these rules.

DEPRECIATION SCHEDULE FOR RVS				
	Travel/ Camp Trailers	Campers	Van Conversions	Motor Homes
Age	Percent Good	Percent Good	Percent Good	Percent Good
0	100	100	100	100
1	86	83	85	85
2	76	76	74	77
3	66	64	62	68
4	62	60	52	62
5	59	55	47	59
6	56	54	40	55
7	55	52	35	54
8	50	49	32	51
9	49	44	30	48
10	43	40	27	44
11	41	36	23	40
12	38	33	19	36
13	37	30	14	32
14	36	27	13	31
15	31	23	12	28

To use this depreciation schedule, multiply the sales price or the market value of the RV adjusted by the percentage, if applicable from Subsection 020.02 or 020.03 below, by the appropriate “Percent Good” based on the “Age” and type of RV. Decide the “Age” based on the year of purchase as follows: purchased in the current year equals “Age” zero (0), purchased in the previous year equals “Age” one (1), etc. For example, in year 2004, the “Age” for an RV

purchased in 2004 is zero (0), the “Age” for an RV purchased in 2003 is one (1), the “Age” for an RV purchased in 2002 is two (2), the “Age” for an RV purchased in 2001 is three (3), etc. For any RV still in use and purchased fifteen (15) or more years ago, calculate the minimum market value using the lowest depreciation rate for the correct RV type. ~~(3-29-17)~~(7-1-17)T

**02. Value of Motor Home or Van Conversion For Registration Fees.** The value of any motor home or van conversion used to calculate the registration fee shall exclude any chassis value. Beginning with the registration fees for calendar year 2004, the county assessor shall use the following schedule of valuation factors to calculate the value of the motor home or van conversion excluding the chassis value.

<b>Motor Home/Van Type</b>	<b>Valuation Factor</b>
Mini Motor Home (MMH)	50%
Motor Home (MH)	60%
Front Engine Diesel	45%
Rear Engine Diesel	58%
Van Conversions	25%

Multiply the motor home or van conversion’s total value by the appropriate factor to calculate the value excluding the chassis value. (5-3-03)

**03. Value of Vehicles Designed For Combined RV and Non-RV Uses For Registration Fees.** For vehicles designed to have part of the vehicle for RV use and other parts of the vehicle for non-RV uses like transporting horses or other cargo, the value of the RV to be used to calculate the registration fee on or after January 1, 2015 is fifty percent (50%) of the sales price. (3-20-14)

**04. Assessment Notice Mailed or Assessment Canceled.** If after August 31, the required annual registration fee has not been paid, a taxpayer’s valuation assessment notice shall be mailed to the owner of the recreational vehicle. If the registration fee is paid before the fourth Monday of November, the assessor shall cancel the assessment. (5-3-03)

## IDAPA 35 – STATE TAX COMMISSION

### 35.01.06 – HOTEL/MOTEL ROOM AND CAMPGROUND SALES TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0106-1702

#### NOTICE OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 63-105(2), 63-3624(a), 63-3635, 63-3039, and 63-1801 through 63-1804, Idaho Code.

**METHOD OF PARTICIPATION:** Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. Responses must be received by August 23, 2017 to participate.

Should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

Failure of interested persons to respond to this notice of intent or the lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event, the agency shall have sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

Upon the conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted on the agency website.

**DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE:** The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

Rule 006 – LODGING OPERATORS AND SHORT-TERM RENATL MARKETPLACES The current proposal is to add a new rule to reference the new statutes created by HB 216. Also to state in the rules that the sales taxes and any local government taxes apply to this type of rental.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this negotiated rulemaking contact Tom Shaner at (208) 334-7518. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the agency's web site at the following web address: <http://tax.idaho.gov/i-1141.cfm?com=s>.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 31, 2017. Comments may be submitted via e-mail to [sherry.briscoe@tax.idaho.gov](mailto:sherry.briscoe@tax.idaho.gov).

DATED this 7th day of July, 2017

Tom Shaner  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7680  
Fax: (208) 332-6619

## IDAPA 35 – STATE TAX COMMISSION

### 35.01.09 – IDAHO COUNTY OPTION KITCHEN AND TABLE WINE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0109-1702

#### NOTICE OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 63-105 and 23-1323, Idaho Code, and Section 23-1314, Idaho Code.

**METHOD OF PARTICIPATION:** Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by August 23, 2017.

Should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

Failure of interested persons to respond to this notice of intent or the lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event, the agency shall have sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

Upon the conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted on the agency website.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

Wine Tax Rule 011 – SALES SUBJECT TO WINE TAX. This rule describes when dispositions of wine are subject to the wine tax. The intent of amending the rule is to give instruction on maintenance of inventory for tax purposes.

Wine Tax Rule 015 – WINE TAX PERMIT REPORTING NUMBER. This rule authorizes the issuing of a wine tax permit. The intent of amending the rule is to allow cancellation of inactive permits.

**ASSISTANCE ON TECHNICAL QUESTIONS, MEETING ACCOMMODATIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this negotiated rulemaking, requests for special meeting accommodations or accessibility, or to obtain a preliminary draft copy of the rule text (if available), contact the undersigned either in writing, by email, or by calling the phone number listed below. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts are on the State Tax Commission website at <http://tax.idaho.gov>

DATED this 2nd day of August 2017.

Don Williams  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
Phone (208) 334-7855  
Fax (208) 334-7846  
[Don.williams@tax.idaho.gov](mailto:Don.williams@tax.idaho.gov)

## IDAPA 35 – STATE TAX COMMISSION

### 35.01.12 – IDAHO BEER TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0112-1702

#### NOTICE OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 63-105 and 23-1051, Idaho Code, and Section 23-1006, Idaho Code.

**METHOD OF PARTICIPATION:** Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by August 23, 2017.

Should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

Failure of interested persons to respond to this notice of intent or the lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event, the agency shall have sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

Upon the conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted on the agency website.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

Beer Tax Rule 011 – SALES SUBJECT TO BEER TAX. This rule describes when dispositions of beer are subject to the beer tax. The intent of amending the rule is to give instruction on maintenance of inventory for tax purposes.

Beer Tax Rule 016 – BEER TAX PERMIT REPORTING NUMBER. This rule authorizes the issuing of a beer tax permit. The intent of amending the rule is to allow cancellation of inactive permits.

**ASSISTANCE ON TECHNICAL QUESTIONS, MEETING ACCOMMODATIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this negotiated rulemaking, requests for special meeting accommodations or accessibility, or to obtain a preliminary draft copy of the rule text (if available), contact the undersigned either in writing, by email, or by calling the phone number listed below. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts are on the State Tax Commission website at <http://tax.idaho.gov>.

DATED this 2nd day of August 2017.

Don Williams  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
Phone (208) 334-7855  
Fax (208) 334-7846  
[Don.williams@tax.idaho.gov](mailto:Don.williams@tax.idaho.gov)

# **IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

## **58.01.01 – RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 58-0101-1702**

### **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. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of Idaho's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act. It also updates citations to other federal regulations necessary to retain state primacy of Clean Air Act programs.

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

**PUBLIC HEARING**  
**Thursday, September 7, 2017**  
**3:00 pm (MDT)**

**Department of Environmental Quality**  
**Conference Room A**  
**1410 N. Hilton**  
**Boise, ID 83706**

The meeting location will be accessible to persons with disabilities, and language translators will be made available upon request. Requests for these accommodations must be made no later than five (5) days prior to the meeting date. For arrangements, contact the undersigned.

**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to ensure that the state rules remain consistent with federal regulations. The Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01, are updated annually to maintain consistency with federal regulations implementing the Clean Air Act. This proposed rule updates federal regulations incorporated by reference to include those revised as of July 1, 2017.

Members of the regulated community who may be subject to Idaho's air quality rules, special interest groups, public officials, and members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2017 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2018 legislative session if adopted by the Board and approved by the Legislature. DEQ will submit the final rule to EPA for approval.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

Adoption of federal regulations is necessary for EPA approval of Idaho's Title V Operating Permit Program and state primacy of Clean Air Act programs. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rule.

In compliance with Idaho Code 67-5223(4), DEQ prepared a brief synopsis detailing the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference can be obtained at [www.deq.idaho.gov/58-0101-1702](http://www.deq.idaho.gov/58-0101-1702) or by contacting the undersigned.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking and because DEQ has no discretion with respect to adopting federal regulations that are necessary for EPA approval of Idaho's Title V Operating Permit Program and state primacy of Clean Air Act programs. Whenever possible, DEQ incorporates federal regulations by reference to ensure that the state rules are consistent with federal regulations.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Carl Brown at [carl.brown@deq.idaho.gov](mailto:carl.brown@deq.idaho.gov) or (208) 373-0206.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 7, 2017.

Dated this 2nd day of August, 2017.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, ID 83706-1255  
Phone: (208) 373-0418  
Fax: (208) 373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0101-1702**  
**(Only Those Sections With Amendments Are Shown.)**

**107. INCORPORATIONS BY REFERENCE.**

**01. General.** Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

**02. Availability of Referenced Material.** Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

- and;
- a.** All federal publications: U.S. Government Printing Office at <http://www.ecfr.gov/cgi-bin/ECFR>; (3-25-16)
  - b.** Statutes of the state of Idaho: <http://legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm>; and (3-20-14)

- c. All documents herein incorporated by reference: (7-1-97)
0502. i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373- (7-1-97)
- ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)
- 03. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (5-1-94)
- a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, [40 CFR Part 51](#) revised as of July 1, 2016~~7~~. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: (3-29-17)(      )
- i. All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)
- ii. Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)
- b. National Primary and Secondary Ambient Air Quality Standards, [40 CFR Part 50](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- c. Approval and Promulgation of Implementation Plans, [40 CFR Part 52](#), Subparts A and N and Appendices D and E, revised as of July 1, 2016~~7~~. (3-29-17)(      )
- 2016~~7~~. d. Ambient Air Monitoring Reference and Equivalent Methods, [40 CFR Part 53](#), revised as of July 1, (3-29-17)(      )
- e. Ambient Air Quality Surveillance, [40 CFR Part 58](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- f. Standards of Performance for New Stationary Sources, [40 CFR Part 60](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- 2016~~7~~. g. National Emission Standards for Hazardous Air Pollutants, [40 CFR Part 61](#), revised as of July 1, (3-29-17)(      )
- h. Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before December 1, 2008, [40 CFR Part 62, Subpart HHH](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- i. National Emission Standards for Hazardous Air Pollutants for Source Categories, [40 CFR Part 63](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- j. Compliance Assurance Monitoring, [40 CFR Part 64](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- k. State Operating Permit Programs, [40 CFR Part 70](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- l. Permits, [40 CFR Part 72](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- m. Sulfur Dioxide Allowance System, [40 CFR Part 73](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- n. Protection of Stratospheric Ozone, [40 CFR Part 82](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- o. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)
- p. Medical Waste Combustors, [Section 39-128, Idaho Code \(1992\)](#). (3-20-14)

# IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.02 – WATER QUALITY STANDARDS

### DOCKET NO. 58-0102-1702

#### 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. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before August 18, 2017. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** This rulemaking has been initiated for administrative purposes and to revise Subsection 210.01, Criteria for Toxic Substances, by streamlining and reorganizing the table that contains criteria for protection of aquatic life and human health.

#### Administrative Revisions:

Water quality standards adopted and submitted to EPA since May 30, 2000, are not effective for federal Clean Water Act (CWA) purposes until EPA approves them (see [40 CFR 131.21](#)). This is known as the Alaska Rule. DEQ proposes to add a new rule section setting out a rulemaking process which would retain the existing rule that continues to be effective for CWA purposes until EPA approves the rule revisions. Using this rulemaking process will allow the regulated community to stay informed of the status of rules effective for CWA purposes.

In addition, the proposal will clean up the water quality standards by deleting obsolete language in two definitions and by deleting Subsection 401.03. Subsection 401.03 is no longer necessary because total chlorine residual was adopted into Section 210 during previous rulemaking.

#### Streamlining Subsection 210.01, Criteria for Toxic Substances:

The table in Subsection 210.01, Criteria for Toxic Substances, contains criteria for protection of aquatic life and human health. DEQ proposes to simplify and streamline the existing table by moving the information into two separate tables. One table will contain the criteria for protection of aquatic life and one table will contain the criteria for protection of human health. As part of this process, the existing table will be deleted.

By drafting two separate tables, Subsection 210.01 will become more manageable and easier to follow. The existing table contains approximately 100 rows for which there are no aquatic life criteria. By moving the criteria for aquatic life into a separate table, the aquatic life criteria table will become much shorter. In addition, the compounds listed in both tables will be arranged alphabetically.

The proposed revisions are for organizational purposes only and are not substantive. Even though the existing table is struck out and the information contained in the two tables is underlined, this is simply a duplication of information that currently exists in the water quality standards. All criteria values remain the same.

Idahoans that recreate in, drink from, or fish Idaho's surface waters, and any who discharge pollutants to those same waters, may be interested in commenting on this proposed rule. After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2017 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2018 legislative session if adopted by the Board and approved by the Legislature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking. The proposed revisions are for administrative and organizational purposes and are not substantive.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Paula Wilson at [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov), (208) 373-0418.

Anyone may submit written comments by mail, fax or email at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 1, 2017.

DATED this 2nd day of August, 2017.

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0102-1702**  
**(Only Those Sections With Amendments Are Shown.)**

**007. EFFECTIVE FOR CLEAN WATER ACT PURPOSES.**

Water quality standards adopted and submitted to EPA since May 30, 2000, are not effective for federal Clean Water Act (CWA) purposes until EPA approves them (see 40 CFR 131.21). This is known as the Alaska Rule. When making revisions to the Water Quality Standards, IDAPA 58.01.02, the Department shall retain the existing rule that continues to be effective for CWA purposes until the date EPA issues written notification that the rule revisions have been approved. Notations explaining the effectiveness of the rule sections shall be included along with the rule revisions. Upon the date EPA issues written notification that the rule revisions have been approved, the revised rule will become effective for CWA purposes and the previous rule and notations will be deleted from the Idaho Administrative Code. Information regarding the status of EPA review will be posted at <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

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

**010. DEFINITIONS.**

For the purpose of the rules contained in IDAPA 58.01.02, "Water Quality Standards," the following definitions apply: (4-11-06)

**01. Activity.** For purposes of antidegradation review, an activity that causes a discharge to a water subject to the jurisdiction of the Clean Water Act. (3-18-11)

**02. Acute.** A stimulus severe enough to induce a rapid response. In aquatic toxicity tests, acute refers to

a single or short-term (i.e., ninety-six (96) hours or less) exposure to a concentration of a toxic substance or effluent which results in death to fifty percent (50%) of the test organisms. When referring to human health, an acute effect is not always measured in terms of lethality. (3-30-07)

**03. Acute Criteria.** Unless otherwise specified in these rules, the maximum instantaneous or one (1) hour average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from acute toxicity due to exposure to the toxic substance or effluent. Acute criteria are expected to adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. This is also known as the Criterion Maximum Concentration (CMC). There are no specific acute criteria for human health; however, the human health criteria are based on chronic health effects and are expected to adequately protect against acute effects. (3-30-07)

**04. Aquatic Species.** Any plant or animal that lives at least part of its life in the water column or benthic portion of waters of the state. (8-24-94)

**05. Assigned Criteria.** Criteria associated with beneficial uses from Section 100 of these rules. (3-18-11)

**06. Background.** The biological, chemical or physical condition of waters measured at a point immediately upstream (up-gradient) of the influence of an individual point or nonpoint source discharge. If several discharges to the water exist or if an adequate upstream point of measurement is absent, the Department will determine where background conditions should be measured. (8-24-94)

**07. Basin Advisory Group.** No less than one (1) advisory group named by the Director, in consultation with the designated agencies, for each of the state's six (6) major river basins which shall generally advise the Director on water quality objectives for each basin, work in a cooperative manner with the Director to achieve these objectives, and provide general coordination of the water quality programs of all public agencies pertinent to each basin. Each basin advisory group named by the Director shall reflect a balanced representation of the interests in the basin and shall, where appropriate, include representatives from each of the following: agriculture, mining, nonmunicipal point source discharge permittees, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, and environmental interests. (3-20-97)

**08. Beneficial Use.** Any of the various uses which may be made of the water of Idaho, including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat, and aesthetics. The beneficial use is dependent upon actual use, the ability of the water to support a non-existing use either now or in the future, and its likelihood of being used in a given manner. The use of water for the purpose of wastewater dilution or as a receiving water for a waste treatment facility effluent is not a beneficial use. (8-24-94)

**09. Best Management Practice.** A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals. (3-20-97)

**10. Bioaccumulation.** The process by which a compound is taken up by, and accumulated in the tissues of an aquatic organism from the environment, both from water and through food. (8-24-94)

**11. Bioaccumulative Pollutants.** A compound with a bioaccumulation factor of greater than one thousand (1,000) or a bioconcentration factor of greater than one thousand (1,000). (4-11-15)

**12. Biological Monitoring or Biomonitoring.** The use of a biological entity as a detector and its response as a measure to determine environmental conditions. Toxicity tests and biological surveys, including habitat monitoring, are common biomonitoring methods. (8-24-94)

**13. Board.** The Idaho Board of Environmental Quality. (7-1-93)

**14. Chronic.** A stimulus that persists or continues for a long period of time relative to the life span of

an organism. In aquatic toxicity tests, chronic refers to continuous exposure to a concentration of a toxic substance or effluent which results in mortality, injury, reduced growth, impaired reproduction, or other adverse effect to aquatic organisms. The test duration is long enough that sub-lethal effects can be reliably measured. When referring to human health, a chronic effect is usually measured in terms of estimated changes in rates (# of cases/ 1000 persons) of illness over a lifetime of exposure. (3-30-07)

**15. Chronic Criteria.** Unless otherwise specified in these rules, the four (4) day average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from chronic toxicity due to exposure to the toxic substance or effluent. Chronic criteria are expected to adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. This is also known as the Criterion Continuous Concentration (CCC). Human health chronic criteria are based on lifetime exposure. (3-30-07)

**16. Compliance Schedule or Schedule Of Compliance.** A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard. (8-24-94)

**17. Cost-Effective and Reasonable Best Management Practices (BMPs) for Nonpoint Sources.** All approved BMPs specified in Subsections 350.03 and 055.07 of these rules. BMPs for activities not specified are, in accordance with Section 350, determined on a case-by-case basis. (3-18-11)

**18. Daily Maximum (Minimum).** The highest (lowest) value measured during one (1) calendar day or a twenty-four (24) hour period, as appropriate. For ambient monitoring of dissolved oxygen, pH, and temperature, multiple measurements should be obtained at intervals short enough that the difference between consecutive measurements around the daily maximum (minimum) is less than zero point two (0.2) ppm for dissolved oxygen, zero point one (0.1) SU for pH, or zero point five (0.5) degree C for temperature. (3-30-07)

**19. Daily Mean.** The average of at least two (2) appropriately spaced measurements, acceptable to the Department, calculated over a period of one (1) day: (3-20-97)

**a.** Confidence bounds around the point estimate of the mean may be required to determine the sample size necessary to calculate a daily mean; (8-24-94)

**b.** If any measurement is greater or less than five-tenths (0.5) times the average, additional measurements over the one-day period may be needed to obtain a more representative average; (3-20-97)

**c.** In calculating the daily mean for dissolved oxygen, values used in the calculation shall not exceed the dissolved oxygen saturation value. If a measured value exceeds the dissolved oxygen saturation value, then the dissolved oxygen saturation value will be used in calculating the daily mean. (8-24-94)

**d.** For ambient monitoring of temperature, the daily mean should be calculated from equally spaced measurements, at intervals such that the difference between any two (2) consecutive measurements does not exceed one point zero (1.0) degree C. (3-30-07)

**20. Degradation or Lower Water Quality.** "Degradation" or "lower water quality" means, for purposes of antidegradation review, a change in a pollutant that is adverse to designated or existing uses, as calculated for a new point source, and based upon monitoring or calculated information for an existing point source increasing its discharge. Such degradation shall be calculated or measured after appropriate mixing of the discharge and receiving water body. (3-29-12)

**21. Deleterious Material.** Any nontoxic substance which may cause the tainting of edible species of fish, taste and odors in drinking water supplies, or the reduction of the usability of water without causing physical injury to water users or aquatic and terrestrial organisms. (8-24-94)

**22. Department.** The Idaho Department of Environmental Quality. (7-1-93)

**23. Design Flow.** The critical flow used for steady-state wasteload allocation modeling. (8-24-94)

- 24. Designated Agency.** The department of lands for timber harvest activities, oil and gas exploration and development, and mining activities; the soil conservation commission for grazing and agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the Department's division of environmental quality for all other activities. (3-20-97)
- 25. Designated Beneficial Use or Designated Use.** Those beneficial uses assigned to identified waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards ~~and Wastewater Treatment Requirements~~," Sections 110 through 160, whether or not the uses are being attained. (4-5-00)(    )
- 26. Desirable Species.** Species indigenous to the area or those introduced species identified as desirable by the Idaho Department of Fish and Game. (3-15-02)
- 27. Director.** The Director of the Idaho Department of Environmental Quality or his authorized agent. (7-1-93)
- 28. Discharge.** When used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. For purposes of antidegradation review, means "discharge" as used in Section 401 of the Clean Water Act. (3-18-11)
- 29. Dissolved Oxygen (DO).** The measure of the amount of oxygen dissolved in the water, usually expressed in mg/l. (7-1-93)
- 30. Dissolved Product.** Petroleum product constituents found in solution with water. (8-24-94)
- 31. Dynamic Model.** A computer simulation model that uses real or derived time series data to predict a time series of observed or derived receiving water concentrations. Dynamic modeling methods include continuous simulation, Monte Carlo simulations, lognormal probability modeling, or other similar statistical or deterministic techniques. (8-24-94)
- 32. E. coli (Escherichia coli).** A common fecal and intestinal organism of the coliform group of bacteria found in warm-blooded animals. (4-5-00)
- 33. Effluent.** Any wastewater discharged from a treatment facility. (7-1-93)
- 34. Effluent Biomonitoring.** The measurement of the biological effects of effluents (e.g., toxicity, biostimulation, bioaccumulation, etc.). (8-24-94)
- 35. EPA.** The United States Environmental Protection Agency. (7-1-93)
- 36. Ephemeral Waters.** A stream, reach, or water body that flows naturally only in direct response to precipitation in the immediate watershed and whose channel is at all times above the water table. (4-11-06)
- 37. Existing Activity or Discharge.** An activity or discharge that has been previously authorized or did not previously require authorization. (3-18-11)
- 38. Existing Beneficial Use Or Existing Use.** Those beneficial uses actually attained in waters on or after November 28, 1975, whether or not they are designated for those waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards." (4-11-06)
- 39. Facility.** As used in Section 850 only, any building, structure, installation, equipment, pipe or pipeline, well pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft, area, place or property from which an unauthorized release of hazardous materials has occurred. (8-24-94)
- 40. Four Day Average.** The average of all measurements within a period of ninety-six (96) consecutive hours. While a minimum of one (1) measurement per each twenty-four (24) hours is preferred, for toxic chemicals in Section 210, any number of data points is acceptable. (3-30-07)

**41. Free Product.** A petroleum product that is present as a nonaqueous phase liquid. Free product includes the presence of petroleum greater than one-tenth (0.1) inch as measured on the water surface for surface water or the water table for ground water. (7-1-93)

**42. Full Protection, Full Support, or Full Maintenance of Designated Beneficial Uses of Water.** Compliance with those levels of water quality criteria listed in Sections 200, 210, 250, 251, 252, 253, and 275 (if applicable) or where no major biological group such as fish, macroinvertebrates, or algae has been modified by human activities significantly beyond the natural range of the reference streams or conditions approved by the Director in consultation with the appropriate basin advisory group. (3-15-02)

**43. General Permit.** An NPDES permit issued by the U.S. Environmental Protection Agency authorizing a category of discharges under the federal Clean Water Act or a nationwide or regional permit issued by the U.S. Army Corps of Engineers under the federal Clean Water Act. (3-29-12)

**44. Geometric Mean.** The geometric mean of “n” quantities is the “nth” root of the product of the quantities. (7-1-93)

**45. Ground Water.** Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (3-30-07)

**46. Harmonic Mean.** The number of daily measurements divided by the sum of the reciprocals of the measurements (i.e., the reciprocal of the mean of reciprocals). (3-25-16)

**47. Hazardous Material.** A material or combination of materials which, when discharged in any quantity into state waters, presents a substantial present or potential hazard to human health, the public health, or the environment. Unless otherwise specified, published guides such as Quality Criteria for Water (1976) by EPA, Water Quality Criteria (Second Edition, 1963) by the state of California Water Quality Control Board, their subsequent revisions, and more recent research papers, regulations and guidelines will be used in identifying individual and specific materials and in evaluating the tolerances of the identified materials for the beneficial uses indicated. (7-1-93)

**48. Highest Statutory and Regulatory Requirements for Point Sources.** All applicable effluent limits required by the Clean Water Act and other permit conditions. It also includes any compliance schedules or consent orders requiring measures to achieve applicable effluent limits and other permit conditions required by the Clean Water Act. (3-18-11)

**49. Hydrologic Unit Code (HUC).** A unique eight (8) digit number identifying a subbasin. A subbasin is a United States Geological Survey cataloging unit comprised of water body units. (4-5-00)

**50. Hydrologically-Based Design Flow.** A statistically derived receiving water design flow based on the selection and identification of an extreme value (e.g., 1Q10, 7Q10). The underlying assumption is that the design flow will occur X number of times in Y years, and limits the number of years in which one (1) or more excursions below the design flow can occur. (8-24-94)

**51. Hypolimnion.** The bottom layer in a thermally-stratified body of water. It is fairly uniform in temperature and lays beneath a zone of water which exhibits a rapid temperature drop with depth such that mixing with overlying water is inhibited. (3-30-07)

**52. Integrated Report.** Refers to the consolidated listing and reporting of the state’s water quality status pursuant to Sections 303(d), 305(b), and 314 of the Clean Water Act. (3-18-11)

**53. Inter-Departmental Coordination.** Consultation with those agencies responsible for enforcing or administering the practices listed as approved best management practices in Subsection 350.03. (7-1-93)

**54. Intermittent Waters.** A stream, reach, or water body which naturally has a period of zero (0) flow for at least one (1) week during most years. Where flow records are available, a stream with a 7Q2 hydrologically-based unregulated flow of less than one-tenth (0.1) cubic feet per second (cfs) is considered intermittent. Streams

with natural perennial pools containing significant aquatic life uses are not intermittent. (4-11-06)

**55. Load Allocation (LA).** The portion of a receiving water's loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources. (8-24-94)

**56. Loading Capacity.** The greatest amount of pollutant loading that a water can receive without violating water quality standards. (8-24-94)

**57. Lowest Observed Effect Concentration (LOEC).** The lowest concentration of a toxic substance or an effluent that results in observable adverse effects in the aquatic test population. (3-30-07)

**58. Man-Made Waterways.** Canals, flumes, ditches, wasteways, drains, laterals, and/or associated features, constructed for the purpose of water conveyance. This may include channels modified for such purposes prior to November 28, 1975. These waterways may have uniform and rectangular cross-sections, straight channels, follow rather than cross topographic contours, be lined to reduce water loss, and be operated or maintained to promote water conveyance. (3-30-07)

**59. Maximum Weekly Maximum Temperature (MWMT).** The weekly maximum temperature (WMT) is the mean of daily maximum temperatures measured over a consecutive seven (7) day period ending on the day of calculation. When used seasonally, e.g., spawning periods, the first applicable WMT occurs on the seventh day into the time period. The MWMT is the single highest WMT that occurs during a given year or other period of interest, e.g., a spawning period. (3-30-07)

**60. Milligrams Per Liter (mg/l).** Milligrams of solute per liter of solution, equivalent to parts per million, assuming unit density. (7-1-93)

**61. Mixing Zone.** A defined area or volume of the receiving water surrounding or adjacent to a wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards. It is considered a place where wastewater mixes with receiving water and not as a place where effluents are treated. (7-1-93)

**62. National Pollutant Discharge Elimination System (NPDES).** Point source permitting program established pursuant to Section 402 of the federal Clean Water Act. (8-24-94)

**63. Natural Background Conditions.** The physical, chemical, biological, or radiological conditions existing in a water body without human sources of pollution within the watershed. Natural disturbances including, but not limited to, wildfire, geologic disturbance, diseased vegetation, or flow extremes that affect the physical, chemical, and biological integrity of the water are part of natural background conditions. Natural background conditions should be described and evaluated taking into account this inherent variability with time and place. (3-30-07)

**64. Nephelometric Turbidity Units (NTU).** A measure of turbidity based on a comparison of the intensity of the light scattered by the sample under defined conditions with the intensity of the light scattered by a standard reference suspension under the same conditions. (8-24-94)

**65. New Activity or Discharge.** An activity or discharge that has not been previously authorized. Existing activities or discharges not currently permitted or licensed will be presumed to be new unless the Director determines to the contrary based on review of available evidence. An activity or discharge that has previously taken place without need for a license or permit is not a new activity or discharge when first licensed or permitted. (3-18-11)

**66. Nonpoint Source Activities.** Activities on a geographical area on which pollutants are deposited or dissolved or suspended in water applied to or incident on that area, the resultant mixture being discharged into the waters of the state. Nonpoint source activities on ORWs do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments. Nonpoint sources activities include, but are not limited to: (3-20-97)

a. Irrigated and nonirrigated lands used for: (7-1-93)

- i. Grazing; (7-1-93)
  - ii. Crop production; (7-1-93)
  - iii. Silviculture; (7-1-93)
  - b. Log storage or rafting; (7-1-93)
  - c. Construction sites; (7-1-93)
  - d. Recreation sites; (3-20-97)
  - e. Septic tank disposal fields. (8-24-94)
  - f. Mining; (3-20-97)
  - g. Runoff from storms or other weather related events; and (3-20-97)
  - h. Other activities not subject to regulation under the federal national pollutant discharge elimination system. (3-20-97)
- 67. Nuisance.** Anything which is injurious to the public health or an obstruction to the free use, in the customary manner, of any waters of the state. (7-1-93)
- 68. Nutrients.** The major substances necessary for the growth and reproduction of aquatic plant life, consisting of nitrogen, phosphorus, and carbon compounds. (7-1-93)
- 69. One Day Minimum.** The lowest daily instantaneous value measured. (3-20-97)
- 70. One Hour Average.** The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of one (1) hour. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the one-hour period may be needed to obtain a more representative mean. (3-20-97)
- 71. Operator.** For purposes of Sections 851 and 852, any person presently or who was at any time during a release in control of, or having responsibility for, the daily operation of the petroleum storage tank (PST) system. (4-2-03)
- 72. Outstanding Resource Water (ORW).** A high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been designated by the legislature and subsequently listed in this chapter. ORW constitutes an outstanding national or state resource that requires protection from point and nonpoint source activities that may lower water quality. (3-20-97)
- 73. Owner.** For purposes of Sections 851 and 852, any person who owns or owned a petroleum storage tank (PST) system any time during a release and the current owner of the property where the PST system is or was located. (4-2-03)
- 74. Permit or License.** A permit or license for an activity that is subject to certification by the state under Section 401 of the Clean Water Act, including, for example, NPDES permits, dredge and fill permits, and FERC licenses. (3-18-11)
- 75. Person.** An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, which is recognized by law as the subject of rights and duties. (3-20-97)
- 76. Petroleum Products.** Products derived from petroleum through various refining processes.

(7-1-93)

**77. Petroleum Storage Tank (PST) System.** Any one (1) or combination of storage tanks or other containers, including pipes connected thereto, dispensing equipment, and other connected ancillary equipment, and stationary or mobile equipment, that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. (7-1-93)

**78. Point Source.** Any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (7-1-93)

**79. Pollutant.** Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged to water in excessive quantities, cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities. (3-20-97)

**80. Project Plans.** Documents which describe actions to be taken under a proposed activity. These documents include environmental impact statements, environmental assessments, and other land use or resource management plans. (7-1-93)

**81. Public Swimming Beaches.** Areas indicated by features such as signs, swimming docks, diving boards, slides, or the like, boater exclusion zones, map legends, collection of a fee for beach use, or any other unambiguous invitation to public swimming. Privately owned swimming docks or the like which are not open to the general public are not included in this definition. (4-11-06)

**82. Receiving Waters.** Those waters which receive pollutants from point or nonpoint sources. (7-1-93)

**83. Reference Stream or Condition.** A water body which represents the minimum conditions necessary to fully support the applicable designated beneficial uses as further specified in these rules, or natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin. In highly mineralized areas or in the absence of such reference streams or water bodies, the Director, in consultation with the basin advisory group and the technical advisors to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported. (3-20-97)

**84. Release.** Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or dispositive into soil, ground water, or surface water. (8-24-94)

**85. Resident Species.** Those species that commonly occur in a site including those that occur only seasonally or intermittently. This includes the species, genera, families, orders, classes, and phyla that: (8-24-94)

a. Are usually present at the site; (8-24-94)

b. Are present only seasonally due to migration; (8-24-94)

c. Are present intermittently because they periodically return or extend their ranges into the site; (8-24-94)

d. Were present at the site in the past but are not currently due to degraded conditions, and are expected to be present at the site when conditions improve; and (8-24-94)

e. Are present in nearby bodies of water but are not currently present at the site due to degraded conditions, and are expected to be present at the site when conditions improve. (8-24-94)

- 86. Responsible Persons in Charge.** Any person who: (8-24-94)
- a.** By any acts or omissions, caused, contributed to or exacerbated an unauthorized release of hazardous materials; (8-24-94)
- b.** Owns or owned the facility from which the unauthorized release occurred and the current owner of the property where the facility is or was located; or (8-24-94)
- c.** Presently or who was at any time during an unauthorized release in control of, or had responsibility for, the daily operation of the facility from which an unauthorized release occurred. (8-24-94)
- 87. Sediment.** Undissolved inorganic matter. (3-30-07)
- 88. Seven Day Mean.** The average of the daily mean values calculated over a period of seven (7) consecutive days. (3-20-97)
- 89. Sewage.** The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. (8-24-94)
- 90. Short-Term or Temporary Activity.** An activity which is as short as possible but lasts for no more than one (1) year, is limited in scope and is expected to have only minimal impact on water quality as determined by the Director. Short-term or temporary activities include, but are not limited to, those activities described in Subsection 080.02. (3-30-07)
- 91. Silviculture.** Those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber. (3-20-97)
- ~~**92. Sludge.** The semi-liquid mass produced by partial dewatering of potable or spent process waters or wastewater. (7-1-93)~~
- 93. Specialized Best Management Practices.** Those practices designed with consideration of geology, land type, soil type, erosion hazard, climate and cumulative effects in order to fully protect the beneficial uses of water, and to prevent or reduce the pollution generated by nonpoint sources. (3-3-87)
- 94. State.** The state of Idaho. (7-1-93)
- 95. State Water Quality Management Plan.** The state management plan developed and updated by the Department in accordance with Sections 205, 208, and 303 of the Clean Water Act. (3-20-97)
- 96. Suspended Sediment.** The undissolved inorganic fraction of matter suspended in surface water. (3-30-07)
- 97. Suspended Solids.** The undissolved organic and inorganic matter suspended in surface water. (3-30-07)
- 98. Technology-Based Effluent Limitation.** Treatment requirements under Section 301(b) of the Clean Water Act that represent the minimum level of control that must be imposed in a permit issued under Section 402 of the Clean Water Act. (8-24-94)
- 99. Thermal Shock.** A rapid temperature change that causes aquatic life to become disoriented or more susceptible to predation or disease. (4-11-15)

**~~100~~99. Total Maximum Daily Load (TMDL).** The sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, and natural background. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. (8-24-94)

**1070. Toxicity Test.** A procedure used to determine the toxicity of a chemical or an effluent using living organisms. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent. (8-24-94)

**1021. Toxic Substance.** Any substance, material or disease-causing agent, or a combination thereof, which after discharge to waters of the State and upon exposure, ingestion, inhalation or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring. Toxic substances include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA pursuant to Section 307(a) of the federal Clean Water Act. (8-24-94)

**1032. Treatment.** A process or activity conducted for the purpose of removing pollutants from wastewater. (7-1-93)

**1043. Treatment System.** Any physical facility or land area for the purpose of collecting, treating, neutralizing or stabilizing pollutants including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishing thereof and their appurtenances. A treatment system may also be known as a treatment facility. (4-11-06)

**1054. Twenty-Four Hour Average.** The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of twenty-four (24) consecutive hours. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the twenty-four (24)-hour period may be needed to obtain a more representative mean. (3-20-97)

**1065. Unique Ecological Significance.** The attribute of any stream or water body which is inhabited or supports an endangered or threatened species of plant or animal or a species of special concern identified by the Idaho Department of Fish and Game, which provides anadromous fish passage, or which provides spawning or rearing habitat for anadromous or desirable species of lake dwelling fishes. (8-24-94)

**1076. Use Attainability Analysis.** A structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in Subsection 102.02.a. (3-25-16)

**1087. Wasteload Allocation (WLA).** The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. (8-24-94)

**1098. Wastewater.** Unless otherwise specified, sewage, industrial waste, agricultural waste, and associated solids or combinations of these, whether treated or untreated, together with such water as is present. (7-1-93)

**1709. Water Body Unit.** Includes all named and unnamed tributaries within a drainage and is considered a single unit unless designated otherwise. (4-5-00)

**1170. Water Pollution.** Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the state, or the discharge of any pollutant into the waters of the state, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. (8-24-94)

**1121. Water Quality-Based Effluent Limitation.** An effluent limitation that refers to specific levels of water quality that are expected to render a body of water suitable for its designated or existing beneficial uses.

(8-24-94)

**1132. Water Quality Limited Water Body.** After monitoring, evaluation of required pollution controls, and consultation with the appropriate basin and watershed advisory groups, a water body identified by the Department, which does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards after the application of required pollution controls. A water body identified as water quality limited shall require the development of a TMDL or other equivalent process in accordance with Section 303 of the Clean Water Act and Sections 39-3601 et seq., Idaho Code.

(3-20-97)

**1143. Waters and Waters Of The State.** All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state.

(7-1-93)

**1154. Watershed.** The land area from which water flows into a stream or other body of water which drains the area.

(3-20-97)

**1165. Watershed Advisory Group.** An advisory group appointed by the Director, with the advice of the appropriate Basin Advisory Group, which will recommend to the Department those specific actions needed to control point and nonpoint sources of pollution affecting water quality limited water bodies within the watershed. Members of each watershed advisory group shall be representative of the industries and interests affected by the management of that watershed, along with representatives of local government and the land managing or regulatory agencies with an interest in the management of that watershed and the quality of the water bodies within it.

(3-20-97)

**1176. Whole-Effluent Toxicity.** The aggregate toxic effect of an effluent measured directly with a toxicity test.

(8-24-94)

**1187. Zone of Initial Dilution (ZID).** An area within a Department authorized mixing zone where acute criteria may be exceeded. This area shall be no larger than necessary and shall be sized to prevent lethality to swimming or drifting organisms by ensuring that organisms are not exposed to concentrations exceeding acute criteria for more than one (1) hour more than once in three (3) years. The actual size of the ZID will be determined by the Department for a discharge on a case-by-case basis, taking into consideration mixing zone modeling and associated size recommendations and any other pertinent chemical, physical, and biological data available.

(4-11-15)

**(BREAK IN CONTINUITY OF SECTIONS)**

**210. NUMERIC CRITERIA FOR TOXIC SUBSTANCES FOR WATERS DESIGNATED FOR AQUATIC LIFE, RECREATION, OR DOMESTIC WATER SUPPLY USE.**

Note: In 2016, Idaho updated human health criteria for 104 toxic substances (10 of which are new). Final rule submitted to EPA on December 13, 2016 (docket 58-0102-1201). Until EPA approves the revisions in this rule docket, the human health criteria published in [2005 Idaho Administrative Code](#) in Subsection 210.01 continue to apply and are effective for CWA purposes. These criteria are listed in [Numeric Criteria for Toxic Substances \(2005\)](#). The previous human health criteria based on a fish consumption rate of 6.5 g/day published in [2005 Idaho Administrative Code](#) in Subsection 210.05.b.i. continue to apply and are effective for CWA purposes. Until EPA approves the revisions in this rule docket, the additional fish-plus-water criterion for copper; the revisions in Subsections 070.08, 210.03, 210.04, 210.05.b.ii. and 400.06; and the definition of harmonic mean published in [2015 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

- ~~01. Criteria for Toxic Substances. The criteria of Section 210 apply to surface waters of the state as follows: (5-3-03)~~
- ~~a. Columns B1 and B2 of the following table apply to waters designated for aquatic life use. (3-25-16)~~
  - ~~b. Column C2 of the following table applies to waters designated for primary or secondary contact recreation use. (3-25-16)~~
  - ~~c. Column C1 of the following table applies to waters designated for domestic water supply use.~~

A		B Aquatic life				C Human health for consumption of:			
(Number)-Compound	<sup>a</sup> -CAS-Number	<sup>b</sup> -CMC (µg/L)	<sup>b</sup> -CCC (µg/L)	Carcinogen?	Water & fish (µg/L)		Fish only (µg/L)		
		B1	B2		C1	C2			
1 Antimony	7440360				5-2	ε	190	ε	
2 Arsenic	7440382	340 e	150 e	Y	10	dfq	10	dfq	
<p><del>Note: In 2008, Idaho adopted 10 µg/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water + fish consumption, choosing the SDWA MCL due to concerns about background levels that exceed EPA's 304(a) criteria (docket 58-0102-0801). EPA approved this action in 2010. In June 2016, Northwest Environmental Advocates challenged EPA's 2010 approval. Court remanded action back to EPA. On September 15, 2016 EPA disapproved Idaho's adoption of 10 µg/L. Until new criteria are adopted, EPA will use criteria of 6.2 µg/L for exposure through fish consumption only and 0.02 µg/L for exposure through both drinking water + consumption of fish in its NPDES permitting actions. These criteria are published in 1996 Idaho Administrative Code (Subsections 250.01.c, 250.02.a.iv, 250.03.a.i). For more information, go to <a href="http://www.deq.idaho.gov/epa-actions-on-proposed-standards">http://www.deq.idaho.gov/epa-actions-on-proposed-standards</a>.</del></p>									
3 Beryllium	7440417					h		h	
4 Cadmium	7440439	1.3 i	0.6 i			h		h	
5a Chromium-III	16065831	570 i	74 i			h		h	
5b Chromium-VI	18540299	46 e	41 e			h		h	
6 Copper	7440508	17 i	41 i		1,300	q			
7 Lead	7439921	65 i	2.5 i			h		h	
8a Mercury	7439976		g	g					
<p><del>Note: In 2005, Idaho adopted EPA's recommended methylmercury fish tissue criterion for protection of human health (docket 58-0102-0302). The decision was made to remove the old tissue-based aquatic life criteria and rely on the fish tissue criterion to provide protection for aquatic life as well as human health. Thus, current Idaho water quality standards do not have mercury water column criteria for the protection of aquatic life. While EPA approved Idaho's adoption of the fish tissue criterion in September 2005, it had withheld judgment on Idaho's removal of aquatic life criteria. On December 12, 2008, EPA disapproved Idaho's removal of the old aquatic life criteria. The water column criteria for total recoverable mercury published in 2004 Idaho Administrative Code continue to apply and are effective for CWA purposes. For more information go to <a href="http://www.deq.idaho.gov/epa-actions-on-proposed-standards">http://www.deq.idaho.gov/epa-actions-on-proposed-standards</a>.</del></p>									
8b Methylmercury	22967926						0.3 mg/kg	p	
9 Nickel	7440020	470 i	52 i		58	ε	100	ε	

A		B				C	
		Aquatic life				Human health for consumption of:	
(Number)-Compound	<sup>a</sup> -CAS-Number	<sup>b</sup> -CMC	<sup>b</sup> -CCC	Carcinogen?	Water & fish-	Fish-only	
		(µg/L)	(µg/L)		(µg/L)	(µg/L)	
		B1	B2		C1	C2	
10 Selenium	7782492	20 f	5 f		29 e	250 e	
11 Silver	7440224	3.4 i					
12 Thallium	7440280				0.017 e	0.023 e	
13 Zinc	7440666	120 i	120 i		870 e	1,500 e	
14 Cyanide	57125	22 j	5.2 j		3.9 e	140 e	
15 Asbestos	1332214				7,000,000-fibers/L g		
16 2,3,7,8-TCDD-Dioxin	1746016			Y	1.8E-08 cl	1.9E-08 cl	
17 Acrolein	107028				3.2 e	120 e	
18 Acrylonitrile	107131			Y	0.60 cl	22 cl	
19 Benzene	71432				3.0 cl	28 e	
20 Bromoform	75252			Y	62 cl	380 cl	
21 Carbon-Tetrachloride	56235			Y	3.6 cl	15 cl	
22 Chlorobenzene	108907				89 e	270 e	
23 Chlorodibromomethane	124481			Y	7.4 cl	67 cl	
24 Chloroethane	75003				h	h	
25 2-Chloroethylvinyl Ether	110758				h	h	
26 Chloroform	67663				64 e	730 e	
27 Dichlorobromomethane	75274			Y	8.8 cl	86 cl	
28 1,1-Dichloroethane	75343				h	h	
29 1,2-Dichloroethane	107062			Y	96 cl	2,000 cl	
30 1,1-Dichloroethylene	75354				310 e	5,200 e	
31 1,2-Dichloropropane	78875			Y	8.5 cl	98 cl	
32 1,3-Dichloropropene	542756			Y	2.5 cl	38 cl	
33 Ethylbenzene	100414				32 e	—41 e	
34 Methyl Bromide	74839				130 e	3,700 e	
35 Methyl Chloride	74873				h	h	
36 Methylene Chloride	75092				38 e	960 e	
37 1,1,2,2-Tetrachloroethane	79345			Y	1.4 cl	8.6 cl	

A		B Aquatic life			C Human health for consumption of:				
(Number)-Compound	<sup>a</sup> -CAS-Number	<sup>b</sup> -CMC	<sup>b</sup> -CCC	Carcinogen?	Water & fish-		Fish-only		
		(µg/L) B1	(µg/L) B2		(µg/L) C1	(µg/L) C2	(µg/L) C1	(µg/L) C2	
38	Tetrachloroethylene	127184				15	e	23	e
39	Toluene	108883				47	e	170	e
40	1,2-Trans-Dichloroethylene	156605				120	e	1,200	e
41	1,1,1-Trichloroethane	71556				11,000	e	56,000	e
42	1,1,2-Trichloroethane	79005			Y	4.9	el	29	el
43	Trichloroethylene	79016				2.6	e	11	e
44	Vinyl Chloride	75014			Y	0.21	el	5.0	el
45	2-Chlorophenol	95578				30	e	260	e
46	2,4-Dichlorophenol	120832				9.6	e	19	e
47	2,4-Dimethylphenol	105679				110	e	820	e
48	2-Methyl-4,6-Dinitrophenol	534521				1.6	e	8.6	e
49	2,4-Dinitrophenol	51285				12	e	110	e
50	2-Nitrophenol	88755					h		h
51	4-Nitrophenol	100027					h		h
52	3-Methyl-4-Chlorophenol	59507				350	e	750	e
53	Pentachlorophenol	87865	20 m	13 m	Y	0.11	el	0.12	el
54	Phenol	108952				3,800	e	85,000	e
55	2,4,6-Trichlorophenol	88062				1.5	e	2.0	e
56	Acenaphthene	83329				26	e	28	e
57	Acenaphthylene	208968					h		h
58	Anthracene	120127				110	e	120	e
59	Benzidine	92875			Y	0.0014	el	0.033	el
60	Benzo(a)Anthracene	56553			Y	0.0042	el	0.0042	el
61	Benzo(a)Pyrene	50328			Y	0.00042	el	0.00042	el
62	Benzo(b)Fluoranthene	205992			Y	0.0042	el	0.0042	el
63	Benzo(ghi)Perylene	191242					h		h
64	Benzo(k)Fluoranthene	207089			Y	0.042	el	0.042	el

A		B Aquatic life			C Human health for consumption of:	
(Number)-Compound	<sup>a</sup> -CAS-Number	<sup>b</sup> -CMC (µg/L)	<sup>b</sup> -CCC (µg/L)	Carcinogen?	Water & fish- (µg/L)	Fish-only (µg/L)
		B1	B2		C1	C2
65	Bis(2-Chloroethoxy)-Methane	111911			h	h
66	Bis(2-Chloroethyl)Ether	111444		Y	0.29 e1	6-8 e1
67	Bis(2-Chloroisopropyl)-Ether	108601			220 e	1,200 e
68	Bis(2-Ethylhexyl)-Phthalate	117817		Y	1.2 e1	1.2 e1
69	4-Bromophenyl-Phenyl-Ether	101553			h	h
70	Butylbenzyl-Phthalate	85687			0.33 e	0.33 e
71	2-Chloronaphthalene	91587			330 e	380 e
72	4-Chlorophenyl-Phenyl-Ether	7005723			h	h
73	Chrysene	218019		Y	0.42 e1	0.42 e1
74	Dibenzo-(a,h)-Anthracene	53703		Y	0.00042 e1	0.00042 e1
75	1,2-Dichlorobenzene	95501			700 e	1,100 e
76	1,3-Dichlorobenzene	541731			3.5 e	4.8 e
77	1,4-Dichlorobenzene	106467			180 e	300 e
78	3,3'-Dichlorobenzidine	91941		Y	0.29 e1	0.48 e1
79	Diethyl-Phthalate	84662			200 e	210 e
80	Dimethyl-Phthalate	131113			600 e	600 e
81	Di-n-Butyl-Phthalate	84742			8.2 e	8.3 e
82	2,4-Dinitrotoluene	121142		Y	0.46 e1	5.5 e1
83	2,6-Dinitrotoluene	606202			h	h
84	Di-n-Octyl-Phthalate	117840			h	h
85	1,2-Diphenylhydrazine	122667		Y	0.25 e1	0.65 e1
86	Fluoranthene	206440			6.3 e	6.4 e
87	Fluorene	86737			21 e	22 e
88	Hexachlorobenzene	118741		Y	0.00026 e1	0.00026 e1
89	Hexachlorobutadiene	87683		Y	0.031 e1	0.031 e1

A		B Aquatic life			C Human health for consumption of:				
(Number)-Compound	<sup>a</sup> -CAS-Number	<sup>b</sup> -CMC	<sup>b</sup> -CCC	Carcinogen?	Water & fish-		Fish-only		
		(µg/L) B1	(µg/L) B2		(µg/L) C1	(µg/L) C2			
90	Hexachloro-cyclopentadiene	77474				1.3	ε	1.3	ε
91	Hexachloroethane	67721				0.23	ε	0.24	ε
92	Ideno (1,2,3-cd)-Pyrene	193395			Y	0.0042	cl	0.0042	cl
93	Isophorone	78591			Y	330	cl	6,000	cl
94	Naphthalene	91203					h		h
95	Nitrobenzene	98953				12	ε	180	ε
96	N-Nitrosodimethylamine	62759			Y	0.0065	cl	9.1	cl
97	N-Nitrosodi-n-Propylamine	621647			Y	0.046	cl	1.5	cl
98	N-Nitrosodiphenylamine	86306			Y	3.14	cl	18	cl
99	Phenanthrene	85018					h		h
100	Pyrene	129000				8.1	ε	8.4	ε
101	1,2,4-Trichlorobenzene	120821				0.24	ε	0.24	ε
102	Aldrin	309002	3		Y	2.5E-06	cl	2.5E-06	cl
103	alpha-BHC	319846			Y	0.0012	cl	0.0013	cl
104	beta-BHC	319857			Y	0.036	cl	0.045	cl
105	gamma-BHC (Lindane)	58899	2	0.08		1.4	ε	1.4	ε
106	delta-BHC	319868					h		h
107	Chlordane	57749	2.4	0.0043	Y	0.0010	cl	0.0010	cl
108	4,4'-DDT	50293	1.1	0.001	Y	9.8E-05	cl	9.8E-05	cl
109	4,4'-DDE	72559			Y	5.5E-05	cl	5.5E-05	cl
110	4,4'-DDD	72548			Y	0.00042	cl	0.00042	cl
111	Dieldrin	60571	2.5	0.0019	Y	4.2E-06	cl	4.2E-06	cl
112	alpha-Endosulfan	959988	0.22	0.056		7.0	ε	8.5	ε
113	beta-Endosulfan	33213659	0.22	0.056		11	ε	14	ε
114	Endosulfan-Sulfate	1031078				9.9	ε	13	ε
115	Endrin	72208	0.18	0.0023		0.011	ε	0.011	ε
116	Endrin-Aldehyde	7421934				0.38	ε	0.40	ε
117	Heptachlor	76448	0.52	0.0038	Y	2.0E-05	cl	2.0E-05	cl

A		B Aquatic life			C Human health for consumption of:				
(Number)-Compound	<sup>a</sup> -CAS-Number	<sup>b</sup> -CMC	<sup>b</sup> -CCC	Carcinogen?	Water & fish-		Fish-only		
		(µg/L) B1	(µg/L) B2		(µg/L) C1	(µg/L) C2			
118	Heptachlor-Epoxide	1024573	0.52	0.0038	Y	0.00010	el	0.00010	el
119	Polychlorinated-Biphenyls-PCBs:	n		0.014 n	Y	0.00019	elo	0.00019	elo
120	Toxaphene	8001352	0.73	0.0002	Y	0.0023	el	0.0023	el
121	Chlorine		19 k	11 k					
122	1,2,4,5-Tetrachlorobenzene	95943				0.0093	e	0.0094	e
123	2,4,5-Trichlorophenol	95954				140	e	190	e
124	Bis-(Chloromethyl)-Ether	542884			Y	0.0015	el	0.055	el
125	Chlorophenoxy-Herbicide (2,4,5-TP)-[Silvex]	93724				82	e	130	e
126	Chlorophenoxy-Herbicide (2,4-D)	94757				1,000	e	3,900	e
127	Dinitrophenols	25550587				13	e	320	e
128	Hexachlorocyclohexane (HCH)-Technical	608734			Y	0.027	el	0.032	el
129	Methoxychlor	72435				0.0054	e	0.0055	e
130	Pentachlorobenzene	608935				0.035	e	0.036	e

Table Footnotes

a. Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.

b. See definitions of Acute Criteria (CMC) and Chronic Criteria (CCC), Section 010 of these rules.

A		B Aquatic life		C Human health for consumption of:		
(Number) Compound	<sup>a</sup> -CAS-Number	<sup>b</sup> -CMC (µg/L) B1	<sup>b</sup> -CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2
<p><del>e. This criterion is based on input values to human health criteria calculation specified in Idaho's Technical Support Document (TSD) for Human Health Criteria Calculations - 2015. Criteria for non-carcinogens are calculated using the formula:</del></p> $\text{AWQC} = \text{RfD} * \text{RSC} * \left( \frac{\text{BW}}{\text{DI} + (\text{FI} * \text{BAF})} \right)$ <p><del>and criteria for carcinogens are calculated using the formula:</del></p> $\text{AWQC} = \text{RSD} * \left( \frac{\text{BW}}{\text{DI} + (\text{FI} * \text{BAF})} \right)$ <p><del>Where:</del>            AWQC = Ambient water quality criterion (mg/L)            BW = Human Body Weight (kg), 80 is used in these criteria            DI = Drinking Water Intake, (L/day), 2.4 is used in these criteria            FI = Fish Intake, (kg/day), 0.0665 is used in these criteria            BAF = Bioaccumulation Factor, L/kg, chemical specific value, see TSD            RfD = Reference dose (mg/kg-day), chemical specific value, see TSD            RSD = <math>\frac{\text{Target Incremental Cancer Risk}}{\text{Cancer Potency Factor}}</math> (mg/kg-day), chemical specific value, see TSD            RSC = Relative Source Contribution, chemical specific value, see TSD</p>						
<del>d. Inorganic forms only.</del>						
<del>e. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.c.iii. CMC = column B1 value X WER. CCC = column B2 value X WER.</del>						
<del>f. Criterion expressed as total recoverable (unfiltered) concentrations.</del>						
<del>g. No aquatic life criterion is adopted for inorganic mercury. However, the narrative criteria for toxics in Section 200 of these rules applies. The Department believes application of the human health criterion for methylmercury will be protective of aquatic life in most situations.</del>						
<del>h. No numeric human health criteria has been established for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the narrative criteria for toxics from Section 200 of these rules.</del>						

A		B Aquatic life			C Human health for consumption of:	
(Number) Compound	<sup>a</sup> -CAS-Number	<sup>b</sup> -CMC (µg/L)	<sup>b</sup> -CCC (µg/L)	Carcinogen?	Water & fish (µg/L)	Fish only (µg/L)
		B1	B2		C1	C2
i. Aquatic life criteria for these metals are a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.c.iii. and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the example values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).						
j. Criteria are expressed as weak acid dissociable (WAD) cyanide.						
k. Total chlorine residual concentrations.						
l. EPA guidance allows states to choose from a range of 10 <sup>-4</sup> to 10 <sup>-6</sup> for the incremental increase in cancer risk used in human health criteria calculation. Idaho has chosen to base this criterion on carcinogenicity of 10 <sup>-5</sup> risk.						
m. Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8). CMC = exp(1.005(pH) - 4.830) CCC = exp(1.005(pH) - 5.290)						
n. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.						
o. This criterion applies to total PCBs, (e.g. the sum of all congener, isomer, or Aroclor analyses).						
p. This fish tissue residue criterion (TRC) for methylmercury is based on a human health reference dose (RfD) of 0.0001 mg/kg body weight-day; a relative source contribution (RSC) estimated to be 27% of the RfD; a human body weight (BW) of 70 kg (for adults); and a total fish consumption rate of 0.0175 kg/day for the general population, summed from trophic level (TL) breakdown of TL2 = 0.0038 kg fish/day + TL3 = 0.0080 kg fish/day + TL4 = 0.0057 kg fish/day. This is a criterion that is protective of the general population. A site-specific criterion or a criterion for a particular subpopulation may be calculated by using local or regional data, rather than the above default values, in the formula: TRC = [BW x (RfD - (RSC x RfD))] / Σ TL. In waters inhabited by species listed as threatened or endangered under the Endangered Species Act or designated as their critical habitat, the Department will apply the human health fish tissue residue criterion for methylmercury to the highest trophic level available for sampling and analysis.						
q. This criterion is based on the drinking water Maximum Contaminant Level (MCL).						

(3-25-16)

**02. Factors for Calculating Hardness Dependent Metals Criteria.** Hardness dependent metals criteria are calculated using values from the following table in the equations: (5-3-03)

**a.** CMC = WER exp{mA[ln(hardness)] + bA} X Acute Conversion Factor. (5-3-03)

**b.** CCC = WER exp{mc[ln(hardness)] + bc} X Chronic Conversion Factor.

**01. Criteria for Toxic Substances.** The criteria of Section 210 apply to surface waters of the state as provided in Tables 1 and 2. ( )

**a.** Table 1 contains criteria set for protection of aquatic life. Criteria for metals (arsenic through zinc) are expressed as dissolved fraction unless otherwise noted. For purposes of these criteria, dissolved fraction means that which passes through a forty-five hundredths (0.45) micron filter. ( )

<b>Table 1. Criteria for Protection of Aquatic Life</b>					
<b>Compound</b>	<b><sup>a</sup> CAS Number</b>	<b><sup>b</sup> CMC (µg/L)</b>		<b><sup>b</sup> CCC (µg/L)</b>	
<b><u>Inorganic Compounds/Metals</u></b>					
<u>Arsenic</u>	<u>7440382</u>	<u>340</u>	<u>c</u>	<u>150</u>	<u>c</u>
<u>Cadmium</u>	<u>7440439</u>	<u>1.3</u>	<u>f</u>	<u>0.6</u>	<u>f</u>
<u>Chromium III</u>	<u>16065831</u>	<u>570</u>	<u>f</u>	<u>74</u>	<u>f</u>
<u>Chromium VI</u>	<u>18540299</u>	<u>16</u>	<u>c</u>	<u>11</u>	<u>c</u>
<u>Copper</u>	<u>7440508</u>	<u>17</u>	<u>f</u>	<u>11</u>	<u>f</u>
<u>Lead</u>	<u>7439921</u>	<u>65</u>	<u>f</u>	<u>2.5</u>	<u>f</u>
<u>Mercury</u>	<u>7439976</u>		<u>e</u>		<u>e</u>
<p><u>Note: In 2005, Idaho adopted EPA's recommended methylmercury fish tissue criterion for protection of human health (docket 58-0102-0302). The decision was made to remove the old tissue-based aquatic life criteria and rely on the fish tissue criterion to provide protection for aquatic life as well as human health. Thus, current Idaho water quality standards do not have mercury water column criteria for the protection of aquatic life. While EPA approved Idaho's adoption of the fish tissue criterion in September 2005, it had withheld judgment on Idaho's removal of aquatic life criteria. On December 12, 2008, EPA disapproved Idaho's removal of the old aquatic life criteria. The water column criteria for total recoverable mercury published in 2004 Idaho Administrative Code continue to apply and are effective for CWA purposes. For more information go to <a href="http://www.deq.idaho.gov/epa-actions-on-proposed-standards">http://www.deq.idaho.gov/epa-actions-on-proposed-standards</a>.</u></p>					
<u>Nickel</u>	<u>7440020</u>	<u>470</u>	<u>f</u>	<u>52</u>	<u>f</u>
<u>Selenium</u>	<u>7782492</u>	<u>20</u>	<u>d</u>	<u>5</u>	<u>d</u>
<u>Silver</u>	<u>7440224</u>	<u>3.4</u>	<u>f</u>		
<u>Zinc</u>	<u>7440666</u>	<u>120</u>	<u>f</u>	<u>120</u>	<u>f</u>
<b><u>Inorganic Compounds/Non-Metals</u></b>					
<u>Chlorine</u>		<u>19</u>	<u>h</u>	<u>11</u>	<u>h</u>
<u>Cyanide</u>	<u>57125</u>	<u>22</u>	<u>g</u>	<u>5.2</u>	<u>g</u>
<b><u>Organic Compounds</u></b>					
<u>Aldrin</u>	<u>39002</u>	<u>3</u>			
<u>gamma-BHC (Lindane)</u>	<u>58899</u>	<u>2</u>		<u>0.08</u>	
<u>Chlordane</u>	<u>57749</u>	<u>2.4</u>		<u>0.0043</u>	
<u>4,4'-DDT</u>	<u>50293</u>	<u>1.1</u>		<u>0.001</u>	
<u>Dieldrin</u>	<u>60571</u>	<u>2.5</u>		<u>0.0019</u>	
<u>alpha-Endosulfan</u>	<u>959988</u>	<u>0.22</u>		<u>0.056</u>	
<u>beta-Endosulfan</u>	<u>33213659</u>	<u>0.22</u>		<u>0.056</u>	

<b>Table 1. Criteria for Protection of Aquatic Life</b>					
<b>Compound</b>	<b><sup>a</sup> CAS Number</b>	<b><sup>b</sup> CMC (µg/L)</b>		<b><sup>b</sup> CCC (µg/L)</b>	
<u>Endrin</u>	<u>72208</u>	<u>0.18</u>		<u>0.0023</u>	
<u>Heptachlor</u>	<u>76448</u>	<u>0.52</u>		<u>0.0038</u>	
<u>Heptachlor Epoxide</u>	<u>1024573</u>	<u>0.52</u>		<u>0.0038</u>	
<u>Pentachlorophenol</u>	<u>87865</u>	<u>20</u>	<u>i</u>	<u>13</u>	<u>i</u>
<u>Polychlorinated Biphenyls PCBs</u>	<u>j</u>			<u>0.014</u>	<u>j</u>
<u>Toxaphene</u>	<u>8001352</u>	<u>0.73</u>		<u>0.0002</u>	
<b>Footnotes for Table 1. Criteria for Protection of Aquatic Life</b>					
<b>a.</b> <u>Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.</u>					
<b>b.</b> <u>See definitions of Acute Criteria (CMC) and Chronic Criteria (CCC), Section 010 of these rules.</u>					
<b>c.</b> <u>Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.c.iii. CMC = CMC column value X WER. CCC = CCC column value X WER.</u>					
<b>d.</b> <u>Criteria expressed as total recoverable (unfiltered) concentrations.</u>					
<b>e.</b> <u>No aquatic life criterion is adopted for inorganic mercury. However, the narrative criteria for toxics in Section 200 of these rules applies. The Department believes application of the human health criterion for methylmercury will be protective of aquatic life in most situations.</u>					
<b>f.</b> <u>Aquatic life criteria for these metals are a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.c.iii. and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the example values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).</u>					
<b>g.</b> <u>Criteria are expressed as weak acid dissociable (WAD) cyanide.</u>					
<b>h.</b> <u>Total chlorine residual concentrations.</u>					
<b>i.</b> <u>Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8). CMC = exp(1.005(pH)-4.830) CCC = exp(1.005(pH)-5.290)</u>					
<b>j.</b> <u>PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016. CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.</u>					

( )

**b.** Table 2 contains criteria set for protection of human health. The Water & Fish criteria apply to waters designated for domestic water supply use. The Fish Only criteria apply to waters designated for primary or secondary contact recreation use. ( )

<b>Table 2. Criteria for Protection of Human Health (based on consumption of:)</b>						
<b>Compound</b>	<b><sup>a</sup> CAS Number</b>	<b>Carcinogen?</b>	<b>Water &amp; Fish (µg/L)</b>		<b>Fish Only (µg/L)</b>	
<b><u>Inorganic Compounds/Metals</u></b>						
<u>Antimony</u>	<u>7440360</u>		<u>5.2</u>	<u>b</u>	<u>190</u>	<u>b</u>
<u>Arsenic</u>	<u>7440382</u>	<u>Y</u>	<u>10</u>	<u>cdj</u>	<u>10</u>	<u>cdj</u>
<p><u>Note: In 2008, Idaho adopted 10 µg/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water+fish consumption, choosing the SDWA MCL due to concerns about background levels that exceed EPA's 304(a) criteria (docket 58-0102-0801). EPA approved this action in 2010. In June 2016, Northwest Environmental Advocates challenged EPA's 2010 approval. Court remanded action back to EPA. On September 15, 2016 EPA disapproved Idaho's adoption of 10 µg/L. Until new criteria are adopted, EPA will use criteria of 6.2 µg/L for exposure through fish consumption only and 0.02 µg/L for exposure through both drinking water + consumption of fish in its NPDES permitting actions. These criteria are published in 1996 Idaho Administrative Code (Subsections 250.01.c, 250.02.a.iv, 250.03.a.i). For more information, go to <a href="http://www.deq.idaho.gov/epa-actions-on-proposed-standards">http://www.deq.idaho.gov/epa-actions-on-proposed-standards</a>.</u></p>						
<u>Beryllium</u>	<u>7440417</u>			<u>e</u>		<u>e</u>
<u>Cadmium</u>	<u>7440439</u>			<u>e</u>		<u>e</u>
<u>Chromium III</u>	<u>16065831</u>			<u>e</u>		<u>e</u>
<u>Chromium VI</u>	<u>18540299</u>			<u>e</u>		<u>e</u>
<u>Copper</u>	<u>7440508</u>		<u>1300</u>	<u>j</u>		
<u>Lead</u>	<u>7439921</u>			<u>e</u>		<u>e</u>
<u>Methylmercury</u>	<u>22967926</u>				<u>0.3mg/kg</u>	<u>i</u>
<u>Nickel</u>	<u>7440020</u>		<u>58</u>	<u>b</u>	<u>100</u>	<u>b</u>
<u>Selenium</u>	<u>7782492</u>		<u>29</u>	<u>b</u>	<u>250</u>	<u>b</u>
<u>Thallium</u>	<u>7440280</u>		<u>0.017</u>	<u>b</u>	<u>0.023</u>	<u>b</u>
<u>Zinc</u>	<u>7440666</u>		<u>870</u>	<u>b</u>	<u>1,500</u>	<u>b</u>
<b><u>Inorganic Compounds/Non-Metals</u></b>						
<u>Cyanide</u>	<u>57125</u>		<u>3.9</u>	<u>b</u>	<u>140</u>	<u>b</u>
<u>Asbestos</u>	<u>1332214</u>		<u>7,000,000 Fibers/L</u>	<u>j</u>		
<b><u>Organic Compounds</u></b>						
<u>Acenaphthene</u>	<u>83329</u>		<u>26</u>	<u>b</u>	<u>28</u>	<u>b</u>
<u>Acenaphthylene</u>	<u>208968</u>			<u>e</u>		<u>e</u>
<u>Acrolein</u>	<u>107028</u>		<u>3.2</u>	<u>b</u>	<u>120</u>	<u>b</u>
<u>Acrylonitrile</u>	<u>107131</u>	<u>Y</u>	<u>0.60</u>	<u>bf</u>	<u>22</u>	<u>bf</u>
<u>Aldrin</u>	<u>309002</u>	<u>Y</u>	<u>2.5E-06</u>	<u>bf</u>	<u>2.5E-06</u>	<u>bf</u>

**Table 2. Criteria for Protection of Human Health (based on consumption of:)**

Compound	<sup>a</sup> CAS Number	Carcinogen?	Water & Fish (µg/L)		Fish Only (µg/L)	
Anthracene	120127		110	b	120	b
alpha-BHC	319846	Y	0.0012	bf	0.0013	bf
beta-BHC	319857	Y	0.036	bf	0.045	bf
gamma-BHC (Lindane)	58899		1.4	b	1.4	b
delta-BHC	319868			e		e
Benzene	71432		3.0	bf	28	b
Benzdine	92875	Y	0.0014	bf	0.033	bf
Benzo(a)Anthracene	56553	Y	0.0042	bf	0.0042	bf
Benzo(b)Fluoranthene	205992	Y	0.0042	bf	0.0042	bf
Benzo(k)Fluoranthene	207089	Y	0.042	bf	0.042	bf
Benzo(ghi)Perylene	191242			e		e
Benzo(a)Pyrene	50328	Y	0.00042	bf	0.00042	bf
Bis(2-Chloroethoxy) Methane	111911			e		e
Bis(2-Chloroethyl) Ether	111444	Y	0.29	bf	6.8	bf
Bis(2-Chloroisopropyl) Ether	108601		220	b	1,200	b
Bis(Chloromethyl) Ether	542881	Y	0.0015	bf	0.055	bf
Bis(2-Ethylhexyl) Phthalate	117817	Y	1.2	bf	1.2	bf
Bromoform	75252	Y	62	bf	380	bf
4-Bromophenyl Phenyl Ether	101553			e		e
Butylbenzyl Phthalate	85687		0.33	b	0.33	b
Carbon Tetrachloride	56235	Y	3.6	bf	15	bf
Chlorobenzene	108907		89	b	270	b
Chlordane	57749	Y	0.0010	bf	0.0010	bf
Chlorodibromomethane	124481	Y	7.4	bf	67	bf
Chloroethane	75003			e		e
2-Chloroethylvinyl Ether	110758			e		e
Chloroform	67663		61	b	730	b
2-Chloronaphthalene	91587		330	b	380	b
2-Chlorophenol	95578		30	b	260	b

**Table 2. Criteria for Protection of Human Health (based on consumption of:)**

Compound	<sup>a</sup> CAS Number	Carcinogen?	Water & Fish (µg/L)		Fish Only (µg/L)	
<u>Chlorophenoxy Herbicide (2,4-D)</u>	<u>94757</u>		<u>1,000</u>	<u>b</u>	<u>3,900</u>	<u>b</u>
<u>Chlorophenoxy Herbicide (2,4,5-TP) [Silvex]</u>	<u>93721</u>		<u>82</u>	<u>b</u>	<u>130</u>	<u>b</u>
<u>4-Chlorophenyl Phenyl Ether</u>	<u>7005723</u>			<u>e</u>		<u>e</u>
<u>Chrysene</u>	<u>218019</u>	<u>Y</u>	<u>0.42</u>	<u>bf</u>	<u>0.42</u>	<u>bf</u>
<u>4,4'-DDD</u>	<u>72548</u>	<u>Y</u>	<u>0.00042</u>	<u>bf</u>	<u>0.00042</u>	<u>bf</u>
<u>4,4'-DDE</u>	<u>72559</u>	<u>Y</u>	<u>5.5E-05</u>	<u>bf</u>	<u>5.5E-05</u>	<u>bf</u>
<u>4,4'-DDT</u>	<u>50293</u>	<u>Y</u>	<u>9.8E-05</u>	<u>bf</u>	<u>9.8E-05</u>	<u>bf</u>
<u>Di-n-Butyl Phthalate</u>	<u>84742</u>		<u>8.2</u>	<u>b</u>	<u>8.3</u>	<u>b</u>
<u>Di-n-Octyl Phthalate</u>	<u>117840</u>			<u>e</u>		<u>e</u>
<u>Dibenzo (a,h) Anthracene</u>	<u>53703</u>	<u>Y</u>	<u>0.00042</u>	<u>bf</u>	<u>0.00042</u>	<u>bf</u>
<u>1,2-Dichlorobenzene</u>	<u>95501</u>		<u>700</u>	<u>b</u>	<u>1,100</u>	<u>b</u>
<u>1,3-Dichlorobenzene</u>	<u>541731</u>		<u>3.5</u>	<u>b</u>	<u>4.8</u>	<u>b</u>
<u>1,4-Dichlorobenzene</u>	<u>106467</u>		<u>180</u>	<u>b</u>	<u>300</u>	<u>b</u>
<u>3,3'-Dichlorobenzidine</u>	<u>91941</u>	<u>Y</u>	<u>0.29</u>	<u>bf</u>	<u>0.48</u>	<u>bf</u>
<u>Dichlorobromomethane</u>	<u>75274</u>	<u>Y</u>	<u>8.8</u>	<u>bf</u>	<u>86</u>	<u>bf</u>
<u>1,1-Dichloroethane</u>	<u>75343</u>			<u>e</u>		<u>e</u>
<u>1,2-Dichloroethane</u>	<u>107062</u>	<u>Y</u>	<u>96</u>	<u>bf</u>	<u>2,000</u>	<u>bf</u>
<u>1,1-Dichloroethylene</u>	<u>75354</u>		<u>310</u>	<u>b</u>	<u>5,200</u>	<u>b</u>
<u>2,4-Dichlorophenol</u>	<u>120832</u>		<u>9.6</u>	<u>b</u>	<u>19</u>	<u>b</u>
<u>1,2-Dichloropropane</u>	<u>78875</u>	<u>Y</u>	<u>8.5</u>	<u>bf</u>	<u>98</u>	<u>bf</u>
<u>1,3-Dichloropropene</u>	<u>542756</u>	<u>Y</u>	<u>2.5</u>	<u>bf</u>	<u>38</u>	<u>bf</u>
<u>Dieldrin</u>	<u>60571</u>	<u>Y</u>	<u>4.2E-06</u>	<u>bf</u>	<u>4.2E-06</u>	<u>bf</u>
<u>Diethyl Phthalate</u>	<u>84662</u>		<u>200</u>	<u>b</u>	<u>210</u>	<u>b</u>
<u>2,4-Dimethylphenol</u>	<u>105679</u>		<u>110</u>	<u>b</u>	<u>820</u>	<u>b</u>
<u>Dimethyl Phthalate</u>	<u>131113</u>		<u>600</u>	<u>b</u>	<u>600</u>	<u>b</u>
<u>Dinitrophenols</u>	<u>25550587</u>		<u>13</u>	<u>b</u>	<u>320</u>	<u>b</u>
<u>2,4-Dinitrophenol</u>	<u>51285</u>		<u>12</u>	<u>b</u>	<u>110</u>	<u>b</u>
<u>2,4-Dinitrotoluene</u>	<u>121142</u>	<u>Y</u>	<u>0.46</u>	<u>bf</u>	<u>5.5</u>	<u>bf</u>
<u>2,6-Dinitrotoluene</u>	<u>606202</u>			<u>e</u>		<u>e</u>
<u>1,2-Diphenylhydrazine</u>	<u>122667</u>	<u>Y</u>	<u>0.25</u>	<u>bf</u>	<u>0.65</u>	<u>bf</u>

**Table 2. Criteria for Protection of Human Health (based on consumption of:)**

<u>Compound</u>	<u><sup>a</sup> CAS Number</u>	<u>Carcinogen?</u>	<u>Water &amp; Fish (µg/L)</u>		<u>Fish Only (µg/L)</u>	
<u>2, 3, 7, 8-TCDD Dioxin</u>	<u>1746016</u>	<u>Y</u>	<u>1.8E-08</u>	<u>bf</u>	<u>1.9E-08</u>	<u>bf</u>
<u>alpha-Endosulfan</u>	<u>959988</u>		<u>7.0</u>	<u>b</u>	<u>8.5</u>	<u>b</u>
<u>beta-Endosulfan</u>	<u>33213659</u>		<u>11</u>	<u>b</u>	<u>14</u>	<u>b</u>
<u>Endosulfan Sulfate</u>	<u>1031078</u>		<u>9.9</u>	<u>b</u>	<u>13</u>	<u>b</u>
<u>Endrin</u>	<u>72208</u>		<u>0.011</u>	<u>b</u>	<u>0.011</u>	<u>b</u>
<u>Endrin Aldehyde</u>	<u>7421934</u>		<u>0.38</u>	<u>b</u>	<u>0.40</u>	<u>b</u>
<u>Ethylbenzene</u>	<u>100414</u>		<u>32</u>	<u>b</u>	<u>41</u>	<u>b</u>
<u>Fluoranthene</u>	<u>206440</u>		<u>6.3</u>	<u>b</u>	<u>6.4</u>	<u>b</u>
<u>Fluorene</u>	<u>86737</u>		<u>21</u>	<u>b</u>	<u>22</u>	<u>b</u>
<u>Heptachlor</u>	<u>76448</u>	<u>Y</u>	<u>2.0E-05</u>	<u>bf</u>	<u>2.0E-05</u>	<u>bf</u>
<u>Heptachlor Epoxide</u>	<u>1024573</u>	<u>Y</u>	<u>0.00010</u>	<u>bf</u>	<u>0.00010</u>	<u>bf</u>
<u>Hexachlorobenzene</u>	<u>118741</u>	<u>Y</u>	<u>0.00026</u>	<u>bf</u>	<u>0.00026</u>	<u>bf</u>
<u>Hexachlorobutadiene</u>	<u>87683</u>	<u>Y</u>	<u>0.031</u>	<u>bf</u>	<u>0.031</u>	<u>bf</u>
<u>Hexachlorocyclohexane (HCH)-Technical</u>	<u>608731</u>	<u>Y</u>	<u>0.027</u>	<u>bf</u>	<u>0.032</u>	<u>bf</u>
<u>Hexachloro- cyclopentadiene</u>	<u>77474</u>		<u>1.3</u>	<u>b</u>	<u>1.3</u>	<u>b</u>
<u>Hexachloroethane</u>	<u>67721</u>		<u>0.23</u>	<u>b</u>	<u>0.24</u>	<u>b</u>
<u>Ideno (1,2,3-cd) Pyrene</u>	<u>193395</u>	<u>Y</u>	<u>0.0042</u>	<u>bf</u>	<u>0.0042</u>	<u>bf</u>
<u>Isophorone</u>	<u>78591</u>	<u>Y</u>	<u>330</u>	<u>bf</u>	<u>6.000</u>	<u>bf</u>
<u>Methoxychlor</u>	<u>72435</u>		<u>0.0054</u>	<u>b</u>	<u>0.0055</u>	<u>b</u>
<u>Methyl Bromide</u>	<u>74839</u>		<u>130</u>	<u>b</u>	<u>3.700</u>	<u>b</u>
<u>Methyl Chloride</u>	<u>74873</u>			<u>e</u>		<u>e</u>
<u>3-Methyl-4-Chlorophenol</u>	<u>59507</u>		<u>350</u>	<u>b</u>	<u>750</u>	<u>b</u>
<u>2-Methyl-4,6-Dinitrophenol</u>	<u>534521</u>		<u>1.6</u>	<u>b</u>	<u>8.6</u>	<u>b</u>
<u>Methylene Chloride</u>	<u>75092</u>		<u>38</u>	<u>b</u>	<u>960</u>	<u>b</u>
<u>Naphthalene</u>	<u>91203</u>			<u>e</u>		<u>e</u>
<u>Nitrobenzene</u>	<u>98953</u>		<u>12</u>	<u>b</u>	<u>180</u>	<u>b</u>
<u>2-Nitrophenol</u>	<u>88755</u>			<u>e</u>		<u>e</u>
<u>4-Nitrophenol</u>	<u>100027</u>			<u>e</u>		<u>e</u>
<u>N-Nitrosodimethylamine</u>	<u>62759</u>	<u>Y</u>	<u>0.0065</u>	<u>bf</u>	<u>9.1</u>	<u>bf</u>
<u>N-Nitrosodi-n-Propylamine</u>	<u>621647</u>	<u>Y</u>	<u>0.046</u>	<u>bf</u>	<u>1.5</u>	<u>bf</u>
<u>N-Nitrosodiphenylamine</u>	<u>86306</u>	<u>Y</u>	<u>3.14</u>	<u>bf</u>	<u>18</u>	<u>bf</u>

<b>Table 2. Criteria for Protection of Human Health (based on consumption of:)</b>						
<b>Compound</b>	<b><sup>a</sup> CAS Number</b>	<b>Carcinogen?</b>	<b>Water &amp; Fish (µg/L)</b>		<b>Fish Only (µg/L)</b>	
<a href="#">Pentachlorobenzene</a>	<a href="#">608935</a>		<a href="#">0.035</a>	<a href="#">b</a>	<a href="#">0.036</a>	<a href="#">b</a>
<a href="#">Pentachlorophenol</a>	<a href="#">87865</a>	<a href="#">Y</a>	<a href="#">0.11</a>	<a href="#">bf</a>	<a href="#">0.12</a>	<a href="#">bf</a>
<a href="#">Phenanthrene</a>	<a href="#">85018</a>			<a href="#">e</a>		<a href="#">e</a>
<a href="#">Phenol</a>	<a href="#">108952</a>		<a href="#">3.800</a>	<a href="#">b</a>	<a href="#">85.000</a>	<a href="#">b</a>
<a href="#">Polychlorinated Biphenyls PCBs</a>	<a href="#">g</a>	<a href="#">Y</a>	<a href="#">0.00019</a>	<a href="#">bfh</a>	<a href="#">0.00019</a>	<a href="#">bfh</a>
<a href="#">Pyrene</a>	<a href="#">129000</a>		<a href="#">8.1</a>	<a href="#">b</a>	<a href="#">8.4</a>	<a href="#">b</a>
<a href="#">1,2,4,5-Tetrachlorobenzene</a>	<a href="#">95943</a>		<a href="#">0.0093</a>	<a href="#">b</a>	<a href="#">0.0094</a>	<a href="#">b</a>
<a href="#">1,1,2,2-Tetrachloroethane</a>	<a href="#">79345</a>	<a href="#">Y</a>	<a href="#">1.4</a>	<a href="#">bf</a>	<a href="#">8.6</a>	<a href="#">bf</a>
<a href="#">Tetrachloroethylene</a>	<a href="#">127184</a>		<a href="#">15</a>	<a href="#">b</a>	<a href="#">23</a>	<a href="#">b</a>
<a href="#">Toluene</a>	<a href="#">108883</a>		<a href="#">47</a>	<a href="#">b</a>	<a href="#">170</a>	<a href="#">b</a>
<a href="#">Toxaphene</a>	<a href="#">8001352</a>	<a href="#">Y</a>	<a href="#">0.0023</a>	<a href="#">bf</a>	<a href="#">0.0023</a>	<a href="#">bf</a>
<a href="#">1,2-Trans-Dichloroethylene</a>	<a href="#">156605</a>		<a href="#">120</a>	<a href="#">b</a>	<a href="#">1,200</a>	<a href="#">b</a>
<a href="#">1,2,4-Trichlorobenzene</a>	<a href="#">120821</a>		<a href="#">0.24</a>	<a href="#">b</a>	<a href="#">0.24</a>	<a href="#">b</a>
<a href="#">1,1,1-Trichloroethane</a>	<a href="#">71556</a>		<a href="#">11,000</a>	<a href="#">b</a>	<a href="#">56,000</a>	<a href="#">b</a>
<a href="#">1,1,2-Trichloroethane</a>	<a href="#">79005</a>	<a href="#">Y</a>	<a href="#">4.9</a>	<a href="#">bf</a>	<a href="#">29</a>	<a href="#">bf</a>
<a href="#">Trichloroethylene</a>	<a href="#">79016</a>		<a href="#">2.6</a>	<a href="#">b</a>	<a href="#">11</a>	<a href="#">b</a>
<a href="#">2,4,5-Trichlorophenol</a>	<a href="#">95954</a>		<a href="#">140</a>	<a href="#">b</a>	<a href="#">190</a>	<a href="#">b</a>
<a href="#">2,4,6-Trichlorophenol</a>	<a href="#">88062</a>		<a href="#">1.5</a>	<a href="#">b</a>	<a href="#">2.0</a>	<a href="#">b</a>
<a href="#">Vinyl Chloride</a>	<a href="#">75014</a>	<a href="#">Y</a>	<a href="#">0.21</a>	<a href="#">bf</a>	<a href="#">5.0</a>	<a href="#">bf</a>
<b>Footnotes for Table 2. Criteria for Protection of Human Health</b>						
<b>a.</b> <a href="#">Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.</a>						
<b>b.</b> <a href="#">This criterion is based on input values to human health criteria calculation specified in Idaho's Technical Support Document (TSD) for Human Health Criteria Calculations - 2015. Criteria for non-carcinogens are calculated using the formula:</a>						

**Table 2. Criteria for Protection of Human Health (based on consumption of:)**

<u>Compound</u>	<u><sup>a</sup> CAS Number</u>	<u>Carcinogen?</u>	<u>Water &amp; Fish</u> <u>(µg/L)</u>	<u>Fish Only</u> <u>(µg/L)</u>
<p><b><u>AWQC = RfD * RSC * <math>\left( \frac{BW}{DI + (FI * BAF)} \right)</math></u></b></p> <p><u>and criteria for carcinogens are calculated using the formula:</u></p> <p><b><u>AWQC = RSD * <math>\left( \frac{BW}{DI + (FI * BAF)} \right)</math></u></b></p> <p><u>Where:</u>  <u>AWQC = Ambient water quality criterion (mg/L)</u>  <u>BW = Human Body Weight (kg), 80 is used in these criteria</u>  <u>DI = Drinking Water Intake, (L/day), 2.4 is used in these criteria</u>  <u>FI = Fish Intake, (kg/day), 0.0665 is used in these criteria</u>  <u>BAF = Bioaccumulation Factor, L/kg, chemical specific value, see TSD</u>  <u>RfD = Reference dose (mg/kg-day), chemical specific value, see TSD</u></p> <p><u>RSD = <math>\frac{\text{Target Incremental Cancer Risk}}{\text{Cancer Potency Factor}}</math> (mg/kg-day), chemical specific value, see TSD</u></p> <p><u>RSC = Relative Source Contribution, chemical specific value, see TSD</u></p>				
<p><b><u>c. Inorganic forms only.</u></b></p>				
<p><b><u>d. Criterion expressed as total recoverable (unfiltered) concentrations.</u></b></p>				
<p><b><u>e. No numeric human health criteria has been established for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the narrative criteria for toxics from Section 200 of these rules.</u></b></p>				
<p><b><u>f. EPA guidance allows states to choose from a range of 10<sup>-4</sup> to 10<sup>-6</sup> for the incremental increase in cancer risk used in human health criteria calculation. Idaho has chosen to base this criterion on carcinogenicity of 10<sup>-5</sup> risk.</u></b></p>				
<p><b><u>g. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016. CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.</u></b></p>				
<p><b><u>h. This criterion applies to total PCBs, (e.g. the sum of all congener, isomer, or Aroclor analyses).</u></b></p>				
<p><b><u>i. This fish tissue residue criterion (TRC) for methylmercury is based on a human health reference dose (RfD) of 0.0001 mg/kg body weight-day; a relative source contribution (RSC) estimated to be 27% of the RfD; a human body weight (BW) of 70 kg (for adults); and a total fish consumption rate of 0.0175 kg/day for the general population, summed from trophic level (TL) breakdown of TL2 = 0.0038 kg fish/day + TL3 = 0.0080 kg fish/day + TL4 = 0.0057 kg fish/day. This is a criterion that is protective of the general population. A site-specific criterion or a criterion for a particular subpopulation may be calculated by using local or regional data, rather than the above default values, in the formula: TRC = [BW x {RfD - (RSCxRfD)}] / TL. In waters inhabited by species listed as threatened or endangered under the Endangered Species Act or designated as their critical habitat, the Department will apply the human health fish tissue residue criterion for methylmercury to the highest trophic level available for sampling and analysis.</u></b></p>				
<p><b><u>j. This criterion is based on the drinking water Maximum Containment Level (MCL).</u></b></p>				

( )

**03. Applicability.** The criteria established in Section 210 are subject to the general rules of applicability in the same way and to the same extent as are the other numeric chemical criteria when applied to the same use classifications. Mixing zones may be applied to toxic substance criteria subject to the limitations set forth in Section 060 and set out below. (3-25-16)

**a.** For all waters for which the Department has determined mixing zones to be applicable, the toxic substance criteria apply at the boundary of the mixing zone(s) and beyond. Absent an authorized mixing zone, the toxic substance criteria apply throughout the waterbody including at the end of any discharge pipe, canal or other discharge point. (3-25-16)

**b.** Low flow design conditions. Water quality-based effluent limits and mixing zones for toxic substances shall be based on the following low flows in perennial receiving streams. Numeric chemical criteria may be exceeded in perennial streams outside any applicable mixing zone only when flows are less than these values:

Aquatic Life		Human Health	
CMC (“acute” criteria)	1Q10 or 1B3	Non-carcinogens	Harmonic mean flow
CCC (“chronic” criteria)	7Q10 or 4B3	Carcinogens	Harmonic mean flow

(3-25-16)

i. Where “1Q10” is the lowest one-day flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

ii. Where “1B3” is biologically based and indicates an allowable exceedance of once every three (3) years. It may be determined by EPA’s computerized method (DFLOW model); (5-3-03)

iii. Where “7Q10” is the lowest average seven (7) consecutive day low flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

iv. Where “4B3” is biologically based and indicates an allowable exceedance for four (4) consecutive days once every three (3) years. It may be determined by EPA’s computerized method (DFLOW model); (5-3-03)

v. Where the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows. (5-3-03)

**c.** Application of aquatic life metals criteria. (3-25-16)

i. For metals other than cadmium, for purposes of calculating hardness dependent aquatic life criteria from the equations in Subsection 210.02, the minimum hardness allowed for use in those equations shall not be less than twenty-five (25) mg/l, as calcium carbonate, even if the actual ambient hardness is less than twenty-five (25) mg/l as calcium carbonate. For cadmium, the minimum hardness for use in those equations shall not be less than ten (10) mg/l, as calcium carbonate. The maximum hardness allowed for use in those equations shall not be greater than four hundred (400) mg/l, as calcium carbonate, except as specified in Subsections 210.03.c.ii. and 210.03.c.iii., even if the actual ambient hardness is greater than four hundred (400) mg/l as calcium carbonate. (3-29-10)

ii. The hardness values used for calculating aquatic life criteria for metals at design discharge conditions shall be representative of the ambient hardnesses for a receiving water that occur at the design discharge conditions given in Subsection 210.03.b. (5-3-03)

iii. Except as otherwise noted, the aquatic life criteria for metals (~~compounds #1 through #13~~ arsenic through zinc in ~~the criteria #Table 1 of in~~ Subsection 210.02~~1~~) are expressed as dissolved metal concentrations. Unless otherwise specified by the Department, dissolved concentrations are considered to be concentrations recovered from a sample which has passed through a forty-five hundredths (0.45) micron filter. For the purposes of calculating aquatic life criteria for metals from the equations in footnotes ~~ec.~~ and ~~fi.~~ in ~~the criteria #Table 1~~ in Subsection 210.01, the water effect ratio is computed as a specific pollutant’s acute or chronic toxicity values

measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. The water-effect ratio shall be assigned a value of one (1.0), except where the Department assigns a different value that protects the designated uses of the water body from the toxic effects of the pollutant, and is derived from suitable tests on sampled water representative of conditions in the affected water body, consistent with the design discharge conditions established in Subsection 210.03.b. For purposes of calculating water effects ratios, the term acute toxicity value is the toxicity test results, such as the concentration lethal one-half (1/2) of the test organisms (i.e., LC50) after ninety-six (96) hours of exposure (e.g., fish toxicity tests) or the effect concentration to one-half of the test organisms, (i.e., EC50) after forty-eight (48) hours of exposure (e.g., daphnia toxicity tests). For purposes of calculating water effects ratios, the term chronic value is the result from appropriate hypothesis testing or regression analysis of measurements of growth, reproduction, or survival from life cycle, partial life cycle, or early life stage tests. The determination of acute and chronic values shall be according to current standard protocols (e.g., those published by the American Society for Testing and Materials (ASTM)) or other comparable methods. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in Subsection 210.02 shall be as required in Subsection 210.03.c.ii. Water hardness shall be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium shall be approximately the same in laboratory toxicity testing water as in the site water, or be similar to average ratios of laboratory waters used to derive the criteria. (4-6-05)( )

iv. Implementation Guidance for the Idaho Mercury Water Quality Criteria. (4-6-05)

(1) The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” describes in detail suggested methods for discharge related monitoring requirements, calculation of reasonable potential to exceed (RPTE) water quality criteria in determining need for mercury effluent limits, and use of fish tissue mercury data in calculating mercury load reductions. This guidance, or its updates, will provide assistance to the Department and the public when implementing the methylmercury criterion. The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” also provides basic background information on mercury in the environment, the novelty of a fish tissue criterion for water quality, the connection between human health and aquatic life protection, and the relation of environmental programs outside of Clean Water Act programs to reducing mercury contamination of the environment. The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” is available at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, and on the DEQ website at [http://www.deq.idaho.gov/media/639808-idaho\\_mercury\\_wq\\_guidance.pdf](http://www.deq.idaho.gov/media/639808-idaho_mercury_wq_guidance.pdf). (4-6-05)

(2) The implementation of a fish tissue criterion in NPDES permits and TMDLs requires a non-traditional approach, as the basic criterion is not a concentration in water. In applying the methylmercury fish tissue criterion in the context of NPDES effluent limits and TMDL load reductions, the Department will assume change in fish tissue concentrations of methylmercury are proportional to change in water body loading of total mercury. Reasonable potential to exceed (RPTE) the fish tissue criterion for existing NPDES sources will be based on measured fish tissue concentrations potentially affected by the discharge exceeding a specified threshold value, based on uncertainty due to measurement variability. This threshold value is also used for TMDL decisions. Because measured fish tissue concentrations do not reflect the effect of proposed new or increased discharge of mercury, RPTE in these cases will be based upon an estimated fish tissue methylmercury concentration, using projected changes in waterbody loading of total mercury and a proportional response in fish tissue mercury. For the above purposes, mercury will be measured in the skinless filets of sport fish using techniques capable of detecting tissue concentrations down to point zero five (0.05) mg/kg. Total mercury analysis may be used, but will be assumed to be all methylmercury for purposes of implementing the criterion. (4-6-05)

d. Application of toxics criteria. (3-25-16)

i. Frequency and duration for aquatic life toxics criteria. ~~Column B1~~ CMC column criteria in Table 1 in Subsection 210.01 are concentrations not to be exceeded for a one-hour average more than once in three (3) years. ~~Column B2~~ CCC column criteria in Table 1 in Subsection 210.01 are concentrations not to be exceeded for a four-day average more than once in three (3) years. (3-25-16)( )

ii. Frequency and duration for human health toxics criteria. ~~Columns C1 and C2-e~~ Criteria in Table 2 in Subsection 210.01 are not to be exceeded based on an annual harmonic mean. (3-25-16)( )

04. National Pollutant Discharge Elimination System Permitting. For the purposes of NPDES

permitting, interpretation and implementation of metals criteria listed in Subsection 210.02 should be governed by the following standards, that are hereby incorporated by reference, in addition to other scientifically defensible methods deemed appropriate by the Department; provided, however, any identified conversion factors within these documents are not incorporated by reference. Metals criteria conversion factors are identified in Subsection 210.02 of this rule.

(5-3-03)

a. "Guidance Document on Dissolved Criteria -- Expression of Aquatic Life Criteria," EPA, October 1993, <http://www.deq.idaho.gov/media/827413-epa-guidance-dissolved-criteria-1093.pdf>. (4-5-00)

b. "Guidance Document on Dynamic Modeling and Translators," EPA, August 1993, <http://www.deq.idaho.gov/media/827417-epa-guidance-dynamic-modeling-translators-0893.pdf>. (4-5-00)

c. "Guidance Document on Clean Analytical Techniques and Monitoring," EPA, October 1993, <http://www.deq.idaho.gov/media/827421-epa-guidance-analytical-techniques-1093.pdf>. (4-5-00)

d. "Interim Guidance on Determination and Use of Water-Effect Ratios for Metals," EPA, February 1994, <http://www.deq.idaho.gov/media/827409-epa-guidance-water-effect-ratios-for-metals-0294.pdf>. (4-5-00)

e. "Technical Support Document for Water Quality-Based Toxics Control." EPA, March 1991. <http://www.deq.idaho.gov/media/60177101/58-0102-1201-epa-technical-support-document-1991.pdf>. (3-25-16)

**05. Development of Toxic Substance Criteria.** (4-5-00)

a. Aquatic Life Communities Criteria. Numeric criteria for the protection of aquatic life uses not identified in these rules for toxic substances, may be derived by the Department from the following information: (4-5-00)

i. Site-specific criteria developed pursuant to Section 275; (4-5-00)

ii. Effluent biomonitoring, toxicity testing and whole-effluent toxicity determinations; (4-5-00)

iii. The most recent recommended criteria defined in EPA's ECOTOX database. When using EPA recommended criteria to derive water quality criteria to protect aquatic life uses, the lowest observed effect concentrations (LOECs) shall be considered; or (3-25-16)

iv. Scientific studies including, but not limited to, instream benthic assessment or rapid bioassessment. (4-5-00)

b. Human Health Criteria. (4-5-00)

Note: In 2016, Idaho updated human health criteria for 104 toxic substances (10 of which are new). Final rule submitted to EPA on December 13, 2016 (docket 58-0102-1201). Until EPA approves the revisions in this rule docket, the human health criteria published in [2005 Idaho Administrative Code](#) in Section 210 continue to apply and are effective for CWA purposes. These criteria are listed in [Numeric Criteria for Toxic Substances \(2005\)](#). The previous human health criteria based on a fish consumption rate of 6.5 g/day published in [2005 Idaho Administrative Code](#) in Section 210.05.b.i. continue to apply and are effective for CWA purposes. Until EPA approves the revisions in this rule docket, the additional fish-plus-water criterion for copper; the revisions in Sections 070.08, 210.03, 210.04, 210.05.b.ii. and 400.06; and the definition of harmonic mean published in [2015 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

i. When numeric criteria for the protection of human health are not identified in these rules for toxic substances, quantifiable criteria may be derived by the Department using best available science on toxicity thresholds (i.e. reference dose or cancer slope factor), such as defined in EPA's Integrated Risk Information System (IRIS) or other peer-reviewed source acceptable to the Department. (3-25-16)

ii. When using toxicity thresholds to derive water quality criteria to protect human health, a fish consumption rate representative of the population to be protected, a mean adult body weight, an adult 90th percentile water ingestion rate, a trophic level weighted BAF or BCF, and a hazard quotient of one (1) for non-carcinogens or a cancer risk level of  $10^{-5}$  for carcinogens shall be utilized. (3-25-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**401. POINT SOURCE WASTEWATER TREATMENT REQUIREMENTS.**

Unless more stringent limitations are necessary to meet the applicable requirements of Sections 200 through 300, or unless specific exemptions are made pursuant to Subsection 080.02, wastewaters discharged into surface waters of the state must have the following characteristics: (4-11-06)

- 01. Temperature.** The wastewater must not affect the receiving water outside the mixing zone so that: (7-1-93)
- a. The temperature of the receiving water or of downstream waters will interfere with designated beneficial uses. (7-1-93)
  - b. Daily and seasonal temperature cycles characteristic of the water body are not maintained. (7-1-93)
  - c. If temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge due to natural background conditions, then wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C. (3-29-12)

Note: Submitted to EPA as a temporary rule on July 20, 2011, and as a final rule on August 7, 2012 (docket 58-0102-1101). This revision removed the numeric limits on point source induced changes in receiving water temperature. Until EPA approves this revision, the previous treatment requirements published in [2011 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

- 02. Turbidity.** The wastewater must not increase the turbidity of the receiving water outside the mixing zone by: (7-1-93)
- a. More than five (5) NTU (Nephelometric Turbidity Units) over background turbidity, when background turbidity is fifty (50) NTU or less; or (7-1-93)
  - b. More than ten percent (10%) increase in turbidity when background turbidity is more than fifty (50) NTU, not to exceed a maximum increase of twenty-five (25) NTU. (7-1-93)
- ~~**03. Total Chlorine Residual.** The wastewater must not affect the receiving water outside the mixing zone so that its total chlorine residual concentration exceeds eleven one thousandths (0.011) mg/l. (1-1-89)~~

# **IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

## **58.01.05 – RULES AND STANDARDS FOR HAZARDOUS WASTE**

### **DOCKET NO. 58-0105-1701**

#### **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. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before August 16, 2017. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to ensure that the state rules remain consistent with federal regulations. Idaho's Rules and Standards for Hazardous Waste, IDAPA 58.01.05, are updated annually to maintain consistency with the federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). This proposed rule updates federal regulations incorporated by reference to include those revised as of July 1, 2017. Specific citations of 40 CFR Part 262, contained in IDAPA 58.01.05.006, have been updated to coincide with a reorganization of this part of the federal regulations. In addition, this rulemaking makes a minor correction to previous incorporation in IDAPA 58.01.05.013 to clarify that 40 CFR 124.15(b)(2) is being expressly excluded from the incorporation by reference.

Groups interested in hazardous waste and handlers of hazardous waste including generators, transporters, and treatment, storage, and disposal facilities may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2017 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2018 legislative session if adopted by the Board and approved by the Legislature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

Adoption of federal regulations is necessary to maintain program primacy. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rule.

In compliance with Idaho Code 67-5223(4), DEQ prepared a brief synopsis detailing the substantive difference between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference can be obtained at [www.deq.idaho.gov/58-0105-1701](http://www.deq.idaho.gov/58-0105-1701) or by contacting the undersigned.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking and because DEQ has no discretion with respect to adopting EPA's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). Whenever possible, DEQ incorporates federal regulations by reference to ensure that the state rules are consistent with federal regulations.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact Matt Alvarado at [matt.alvarado@deq.idaho.gov](mailto:matt.alvarado@deq.idaho.gov) or (208) 373-0554.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before August 30, 2017.

DATED this 2nd day of August, 2017.

Paula J. Wilson, Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton St.  
Boise, ID 83706-1255  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0105-1701**  
**(Only Those Sections With Amendments Are Shown.)**

**002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.**

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260 - 268, 270, 273, 278, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2016~~7~~, including any notes and appendices therein, unless expressly provided otherwise in these rules. ~~(3-29-17)~~( )

**01. Exceptions.** Nothing in 40 CFR Parts 260 - 268, 270, 273, 278, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (5-8-09)

**02. Availability of Referenced Material.** The federal regulations adopted by reference throughout these rules are maintained at the following locations: (7-2-97)

- a. U.S. Government Printing Office, <http://www.ecfr.gov/cgi-bin/ECFR>; and (3-25-16)
- b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208) 334-3316; and (7-2-97)
- c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502. (7-2-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. HAZARDOUS WASTE MANAGEMENT SYSTEM.**

40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016~~7~~. For the purposes of 40 CFR 260.10 in the definition of electronic manifest and electronic

manifest system, "EPA" shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 260.10, in the definition of hazardous waste constituent, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, "Federal Register" shall be defined as the Idaho Administrative Bulletin. (3-29-17)( )

**005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.**

40 CFR Part 261 and all Subparts (excluding 261.4(b)(17)), except the language "in the Region where the sample is collected" in 40 CFR 261.4(e)(3)(iii), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016. For purposes of 40 CFR 261.10 and 40 CFR 261.11, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261.4(b)(11)(ii), 40 CFR 261.39(a)(5), 40 CFR 261.41, and 40 CFR 261 Appendix IX, "EPA" shall be defined as the U.S. Environmental Protection Agency. Copies of annual reports and advance notifications under these sections shall also be sent to the Director. (3-29-17)( )

**01. Hazardous Secondary Materials Managers Emergency Notification.** In addition to the emergency notification required by 40 CFR 261.411(d)(3) and 261.420(f)(4)(ii), the emergency coordinator must also immediately notify the Idaho Office of Emergency Management by telephone, 1-800-632-8000, to file an identical report. (3-29-17)

**02. Excluded Wastes.** Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by Envirosafe Services of Idaho, Inc. (ESII) at ESII's facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (3-16-96)

**a. Verification Testing Requirements.** Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.02.b. and 005.02.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. (3-29-17)

**b. Initial Verification Testing.** (3-16-96)

**i.** For purposes of Subsections 005.02.b., "new source" shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.02.d. (3-29-17)

**ii.** Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (3-16-96)

(1) The waste profile information; and (3-16-96)

(2) The name and address of the generator. (3-16-96)

**iii.** The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.02.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.02.d. (3-29-17)

**iv.** If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.02.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.02.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. (3-29-17)

**v.** CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: (3-16-96)

(1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.02.d.; and (3-29-17)

(2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.02.b.iv. (3-29-17)

vi. For purposes of Subsections 005.02.b. and 005.02.c., “batch” shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. (3-29-17)

c. Subsequent Verification Testing. (3-16-96)

i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.02.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. (3-29-17)

ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the CSEAFD meets the delisting levels specified in Subsection 005.02.d. (3-29-17)

iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. (3-16-96)

iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.02.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.02.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. (3-29-17)

v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.02.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be: (3-29-17)

(1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.02.d.; or (3-29-17)

(2) Managed and disposed of in accordance with Subtitle C of RCRA. (3-16-96)

vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.02.d. (3-29-17)

d. Delisting Levels. (3-16-96)

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

antimony	0.06	mercury	0.009
arsenic	0.50	nickel	1
barium	7.60	selenium	0.16
beryllium	0.010	silver	0.30
cadmium	0.050	thallium	0.020
chromium	0.33	vanadium	2
lead	0.15	zinc	70

(3-16-96)

- ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. (3-16-96)
- e. Modification of Treatment Process. (3-16-96)
- i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification. (3-16-96)
- ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification. (3-16-96)
- iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified. (3-16-96)
- iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental Quality, Waste Management and Remediation Division, 1410 N. Hilton, Boise, Idaho 83706. (3-29-12)
- f. Records and Data Retention and Submittal. (3-16-96)
- i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated. (3-16-96)
- ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA. (3-16-96)
- iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department. (3-16-96)
- iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion." (3-16-96)
- g. Facility Merger and Name Change. On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII's facility merging with American Ecology. This created a name change from EnviroSAFE Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to EnviroSAFE Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc. (3-15-02)

**006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.**

**01. Incorporation by Reference.** 40 CFR Part 262 and all Subparts ~~(excluding Subparts I and J and 40 CFR 262.10(j), 262.34(j), (k), (l))~~, except for the language "for the Region in which the generator is located" in 40 CFR 262.42(a)(2) and 40 CFR 262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of

July 1, 2016<sup>7</sup>. For purposes of 40 CFR 262.~~5382~~, 262.~~5583~~, and 262.~~5684~~, “EPA” shall be defined as the U.S. Environmental Protection Agency. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.20, 262.21, 262.24, and 262.25, ~~262.51, 262.54(e), 262.54(g)(1), 262.55, 262.56, 262.60, and 262.85(g)~~, EPA or Environmental Protection Agency shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262, Subparts ~~E, F, H, and 40 CFR 262.41(a)(4)~~, “United States or U.S.” shall be defined as the United States. ~~(3-29-17)( )~~

**02. Generator Emergency Notification.** In addition to the emergency notification required by 40 CFR ~~265.56(d)(2), 262.34(d)(5)(iv)(C) 262.16(b)(9)(iv)(C) and 262.265(d)(2)~~, (see 40 CFR ~~262.34(a)(4) 262.17(a)(6), 263.30(c)(1), and 264.56(d)(2)~~, and 265.56(d)(2)) the emergency coordinator must also immediately notify the Idaho Office of Emergency Management by telephone, 1-800-632-8000, to file an identical report. ~~(3-15-02)( )~~

**007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.**

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), “United States” shall be defined as the United States. For the purposes of 40 CFR 263.20(a), “EPA” shall be defined as U.S. Environmental Protection Agency. ~~(3-29-17)( )~~

**008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.**

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. For purposes of 40 CFR Subsection 264.12(a), “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.71 and 264.1082(c)(4)(ii), “EPA” shall be defined as the U.S. Environmental Protection Agency. ~~(3-29-17)( )~~

**009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.**

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.1(c)(4), 265.1(c)(15), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)), except the language contained in 40 CFR 265.340(b)(2) as replaced with: “The following requirements continue to apply even when the owner or operator has demonstrated compliance with the MACT requirements of part 63, subpart EEE of this chapter: 40 CFR 265.351 (closure) and the applicable requirements of Subparts A through H, BB and CC of this part.” are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. For purposes of 40 CFR Subsection 265.12(a), “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.71 and 265.1083(c)(4)(ii), “EPA” shall be defined as the U.S. Environmental Protection Agency. ~~(3-29-17)( )~~

**010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.**

40 CFR Part 266 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. ~~(3-29-17)( )~~

**011. LAND DISPOSAL RESTRICTIONS.**

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>, except for 40 CFR 268.1(e)(3), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. For purposes of 40 CFR 268.(2)(j) “EPA” shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), “Administrator” shall be defined as U.S. Environmental Protection Agency Administrator. In 40 CFR 268.7(a)(9)(iii), “D009” is excluded, (from lab packs as noted in 40 CFR Part 268 Appendix IV.). ~~(3-29-17)( )~~

**012. HAZARDOUS WASTE PERMIT PROGRAM.**

40 CFR Part 270 and all Subparts, except 40 CFR 270.1(c)(2)(ix), 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(2), 270.10(f)(3), 270.10(g), 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively. (3-29-17)( )

**013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).**

40 CFR Part 124, Subparts A, B and G are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>, except that the last sentence of 40 CFR 124.10(b)(1), 40 CFR 124.15(b)(2) 40 CFR 124.19, the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively. (3-29-17)( )

**014. (RESERVED)**

**015. STANDARDS FOR THE MANAGEMENT OF USED OIL.**

**01. Incorporation by Reference.** 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. For purposes of 40 CFR 279.43(c)(3)(ii) “Director” shall be defined as the Director, U.S.DOT Office of Hazardous Materials Regulation. (3-29-17)( )

**02. Used Oil as a Dust Suppressant.** 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must: (2-11-94)

**a.** Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255; and (2-11-94)

**b.** Demonstrate how the requirements of 40 CFR 279.82(b) will be met. (2-11-94)

**016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.**

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. For purposes of 40 CFR 273.32(a)(3), “EPA” shall be defined as the U.S. Environmental Protection Agency. (3-29-17)( )

**017. CRITERIA FOR THE MANAGEMENT OF GRANULAR MINE TAILINGS (CHAT) IN ASPHALT CONCRETE AND PORTLAND CEMENT CONCRETE IN TRANSPORTATION CONSTRUCTION PROJECTS FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS.**

40 CFR Part 278 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. (3-29-17)( )

**018. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT.**

40 CFR Part 267 and all Subparts, except 40 CFR 267.150, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. (3-29-17)( )

## **IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **58.01.25 – RULES REGULATING THE IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM**

**DOCKET NO. 58-0125-1701**

#### **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. This action is authorized by Sections 39-105, 39-107, and 39-175C, Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before August 18, 2017. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to ensure that the Rules Regulating the Idaho Pollutant Discharge Elimination System Program (IPDES), IDAPA 58.01.25, remain consistent with federal regulations. This rulemaking proposes changes to the current rules to provide a smoother transition for the regulated community when DEQ becomes the permitting authority. The federal regulations incorporated by reference will be updated with the July 1, 2017 Code of Federal Regulations (CFR) effective date. The July 1, 2017 CFR is a codification of federal regulations published in the Federal Register as of July 1, 2017. In addition to updating the incorporated by reference date, this rulemaking proposes changes to the IPDES rules based on the following federal rulemakings.

In December 2015, EPA's rule on electronic reporting (eReporting Rule) became effective for NPDES permitting authorities. This rule requires commensurate changes to portions of the IPDES rules with regard to updating electronic reporting requirements for the state and for facilities permitted under the program. DEQ is proposing to update those portions of the IPDES rules affected by this federal rulemaking by including the electronic reporting requirements found in 40 CFR Part 127.

On January 9, 2017, EPA's small Municipal Separate Storm Sewer System (MS4) remand rule became effective. Changes to these regulations are in response to the remand from the US Court of Appeals for the Ninth Circuit. These changes allow for the state to select an approach for permitting these discharges and establishing the method for permittees to meet the maximum extent practicable standards established by the Clean Water Act.

Additional changes to the federal regulations include updates to effluent limitation guidelines for steam electric generating point sources, oil and gas point sources, and approved test methods for analysis of parameters in effluent discharges. The IPDES rules will also be updated to delete references to the vessel general permit. The agency will not be taking over responsibility for this element of the NPDES program. No state has implemented the vessel general permit portion of the NPDES program. These permits primarily regulate commercial vessels in the Snake River and large lakes.

DEQ also proposes to include nonsubstantive revisions to make typographical corrections, provide clarity, and maintain consistency with state and federal law.

Major and minor municipal dischargers; industrial dischargers; facilities, organizations and individuals seeking coverage under a general permit; facilities that currently have or will have a pretreatment permit to a wastewater facility; and other groups interested in point source discharges to Idaho's surface waters may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2017 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2018 legislative session if adopted by the Board and approved by the Legislature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

It is necessary to update the IPDES rules to maintain consistency with federal regulations implementing the Clean Water Act. Adoption of federal regulations is necessary for EPA approval of the IPDES program and delegated state authority of Clean Water Act programs.

Incorporating the federal regulations by reference benefits the agency and simplifies the overall rule chapter by incorporating those sections of the federal regulations that must be adhered to in the course of developing an IPDES program. The alternative to incorporating the federal regulations by reference is to restate the federal regulations in the IPDES rules. Incorporation by reference saves the agency the administrative costs associated with maintaining rules. Incorporation by reference is estimated to reduce the number of rule pages by 1,219 and results in an administrative rule publication cost savings of \$61,000 annually.

In compliance with Idaho Code 67-5223(4), DEQ prepared a brief synopsis detailing the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference is available at [www.deq.idaho.gov/58-0125-1701](http://www.deq.idaho.gov/58-0125-1701) or by contacting the undersigned.

**NEGOTIATED RULEMAKING:** The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the May 2017 issue of the Idaho Administrative Bulletin, and a preliminary draft rule was made available for public review. Meetings were held on May 25 and July 11, 2017. Key information was posted on the DEQ rulemaking web page and distributed to the public. Members of the public participated in the negotiated rulemaking process by attending the meetings and by submitting written comments.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding development of the rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule drafts, written public comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at [www.deq.idaho.gov/58-0125-1701](http://www.deq.idaho.gov/58-0125-1701).

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Paula Wilson at [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov), (208) 373-0418.

Anyone may submit written comments by mail, fax or email at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 1, 2017.

DATED this 2nd day of August, 2017

Paula J. Wilson, Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton St.  
Boise, ID 83706-1255  
Phone: (208) 373-0418  
Fax: (208) 373-0481  
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0125-1701  
(Only Those Sections With Amendments Are Shown.)

003. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

**01. Availability of Reference Material.** Codes, standards and regulations may be incorporated by reference in this rule pursuant to Section 67-5229, Idaho Code. Codes, standards or regulations adopted by reference throughout this rule are available in the following locations: (3-24-16)

a. Department of Environmental Quality. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. (3-24-16)

b. Law Library. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051. (3-24-16)

c. Electronic Code of Federal Regulations (eCFR) <http://www.ecfr.gov/cgi-bin/ECFR>. (3-24-16)

**02. Incorporation by Reference.** The following documents are incorporated by reference into these rules. Any reference in these rules to requirements, procedures, or specific forms contained in any section or subsection shall constitute the full adoption by reference of that section or subsection, including any notes and appendices therein, unless expressly provided otherwise in these rules: (3-24-16)

a. 40 CFR 122.21(r), revised as of July 1, 2015~~7~~ (Application Requirements for Facilities with Cooling Water Intake Structures); ~~(3-24-16)~~( )

b. 40 CFR 122.23, revised as of July 1, 2015~~7~~ (Concentrated Animal Feeding Operations); ~~(3-24-16)~~( )

c. 40 CFR 122.24, revised as of July 1, 2015~~7~~ (Concentrated Aquatic Animal Production Facilities); ~~(3-24-16)~~( )

d. 40 CFR 122.25, revised as of July 1, 2015~~7~~ (Aquaculture Projects); ~~(3-24-16)~~( )

e. 40 CFR 122.26(a) through (b) and 40 CFR 122.26(e) through (g), revised as of July 1, 2015~~7~~ (Storm Water Discharges); ~~(3-24-16)~~( )

f. 40 CFR 122.27, revised as of July 1, 2015~~7~~ (Silvicultural Activities); ~~(3-24-16)~~( )

g. 40 CFR 122.29(d), revised as of July 1, 2015~~7~~ (Effect of Compliance with New Source Performance Standards); ~~(3-24-16)~~( )

h. 40 CFR 122.30 and 40 CFR 122.32 through 40 CFR 122.37, revised as of July 1, 2015~~7~~ (Requirements and Guidance for Small Municipal Separate Storm Sewer Systems); ~~(3-24-16)~~( )

i. 40 CFR 122.42(e), revised as of July 1, 2015~~7~~ (Additional Conditions Applicable to NPDES Permits for Concentrated Animal Feeding Operations); ~~(3-24-16)~~( )

j. Appendix A to 40 CFR 122, revised as of July 1, 2015~~7~~ (NPDES Primary Industry Categories); ~~(3-24-16)~~( )

k. Appendix C to 40 CFR 122, revised as of July 1, 2015~~7~~ (Criteria for Determining a Concentrated Aquatic Animal Production Facility); ~~(3-24-16)~~( )

- l.** [Appendix D to 40 CFR 122](#), revised as of July 1, 201~~5~~7 (NPDES Permit Application Testing Requirements); ~~(3-24-16)~~(    )
- m.** [Appendix J to 40 CFR 122](#), revised as of July 1, 201~~5~~7 (NPDES Permit Testing Requirements for Publicly Owned Treatment Works); ~~(3-24-16)~~(    )
- n.** [40 CFR 125.1](#) through [40 CFR 125.3](#) (Subpart A), revised as of July 1, 201~~5~~7 (Criteria and Standards for Imposing Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Clean Water Act); ~~(3-24-16)~~(    )
- o.** [40 CFR 125.10](#) through [40 CFR 125.11](#) (Subpart B), revised as of July 1, 201~~5~~7 (Criteria for Issuance of Permits to Aquaculture Projects); ~~(3-24-16)~~(    )
- p.** [40 CFR 125.30](#) through [40 CFR 125.32](#) (Subpart D), revised as of July 1, 201~~5~~7 (Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A) and 301(b)(2)(A) and (E) of the Clean Water Act); ~~(3-24-16)~~(    )
- q.** [40 CFR 125.70](#) through [40 CFR 125.73](#) (Subpart H), revised as of July 1, 201~~5~~7 (Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Clean Water Act); ~~(3-24-16)~~(    )
- r.** [40 CFR 125.80](#) through [40 CFR 125.89](#) (Subpart I), revised as of July 1, 201~~5~~7 (Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Clean Water Act); ~~(3-24-16)~~(    )
- s.** [40 CFR 125.90](#) through [40 CFR 125.99](#) (Subpart J), revised as of July 1, 201~~5~~7 (Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities Under Section 316(b) of the Clean Water Act); ~~(3-24-16)~~(    )
- t.** [40 CFR 127.11 through 40 CFR 127.16 \(Subpart B\), revised as of July 1, 2017 \(Electronic reporting of NPDES Information from NPDES-Regulated Facilities\)](#); (    )
- u.** [40 CFR 129.1](#) through [40 CFR 129.105](#) (Subpart A), revised as of July 1, 201~~5~~7 (Toxic Pollutant Effluent Standards and Prohibitions); ~~(3-24-16)~~(    )
- v.** [40 CFR 133.100](#) through [40 CFR 133.105](#), revised as of July 1, 201~~5~~7 (Secondary Treatment Regulation); ~~(3-24-16)~~(    )
- w.** [40 CFR Part 136](#), revised as of July 1, 201~~5~~7 (Guidelines Establishing Test Procedures for the Analysis of Pollutants, including Appendices A, B, C, and D); ~~(3-24-16)~~(    )
- x.** [40 CFR Part 401](#), revised as of July 1, 201~~5~~7 (General Provisions); ~~(3-24-16)~~(    )
- y.** [40 CFR 403.1](#) through [40 CFR 403.3](#); [40 CFR 403.5](#) through [40 CFR 403.9](#); and [40 CFR 403.11](#) through [40 CFR 403.18](#), revised as of July 1, 201~~5~~7 (General Pretreatment Regulations for Existing and New Sources of Pollution, including Appendices D, E, and G); ~~(3-24-16)~~(    )
- z.** [40 CFR Part 405](#) through [40 CFR Part 471](#), revised as of July 1, 201~~5~~7 (Effluent Limitations and Guidelines); and ~~(3-24-16)~~(    )
- aa.** [40 CFR 503.2](#) through [40 CFR 503.48](#), revised as of July 1, 201~~5~~7 (Sewage Sludge, including Appendices A and B). ~~(3-24-16)~~(    )
- bb.** The term “Waters of the United States or waters of the U.S.,” as defined in [40 CFR 122.2](#), revised as of August 28, 2015 by 80 Federal Register 37054-37127 (June 29, 2015), unless said revision is stayed, overturned or invalidated by a court of law or withdrawn by EPA, in which case the Department incorporates by reference the term “Waters of the United States or waters of the U.S.” as defined in [40 CFR 122.2](#), revised as of July 1, 2015. (3-24-16)

**03. Term Interpretation.** For the federal regulations incorporated by reference into these rules, unless the context in which a term is used clearly requires a different meaning, terms in this section have the following meanings: (3-24-16)

- a.** The term Administrator or Regional Administrator means the EPA Region 10 Administrator; (3-24-16)
- b.** The term Control Authority means the POTW for a facility with a Department-approved pretreatment program and the Department for a POTW without a Department-approved pretreatment program; (3-24-16)
- c.** The term Director or State Director means the Director of the Department of Environmental Quality with an NPDES permit program approved pursuant to section 402(b) of the Clean Water Act; (3-24-16)
- d.** The term National Pollutant Discharge Elimination System (NPDES) means the Idaho Pollutant Discharge Elimination System (IPDES); (3-24-16)
- e.** The term Permitting Authority (also preceded by the terms NPDES or State) means the Idaho Department of Environmental Quality with an NPDES permit program approved pursuant to section 402(b) of the Clean Water Act. (3-24-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

For the purpose of the rules contained in IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program," the following definitions apply. Terms not expressly defined in this section shall have the meaning provided by IDAPA 58.01.02, Section 010, "Water Quality Standards," or IDAPA 58.01.16, Section 010, "Wastewater Rules." (3-24-16)( )

**01. Animal Feeding Operation.** A lot or facility (other than an aquatic animal production facility) where the following conditions are met: (3-24-16)

- a.** Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12)-month period; and (3-24-16)
- b.** Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. (3-24-16)

**02. Applicable Standards and Limitations.** All state, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the Clean Water Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal under the Clean Water Act sections 301, 302, 303, 304, 306, 307, 308, 402 and 405. (3-24-16)

**03. Application.** The IPDES forms for applying for a permit or the EPA equivalent standard national forms when deemed acceptable by the Department, including any additions, revisions or modifications to the forms. (3-24-16)

**04. Approved Program or Approved State.** A state or interstate program which has been approved or authorized by EPA under 40 CFR Part 123. (3-24-16)

**05. Aquaculture Project.** A defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals. (3-24-16)

**06. Average Monthly Discharge Limitation.** The highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. (3-24-16)

**07. Average Weekly Discharge Limitation.** The highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week. (3-24-16)

**08. Background.** The biological, chemical or physical condition of waters measured at a point immediately upstream (up-gradient) of the influence of an individual point or nonpoint source discharge. If several discharges to the water exist or if an adequate upstream point of measurement is absent, the Department will determine where background conditions should be measured. (3-24-16)

**09. Best Management Practices (BMPs).** Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. (3-24-16)

**10. Biochemical Oxygen Demand (BOD).** The measure of the amount of oxygen necessary to satisfy the biochemical oxidation requirements of organic materials at the time the sample is collected; unless otherwise specified, this term will mean the five (5) day BOD incubated at twenty (20) degrees C. (3-24-16)

**11. Biological Monitoring or Biomonitoring.** The use of a biological entity as a detector and its response as a measure to determine environmental conditions. Toxicity tests and biological surveys, including habitat monitoring, are common biomonitoring methods. (3-24-16)

**12. Bypass.** The intentional diversion of wastewater from any portion of a treatment facility. (3-24-16)

**13. Chemical Oxygen Demand (COD).** A bulk parameter that measures the oxygen-consuming capacity of organic and inorganic matter present in water or wastewater. It is expressed as the amount of oxygen consumed from a chemical oxidant in a specific test. (3-24-16)

**14. Class I Sludge Management Facility.** Any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including such POTWs where the Department has elected to assume local program responsibilities pursuant to 40 CFR 403.10(e)) and any other treatment works treating domestic sewage (TWTDS) classified as a Class I sludge management facility by the Department, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment. (3-24-16)

**15. Clean Water Act.** Formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972. Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483 and Public Law 97-117, 33 U.S.C. 1251 et seq. (3-24-16)

**16. Clean Water Act and Regulations.** The Clean Water Act and applicable regulations promulgated thereunder. In the case of an approved IPDES program, it includes Department program requirements. (3-24-16)

**17. Compliance Schedule or Schedule of Compliance.** A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Clean Water Act and these rules. (3-24-16)

**18. Concentrated Animal Feeding Operation (CAFO).** Animal feeding operation that is defined as a Large CAFO in accordance with 40 CFR 122.23(b)(4), as a Medium CAFO in accordance with 40 CFR 122.23(b)(6), or that is designated as a CAFO in accordance with 40 CFR 122.23(c). Two (2) or more animal feeding operations under common ownership are considered to be a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. (3-24-16)

**19. Concentrated Aquatic Animal Production (CAAP).** A hatchery, fish farm, or other facility

which meets the criteria in Appendix C of 40 CFR Part 122, or which the Department designates under 40 CFR 122.24(c). (3-24-16)

**20. Continuous Discharge.** A discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities. (3-24-16)

**21. Daily Discharge.** The discharge of a pollutant measured during a calendar day or any twenty-four (24)-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day. (3-24-16)

**22. Department.** The Idaho Department of Environmental Quality. (3-24-16)

**23. Design Flow.** The average or maximum point source discharge volume per unit time that a facility or system is constructed to accommodate. (3-24-16)

**24. Direct Discharge.** The discharge of a pollutant to waters of the United States. (3-24-16)

**25. Director.** The Director of the Idaho Department of Environmental Quality or authorized agent. (3-24-16)

**26. Discharge Monitoring Report (DMR).** The facility or activity report containing monitoring and discharge quality and quantity information and data required to be submitted periodically, as defined in the discharge permit. These reports must be submitted to the Department on a Department-approved format. (3-24-16)

**27. Discharge.** When used without qualification means the discharge of a pollutant. (3-24-16)

**28. Discharge of a Pollutant.** Any addition of any pollutant or combination of pollutants to waters of the United States from any point source. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger. (3-24-16)

**29. Draft Permit.** A document prepared under these rules indicating the Department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in Subsections 107.01 and 203.02, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in Subsection 201.01, is not a draft permit. A proposed permit is not a draft permit. (3-24-16)

**30. Effluent.** Any discharge of treated or untreated pollutants into waters of the United States. (3-24-16)

**31. Effluent Limitation.** Any restriction imposed by the Department on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the United States, in accordance with these rules and the Clean Water Act. (3-24-16)

**32. Effluent Limitations Guidelines.** A regulation published by the EPA under the Clean Water Act section 304(b) to adopt or revise effluent limitations. (3-24-16)

**33. Electronic Signature.** Information in digital form that is included in or associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature. (3-24-16)

**34. Environmental Protection Agency (EPA).** The United States Environmental Protection Agency. (3-24-16)

35. **Equivalent Dwelling Unit (EDU).** A measure where one (1) equivalent dwelling unit is equivalent to wastewater generated from one (1) single-family residence. For the purposes of assessing fees associated with this rule, the number of EDUs must be is calculated from as the municipality's population served divided by the average number of people per household as defined in the most recent Census Bureau data (for that municipality, county, or average number of persons per household for the state of Idaho). (3-24-16)(\_\_\_\_)

36. **Existing Source.** Any source which is not a new source or a new discharger. (3-24-16)

37. **Facilities or Equipment.** Buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source. (3-24-16)

38. **Facility or Activity.** Any point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the IPDES program. (3-24-16)

39. **Fundamentally Different Factors.** The factors relating to a discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national effluent limits. (3-24-16)

40. **General Permit.** An IPDES permit issued under Section 130 (General Permits) authorizing a category of discharges within a geographical area. (3-24-16)

41. **Hazardous Substance.** Any substance designated under 40 CFR Part 116 pursuant to the Clean Water Act section 311. (3-24-16)

42. **Idaho Pollutant Discharge Elimination System (IPDES).** Idaho's program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under these rules and the Clean Water Act sections 307, 402, 318, and 405. (3-24-16)

43. **Indian Country.** (3-24-16)

a. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (3-24-16)

b. All dependent Indian communities within the borders of the United States, whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of the state; and (3-24-16)

c. All Indian allotments, the Indian titles to which have not been extinguished including rights-of-way running through the same. (3-24-16)

44. **Indian Tribe.** Any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a federal Indian reservation. (3-24-16)

45. **Indirect Discharger.** A nondomestic discharger introducing pollutants to a privately or publicly owned treatment works. (3-24-16)

46. **Industrial Wastewater.** Any waste, together with such water as is present that is the by-product of industrial processes including, but not limited to, food processing or food washing wastewater (see Process Wastewater). (3-24-16)

47. **Infiltration.** Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow. (3-24-16)

- 48. Inflow.** Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration. (3-24-16)
- 49. Interstate Agency.** An agency of two (2) or more states established by or under an agreement or compact, or any other agency of two (2) or more states having substantial powers or duties pertaining to the control of pollution. (3-24-16)
- 50. Load Allocation (LA).** The portion of a receiving water body's loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources. (3-24-16)
- 51. Major Facility.** A facility or activity that is: (3-24-16)
- a.** A publicly or privately owned treatment works with a design flow equal to or greater than one million gallons per day (1 MGD), or serves a population of ten thousand (10,000) or more, or causes significant water quality impacts; or (3-24-16)
- b.** A non-municipal facility that equals or exceeds the eighty (80) point accumulation as described in the Score Summary of the NPDES Non-Municipal Permit Rating Work Sheet (June 27, 1990) or the Department equivalent guidance document. (3-24-16)
- 52. Maximum Daily Discharge Limitation.** The highest allowable daily discharge. (3-24-16)
- 53. Maximum Daily Flow.** The largest volume of flow to be discharged during a continuous twenty-four-hour period expressed as a volume per unit time. (3-24-16)
- 54. Mixing Zone.** A defined area or volume of the receiving water surrounding or adjacent to a wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards. It is considered a place where wastewater mixes with receiving water and not as a place where effluents are treated. (3-24-16)
- 55. Municipality.** A city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under the Clean Water Act section 208. (3-24-16)
- 56. National Pollutant Discharge Elimination System (NPDES).** The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under the Clean Water Act sections 307, 402, 318, and 405. (3-24-16)
- 57. New Discharger.** Any building, structure, facility, or installation: (3-24-16)
- a.** From which there is or may be a discharge of pollutants; (3-24-16)
- b.** That did not commence the discharge of pollutants at a particular site prior to August 13, 1979; (3-24-16)
- c.** Which is not a new source; and (3-24-16)
- d.** Which has never received a finally effective NPDES or IPDES permit for discharges at that site. (3-24-16)
- e.** This definition includes an indirect discharger which commences discharging into waters of the United States after August 13, 1979. It also includes any existing mobile point source such as an aggregate plant, that begins discharging at a site for which it does not have a permit; (3-24-16)

**58. New Source.** Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced: (3-24-16)

**a.** After promulgation of standards of performance under the Clean Water Act section 306 which are applicable to such source; or (3-24-16)

**b.** After proposal of standards of performance in accordance with the Clean Water Act section 306 which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within one hundred twenty (120) days of their proposal. (3-24-16)

**59. Notice of Intent to Deny.** A type of draft permit that shall convey to a permit applicant or permittee, the Department's intent to not issue or renew an IPDES permit. (3-24-16)

**60. Notice of Intent to Obtain Coverage under an IPDES General Permit.** An applicant seeking discharge coverage under an IPDES general permit shall submit a notice of intent to obtain coverage for discharges to waters of the United States under general permit classifications, including, but not limited to: (3-24-16)

**a.** Storm Water Construction General Permit (CGP); (3-24-16)

**b.** Multi-Sector General Permit (MSGP) for Industrial Storm Water Requirements; (3-24-16)

**c.** Municipal Separate Storm Sewer System (MS4) General Permit; (3-24-16)

**d.** Concentrated Animal Feeding Operation (CAFO) General Permit; (3-24-16)

**e.** Concentrated Aquatic Animal Production (CAAP) Facility General Permit; (3-24-16)

**f.** Ground Water Remediation General Permit; (3-24-16)

**g.** Suction Dredge General Permit; ~~or~~ (3-24-16) ( )

~~**h.** Vessel General Permit (VGP); or~~ (3-24-16)

~~**i.** Pesticide General Permit (PGP).~~ (3-24-16)

**61. Notice of Intent to Terminate.** A notice of intent to terminate shall: (3-24-16)

**a.** Convey to a permittee the Department's intent to terminate an existing IPDES permit for cause; or (3-24-16)

**b.** Convey to the Department a permittee's intent to terminate coverage for an activity under an Individual or General Permit. A construction general permit holder is obligated to submit a notice of intent to terminate upon completion of construction activities and, in the case of storm water control, that final stabilization has been achieved. (3-24-16)

**62. Owner or Operator.** The person, company, corporation, district, association, or other organizational entity that is an owner or operator of any facility or activity subject to regulation under the IPDES program. (3-24-16)

**63. Permit.** The authorization, license, or equivalent control document issued by the Department to implement the requirements of these rules. This does not include any permit which has not yet been the subject of final Department action, such as a draft permit or a proposed permit. (3-24-16)

**64. Person.** An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, or an agent or employee thereof, which is recognized by law as the subject of rights and duties. (3-24-16)

**65. Point Source.** Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (3-24-16)

**66. Pollutant.** Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean: (3-24-16)

**a.** Sewage from vessels; or (3-24-16)

**b.** Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources.

NOTE: Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear materials. Examples of materials not covered include radium and accelerator-produced isotopes. See *Train v. Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976). (3-24-16)

**67. Potable Water.** Water which is free from impurities in such amounts that it is safe for human consumption without treatment. (3-24-16)

**68. Pretreatment.** The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e). (3-24-16)

**69. Primary Industry Category.** Any industry category listed in Appendix A of 40 CFR Part 122. (3-24-16)

**70. Privately Owned Treatment Works.** Any device or system which is used to treat wastes and is not a Publicly Owned Treatment Works (POTW). (3-24-16)

**71. Process Wastewater.** Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product (see Industrial Wastewater definition). (3-24-16)

**72. Proposed Permit.** An IPDES permit prepared after the close of the public comment period (and, when applicable, any public meeting and administrative appeals) which is sent to EPA for review before final issuance by the Department. A proposed permit is not a draft permit. (3-24-16)

**73. Publicly Owned Treatment Works (POTW).** A treatment works as defined by the Clean Water Act section 212, which is owned by a state or municipality, as defined by the Clean Water Act section 502(4). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in the Clean Water Act section 502(4), which has jurisdiction over the indirect discharges to and the discharges from such a treatment works. (3-24-16)

74. **Receiving Waters.** Those waters of the United States to which there is a discharge of pollutants. (3-24-16)
75. **Recommencing Discharger.** A source which renews discharges after terminating operations. (3-24-16)
76. **Regional Administrator.** The Region 10 Administrator of the Environmental Protection Agency or the authorized representative of the Regional Administrator. (3-24-16)
77. **Secondary Industry Category.** Any industry category which is not a primary industry category. (3-24-16)
78. **Secondary Treatment.** Technology-based requirements for direct discharging POTWs, based on the expected performance of a combination of physical and biological processes typical for the treatment of pollutants in municipal sewage. Standards are expressed as a minimum level of effluent quality in terms of: BOD5, total suspended solids (TSS), and pH (except as provided by treatment equivalent to secondary treatment and other special considerations). (3-24-16)
79. **Secretary.** The Secretary of the Army, acting through the Chief of Engineers. (3-24-16)
80. **Septage.** The liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained. (3-24-16)
81. **Severe Property Damage.** Substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. (3-24-16)
82. **Sewage.** The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. (3-24-16)
83. **Sewage from Vessels.** Human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under the Clean Water Act section 312. (3-24-16)
84. **Sewage Sludge.** Any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge. ~~(3-24-16)~~ ( )
85. **Sewage Sludge Use or Disposal Practice.** The collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge. (3-24-16)
86. **Significant Industrial User.** (3-24-16)
- a. All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Parts 400 through 471; and (3-24-16)
- b. Any other industrial user that: (3-24-16)
- i. Discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); (3-24-16)
- ii. Contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or (3-24-16)

iii. Is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement (in accordance with 40 CFR 403.8(f)(6)). (3-24-16)

**87. Silvicultural Point Source.** Any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a Clean Water Act section 404 permit. (3-24-16)

**88. Site.** The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity. (3-24-16)

**89. Sludge.** The semi-liquid mass produced and removed by the wastewater treatment process. ( )

**89.0. Sludge-Only Facility.** Any TWTDS whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to the Clean Water Act section 405(d) and is required to obtain an IPDES permit. (3-24-16)

**90.1. Source.** Any building, structure, facility, or installation from which there is or may be discharge of pollutants. (3-24-16)

**92. Standards for Sewage Sludge Use or Disposal.** Regulations promulgated pursuant to the Clean Water Act section 405(d) and these rules which govern minimum requirements for sewage sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person. (3-24-16)( )

**92.3. State.** The state of Idaho. (3-24-16)

**93.4. State/EPA Agreement.** An agreement between the EPA Regional Administrator and the state of Idaho which coordinates EPA and Department activities, responsibilities and programs including those under the Clean Water Act programs. (3-24-16)

**94.5. Storm Water.** Storm water runoff, snow melt runoff, and surface runoff and drainage. (3-24-16)

**95.6. Technology-Based Effluent Limitation (TBEL).** Treatment requirements under the Clean Water Act that represent the minimum level of control that must be imposed in a permit issued under section 402 of the Clean Water Act. (3-24-16)

**96.7. Total Dissolved Solids.** The total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136. (3-24-16)

**97.8. Toxic Pollutant.** Any substance, material or disease-causing agent, or a combination thereof, which after discharge to waters of the United States and upon exposure, ingestion, inhalation, or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring. Toxic pollutants include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA pursuant to the Clean Water Act section 307(a), or in the case of sewage sludge use or disposal practices, any pollutant identified in regulations implementing the Clean Water Act section 405(d). (3-24-16)

**98.9. Treatment.** A process or activity conducted for the purpose of removing pollutants from wastewater. (3-24-16)

~~99~~**100.** **Treatment Facility.** Any physical facility or land area for the purpose of collecting, treating, neutralizing, or stabilizing pollutants including treatment plants; the necessary collecting, intercepting, outfall and outlet sewers; pumping stations integral to such plants or sewers; disposal or reuse facilities; equipment and furnishing thereof; and their appurtenances. For the purpose of these rules, a treatment facility may also be known as a treatment system, a wastewater system, wastewater treatment system, wastewater treatment facility, wastewater treatment plant, or privately or publicly owned treatment works. (3-24-16)

~~10~~**01.** **Treatment Works Treating Domestic Sewage (TWTDS).** A POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. (3-24-16)

~~10~~**02.** **Upset.** An exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. (3-24-16)

~~10~~**03.** **User.** Any person served by a wastewater system. (3-24-16)

~~10~~**04.** **Variance.** Any mechanism or provision under the Clean Water Act section 301 or 316 or under 40 CFR Part 125, or in the applicable effluent limitations guidelines allowing modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the Clean Water Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on Clean Water Act sections 301(c), 301(g), 301(h), 301(i), or 316(a). (3-24-16)

~~10~~**05.** **Wasteload Allocation (WLA).** The portion of a receiving water's loading capacity that is allocated to one (1) of its existing or future point sources of pollution. (3-24-16)

~~10~~**06.** **Wastewater.** Any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any ground water, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, gray water or commercial or industrial pollutants; and sewage. (3-24-16)

~~10~~**07.** **Water Pollution.** Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the United States, or the discharge of any pollutant into the waters of the United States, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. (3-24-16)

~~10~~**08.** **Water Quality-Based Effluent Limitation (WQBEL).** An effluent limitation determined by selecting the most stringent of the effluent limits calculated using all applicable water quality criteria (e.g., aquatic life, human health, wildlife, translation of narrative criteria) for a specific point source to a specific receiving water. (3-24-16)

~~10~~**09.** **Water Transfer.** An activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use. (3-24-16)

~~10~~**10.** **Wetlands.** Areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. (3-24-16)

~~11~~**01.** **Whole Effluent Toxicity.** The aggregate toxic effect of an effluent measured directly by a toxicity test. (3-24-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**090. SIGNATURE REQUIREMENTS.**

**01. Permit Applications and Notices of Intent.** All IPDES permit applications and notices of intent must be signed by a certifying official as follows: (3-24-16)

**a.** For a corporation, a responsible corporate officer shall sign the application or notice of intent. In this subsection, a responsible corporate officer means: (3-24-16)

**i.** A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or (3-24-16)

**ii.** The manager of one (1) or more manufacturing, production, or operating facilities, if: (3-24-16)

(1) The manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental statutes and regulations; (3-24-16)

(2) The manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for IPDES permit application requirements; and (3-24-16)

(3) Authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; (3-24-16)

**b.** For a partnership or sole proprietorship, the general partner or the proprietor, respectively, shall sign the application; and (3-24-16)

**c.** For a municipality, state, or other public agency, either a principal executive officer or ranking elected official shall sign the application. In this subsection, a principal executive officer of an agency means: (3-24-16)

**i.** The chief executive officer of the agency; or (3-24-16)

**ii.** A senior executive officer having responsibility for the overall operations of a principal geographic unit or division of the agency. (3-24-16)

**02. Reports and Other Information Submitted.** Any report or information required by an IPDES permit, notice of intent, monitoring and reporting provisions, and any other information requested by the Department, must be signed by a person described in Subsection 090.01, or by a duly authorized representative of that person. A person is a duly authorized representative only if: (3-24-16)

**a.** The authorization is made in writing by a person described in Subsection 090.01; (3-24-16)

**b.** The authorization specifies either: (3-24-16)

**i.** An individual or a position having responsibility for the overall operation of the regulated facility or activity, including the position of manager, operator, superintendent or position of equivalent responsibility; or (3-24-16)

**ii.** An individual or position having overall responsibility for environmental matters for the company; and (3-24-16)

c. The written authorization is submitted to the Department. (3-24-16)

**03. New Authorization.** If an authorization is no longer accurate due to a change in staffing or personnel for the overall operation of the facility, a new authorization satisfying the requirements of Subsection 090.01 must be submitted to the Department before or together with any report, information, or application to be signed by an authorized representative. (3-24-16)

**04. Certification.** Any person signing a document under Subsections 090.01 or 090.02 shall certify as follows: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." (3-24-16)

**05. Electronic Signatures.** The Department may require any signed, certified, or authorized information required under these rules to be submitted electronically, with an electronic signature approved by the Department. (3-24-16)

**06. Electronic Reporting.** When documents described in Subsection 090.01 or 090.02 of this rule are submitted electronically by or on behalf of the IPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**105. APPLICATION FOR AN INDIVIDUAL IPDES PERMIT.**

**01. Electronic Submittals.** The Department may require an applicant to electronically submit information required by this section, if the Department approves an electronic method of submittal. (3-24-16)

**02. Application Retention Schedule.** An applicant shall keep records of all data used to complete a permit application and any supplemental information submitted for a period of at least three (3) years from the date the application is signed. (3-24-16)

**03. Time to Apply.** Any person required under Subsections 102.01 through 102.03 to obtain an IPDES permit shall submit to the Department a complete application for a permit in compliance with the requirements of this subsection. A permit application must be signed and certified as required by Section 090 (Signature Requirements). (3-24-16)

**a.** A person proposing a new discharge shall submit an application at least one hundred eighty (180) days before the date on which the discharge is to commence, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f. A facility proposing a new discharge of storm water associated with industrial activity shall submit an application one hundred eighty (180) days before that facility commences industrial activity that may result in a discharge of storm water associated with that industrial activity, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f. (3-24-16)

**b.** Facilities described under 40 CFR 122.26(b)(14)(x) or (b)(15)(i) shall submit an application at least ninety (90) days before the date on which construction is to commence unless otherwise required by the terms of an applicable general permit. (3-24-16)

**c.** Any TWTDS that commences operations after promulgation of any applicable "standard for sewage sludge use or disposal" must submit an application to the Department at least one hundred eighty (180) days prior to the date proposed for commencing operations. (3-24-16)

**d.** A person discharging from a permitted facility with a currently effective permit shall submit a new application at least one hundred eighty (180) days before the expiration date of the existing permit, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f. (3-24-16)

**e.** Permission may be granted by the Department for submission of an application in less than one hundred eighty (180) days. The Department's prior approval must be sought and obtained in advance of the one hundred eighty (180) days before expiration of the existing permit or commencement of new discharge. (3-24-16)

**f.** In no instance shall the application be accepted after the expiration date of the existing permit as an application for renewal of the permit. Any applications received after the expiration of the permit will be received and reviewed as an application for a new source or new discharger. (3-24-16)

**04. Individual Permit Application Forms.** An applicant must submit an application on one (1) or more Department-approved forms appropriate to the number and type of discharge or outfall at the applicant's facility. A person required by Subsections 102.01 through 102.03 to obtain an individual IPDES permit shall submit an application to the Department providing the information required by this subsection and Subsections 105.05 through 105.19, as applicable. The application must be submitted on one (1) or more of the EPA forms listed in this subsection, or on the Department equivalent of the listed EPA form: (3-24-16)

**a.** All applicants, other than a POTW and other TWTDS (see Subsection 105.06), EPA Form 1, revised as of August 1, 1990, and the following additional forms, if applicable: (3-24-16)

**i.** Applicants for a concentrated animal feeding operation (CAFO; see Subsection 105.09) or concentrated aquatic animal production (CAAP; see Subsection 105.10) facility, EPA Form 2B, revised as of November 2008; (3-24-16)

**ii.** Applicants for an existing industrial facility, including manufacturing facilities, commercial facilities, mining activities, and silviculture activities (see Subsection 105.07), EPA Form 2C, revised as of August 1, 1990; (3-24-16)

**iii.** Applicants for a new industrial facility that discharges process wastewater (see Subsection 105.16), EPA Form 2D, revised as of August 1, 1990; (3-24-16)

**iv.** Applicants for a new or existing industrial facility that discharges only non-process wastewater (see Subsection 105.08.a.), EPA Form 2E, revised as of August 1, 1990; (3-24-16)

**v.** Applicants for a new or existing facility whose discharge is composed entirely of storm water associated with industrial activity (see Subsection 105.19), EPA Form 2F, revised May 31, 1992, unless the applicant is exempted by 40 CFR 122.26(c)(1)(ii). If the applicant's discharge is composed of storm water and non-storm water (see Subsections 105.07, 105.08, and 105.16), EPA Forms 2C, 2D, or 2E, as appropriate, are also required; or (3-24-16)

**vi.** Applicants that operate a sludge-only facility (see Subsection 105.17), that currently does not have and is not applying for, an IPDES permit for a direct discharge to a surface water body, EPA Form 2S, revised January 14, 1999; (3-24-16)

**b.** For an applicant that is a new or existing POTW (see Subsections 105.11 through 105.15): (3-24-16)

**i.** EPA Form 2A, revised January 14, 1999; and (3-24-16)

**ii.** EPA Form 2S, revised January 14, 1999, if applicable. (3-24-16)

**05. Application Information for All Dischargers.** In addition to the application information required for specific dischargers, the Department may require the submittal of any information necessary to ensure compliance with Section 103 (Permit Prohibitions). Such information includes, but is not limited to: (3-24-16)

a. Information required to determine compliance with the antidegradation policy and antidegradation implementation provisions set forth in IDAPA 58.01.02.051 and 052, “Water Quality Standards”; (3-24-16)

b. Information required to determine compliance with the mixing zone provisions set forth in IDAPA 58.01.02.060, “Water Quality Standards”; or (3-24-16)

c. Information necessary for the Department to authorize a compliance schedule under IDAPA 58.01.02.400, “Water Quality Standards.” (3-24-16)

**06. Individual Permit Application Requirements for Dischargers Other than Treatment Works Treating Domestic Sewage (TWTDS) and Publicly Owned Treatment Works (POTWs).** An applicant for an IPDES permit other than a POTW and other TWTDS, shall provide the following information to the Department, using the appropriate forms specified in Subsection 105.04: (3-24-16)

a. The applicant’s activity that requires an IPDES permit; (3-24-16)

b. The name, mailing address, electronic mail address, and location of the facility for which the application is submitted; (3-24-16)

c. Up to four (4) Standard Industrial Classification (SIC) codes that best identify the principal products or services provided by the facility; (3-24-16)

d. The operator’s name, mailing address, electronic mail address, telephone number, ownership status, Employer Identification Number (EIN), and status as federal, state, private, public, or other entity; (3-24-16)

e. A statement that the facility is located in Indian country, if applicable; (3-24-16)

f. A listing of all permits or construction approvals received or applied for under any of the following programs: (3-24-16)

i. Hazardous waste management program under IDAPA 58.01.05, “Rules and Standards for Hazardous Waste”; (3-24-16)

ii. Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells”; (3-24-16)

iii. IPDES program under IDAPA 58.01.25 “Rules Regulating the Idaho Pollutant Discharge Elimination System Program”; (3-24-16)

iv. Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, “Rules for Control of Air Pollution in Idaho”; (3-24-16)

v. Nonattainment program under IDAPA 58.01.01, “Rules for Control of Air Pollution in Idaho”; (3-24-16)

vi. National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under IDAPA 58.01.01, “Rules for Control of Air Pollution in Idaho”; (3-24-16)

vii. Dredge or fill permits under the Clean Water Act section 404; or (3-24-16)

viii. Other relevant environmental permits, programs or activities, including those subject to state jurisdiction, approval, and permits; and (3-24-16)

g. A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting: (3-24-16)

- i. The facility and each of its intake and discharge structures; (3-24-16)
- ii. The location of the facility's hazardous waste treatment, storage, or disposal areas; (3-24-16)
- iii. The location of each well where fluids from the facility are injected underground; and (3-24-16)
- iv. The location of wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known by the applicant to exist in the map area; and (3-24-16)
- h. A brief description of the nature of the business. (3-24-16)

**07. Individual Permit Application Requirements for Existing Manufacturing, Commercial, Mining and Silviculture Dischargers.** (3-24-16)

a. Except for a facility subject to the requirements in Subsection 105.08, an applicant for an IPDES permit for an existing discharge from a manufacturing, commercial, mining, or silviculture facility or activity shall provide the following information to the Department, using the applicable forms specified in Subsection 105.04: (3-24-16)

- i. For each outfall: (3-24-16)
  - (1) The latitude and longitude to the nearest second and the name of each receiving water; (3-24-16)
  - (2) A narrative identifying each type of process, operation, or production area that contributes wastewater to the effluent from that outfall, including process wastewater, cooling water, and storm water runoff; processes, operations, or production areas may be described in general terms, such as dye-making reactor or distillation tower; (3-24-16)
  - (3) The average flow that each process contributes and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge; (3-24-16)
  - (4) For a privately owned treatment works, the identity of each user of the treatment works; and (3-24-16)
  - (5) The average flow of point sources composed of storm water. For this subsection, the average flow may be estimated, and the basis for the rainfall event with the method of estimation must be submitted; (3-24-16)
- ii. A description of the frequency, duration, and flow rate of each discharge occurrence for any of the discharges described in Subsection 105.07.a.i.(2). through 105.07.a.i.(5). that are intermittent or seasonal, except for storm water runoff, spillage, or leaks; (3-24-16)
- iii. A reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline, if an effluent guideline promulgated under the Clean Water Act section 304 applies to the applicant and is expressed in terms of production or other measure of operation. The reported measure must reflect the actual production of the facility as required by Subsection 303.02.b.; (3-24-16)
- iv. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading, or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates; (3-24-16)
- v. A listing of any toxic pollutant that the applicant currently uses or manufactures as an intermediate or final product or byproduct, except that the Department may waive or modify this requirement; (3-24-16)
  - (1) If the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant; and (3-24-16)

- (2) The Department has adequate information to issue the permit; (3-24-16)
- vi. An identification of any biological toxicity tests that the applicant knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge; and (3-24-16)
- vii. The identity of each laboratory or firm and the analyses performed, if a contract laboratory or consulting firm performed any of the analyses required by Subsection 105.07.c. through m. (3-24-16)
- b.** The owner or operator of a facility subject to this subsection shall submit, with an application, a line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. (3-24-16)
- i. In the line drawing, similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under Subsection 105.07.a.i.(2) through 105.07.a.i.(5). (3-24-16)
- ii. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. (3-24-16)
- iii. If a water balance cannot be determined for certain activities, the applicant may instead provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures. (3-24-16)
- c.** In addition to the items of information listed in Subsections 105.07.a. through 105.07.b., and except for information on storm water discharges required by 40 CFR 122.26, an applicant for an IPDES permit for an existing facility described in Subsection 105.07.a. shall: (3-24-16)
- i. Collect, prepare, and submit information regarding the effluent characteristics and discharge of pollutants specified in this section; and (3-24-16)
- ii. When quantitative data for a pollutant are required, collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136, except that when no analytical method is approved, the applicant may use any suitable method but must describe the method. (3-24-16)
- d.** An applicant for an IPDES permit under this subsection shall: (3-24-16)
- i. Use grab samples in providing information regarding cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including *E. coli*), Enterococci (previously known as fecal streptococcus), and volatile organics; temperature, pH, and residual chlorine effluent data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; (3-24-16)
- ii. For all other pollutants, use twenty-four (24) hour composite samples, except that a minimum of one (1) grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours; (3-24-16)
- e.** For purposes of Subsection 105.07.c., exceptions to testing and data provision requirements for effluent characteristics include: (3-24-16)
- i. When an applicant has two (2) or more outfalls with substantially identical effluents, the Department may allow the applicant to test only one (1) outfall and report that the quantitative data also apply to the substantially identical outfall; and (3-24-16)
- ii. An applicant's duty under Subsections 105.07.j., k., and l. to provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report that those pollutants are present. (3-24-16)

f. For storm water discharges, associated with an existing facility described in Subsection 105.07.a., from storm events which yield more than one-tenth (0.1) inch of rainfall: (3-24-16)

i. All samples must be collected from the discharge resulting from a storm event and at least seventy-two (72) hours after the previously measurable storm event exceeding one-tenth (0.1) inch rainfall. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed fifty percent (50%) from the average or median rainfall event in that area; and (3-24-16)

ii. For all applicants, a flow-weighted composite sample must be taken for either the entire discharge or for the first three (3) hours of the discharge, except for the following: (3-24-16)

(1) The sampling may be conducted with a continuous sampler or as a combination of a minimum of three (3) sample aliquots taken in each hour of discharge for the entire discharge or for the first three (3) hours of the discharge, with each aliquot being separated by a minimum period of fifteen (15) minutes. If the Department approves, an applicant for a storm water discharge permit under Subsection 105.18 may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots; (3-24-16)

(2) A minimum of one (1) grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours; or (3-24-16)

(3) For a flow-weighted composite sample, only one (1) analysis of the composite of aliquots is required; (3-24-16)

iii. For samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty (30) minutes, or as soon thereafter as practicable, of the discharge for all pollutants specified in Subsection 105.19 except that for all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 40 CFR 122.26(a) through (b) and (e) through (g), Subsections 105.18 and 105.19, but not for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus; (3-24-16)

iv. The Department may, on a case-by-case basis, allow or establish appropriate site-specific sampling procedures or requirements, including: (3-24-16)

(1) Sampling locations; (3-24-16)

(2) The season in which the sampling takes place; (3-24-16)

(3) The minimum duration between the previous measurable storm event and the sampled storm event; (3-24-16)

(4) The minimum or maximum level of precipitation required for an appropriate storm event; (3-24-16)

(5) The form of precipitation sampled, whether snow melt or rain fall; (3-24-16)

(6) Protocols for collecting samples under 40 CFR Part 136; and (3-24-16)

(7) Additional time for submitting data; and (3-24-16)

v. An applicant is deemed to know or have reason to believe that a pollutant is present in an effluent if an evaluation of the expected use, production, or storage of the pollutant, or any previous analyses for the pollutant, show that pollutant's presence. (3-24-16)

g. Unless a reporting requirement is waived under Subsection 105.07.h., every applicant subject to this subsection shall report quantitative data for the following pollutants for every outfall: (3-24-16)

- i. 5-day biochemical oxygen demand (BOD5); (3-24-16)
- ii. Chemical oxygen demand (COD); (3-24-16)
- iii. Total organic carbon (TOC); (3-24-16)
- iv. Total suspended solids (TSS); (3-24-16)
- v. Ammonia, as N; (3-24-16)
- vi. Temperature (both winter and summer); and (3-24-16)
- vii. pH. (3-24-16)
- h.** The Department may waive the reporting requirements under Subsection 105.07.g. for individual point sources or for a particular industry category for one (1) or more of the pollutants listed in Subsection 105.07.g. if the applicant demonstrates that information adequate to support issuance of a permit can be obtained with less stringent requirements. (3-24-16)
- i.** Except as provided in Subsection 105.07.n., an applicant with an existing facility described in Subsection 105.07.a. that has processes that qualify in one (1) or more of the primary industry categories shown in Appendix A to 40 CFR Part 122 contributing to a discharge, must report quantitative data for pollutants in each outfall containing process wastewater as follows: (3-24-16)
  - i. Data for the organic toxic pollutants listed in Table II of Appendix D to 40 CFR Part 122 in the fractions designated in Table I of Appendix D to 40 CFR Part 122. For purposes of this subsection: (3-24-16)
    - (1) Table II of Appendix D to 40 CFR Part 122, lists the organic toxic pollutants in each fraction that result from the sample preparation required by the analytical procedure that uses gas chromatography/mass spectrometry; and (3-24-16)
    - (2) If the Department determines that an applicant falls within an industrial category for the purposes of selecting fractions for testing, that determination does not establish the applicant's category for any other purpose; see Notes 2 and 3 to 40 CFR 122.21; and (3-24-16)
  - ii. Data for the toxic metals, cyanide, and total phenols listed in Table III of Appendix D to 40 CFR Part 122. (3-24-16)
- j.** An applicant for an IPDES permit under this section must disclose, in an application, whether the applicant knows or has reason to believe that any of the conventional and nonconventional pollutants in Table IV of Appendix D to 40 CFR Part 122 are discharged from each outfall. If an applicable effluent limitations guideline limits the pollutant either directly or indirectly by express limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged that is not limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged. (3-24-16)
- k.** An applicant for an IPDES permit under this subsection must disclose, in an application, whether the applicant knows or has reason to believe that any of the organic toxic pollutants listed in Table II or the toxic metals, cyanide, or total phenols listed in Table III of Appendix D to 40 CFR Part 122 for which quantitative data are not otherwise required under Subsection 105.07.i., are discharged from each outfall. Unless an applicant qualifies as a small business under Subsection 105.07.n., the applicant must: (3-24-16)
  - i. Report quantitative data for every pollutant expected to be discharged in concentrations of ten (10) parts per billion or greater; (3-24-16)
  - ii. Report quantitative data for acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, if any of these four (4) pollutants are expected to be discharged in concentrations of one hundred (100) parts per billion or greater; and (3-24-16)

iii. For every pollutant expected to be discharged in concentrations less than ten (10) parts per billion, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, in concentrations less than one hundred (100) parts per billion, either submit quantitative data, or briefly describe the reasons the pollutant is expected to be discharged and submit any supporting documentation. (3-24-16)

l. An applicant for an IPDES permit under this subsection must disclose, in an application, whether the applicant knows or has reason to believe that asbestos or any of the hazardous substances listed in Table V of Appendix D to 40 CFR Part 122 are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged and report any quantitative data it has for any pollutant. (3-24-16)

m. An applicant for an IPDES permit under this subsection must disclose, in an application, and report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7, 8-tetrachlorodibenzo-p-dioxin (TCDD) if the applicant: (3-24-16)

i. Uses or manufactures the following: (3-24-16)

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); (3-24-16)

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); (3-24-16)

(3) 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); (3-24-16)

(4) o,o-dimethyl o-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); (3-24-16)

(5) 2,4,5-trichlorophenol (TCP); or (3-24-16)

(6) Hexachlorophene (HCP); or (3-24-16)

ii. Knows or has reason to believe that TCDD is or may be present in an effluent. (3-24-16)

n. An applicant under this subsection is exempt from the quantitative data requirements in Subsections 105.07.i. or 105.07.j. for the organic toxic pollutants listed in Table II of Appendix D to 40 CFR Part 122, if that applicant qualifies as a small business under one (1) of the following criteria: (3-24-16)

i. The applicant is a coal mine with an expected total annual production of less than one hundred thousand (100,000) tons per year; or (3-24-16)

ii. The applicant has gross total annual sales averaging less than two hundred eighty-seven thousand, three hundred dollars (\$287,300) per year in 2014 dollars. (3-24-16)

o. In addition to the information reported on the application form, an applicant under this subsection shall provide to the Department, at the Department's request, any other information that the Department may reasonably require to assess the discharges of the facility and to determine whether to issue an IPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and information required to determine the cause of the toxicity. (3-24-16)

**08. Individual Permit Application Requirements for New or Existing Manufacturing, Commercial, Mining, and Silviculture Facilities that Discharge only Non-Process Wastewater.** (3-24-16)

a. An applicant for an IPDES permit that is a manufacturing, commercial, mining, or silvicultural discharger that discharges only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the Department for all discharges, except for storm water discharges, using the applicable forms specified in Subsection 105.04: (3-24-16)

i. The number of each outfall, the latitude and longitude to the nearest second, and the name of each receiving water; (3-24-16)

- ii. For a new discharger, the date of expected commencement of discharge; (3-24-16)
- iii. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or non-contact cooling water; (3-24-16)
- iv. An identification of cooling water additives, if any, that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available; (3-24-16)
- v. Effluent characteristics prepared and submitted as described in Subsections 105.08.b. and 105.08.c.; (3-24-16)
- vi. A description of the frequency of flow and duration of any seasonal or intermittent discharge, except for storm water runoff, leaks, or spills; (3-24-16)
- vii. A brief description of any treatment system used or to be used; (3-24-16)
- viii. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits under Subsection 303.07; and (3-24-16)
- ix. The signature of the certifying official under Section 090 (Signature Requirements). (3-24-16)
- b.** Except as otherwise provided in Subsections 105.08.d. through g., an IPDES permit application for a discharger described in Subsection 105.08.a. must include quantitative data for the following pollutants or parameters: (3-24-16)
  - i. 5-day biochemical oxygen demand (BOD<sub>5</sub>); (3-24-16)
  - ii. Total suspended solids (TSS); (3-24-16)
  - iii. Fecal coliform, if believed present or if sanitary waste is or will be discharged; (3-24-16)
  - iv. Total residual chlorine (TRC), if chlorine is used; (3-24-16)
  - v. Oil and grease; (3-24-16)
  - vi. Chemical oxygen demand (COD), if non-contact cooling water is or will be discharged; (3-24-16)
  - vii. Total organic carbon (TOC), if non-contact cooling water is or will be discharged; (3-24-16)
  - viii. Ammonia, as N; (3-24-16)
  - ix. Discharge flow; (3-24-16)
  - x. pH; and (3-24-16)
  - xi. Temperature, both in winter and summer, respectively. (3-24-16)
- c.** For purposes of the data required under Subsection 105.08.b.: (3-24-16)
  - i. Grab samples must be used for oil and grease, fecal coliform, and volatile organics. Temperature, pH, and TRC effluent data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; (3-24-16)
  - ii. Twenty-four (24) hour composite samples must be used for pollutants listed in Subsection 105.08.b., other than those specified in Subsection 105.08.c.i. Twenty-four (24) hour composite samples must, at a

minimum, be composed of four (4) grab samples, equally spaced through the twenty-four (24)-hour period, unless specified otherwise at 40 CFR Part 136. For a composite sample, only one (1) analysis of the composite aliquots is required; (3-24-16)

iii. The quantitative data may be collected over the past three hundred sixty-five (365) days, as long as the data is representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken; and (3-24-16)

iv. The applicant shall collect and analyze samples in accordance with 40 CFR Part 136. (3-24-16)

d. The Department may waive the testing and reporting requirements for any of the pollutants or flow listed in Subsection 105.08.c. if the applicant requests a waiver with its application or earlier, and demonstrates that information adequate to support permit issuance can be obtained through less stringent requirements. (3-24-16)

e. If the applicant is a new discharger, the applicant shall: (3-24-16)

i. Complete and submit Item IV of EPA Form 2E, or the Department equivalent, as required by Subsection 105.04.a.iv., by providing quantitative data in compliance with that section no later than two (2) years after the discharge commences, except that the applicant need not complete those portions of Item IV requiring tests that the applicant has already performed and reported under the discharge monitoring requirements of its IPDES or NPDES permit; and (3-24-16)

ii. Include estimates and the source of each estimate instead of sampling data for the pollutants or parameters listed in Subsection 105.08.b.; (3-24-16)

f. For purposes of the data required under this subsection, all pollutant levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature. Submittal of all estimated data shall be accompanied by documents supporting the estimated value. (3-24-16)

g. An applicant's duty, under Subsections 105.08.b., c. and e., to provide quantitative data or estimates of certain pollutants does not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant shall report the presence of those pollutants. If the requirements of Subsection 303.07 are met, net credit may be provided for the presence of pollutants in intake water. (3-24-16)

**09. Individual Permit Application Requirements for New and Existing Concentrated Animal Feeding Operations (CAFO).** An applicant for an IPDES permit for a new or existing CAFO, as defined in 40 CFR 122.23(b) shall provide the following information to the Department, using the applicable forms specified in Subsection 105.04: (3-24-16)

a. The name of the owner or operator; (3-24-16)

b. The facility location and mailing addresses; (3-24-16)

c. Latitude and longitude of the production area to the nearest second, measured at the entrance to the production area; (3-24-16)

d. A topographic map of the geographic area in which the concentrated animal feeding operation is located, showing the specific location of the production area; (3-24-16)

e. Specific information about the number and type of animals, including, if applicable: beef cattle, broilers, layers, swine weighing fifty-five (55) pounds or more, swine weighing less than fifty-five (55) pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, or other animals, whether in open confinement or housed under roof; (3-24-16)

f. The type of containment and total capacity in tons or gallons of any anaerobic lagoon, roofed storage shed, storage pond, under-floor pit, above-ground storage tank, below-ground storage tank, concrete pad, impervious soil pad, or other structure or area used for containment and storage of manure, litter, and process wastewater; (3-24-16)

- g.** The total number of acres available and under the applicant's control for land application of manure, litter, or process wastewater; (3-24-16)
- h.** Estimated amounts of manure, litter, and process wastewater generated per year in tons or gallons; (3-24-16)
- i.** Estimated amounts of manure, litter, and process wastewater transferred to other persons per year in tons or gallons; and (3-24-16)
- j.** A nutrient management plan that has been completed and will be implemented upon the date of permit coverage. A nutrient management plan must meet, at a minimum, the requirements specified in 40 CFR 122.42(e), including for all CAFOs subject to 40 CFR 412.30 through 412.37, 412.40 through 412.47, or the requirements of 40 CFR 412.4(c), as applicable. (3-24-16)

**10. Individual Permit Application Requirements for New and Existing Concentrated Aquatic Animal Production (CAAP) Facilities.** An applicant for an IPDES permit for a new or existing CAAP facility shall provide the following information to the Department, using the applicable forms specified in Subsection 105.04: (3-24-16)

- a.** The maximum daily and average monthly flow from each outfall; (3-24-16)
- b.** The number of ponds, raceways, and similar structures; (3-24-16)
- c.** The name of the receiving water and the source of intake water; (3-24-16)
- d.** For each species of aquatic animal, the total yearly and maximum harvestable weight; and (3-24-16)
- e.** The calendar month of maximum feeding and the total mass of food fed during that month. (3-24-16)

**11. Individual Permit Application Requirements for New and Existing POTWs and Other Dischargers Designated by the Department.** (3-24-16)

**a.** Except as provided in Subsection 105.11.b., an applicant that is a POTW and any other discharger designated by the Department shall provide the information in this subsection to the Department, using the applicable forms specified in Subsection 105.04.b. A permit applicant under this subsection shall submit all information available at the time of permit application; however, an applicant may provide information by referencing information previously submitted to the Department. (3-24-16)

**b.** The Department may waive any requirement of this subsection if the Department has access to substantially identical information. The Department may also waive any requirement of this subsection if that information is not of material concern for a specific permit, if approved by the EPA Regional Administrator. The waiver request to the Regional Administrator must include the Department's justification for the waiver. A Regional Administrator's disapproval of a Department's proposed waiver does not constitute final agency action, but does provide notice to the state and permit applicant(s) that EPA may object to any state-issued permit issued in the absence of the required information. (3-24-16)

- c.** An applicant under this subsection must provide the following information: (3-24-16)

  - i.** Name, mailing address, and location of the facility for which the application is submitted; (3-24-16)
  - ii.** Name, mailing address, electronic mail address, EIN, and telephone number of the applicant, and a statement whether the applicant is the facility's owner, operator, or both; (3-24-16)

iii. A list of all environmental permits or construction approvals received or applied for, including dates, under any of the following programs or types of activities: (3-24-16)

(1) Hazardous waste management program under IDAPA 58.01.05, “Rules and Standards for Hazardous Waste”; (3-24-16)

(2) Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells”; (3-24-16)

(3) IPDES program under IDAPA 58.01.25, “Rules Regulating the Idaho Pollutant Discharge Elimination System Program”; (3-24-16)

(4) Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho”; (3-24-16)

(5) Nonattainment program under IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho”; (3-24-16)

(6) National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho”; (3-24-16)

(7) Dredge or fill permits under the Clean Water Act section 404; (3-24-16)

(8) Sludge Management Program under IDAPA 58.01.16.650, “Wastewater Rules,” and Section 380 (Sewage Sludge) of these rules; and (3-24-16)

(9) Other relevant environmental permits, programs, or activities, including those subject to state jurisdiction, approval, and permits; (3-24-16)

iv. The name ~~and~~, population ~~or~~, and equivalent dwelling units (EDU) of each municipal entity served by the facility, including unincorporated connector districts, a statement whether each municipal entity owns or maintains the collection system and, if the information is available, whether the collection system is a separate sanitary sewer or a combined storm and sanitary sewer; (3-24-16) ( )

v. A statement whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country; (3-24-16)

vi. The facility’s design flow rate, or the wastewater flow rate the plant was built to handle, annual average daily flow rate, and maximum daily flow rate for each of the previous three (3) years; (3-24-16)

vii. A statement identifying the types of collection systems, either separate sanitary sewers or combined storm and sanitary sewers, used by the treatment works, and an estimate of the percent of sewer line that each type comprises; (3-24-16)

viii. The following information for outfalls to waters of the United States and other discharge or disposal methods: (3-24-16)

(1) For effluent discharges to waters of the United States, the total number and types of outfalls including treated effluent, combined sewer overflows, bypasses, constructed emergency overflows; (3-24-16)

(2) For wastewater discharged to surface impoundments, the location of each surface impoundment, the average daily volume discharged to each surface impoundment, and a statement whether the discharge is continuous or intermittent; (3-24-16)

(3) For wastewater applied to the land, the location of each land application site, the size in acres of each land application site, the average daily volume in gallons per day applied to each land application site, and a statement whether the land application is continuous or intermittent; (3-24-16)

(4) For effluent sent to another facility for treatment prior to discharge, the means by which the effluent is transported, the name, mailing address, electronic mail address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant, the name, mailing address, electronic mail address, contact person, phone number, and IPDES or NPDES permit number, if any, of the receiving facility, and the average daily flow rate from this facility into the receiving facility in million gallons per day (MGD); and (3-24-16)

(5) For wastewater disposed of in a manner not included in Subsections 105.11.c.viii.(1) through (4), including underground percolation and underground injection, a description of the disposal method, the location and size of each disposal site, if applicable, the annual average daily volume in gallons per day disposed of by this method, and a statement whether disposal by this method is continuous or intermittent; and (3-24-16)

ix. The name, mailing address, electronic mail address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the POTW facility. (3-24-16)

d. In addition to the information described in Subsection 105.11.c., an applicant under this subsection with a design flow greater than or equal to zero point one (0.1) million gallons per day (MGD) must provide: (3-24-16)

i. The current average daily volume in gallons per day of inflow and infiltration, and a statement describing steps the facility is taking to minimize inflow and infiltration; (3-24-16)

ii. A topographic map, or other map if a topographic map is unavailable, extending at least one (1) mile beyond property boundaries of the treatment plant including all unit processes, and showing: (3-24-16)

(1) The treatment plant area and unit processes; (3-24-16)

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant, including outfalls from bypass piping, if applicable; (3-24-16)

(3) Each well where fluids from the treatment plant are injected underground; (3-24-16)

(4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within one-quarter (1/4) mile of the property boundaries of the treatment works; (3-24-16)

(5) Sewage sludge management facilities including on-site treatment, storage, and disposal sites; and (3-24-16)

(6) Each location at which waste classified as hazardous under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste," enters the treatment plant by truck, rail, or dedicated pipe; (3-24-16)

iii. A process flow diagram or schematic as follows: (3-24-16)

(1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system, including a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points and approximate daily flow rates between treatment units; and (3-24-16)

(2) A narrative description of the diagram; and (3-24-16)

iv. The following information regarding scheduled improvements: (3-24-16)

(1) The outfall number of each affected outfall; (3-24-16)

(2) A narrative description of each required improvement; (3-24-16)

- (3) Scheduled dates for commencement and completion of construction, commencement of discharge and attainment of operational level, and actual completion date for any event listed in this subsection that has been completed; and (3-24-16)
- (4) A description of permits and ~~clearances~~ authorizations concerning other federal and state requirements. (~~3-24-16~~)(    )
- e. An applicant under this subsection must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable: (3-24-16)
- i. For each outfall: (3-24-16)
- (1) The outfall number; (3-24-16)
- (2) The county, and city or town in which the outfall is located; (3-24-16)
- (3) The latitude and longitude, to the nearest second; (3-24-16)
- (4) The distance from shore and depth below surface; (3-24-16)
- (5) The average daily flow rate, in million gallons per day (MGD); (3-24-16)
- (6) If the outfall has a seasonal or periodic discharge, the number of times per year the discharge occurs, the duration of each discharge, the flow of each discharge, and the months in which discharge occurs; and (3-24-16)
- (7) A statement whether the outfall is equipped with a diffuser and the type of diffuser used, such as high-rate; (3-24-16)
- ii. For each outfall discharging effluent to waters of the United States, the following receiving water information, if the information is available: (3-24-16)
- (1) The name of each receiving water; (3-24-16)
- (2) The critical flow of each receiving stream; and (3-24-16)
- (3) The total hardness of the receiving stream at critical low flow; and (3-24-16)
- iii. For each outfall discharging to waters of the United States, the following information describing the treatment of the discharges: (3-24-16)
- (1) The highest level of treatment, including primary, equivalent to secondary, secondary, advanced, or other treatment level provided for: (3-24-16)
- (a) The design biochemical oxygen demand removal percentage; (3-24-16)
- (b) The design suspended solids removal percentage; (3-24-16)
- (c) The design phosphorus removal percentage; (3-24-16)
- (d) The design nitrogen removal percentage; and (3-24-16)
- (e) Any other removals that an advanced treatment system is designed to achieve; and (3-24-16)
- (2) A description of the type of disinfection used, and a statement whether the treatment plant de-chlorinates, if disinfection is accomplished through chlorination. (3-24-16)

f. In addition to Subsection 105.11.a., and except as provided in Subsection 105.11.h., an applicant under this subsection shall undertake sampling and analysis and submit effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the United States, except for combined sewer overflows, including the following if applicable: (3-24-16)

i. Sampling and analysis for the pollutants listed in Appendix J, Table 1A to 40 CFR Part 122; (3-24-16)

ii. For an applicant with a design flow greater than or equal to zero point one (0.1) million gallons per day (MGD), sampling and analysis for the pollutants listed in Appendix J, Table 1 to 40 CFR Part 122, except that a facility that does not use chlorine for disinfection, does not use chlorine elsewhere in the treatment process, and has no reasonable potential to discharge chlorine in the facility's effluent, is not required to sample or analyze chlorine; (3-24-16)

iii. Sampling and analysis for the pollutants listed in Appendix J, Table 2 to 40 CFR Part 122 and for any other pollutants for which the state or EPA has established water quality standards applicable to the receiving waters if the facility is: (3-24-16)

(1) A POTW that has a design flow rate equal to or greater than one (1) million gallons per day (MGD); (3-24-16)

(2) A POTW that has an approved pretreatment program; (3-24-16)

(3) A POTW that is required to develop a pretreatment program; or (3-24-16)

(4) Any POTW, as required by the Department to ensure compliance with these rules; (3-24-16)

iv. Sampling and analysis for additional pollutants, as the Department may require, on a case-by-case basis; (3-24-16)

v. Data from a minimum of three (3) samples taken within four and one-half (4 ½) years before the date of the permit application; to meet this requirement: (3-24-16)

(1) Samples must be representative of the seasonal variation in the discharge from each outfall; (3-24-16)

(2) Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application; and (3-24-16)

(3) Additional samples may be required by the Department on a case-by-case basis; and (3-24-16)

vi. All existing data for pollutants specified in Subsections 105.11.f.i. through iv. collected within four and one-half (4 ½) years of the application. This data must be included in the pollutant data summary submitted by the applicant, except that if the applicant samples for a specific pollutant on a monthly or more frequent basis, only the data collected for that pollutant within one (1) year of the application must be provided. (3-24-16)

g. To meet the information requirements of Subsection 105.11.f., an applicant must: (3-24-16)

i. Collect samples of effluent and analyze the samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 unless an alternative is specified in the existing IPDES or NPDES permit; (3-24-16)

ii. Use the following methods: (3-24-16)

(1) Grab samples for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and volatile organics. Temperature, pH, and residual chlorine data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; (3-24-16)

- (2) Twenty-four (24) hour composite samples for all other pollutants; for a composite sample, only one (1) analysis of the composite of aliquots is required; and (3-24-16)
- iii. Provide at least the following information for each parameter: (3-24-16)
  - (1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values; (3-24-16)
  - (2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value; (3-24-16)
  - (3) The analytical method used; and (3-24-16)
  - (4) The threshold level, such as the method detection limit, minimum level, or other designated method endpoint for the analytical method used; and (3-24-16)
- iv. Report metals as total recoverable, unless the Department requires otherwise. (3-24-16)
- h.** When an applicant under this subsection has two (2) or more outfalls with substantially identical effluent discharging to the same receiving water segment, the Department may, on a case-by-case basis, allow the applicant to submit sampling data for only one (1) outfall. The Department may also allow an applicant to composite samples from one (1) or more outfalls that discharge into the same mixing zone, pursuant to IDAPA 58.01.02, "Water Quality Standards." (3-24-16)
- 12. Whole Effluent Toxicity (WET) Monitoring for POTWs.** (3-24-16)
  - a.** An applicant for a permit under Subsection 105.11 shall submit information on effluent monitoring for WET, including an identification of any WET tests conducted during the four and one-half (4 ½) years before the date of the application on any of the applicant's discharges or on any receiving water near the discharge. (3-24-16)
  - b.** An applicant under Subsection 105.11 shall submit to the Department, in compliance with Subsections 105.12.c. through f., the results of valid WET tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows, if the applicant: (3-24-16)
    - i. Has a design flow rate greater than or equal to one (1) million gallons per day (MGD); (3-24-16)
    - ii. Has an approved pretreatment program or is required to develop a pretreatment program; or (3-24-16)
    - iii. Is required to comply with this subsection by the Department, based on consideration of the following factors: (3-24-16)
      - (1) The variability of the pollutants or pollutant parameters in the POTW effluent based on chemical-specific information, the type of treatment plant, and types of industrial contributors; (3-24-16)
      - (2) The ratio of effluent flow to receiving stream flow; (3-24-16)
      - (3) Existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW; (3-24-16)
      - (4) Receiving water characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource water; or (3-24-16)
      - (5) Other considerations, including the history of toxic impacts and compliance problems at the POTW that the Department determines could cause or contribute to adverse water quality impacts. (3-24-16)

c. When an applicant under Subsection 105.11 has two (2) or more outfalls with substantially identical effluent discharging to the same receiving water segment, the Department may, on a case-by-case basis, allow the applicant to submit whole effluent toxicity data for only one (1) outfall. The Department may also allow an applicant to composite samples from one (1) or more outfalls that discharge into the same mixing zone. (3-24-16)

d. An applicant under Subsection 105.12.b. that is required to perform WET testing must provide: (3-24-16)

i. Results of a minimum of four (4) quarterly tests for a year, from the year preceding the permit application or results from four (4) tests performed at least annually in the four and one-half (4 ½) year period before the application, if the results show no appreciable toxicity using a safety factor determined by the Department; (3-24-16)

ii. The number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance; (3-24-16)

iii. The results using the form provided by the Department, or test summaries, if available and comprehensive, for each WET test conducted under this subsection for which the information has not been reported previously to the Department; (3-24-16)

iv. For WET data submitted to the Department within four and one-half (4 ½) years before the date of the application, the dates on which the data were submitted and a summary of the results; and (3-24-16)

v. Any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any WET test conducted within the past four and one-half (4 ½) years revealed toxicity. (3-24-16)

e. An applicant under Subsection 105.11 must conduct tests with no less than two (2) species, including fish, invertebrate, or plant, and test for acute or chronic toxicity, depending on the range of receiving water dilution. Unless the Department directs otherwise, an applicant shall conduct acute or chronic testing based on the following dilutions: (3-24-16)

i. Acute toxicity testing if the dilution of the effluent is greater than a ratio of one thousand to one (1,000:1) at the edge of the mixing zone; (3-24-16)

ii. Acute or chronic toxicity testing, if the dilution of the effluent is between a ratio of one hundred to one (100:1) and one thousand to one (1,000:1) at the edge of the mixing zone; acute testing may be more appropriate at the higher end of this range (one thousand to one (1,000:1)), and chronic testing may be more appropriate at the lower end of this range (one hundred to one (100:1)); or (3-24-16)

iii. Chronic testing if the dilution of the effluent is less than a ratio of one hundred to one (100:1) at the edge of the mixing zone. (3-24-16)

f. For purposes of the WET testing required by this section, an applicant must conduct testing using methods approved under 40 CFR Part 136. (3-24-16)

**13. Individual Permit Application Requirements for POTWs Receiving Industrial Discharges.** (3-24-16)

a. An applicant for an IPDES permit as a POTW under Subsection 105.11 shall state in its application the number of significant industrial users (SIU) and categorical industrial users (CIU) discharging to the POTW. A POTW with one (1) or more SIUs shall provide the following information for each SIU that discharges to the POTW: (3-24-16)

i. The name and mailing address of the SIU; (3-24-16)

ii. A description of all industrial processes that affect or contribute to the SIU's discharge; (3-24-16)

- iii. The principal products and raw materials of each SIU that affects or contributes to that SIU's discharge; (3-24-16)
  - iv. The average daily volume of wastewater discharged by the SIU, indicating the amount attributable to process flow and non-process flow; (3-24-16)
  - v. A statement whether the SIU is subject to local limits; (3-24-16)
  - vi. A statement whether the SIU is subject to one (1) or more categorical standards, and if so, under which category and subcategory; and (3-24-16)
  - vii. A statement whether any problems at the POTW, including upsets, pass-through, or interference have been attributed to the SIU in the past four and one-half (4 ½) years. (3-24-16)
- b.** The information required in Subsection 105.13.a. may be waived by the Department for a POTW with a pretreatment program if the applicant has submitted either of the following that contains information substantially identical to the information required in Subsection 105.13.a.: (3-24-16)
- i. An annual report submitted within one (1) year of the application; or (3-24-16)
  - ii. A pretreatment program. (3-24-16)
- 14. Individual Permit Application Requirements for POTWs Receiving Discharges from Hazardous Waste Generators and from Waste Cleanup or Remediation Sites.** (3-24-16)
- a.** A POTW receiving hazardous or corrective action wastes or wastes generated at another type of cleanup or remediation site must provide the following information: (3-24-16)
- i. If the POTW receives, or has been notified that it will receive by truck, rail, or dedicated pipe, any wastes that are regulated as hazardous wastes under 40 CFR Part 261 and IDAPA 58.01.05, "Rules and Standards for Hazardous Waste," the applicant must report the following: (3-24-16)
    - (1) The method of delivery, including by truck, rail, or dedicated pipe, by which the waste is received; and (3-24-16)
    - (2) The applicable hazardous waste number designated in IDAPA 58.01.05, "Rules and Standards for Hazardous Waste" for the transported waste, and the amount received annually of each hazardous waste; and (3-24-16)
  - ii. If the POTW receives, or has been notified that it will receive, wastewater that originates from remedial activities, including those undertaken under Comprehensive Environmental Response, Compensation, and Liability Act, and the Resource Conservation and Recovery Act sections 3004(u) or 3008(h), the applicant must report the following: (3-24-16)
    - (1) The identity and description of each site or facility at which the wastewater originates; (3-24-16)
    - (2) The identity of any known hazardous constituents specified in IDAPA 58.01.05, "Rules and Standards for Hazardous Waste," in the wastewater; and (3-24-16)
    - (3) The extent of any treatment the wastewater receives or will receive before entering the POTW. (3-24-16)
- b.** An applicant under this subsection is exempt from the requirements of Subsection 105.14.a.ii. if the applicant receives no more than fifteen (15) kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in IDAPA 58.01.05, "Rules and Standards for Hazardous Waste." (3-24-16)

- 15. Individual Permit Application Requirements for POTWs with Combined Sewer Systems and Overflows.** A POTW applicant with a combined sewer system must provide the following information on the combined sewer system and outfalls: (3-24-16)
- a.** A system map indicating the location of: (3-24-16)
    - i.** All combined sewer overflow discharge points; (3-24-16)
    - ii.** Any sensitive use areas potentially affected by combined sewer overflows including beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems; (3-24-16)
    - iii.** Outstanding national resource waters potentially affected by combined sewer overflows; and (3-24-16)
    - iv.** Waters supporting threatened and endangered species potentially affected by combined sewer overflows; (3-24-16)
  - b.** A system diagram of the combined sewer collection system that includes the locations of: (3-24-16)
    - i.** Major sewer trunk lines, both combined and separate sanitary; (3-24-16)
    - ii.** Points where separate sanitary sewers feed into the combined sewer system; (3-24-16)
    - iii.** In-line and off-line storage structures; (3-24-16)
    - iv.** Flow-regulating devices; and (3-24-16)
    - v.** Pump stations; (3-24-16)
  - c.** Information on each outfall for each combined sewer overflow discharge point covered by the permit application, including: (3-24-16)
    - i.** The outfall number; (3-24-16)
    - ii.** The county and city or town in which the outfall is located; (3-24-16)
    - iii.** The latitude and longitude, to the nearest second; and (3-24-16)
    - iv.** The distance from shore and depth below surface; (3-24-16)
  - d.** A statement whether the applicant monitored any of the following in the past year for a combined sewer overflow: (3-24-16)
    - i.** Rainfall; (3-24-16)
    - ii.** Overflow volume; (3-24-16)
    - iii.** Overflow pollutant concentrations; (3-24-16)
    - iv.** Receiving water quality; (3-24-16)
    - v.** Overflow frequency; and (3-24-16)
    - vi.** The number of storm events monitored in the past year; (3-24-16)

- e. Information regarding the number of combined sewer overflows from each outfall in the past year and, if available: (3-24-16)
  - i. The average duration per event; (3-24-16)
  - ii. The average volume for each event; and (3-24-16)
  - iii. The minimum rainfall that caused a combined sewer overflow event in the last year; (3-24-16)
- f. The name of each receiving water; (3-24-16)
- g. A description of any known water quality impact caused by the combined sewer overflow operations, including permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or the exceedance of any applicable state water quality standard, on the receiving water; and (3-24-16)
- h. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility. (3-24-16)

**16. Individual Permit Application Requirements for New Sources and New Discharges.** (3-24-16)

- a. An applicant for an IPDES permit for a new manufacturing, commercial, mining, silviculture, or other discharge, except for a new discharge from a facility subject to the requirements of Subsection 105.08 or a new discharge of storm water associated with industrial activity that is subject to the requirements of Subsection 105.19, except as provided by Subsection 105.19.c., shall provide the following information to the Department, using the applicable forms specified in Subsection 105.04.b.: (3-24-16)
  - i. The latitude and longitude to the nearest second of the expected outfall location and the name of each receiving water; (3-24-16)
  - ii. The expected date the discharge will commence; (3-24-16)
  - iii. The following information on flows, sources of pollution, and treatment technologies: (3-24-16)
    - (1) A narrative describing the treatment that the wastewater will receive, identifying all operations contributing wastewater to the effluent, stating the average flow contributed by each operation, and describing the ultimate disposal of any solid or liquid wastes not discharged; (3-24-16)
    - (2) A line drawing of the water flow through the facility with a water balance as described in Subsection 105.07.b.; and (3-24-16)
    - (3) If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration, and maximum daily flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks; (3-24-16)
  - iv. If a new source performance standard promulgated under the Clean Water Act section 306 or an effluent limitation guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable calculation of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard, as required by Subsection 303.02.b., for each of the first three (3) years. The applicant may submit alternative estimates if production is likely to vary; (3-24-16)
  - v. The effluent characteristics information as described in Subsection 105.16.b.; (3-24-16)
  - vi. The existence of any technical evaluation concerning the applicant's wastewater treatment, along with the name and location of similar plants of which the applicant has knowledge; (3-24-16)
  - vii. Any optional information the permittee wishes the Department to consider. (3-24-16)

- b. An applicant under this section must provide the following effluent characteristics information: (3-24-16)
- i. Estimated daily maximum, daily average, and the source of that information for each outfall for the following pollutants or parameters: (3-24-16)
- (1) Five (5)-day biochemical oxygen demand (BOD<sub>5</sub>); (3-24-16)
  - (2) Chemical oxygen demand (COD); (3-24-16)
  - (3) Total organic carbon (TOC); (3-24-16)
  - (4) Total suspended solids (TSS); (3-24-16)
  - (5) Flow; (3-24-16)
  - (6) Ammonia, as N; (3-24-16)
  - (7) Temperature, in both winter and summer; and (3-24-16)
  - (8) pH. (3-24-16)
- ii. Estimated daily maximum, daily average, and the source of that information for each outfall for all the conventional and nonconventional pollutants in Table IV of Appendix D to 40 CFR Part 122, if the applicant knows or has reason to believe any of the pollutants will be present or if any of the pollutants are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant; (3-24-16)
- iii. Estimated daily maximum, daily average, and the source of that information for the following pollutants for each outfall, if the applicant knows or has reason to believe the pollutants will be present in the discharge from any outfall: (3-24-16)
- (1) All pollutants in Table IV of Appendix D to 40 CFR Part 122; (3-24-16)
  - (2) The toxic metals, total cyanide, and total phenols listed in Table III of Appendix D to 40 CFR Part 122; (3-24-16)
  - (3) The organic toxic pollutants in Table II of Appendix D to 40 CFR Part 122 except bis (chloromethyl) ether, dichlorofluoromethane, and trichlorofluoromethane; however, this requirement is waived for: (3-24-16)
    - (a) An applicant with expected gross sales of less than two hundred eighty-seven thousand three hundred dollars (\$287,300) per year in 2014 dollars for the next three (3) years (see also Subsection 105.07.n.ii.); or (3-24-16)
    - (b) A coal mine with expected average production of less than one hundred thousand (100,000) tons of coal per year (see also Subsection 105.07.n.i.); (3-24-16)
- iv. The information that 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) may be discharged if the applicant uses or manufactures one (1) of the following compounds, or if the applicant knows or has reason to believe that TCDD will or may be present in an effluent: (3-24-16)
- (1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); Chemical Abstract Service (CAS) #93-76-5; (3-24-16)
  - (2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1); (3-24-16)

- (3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4); (3-24-16)
- (4) o,o-dimethyl o-(2,4,5-trichlorophenyl) phosphorothioate (Ronnell) (CAS #299-84-3); (3-24-16)
- (5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or (3-24-16)
- (6) Hexachlorophene (HCP) (CAS #70-30-4); and (3-24-16)

v. The potential presence of any of the pollutants listed in Table V of Appendix D to 40 CFR Part 122 if the applicant believes these pollutants will be present in any outfall, except that quantitative estimates are not required unless they are already available at the time the applicant applies for the permit. (3-24-16)

c. No later than two (2) years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of EPA application Form 2C or the Department equivalent. The applicant need not complete those portions of Item V or the Department equivalent requiring tests already performed and reported under the discharge monitoring requirements of its permit. (3-24-16)

d. The effluent characteristics requirements in Subsections 105.08.b., c., and e. that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report that a pollutant is present. For purposes of this subsection, net credits may be provided for the presence of pollutants in intake water if the requirements of Subsection 303.07 are met, and (except for discharge flow, temperature, and pH) all levels must be estimated as concentration and as total mass. (3-24-16)

e. The Department may waive the reporting requirements for any of the pollutants and parameters in Subsection 105.16.b. if the applicant requests a waiver with its application, or earlier, and demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements. (3-24-16)

**17. Individual Permit Application Requirements for Treatment Works Treating Domestic Sewage (TWTDS).** All TWTDS with a currently effective NPDES or IPDES permit must submit a permit application at the time of the next IPDES permit renewal application, using Form 2S or another application form approved by the Department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the Department. (3-24-16)

a. The Department may waive any requirement of this subsection if there is access to substantially identical information. The Department may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the EPA Regional Administrator. The waiver request to the Regional Administrator must include the Department's justification for the waiver. A Regional Administrator's disapproval of a Department's proposed waiver does not constitute final agency action, but does provide notice to the state and permit applicant(s) that EPA may object to any state-issued permit issued in the absence of the required information. (3-24-16)

b. All applicants must submit the following information: (3-24-16)

- i. The name, mailing address, and location of the TWTDS for which the application is submitted; (3-24-16)
- ii. The name, mailing address, EIN, and telephone number of the applicant and indication whether the applicant is the owner, operator, or both; (3-24-16)
- iii. Whether the facility is a Class I Sludge Management Facility; (3-24-16)
- iv. The design flow rate in million gallons per day (MGD); (3-24-16)
- v. The total population ~~or~~ and equivalent dwelling units (EDU) served; and ~~(3-24-16)~~ ( )

- vi. The TWTDS's status as federal, state, private, public, or other entity. (3-24-16)
- c. All applicants must submit the facility's NPDES or IPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs: (3-24-16)
  - i. Hazardous waste management program under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste"; (3-24-16)
  - ii. Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells"; (3-24-16)
  - iii. IPDES program under IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program"; (3-24-16)
  - iv. Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; (3-24-16)
  - v. Nonattainment program under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; (3-24-16)
  - vi. National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; (3-24-16)
  - vii. Dredge or fill permits under the Clean Water Act section 404; (3-24-16)
  - viii. Sludge Management Program under IDAPA 58.01.16.650, "Wastewater Rules," and Section 380 (Sewage Sludge) of these rules; and (3-24-16)
  - ix. Other relevant environmental permits, programs or activities, including those subject to state jurisdiction, approval, and permits. (3-24-16)
- d. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country. (3-24-16)
- e. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one (1) mile beyond property boundaries of the facility and showing the following information: (3-24-16)
  - i. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and (3-24-16)
  - ii. Wells, springs, and other surface water bodies that are within one-quarter ( $\frac{1}{4}$ ) mile of the property boundaries and listed in public records or otherwise known to the applicant. (3-24-16)
- f. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge, the destination(s) of all liquids and solids leaving each such unit, and all processes used for pathogen reduction and vector attraction reduction. (3-24-16)
- g. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in 40 CFR Part 503 for the applicant's use or disposal practices on the date of permit application. (3-24-16)
  - i. The Department may require sampling for additional pollutants, as appropriate, on a case-by-case basis; (3-24-16)

ii. Applicants must provide data from a minimum of three (3) samples taken within four and one-half (4 ½) years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one (1) month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application; (3-24-16)

iii. Applicants must collect and analyze samples in accordance with analytical methods approved under SW-846 (Test Methods for Evaluating Solid Waste, Physical/Chemical Methods) unless an alternative has been specified in an existing sewage sludge permit; and (3-24-16)

iv. The monitoring data provided must include at least the following information for each parameter: (3-24-16)

values; (1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample (3-24-16)

(2) The analytical method used; and (3-24-16)

(3) The method detection level. (3-24-16)

**h.** If the applicant is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge, the following information must be provided: (3-24-16)

i. If the applicant's facility generates sewage sludge, the total dry metric tons per three hundred sixty-five (365)-day period generated at the facility; (3-24-16)

ii. If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received: (3-24-16)

(1) The name, mailing address, and location of the other facility; (3-24-16)

(2) The total dry metric tons per three hundred sixty-five (365)-day period received from the other facility; and (3-24-16)

(3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics; (3-24-16)

iii. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information must be submitted: (3-24-16)

(1) Whether the Class A pathogen reduction requirements in 40 CFR 503.32(a) or the Class B pathogen reduction requirements in 40 CFR 503.32(b) are met, and a description of any treatment processes used to reduce pathogens in sewage sludge; (3-24-16)

(2) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(1) through (b)(8) are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and (3-24-16)

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge; (3-24-16)

iv. If sewage sludge from the applicant's facility meets the ceiling concentrations in 40 CFR 503.13(b)(1), the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), and one (1) of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (b)(8), and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that is applied to the land; (3-24-16)

v. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to Subsection 105.17.h.iv., the applicant must provide the following information: (3-24-16)

(1) The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that is sold or given away in a bag or other container for application to the land; and (3-24-16)

(2) A copy of all labels or notices that accompany the sewage sludge being sold or given away; and (3-24-16)

vi. If sewage sludge from the applicant's facility is provided to another person who generates sewage sludge during the treatment of domestic sewage in a treatment works or a person who derives a material from sewage sludge, and the sewage sludge is not subject to Subsection 105.17.h.iv., the applicant must provide the following information for each facility receiving the sewage sludge: (3-24-16)

(1) The name and mailing address of the receiving facility; (3-24-16)

(2) The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that the applicant provides to the receiving facility; (3-24-16)

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic; (3-24-16)

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 40 CFR 503.12(g); and (3-24-16)

(5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge. (3-24-16)

i. If sewage sludge from the applicant's facility is applied to the land in bulk form, and is not subject to Subsection 105.17.h.iv., v., or vi., the applicant must provide the following information: (3-24-16)

i. The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that is applied to the land; (3-24-16)

ii. If any land application sites are located in states other than the state where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located; (3-24-16)

iii. The following information for each land application site that has been identified at the time of permit application: (3-24-16)

(1) The name (if any), and location for the land application site; (3-24-16)

(2) The site's latitude and longitude to the nearest second, and method of determination; (3-24-16)

(3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location; (3-24-16)

(4) The name, mailing address, and telephone number of the site owner, if different from the applicant; (3-24-16)

(5) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant; (3-24-16)

(6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined under 40 CFR 503.11; (3-24-16)

(7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation; (3-24-16)

(8) Whether either of the vector attraction reduction options of 40 CFR 503.33(b)(9) or (b)(10) is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and (3-24-16)

(9) Other information that describes how the site will be managed, as specified by the permitting authority. (3-24-16)

iv. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site: (3-24-16)

(1) Whether the applicant has contacted the permitting authority in the state where the bulk sewage sludge subject to 40 CFR 503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to 40 CFR 503.13(b)(2) has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority; (3-24-16)

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site since July 20, 1993, if, based on the inquiry in Subsection 105.17.i.iv.(1) bulk sewage sludge subject to cumulative pollutant loading rates in 40 CFR 503.13(b)(2) has been applied to the site since July 20, 1993; (3-24-16)

v. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum: (3-24-16)

(1) Describes the geographical area covered by the plan; (3-24-16)

(2) Identifies the site selection criteria; (3-24-16)

(3) Describes how the site(s) will be managed; (3-24-16)

(4) Provides for advance notice to the permit authority of specific land application sites and reasonable time for the permit authority to object prior to land application of the sewage sludge; and (3-24-16)

(5) Provides for advance public notice of land application sites in the manner prescribed by state and local law. When state or local law does not require advance public notice, it must be provided in a manner reasonably calculated to apprise the general public of the planned land application. (3-24-16)

j. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information: (3-24-16)

i. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per three hundred sixty-five (365)-day period; (3-24-16)

ii. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate: (3-24-16)

(1) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and (3-24-16)

(2) The total dry metric tons from the applicant's facility per three hundred sixty-five (365)-day period placed on the surface disposal site; (3-24-16)

iii. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates: (3-24-16)

- (1) The name or number and the location of the active sewage sludge unit; (3-24-16)
- (2) The unit's latitude and longitude to the nearest second, and method of determination; (3-24-16)
- (3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location; (3-24-16)
- (4) The total dry metric tons placed on the active sewage sludge unit per three hundred sixty-five (365)-day period; (3-24-16)
- (5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit; (3-24-16)
- (6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of  $1 \times 10^{-7}$  cm/sec; (3-24-16)
- (7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal; (3-24-16)
- (8) If the active sewage sludge unit is less than one hundred fifty (150) meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line; (3-24-16)
- (9) The remaining capacity (dry metric tons) for the active sewage sludge unit; (3-24-16)
- (10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified; (3-24-16)
- (11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit: (3-24-16)
  - (a) The name, contact person, and mailing address of the facility; and (3-24-16)
  - (b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics; (3-24-16)
- (12) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(9) through (b)(11) is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge; (3-24-16)
- (13) The following information, as applicable to any ground water monitoring occurring at the active sewage sludge unit: (3-24-16)
  - (a) A description of any ground water monitoring occurring at the active sewage sludge unit; (3-24-16)
  - (b) Any available ground water monitoring data, with a description of the well locations and approximate depth to ground water; (3-24-16)
  - (c) A copy of any ground water monitoring plan that has been prepared for the active sewage sludge unit; and (3-24-16)
  - (d) A copy of any certification that has been obtained from a qualified ground water scientist that the aquifer has not been contaminated; and (3-24-16)
- (14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request. (3-24-16)

- k.** If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information: (3-24-16)
- i. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per three hundred sixty-five (365)-day period; (3-24-16)
- ii. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate: (3-24-16)
- (1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and (3-24-16)
- (2) The total dry metric tons from the applicant's facility per three hundred sixty-five (365)-day period fired in the sewage sludge incinerator; (3-24-16)
- iii. The following information for each sewage sludge incinerator that the applicant owns or operates: (3-24-16)
- (1) The name and/or number and the location of the sewage sludge incinerator; (3-24-16)
- (2) The incinerator's latitude and longitude to the nearest second, and method of determination; (3-24-16)
- (3) The total dry metric tons per three hundred sixty-five (365)-day period fired in the sewage sludge incinerator; (3-24-16)
- (4) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Beryllium in 40 CFR Part 61 will be achieved; (3-24-16)
- (5) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Mercury in 40 CFR Part 61 will be achieved; (3-24-16)
- (6) The dispersion factor for the sewage sludge incinerator, as well as modeling results and supporting documentation; (3-24-16)
- (7) The control efficiency for parameters regulated in 40 CFR 503.43, as well as performance test results and supporting documentation; (3-24-16)
- (8) Information used to calculate the risk specific concentration (RSC) for chromium, including the results of incinerator stack tests for hexavalent and total chromium concentrations, if the applicant is requesting a chromium limit based on a site-specific RSC value; (3-24-16)
- (9) Whether the applicant monitors total hydrocarbons (THC) or Carbon Monoxide (CO) in the exit gas for the sewage sludge incinerator; (3-24-16)
- (10) The type of sewage sludge incinerator; (3-24-16)
- (11) The maximum performance test combustion temperature, as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies; (3-24-16)
- (12) The following information on the sewage sludge feed rate used during the performance test: (3-24-16)
- (a) Sewage sludge feed rate in dry metric tons per day; (3-24-16)
- (b) Identification of whether the feed rate submitted is average use or maximum design; and (3-24-16)

- (c) A description of how the feed rate was calculated; (3-24-16)
- (13) The incinerator stack height in meters for each stack, including identification of whether actual or creditable stack height was used; (3-24-16)
- (14) The operating parameters for the sewage sludge incinerator air pollution control device(s), as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies; (3-24-16)
- (15) Identification of the monitoring equipment in place, including (but not limited to) equipment to monitor the following: (3-24-16)
  - (a) Total hydrocarbons or Carbon Monoxide; (3-24-16)
  - (b) Percent Oxygen; (3-24-16)
  - (c) Percent moisture; and (3-24-16)
  - (d) Combustion temperature; and (3-24-16)
- (16) A list of all air pollution control equipment used with this sewage sludge incinerator. (3-24-16)
  - i.** If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent: (3-24-16)
    - i. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF; (3-24-16)
    - ii. The total dry metric tons per three hundred sixty-five (365)-day period sent from this facility to the MSWLF; (3-24-16)
    - iii. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and (3-24-16)
    - iv. Information, if known, indicating whether the MSWLF complies with criteria set forth in 40 CFR Part 258. (3-24-16)
  - m.** All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal. (3-24-16)
  - n.** At the request of the Department, the applicant must provide any other information necessary to determine the appropriate standards for permitting under 40 CFR Part 503, and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements. (3-24-16)
  - o.** TWTDS facilities using or disposing of sewage sludge to which a standard applicable to its sewage sludge use or disposal practices have been published shall submit the following information on EPA Form 2S, Part I, or on the Department equivalent form: (3-24-16)
    - i. The TWTDS's name, mailing address, location, and status as federal, state, private, public, or other entity; (3-24-16)
    - ii. The applicant's name, address, telephone number, and ownership status; (3-24-16)
    - iii. A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the

requirements of Subsection 105.17.h.iv., the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal, and the location of any land application sites; (3-24-16)

iv. Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and (3-24-16)

v. The most recent data the TWTDS may have on the quality of the sewage sludge. (3-24-16)

**18. Individual Permit Application Requirements for Municipal Separate Storm Sewer Discharges.** The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Department under 40 CFR 122.26(a)(1)(v), may submit a jurisdiction-wide or system-wide permit application. Where more than one (1) public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under 40 CFR 122.26 (a)(1)(v) shall include: (3-24-16)

a. Part 1 of the application shall consist of: (3-24-16)

i. The applicants' name, address, EIN, telephone number of contact person, ownership status and status as a state or local government entity; (3-24-16)

ii. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in Subsection 105.18.b.i., the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria; (3-24-16)

iii. A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any POTW serving the same area as the municipal separate storm sewer system. The following information shall be provided: (3-24-16)

(1) A USGS seven point five (7.5) minute topographic map (or equivalent topographic map with a scale between one to ten thousand (1:10,000) and one to twenty-four thousand (1:24,000) if cost effective) extending one (1) mile beyond the service boundaries of the municipal storm sewer system covered by the permit application; (3-24-16)

(2) The location of known municipal storm sewer system outfalls discharging to waters of the United States; (3-24-16)

(3) A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten (10) year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided; (3-24-16)

(4) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste; (3-24-16)

(5) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES or IPDES permit; (3-24-16)

(6) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and (3-24-16)

(7) The identification of publicly owned parks, recreational areas, and other open lands. (3-24-16)

iv. A description of the discharge including: (3-24-16)

- (1) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events; (3-24-16)
- (2) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used; (3-24-16)
- (3) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been: (3-24-16)
  - (a) Assessed and reported in the Clean Water Act section 305(b) reports submitted by the Department, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act goals (fishable and swimmable waters), and causes of nonsupport of designated uses; (3-24-16)
  - (b) Listed under the Clean Water Act section 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or 304(l)(1)(B) that is not expected to meet water quality standards or water quality goals; (3-24-16)
  - (c) Listed in state Nonpoint Source Assessments required by the Clean Water Act section 319(a), without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards); (3-24-16)
  - (d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under the Clean Water Act section 314(a) (include the following: A description of those publicly owned lakes for which uses are known to be impaired, a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes, and a description of methods and procedures to restore the quality of such lakes); (3-24-16)
  - (e) Recognized by the applicant as highly valued or sensitive waters; (3-24-16)
  - (f) Defined by the state as wetlands; and (3-24-16)
  - (g) Found to have pollutants in bottom sediments, fish tissue, or biosurvey data. (3-24-16)
- (4) Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two (2) grab samples shall be collected during a twenty-four (24)-hour period with a minimum period of four (4) hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria: (3-24-16)
  - (a) A grid system consisting of perpendicular north-south and east-west lines spaced one-quarter ( $\frac{1}{4}$ ) mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells; (3-24-16)

(b) All cells that contain a segment of the storm sewer system shall be identified; one (1) field screening point shall be selected in each cell; major outfalls may be used as field screening points; (3-24-16)

(c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity; (3-24-16)

(d) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination; (3-24-16)

(e) Hydrological conditions, total drainage area of the site, population density of the site, traffic density, age of the structures or buildings in the area, history of the area, and land use types; (3-24-16)

(f) For medium municipal separate storm sewer systems, no more than two hundred fifty (250) cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than five hundred (500) cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than two hundred fifty (250) cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and (3-24-16)

(g) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in Subsection 105.18.a.iv.(4)(a) through (f), because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than five hundred (500) or two hundred fifty (250) major outfalls respectively (or all major outfalls in the system, if less). In such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced one-quarter (¼) mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells. The applicant will then select major outfalls in as many cells as possible until at least five hundred (500) major outfalls (large municipalities) or two hundred fifty (250) major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls; and (3-24-16)

(5) Information and a proposed program to meet the requirements of Subsection 105.18.b.iii., which shall include: the location of outfalls or field screening points appropriate for representative data collection under Subsection 105.18.b.iii.(1), a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see Subsection 105.18.a.iv.(3)) to the extent practicable; (3-24-16)

v. A description of the existing management programs to control pollutants from the municipal separate storm sewer system, which shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls that are currently being implemented. Such controls may include, but are not limited to: procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under state law as well as local requirements; (3-24-16)

vi. A description of the existing program to identify illicit connections to the municipal storm sewer system, which should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented; and (3-24-16)

vii. A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs. (3-24-16)

**b.** Part 2 of the application shall consist of: (3-24-16)

i. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance, or series of contracts which authorizes or enables the applicant at a minimum to: (3-24-16)

(1) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity; (3-24-16)

(2) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer; (3-24-16)

(3) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water; (3-24-16)

(4) Control through interagency agreements among co-applicants the contribution of pollutants from a portion of the municipal system to another portion of the municipal system; (3-24-16)

(5) Require compliance with conditions in ordinances, permits, contracts or orders; and (3-24-16)

(6) Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer. (3-24-16)

ii. The location of any major outfall that discharges to waters of the United States that was not reported under Subsection 105.18.a.iii.(2). Provide an inventory, organized by watershed of the name and address, and a description (such as Standard Industrial Classification (SIC) codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity; (3-24-16)

iii. When quantitative data for a pollutant are required under Subsection 105.18.b.iii.(1)(c), the applicant must collect a sample of effluent in accordance with Subsection 105.07.c. through 105.07.m. and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including: (3-24-16)

(1) Quantitative data from representative outfalls designated by the Department developed as follows (based on information received in part 1 of the application. The Department shall designate between five (5) and ten (10) outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five (5) outfalls covered in the application, the Department shall designate all outfalls): (3-24-16)

(a) For each outfall or field screening point designated under this subsection, samples shall be collected of storm water discharges from three (3) storm events occurring at least one (1) month apart in accordance with the requirements at Subsection 105.07.c. through 105.07.m. (the Department may allow exemptions to sampling three (3) storm events when climatic conditions create good cause for such exemptions); (3-24-16)

(b) A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than one-tenth (0.1) inch rainfall) storm event; (3-24-16)

(c) For samples collected and described under Subsections 105.18.b.iii.(1)(a) and (b), quantitative data shall be provided for the organic pollutants listed in Table II and the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of Appendix D of 40 CFR Part 122, and for the following pollutants: (3-24-16)

(i) Total suspended solids (TSS); (3-24-16)

(ii) Total dissolved solids (TDS); (3-24-16)

- (iii) Chemical oxygen demand (COD); (3-24-16)
  - (iv) Five (5)-day biochemical oxygen demand (BOD5); (3-24-16)
  - (v) Oil and grease; (3-24-16)
  - (vi) Fecal coliform; (3-24-16)
  - (vii) Fecal streptococcus; (3-24-16)
  - (viii) pH; (3-24-16)
  - (ix) Total Kjeldahl nitrogen; (3-24-16)
  - (x) Nitrate plus nitrite; (3-24-16)
  - (xi) Total ammonia plus organic nitrogen; (3-24-16)
  - (xii) Dissolved phosphorus; and (3-24-16)
  - (xiii) Total phosphorus; (3-24-16)
- (d) Additional limited quantitative data required by the Department for determining permit conditions (the Department may require that quantitative data be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness); (3-24-16)
- (2) Estimates of the annual pollutant load of the cumulative discharges to waters of the United States from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States from all identified municipal outfalls during a storm event for BOD5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods; (3-24-16)
- (3) A proposed schedule to provide estimates for each major outfall identified in either Subsection 105.18.b.ii. or 105.18.a.iii.(2) of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under Subsection 105.18.b.iii.(1); and (3-24-16)
- (4) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment; (3-24-16)
- iv. A proposed management program covering the duration of the permit, which shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each co-applicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Department when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on: (3-24-16)
- (1) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be

implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include: (3-24-16)

(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers; (3-24-16)

(b) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed (controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in Subsection 105.18.b.iv.(4)); (3-24-16)

(c) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities; (3-24-16)

(d) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible; (3-24-16)

(e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage, or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under Subsection 105.18.b.iv.(3)); and (3-24-16)

(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides, and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities; (3-24-16)

(2) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate IPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include: (3-24-16)

(a) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system. This program description shall address all types of illicit discharges; however, the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined in Section 010) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from firefighting only where such discharges or flows are identified as significant sources of pollutants to waters of the United States); (3-24-16)

(b) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens; (3-24-16)

(c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation); (3-24-16)

- (d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer; (3-24-16)
- (e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers; (3-24-16)
- (f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and (3-24-16)
- (g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary; (3-24-16)
- (3) A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall: (3-24-16)
- (a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges; and (3-24-16)
- (b) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in Subsection 105.18.b.iv.(3), to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES or IPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under Subsections 105.07.j. through l.; (3-24-16)
- (4) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include: (3-24-16)
- (a) A description of procedures for site planning which incorporate consideration of potential water quality impacts; (3-24-16)
- (b) A description of requirements for nonstructural and structural best management practices; (3-24-16)
- (c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and (3-24-16)
- (d) A description of appropriate educational and training measures for construction site operators; (3-24-16)
- v. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water; (3-24-16)
- vi. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under Subsections 105.18.b.iii. and iv. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds; (3-24-16)

vii. Where more than one (1) legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination; and (3-24-16)

viii. Where requirements under Subsections 105.18.a.iv.(5), 105.18.b.ii., 105.18.b.iii.(2), and 105.18.b.iv. are not practicable or are not applicable, the Department may exclude any operator of a discharge from a municipal separate storm sewer which is designated under 40 CFR 122.26(a)(1)(v), (b)(4)(ii) or (b)(7)(ii) from such requirements. The Department shall not exclude the operator of a discharge from a municipal separate storm sewer identified in Appendix F, G, H or I of 40 CFR Part 122, from any of the permit application requirements under this subsection except where authorized under this section. (3-24-16)

**19. Individual Permit Application Requirements for Industrial and Construction Storm Water Discharges.** Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity. (3-24-16)

**a.** Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit or any discharge of storm water which the Department is evaluating for designation (see Section 130, General Permits) under 40 CFR 122.26(a)(1)(v) and is not a municipal storm sewer, shall submit an IPDES application in accordance with the requirements of Section 105 (Application for an Individual IPDES Permit) as modified and consistent with this subsection. (3-24-16)

**b.** Except as provided in Subsections 105.19.c. through e., the operator of a storm water discharge associated with industrial activity subject to this section shall provide: (3-24-16)

i. A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: (3-24-16)

(1) Each of its drainage and discharge structures; (3-24-16)

(2) The drainage area of each storm water outfall; (3-24-16)

(3) Paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a Resource Conservation and Recovery Act permit which is used for accumulating hazardous waste under 40 CFR 262.34); (3-24-16)

(4) Each well where fluids from the facility are injected underground; and (3-24-16)

(5) Springs, and other surface water bodies which receive storm water discharges from the facility; (3-24-16)

ii. An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: (3-24-16)

(1) Significant materials that in the three (3) years prior to the submittal of this application have been treated, stored, or disposed in a manner to allow exposure to storm water; (3-24-16)

(2) Method of treatment, storage or disposal of such materials; materials management practices employed, in the three (3) years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; (3-24-16)

(3) Materials loading and access areas; (3-24-16)

- (4) The location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; (3-24-16)
- (5) The location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and (3-24-16)
- (6) A description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge; (3-24-16)
- iii. A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by an IPDES permit. Tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test; (3-24-16)
- iv. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three (3) years prior to the submittal of this application; (3-24-16)
- v. Quantitative data based on samples collected during storm events and collected in accordance with Subsection 105.07 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters: (3-24-16)
- (1) Any pollutant limited in an effluent guideline to which the facility is subject; (3-24-16)
- (2) Any pollutant listed in the facility's NPDES or IPDES permit for its process wastewater (if the facility is operating under an existing NPDES or IPDES permit); (3-24-16)
- (3) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen; (3-24-16)
- (4) Any information on the discharge required under Subsections 105.07.j. through l.; (3-24-16)
- (5) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and (3-24-16)
- (6) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration (in hours) between the storm event sampled and the end of the previous measurable (greater than one-tenth (0.1) inch rainfall) storm event; (3-24-16)
- vi. Operators of a discharge which is composed entirely of storm water are exempt from the requirements of Subsections 105.07.b., 105.07.a.i.(2) through 105.07.a.i.(5), 105.07.a.ii., 105.07.a.iii., 105.07.g., 105.07.h., 105.07.i., and 105.07.m.; and (3-24-16)
- vii. Operators of new sources or new discharges (as defined in Section 010, Definitions) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in Subsection 105.19.b.v. instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in Subsection 105.19.b.v. within two (2) years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the IPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of Subsections 105.16.a.iii.(2), 105.16.a.iii.(3), and 105.16.b. (3-24-16)
- c. An operator of an existing or new storm water discharge that is associated with industrial activity solely under 40 CFR 122.26(b)(14)(x) or is associated with small construction activity solely under 40 CFR 122.26 (b)(15), is exempt from the requirements of Subsection 105.07 and Subsection 105.19.b. Such operator shall provide a narrative description of: (3-24-16)

- i. The location (including a map) and the nature of the construction activity; (3-24-16)
- ii. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit; (3-24-16)
- iii. Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable state and local erosion and sediment control requirements; (3-24-16)
- iv. Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable state or local erosion and sediment control requirements; (3-24-16)
- v. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and (3-24-16)
- vi. The name of the receiving water. (3-24-16)
- d.** The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with Subsection 105.19.b., unless the facility:
  - i. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at any time since November 16, 1987; or (3-24-16)
  - ii. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or (3-24-16)
  - iii. Contributes to a violation of a water quality standard. (3-24-16)
- e.** The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations. (3-24-16)
- f.** Applicants shall provide such other information the Department may reasonably require under Subsection 105.07.o. to determine whether to issue a permit and may require any facility subject to Subsection 105.19.c. to comply with Subsection 105.19.b. (3-24-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**109. PUBLIC NOTIFICATION AND COMMENT.**

- 01. Public Notification.** (3-24-16)
  - a.** The Department will give notice to the public that: (3-24-16)
    - i. A draft permit has been prepared under Subsection 108.01; (3-24-16)
    - ii. The Department intends to deny a permit application under Subsection 107.01; (3-24-16)
    - iii. A public meeting is scheduled; or (3-24-16)

- iv. An IPDES new source determination has been made. (3-24-16)
- b. A public notice may describe more than one (1) permit or permit action. (3-24-16)
- c. The Department will allow at least thirty (30) days for public comment on the items in the notice, and will provide at least thirty (30) days' notice before the public meeting. Notice of the draft permit and the meeting may be combined and given at the same time. (3-24-16)
- d. Public notice that a draft permit has been prepared, and any public meeting on the draft permit must be given by the following methods: (3-24-16)
  - i. By mailing a copy of the notice to the following persons, unless any person entitled to receive notice under this subsection waives that person's right to receive notice for any classes and categories of permits: (3-24-16)
    - (1) The applicant, unless there is no applicant for an IPDES general permit; (3-24-16)
    - (2) Any other agency (including EPA when the draft permit is prepared by the state) that the Department knows has issued or is required to issue a permit for the same facility or activity under the following laws and programs: (3-24-16)
      - (a) Resource Conservation and Recovery Act, under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste"; (3-24-16)
      - (b) Underground Injection Control (UIC) Program under Idaho Department of Water Resources as authorized under Idaho Code Title 42 Chapter 39 and regulated under IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells"; (3-24-16)
      - (c) Clean Air Act, under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; (3-24-16)
      - (d) Idaho Pollution Discharge Elimination System Program, under IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program"; or (3-24-16)
      - (e) Sludge Management Program, under IDAPA 58.01.16.650, "Wastewater Rules"; and (3-24-16)
      - (f) Dredge and Fill Permit Program (Clean Water Act section 404); (3-24-16)
    - (3) Affected federal and state agencies with jurisdiction over fish, shellfish, wildlife, and other natural resources, state historic preservation officers, and any affected Indian tribe; (3-24-16)
    - (4) Any state agency responsible for plan development under the Clean Water Act sections 208(b)(2), 208(b)(4), or 303(e), and the United States Army Corps of Engineers, the United States Fish and Wildlife Service, and the National Marine Fisheries Service; (3-24-16)
  - (5) Any user identified in the permit application of a privately owned treatment works; (3-24-16)
  - (6) Persons on a mailing list developed by: (3-24-16)
    - (a) Recording those who request in writing to be on the list; (3-24-16)
    - (b) Soliciting persons for area lists from participants in past permit proceedings in that area; and (3-24-16)
    - (c) Publishing notice of the opportunity to be on the mailing list on the Department's website and through periodic publication in the local press and in regional and state-funded newsletters, environmental bulletins, state law journals or similar publications. The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed, and may delete from the list the name of any person who fails to respond to the Department's request; (3-24-16)

- (7) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and (3-24-16)
- (8) Each state agency having any authority under state law with respect to the construction or operation of the facility; (3-24-16)
- ii. For a major facility permit, a general permit, and a permit that includes sewage sludge land application plans, by publishing a notice in a daily or weekly newspaper within the area affected by the facility or activity; and (3-24-16)
- iii. By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or use of any other forum or media to elicit public participation. (3-24-16)
- e. A public notice issued under this subsection must contain at least the following information: (3-24-16)
- i. Name and address of the office processing the permit action for which notice is being given and where comments may be submitted; (3-24-16)
- ii. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of IPDES draft general permits; (3-24-16)
- iii. A brief description of the business conducted at the facility or activity described in the permit application, or for general permits when there is no application, in the draft permit; (3-24-16)
- iv. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, fact sheet, and the application; (3-24-16)
- v. A brief description of the comment and public meeting procedures required by this subsection and the time and place of any meeting that will be held; if no meeting has already been scheduled, a statement of procedures to request a meeting and other procedures by which the public may participate in the final permit decision; (3-24-16)
- vi. A general description of the location of each existing or proposed discharge point and the name of the receiving water; (3-24-16)
- vii. The sludge use and disposal practices and the location of each sludge TWTDS and use or disposal sites known at the time of permit application; (3-24-16)
- viii. A description of requirements applicable to cooling water intake structures under the Clean Water Act section 316(b), in accordance with 40 CFR 125.80 through 89, 125.90 through 99, and 125.130 through 139; and (3-24-16)
- ix. Directions to the Department's website where interested parties can obtain copies of the draft permit, fact sheet, and the permit application, if any; and (3-24-16)
- f. In addition to the information required by Subsection 109.01.e., the public notice for a draft permit for a discharge for which a request has been filed under the Clean Water Act section 316(a) must include: (3-24-16)
- i. A statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act sections 301 or 306, and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under the Clean Water Act sections 301 or 306; (3-24-16)
- ii. A statement that a request has been filed under the Clean Water Act section 316(a), that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under the Clean Water

Act section 316(a), and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and (3-24-16)

iii. If the applicant has filed an early screening request under 40 CFR 125.72 for a variance under the Clean Water Act section 316(a), a statement that the applicant has submitted that early screening request. (3-24-16)

g. In addition to the general public notice described in Subsection 109.01.e., the public notice of a meeting under this section must contain the following information: (3-24-16)

i. Reference to the date of previous public notices relating to the permit; (3-24-16)

ii. Date, time, and place of the meeting; and (3-24-16)

iii. A brief description of the nature and purpose of the meeting, including the applicable rules and procedures. (3-24-16)

h. The Department shall mail a copy of the general public notice described in Subsection 109.01.e. to all persons identified in Subsections 109.01.d.i.(1), (2), (3), and (4). (3-24-16)

i. The Department will hold a public meeting whenever the Department finds, on the basis of requests, a significant degree of public interest in a draft permit. The Department may also hold a public meeting if a meeting might clarify one (1) or more issues involved in the permit decision or for other good reason in the Department's discretion. (3-24-16)

**02. Public Comment.** (3-24-16)

a. During the public comment period, any interested person may submit written comments on the draft permit. Written comments shall be submitted to the person identified in the notice and as specified in Subsection 109.01.e. (3-24-16)

b. During the public comment period, any interested person may request a public meeting if no public meeting has been scheduled. ~~A request for a public meeting shall be in writing and must be submitted to the Department within fourteen (14) days after the date of the public notice required by Subsection 109.01.~~ The Department shall schedule and hold a public meeting if the Department determines that significant public interest exists in the draft permit. (3-24-16)( )

i. A request for a public meeting shall be in writing and must be submitted to the Department within fourteen (14) days after the date of the public notice required by Subsection 109.01. ( )

ii. If a public meeting is held for the purpose of receiving comments, the Department will make an audio recording or hire a court reporter to record the meeting and shall prepare a transcript of the meeting if an appeal is filed. ( )

c. If, during the comment period for an IPDES draft permit, the district engineer of the United States Army Corps of Engineers advises the Department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the Department will deny the permit and notify the applicant of the denial. If the district engineer advises the Department that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, the Department will include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer must be sought through the applicable procedures of the United States Army Corps of Engineers and not through the state procedures. If a court of competent jurisdiction stays the conditions or if applicable procedures of the United States Army Corps of Engineers result in a stay of the conditions, those conditions must be considered stayed in the IPDES permit for the duration of the stay. (3-24-16)

d. If, during the comment period for an IPDES draft permit, the United States Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the Department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Department may

include the specified conditions in the permit to the extent the Department determines they are necessary to comply with the provisions of the Clean Water Act. (3-24-16)

**e.** In some cases, the Department may confer with one (1) or more of the agencies referred to in Subsections 109.02.c. and 109.02.d. before issuing a draft permit and may set out an agency's view in the fact sheet or the draft permit. (3-24-16)

**f.** The Department will consider all comments in making the final decision and will answer the comments as provided in this subsection. (3-24-16)

**g.** Requests for extending a public comment period must be received in writing by the Department prior to the last day of the comment period. (3-24-16)

**h.** After the close of the public comment period and prior to the issuance of the final permit decision, the Department shall afford the permit applicant an opportunity to provide additional information to respond to public comments. In addition, in order to respond to comments, the Department may request the applicant provide additional information. (3-24-16)

**03. Response to Comments.** When the Department issues a final permit, the Department will issue a response to comments, which must be available to the public. The response must: (3-24-16)

**a.** Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and (3-24-16)

**b.** Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any meeting. (3-24-16)

**110. FEE SCHEDULE FOR IPDES PERMITTED FACILITIES.**

**01. Effective Date.** Annual fees shall be paid for each fee year beginning one (1) year after the effective date of the IPDES program for the affected category of discharger and continuing for each succeeding year. (3-24-16)

**02. Fee Schedule.** (3-24-16)

**a.** Publicly and privately owned treatment works, and any other discharger designated by the Department (Subsection 105.11.a.), shall pay an annual fee based on the number of equivalent dwelling units (EDUs) as defined in Section 010 (Definitions). The rate fee shall be \$1.74 per EDU. The Department will calculate EDUs and the appropriate annual fee will be calculated by the following: (3-24-16)( )

**i.** Using the most recent Census Bureau statistics for estimates of the population served and the average number of people in a household The Department calculates facility EDUs according to the definition of EDUs in Section 010; or (3-24-16)( )

**ii.** Existing facilities may annually report to the Department the number of EDUs served, annually; or (3-24-16)( )

**iii.** New facilities may report to the Department the number of EDUs to be served, based on the facility planning design as part of the IPDES permit application. (3-24-16)

**b.** All other permitted IPDES dischargers shall pay an annual fee, an application fee, or both according to the following schedule:

Permit Type	Application	Annual
<b>Industrial Permits</b>		
<b>Major</b>	\$0	\$13,000

Permit Type	Application	Annual
Minor	\$0	\$4,000
<b>Storm Water Permits</b>		
<b>Construction (CGP)</b>		
1-10 acres	\$200	\$0
10-50 acres	\$400	\$75
50-100 acres	\$750	\$100
100-500 acres	\$1,000	\$400
>500 acres	\$1,250	\$400
Low Erosivity Waiver (CGP)	\$125	\$0
Industrial (MSGP) Permits	\$1,500	\$1,000
Cert. of No Exposure (MSGP)	\$250	\$100
Other General Permits	\$0	\$0

(3-24-16)

**03. Fee Assessment.**

(3-24-16)

a. An annual fee assessment will be generated for each IPDES-permitted facility for which an annual fee is required as set forth in Subsection 110.02. Annual fees will be determined based on the twelve (12) months between October 1 and September 30 of the following calendar year. (3-24-16)

b. Application Fees and Annual Fees:

(3-24-16)

i. Application fees, as identified in Subsection 110.02.b., are assessed at the time of application for coverage under an individual permit, or notice of intent for coverage under a general permit. (3-24-16)

ii. Owners or operators of multi-year storm water facilities or construction projects are subject to annual fees that will be assessed in the year (October through September) immediately following the receipt of the application or notice of intent for coverage. (3-24-16)

c. Assessment of annual fees will consider the number of months a permittee was covered under either a general or an individual permit in a given year (October through September of the following calendar year). If the permittee was covered for less than a full twelve (12) months, the assessed fee shall be pro-rated to account for less than a full year's coverage under the permit. (3-24-16)

**04. Billing.** For those permitted facilities subject to an annual fee, the annual fee shall be assessed and a statement will be mailed by the Department on or before July 1 of each year. (3-24-16)

**05. Payment.**

(3-24-16)

a. Payment of the annual fee shall be due on October 1, unless it is a Saturday, Sunday, or legal holiday, in which event the payment shall be due on the successive business day. Fees paid by check or money order shall be made payable to the Idaho Department of Environmental Quality and sent to 1410 North Hilton Street, Boise, ID 83706-1255. (3-24-16)

b. If a POTW serves five hundred seventy-five (575) EDUs or more, the facility may request to divide its annual fee payment into equal monthly or quarterly installments by submitting a request to the Department on the proper request form provided with the initial billing statement. (3-24-16)

i. The Department will notify an applicable POTW, in writing, of approval or denial of a requested monthly or quarterly installment plan within ten (10) business days of the Department receiving such a request. (3-24-16)

ii. If a POTW has been approved to pay monthly installments then each installment shall be due by the first day of each month, unless it is a Saturday, a Sunday, or a legal holiday, in which event the installment shall be due on the successive business day. (3-24-16)

iii. If a POTW has been approved to pay quarterly installments then each installment shall be due by the first day of the month of each quarter (October 1, January 1, April 1, and July 1), unless it is a Saturday, a Sunday, or a legal holiday, in which event the installment shall be due on the first successive business day. (3-24-16)

c. Payment of the application fee is due with the application for an individual permit or notice of intent for coverage under a general permit. (3-24-16)

**06. Delinquent Unpaid Fees.** A permittee covered under either a general permit or an individual permit will be delinquent in payment if the annual fee assessed has not been received by the Department by November 1; or if having first opted to pay monthly or quarterly installments, its monthly or quarterly installment has not been received by the Department by the last day of the month in which the monthly or quarterly payment is due. (3-24-16)

**07. Suspension of Services and Disapproval Designation.** (3-24-16)

a. For any permittee delinquent in payment of fee assessed under Subsections 110.02 and 110.06 in excess of ninety (90) days, technical services provided by the Department shall be suspended. The permittee will be informed of the fee delinquency in a warning letter, which shall identify administrative enforcement actions the Department may pursue if the permittee does not comply with the terms of the permit. (3-24-16)

b. For any permittee delinquent in payment of fee assessed under Subsections 110.02 and 110.06, in excess of one hundred and eighty (180) days, the Department shall suspend all technical services provided by the Department and consider the permittee in non-compliance with permit conditions and these rules, and subject to provisions described in Section 500 (Enforcement) of these rules. (3-24-16)

**08. Reinstatement of Suspended Services and Approval Status.** For any permittee for which delinquency of fee payment pursuant to Subsection 110.07 has resulted in the suspension of technical services, determination of non-compliance of permit condition, or both, the continuation of technical services, determination of compliance based on payment of fee, or both will occur upon payment of delinquent annual fee assessments. (3-24-16)

**09. Enforcement Action.** Nothing in Section 110 (Fee Schedule for IPDES Permitted Facilities) waives the Department's right to undertake a non-fee related enforcement action at any time, including seeking penalties, as provided in Sections 39-108, 39-109, and 39-117, Idaho Code. (3-24-16)

**10. Responsibility to Comply.** Subsection 110.07 shall in no way relieve any permittee from its obligation to comply with all applicable state and federal statutes, rules, regulations, permits, or orders. (3-24-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**130. GENERAL PERMITS.**

**01. Coverage.** The Department may issue a general permit in accordance with the following:(3-24-16)

a. Within a geographic area, the general permit shall be written to cover one (1) or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under Subsection

130.01.b.ii., except those covered by individual permits within a geographic area. The area should correspond to existing geographic or political boundaries such as: (3-24-16)

- i. Designated planning areas under the Clean Water Act sections 208 and 303; (3-24-16)
- ii. Sewer districts or sewer authorities; (3-24-16)
- iii. City, county, or state political boundaries; (3-24-16)
- iv. State highway systems; (3-24-16)
- v. Standard metropolitan statistical areas as defined by state or federal agencies; (3-24-16)
- vi. Urbanized areas as designated by the U.S. Census Bureau; or (3-24-16)
- vii. Any other appropriate division or combination of boundaries. (3-24-16)

**b.** The general permit may be written to regulate one (1) or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in Subsection 130.01.a., where the sources within a covered subcategory of discharges are either: (3-24-16)

- i. Storm water point sources; or (3-24-16)
- ii. One (1) or more categories or subcategories of point sources other than storm water point sources or TWTDS, if the point sources or TWTDS within each category or subcategory all: (3-24-16)
  - (1) Involve the same or substantially similar types of operations; (3-24-16)
  - (2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices; (3-24-16)
  - (3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal; (3-24-16)
  - (4) Require the same or similar monitoring; and (3-24-16)
  - (5) In the opinion of the Department, are more appropriately controlled under a general permit than under individual permits. (3-24-16)

**c.** Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to Section 302 (Establishing Permit Provisions), the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations. (3-24-16)

**d.** Other requirements: (3-24-16)

- i. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or TWTDS covered by the permit; and (3-24-16)
- ii. The general permit may exclude specified sources or areas from coverage. (3-24-16)

iii. For general permits issued under Subsection 130.01.b. for small MS4s, the Department must establish the terms and conditions necessary to meet the requirements of 40 CFR 122.34 using one (1) of the two (2) permitting approaches described in Subsections 130.01.d.iii.(1) and (2). The Department must indicate in the permit or fact sheet which approach is being used. ( )

(1) Comprehensive general permit. The Department includes all required permit terms and conditions in the general permit; or ( )

(2) Two-step general permit. The Department includes required permit terms and conditions in the general permit applicable to all eligible small MS4s and, during the process of authorizing small MS4s to discharge, establishes additional terms and conditions not included in the general permit to satisfy one (1) or more of the permit requirements in 40 CFR 122.34 for individual small MS4 operators. ( )

(a) The general permit must require that any small MS4 operator seeking authorization to discharge under the general permit submit a Notice of Intent (NOI) consisting of the minimum required information in Subsection 130.05.b., and any other information the Director identifies as necessary to establish additional terms and conditions that satisfy the permit requirements of 40 CFR 122.34, such as the information required under Subsection 130.05.b. The general permit will explain any other steps necessary to obtain permit authorization. ( )

(b) The Department must review the NOI submitted by the small MS4 operator to determine whether the information in the NOI is complete and to establish the additional terms and conditions necessary to meet the requirements of 40 CFR 122.34. The Department may require the small MS4 operator to submit additional information. If the Department makes a preliminary decision to authorize the small MS4 operator to discharge under the general permit, the Department must give the public notice of and opportunity to comment and request a public meeting on its proposed authorization and the NOI, the proposed additional terms and conditions, and the basis for these additional requirements. The public notice, the process for submitting public comments and meeting requests, and the meeting process if a request for a meeting is granted, must follow the procedures applicable to draft permits set forth in Sections 108 and 109 except Subsection 109.01.d. The Department must respond to significant comments received during the comment period as provided in Subsection 109.03. ( )

(c) Upon authorization for the MS4 to discharge under the general permit, the final additional terms and conditions applicable to the MS4 operator become effective. The Department must notify the permittee and inform the public of the decision to authorize the MS4 to discharge under the general permit and of the final additional terms and conditions specific to the MS4. ( )

**02. Electronic Submittals.** ~~The Department may require the applicant to electronically submit information required by this section, if the Department approves an electronic method of submittal~~ As of December 21, 2020, all notices of intent submitted in compliance with this section must be submitted electronically by the discharger (or treatment works treating domestic sewage) to the Department unless waived pursuant to 40 CFR 127.15. (3-24-16)( )

**03. Information Retention Schedule.** An applicant must keep records of all data used to complete a notice of intent and any supplemental information submitted for a period of at least three (3) years from the date the notice of intent is signed. (3-24-16)

**04. Notice of Intent.** (3-24-16)

**a.** Any person required under Subsections 102.01 through 102.03 must submit a notice of intent to the Department for coverage under an IPDES general permit as set out in Subsection 130.05. (3-24-16)

**b.** A notice of intent must be signed and certified as required by Section 090 (Signature Requirements). (3-24-16)

**05. Administration.** (3-24-16)

**a.** General permits may be issued, modified, revoked and reissued, or terminated in accordance with Sections 201 (Modification, or Revocation and Reissuance of IPDES Permits) and 203 (Termination of IPDES Permits). (3-24-16)

**b.** Authorization to discharge, or authorization to engage in sludge use and disposal practices shall follow these procedures: (3-24-16)

**i.** Except as provided in Subsections 130.05.b.xi. and 130.05.b.xii., a discharger shall submit, in accordance with general permit requirements, a complete and timely notice of intent which will fulfill the requirements for permit applications; (3-24-16)

- ii. A discharger (or TWTDS) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice) under the terms of the general permit unless: (3-24-16)
- (1) The general permit, in accordance with Subsections 130.05.b.xi., contains a provision that a notice of intent is not required; or (3-24-16)
- (2) The Department notifies a discharger (or TWTDS) that it is covered by a general permit in accordance with Subsection 130.05.b.xii.; (3-24-16)
- iii. All notices of intent shall be signed as required in Section 090 (Signature Requirements); (3-24-16)
- iv. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum: (3-24-16)
- (1) The legal name, address, and EIN of the owner or operator; (3-24-16)
- (2) The facility name and address; (3-24-16)
- (3) Type of facility or discharges; and (3-24-16)
- (4) The receiving stream(s); (3-24-16)
- v. Coverage under a general permit may be terminated or revoked in accordance with Subsection 130.05.c. through e.; (3-24-16)
- vi. Notices of intent for coverage under a general permit for CAFOs must include the information specified in Subsection 105.09 and 40 CFR 122.21(i)(1), including a topographic map; (3-24-16)
- vii. A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in 40 CFR 122.23(h); (3-24-16)
- viii. General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements; (3-24-16)
- ix. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit; (3-24-16)
- x. General permits shall specify whether a discharger (or TWTDS), who has submitted a complete and timely notice of intent to be covered in accordance with the general permit and is eligible for coverage under the permit, is authorized to discharge (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice) in accordance with the permit either: (3-24-16)
- (1) Upon receipt of the notice of intent by the Department; (3-24-16)
- (2) After a waiting period specified in the general permit; (3-24-16)
- (3) On a date specified in the general permit; or (3-24-16)
- (4) Upon receipt of notification of inclusion by the Department; (3-24-16)
- xi. Discharges other than discharges from POTWs, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Department, be authorized to discharge under a general permit without submitting a notice of intent where the Department finds that a notice of intent requirement would be inappropriate. The Department shall

provide in the public notice of the general permit the reasons for not requiring a notice of intent. In making such a finding, the Department shall consider: (3-24-16)

- (1) The type of discharge; (3-24-16)
- (2) The expected nature of the discharge; (3-24-16)
- (3) The potential for toxic and conventional pollutants in the discharges; (3-24-16)
- (4) The expected volume of the discharges; (3-24-16)
- (5) Other means of identifying discharges covered by the permit; and (3-24-16)
- (6) The estimated number of discharges to be covered by the permit; and (3-24-16)

xii. The Department may notify a discharger (or TWTDS) that it is covered by a general permit, even if the discharger (or TWTDS) has not submitted a notice of intent to be covered. A discharger (or TWTDS) so notified may request an individual permit as specified in Subsection 130.05.d. (3-24-16)

c. The Department may terminate, revoke, or deny coverage under a general permit, and require the discharger or applicant to apply for and obtain an individual IPDES permit. Any interested person may petition the Department to take action under this subsection. Cases where an individual IPDES permit may be required include the following: (3-24-16)

- i. The discharger or TWTDS is not in compliance with the conditions of the general permit; (3-24-16)
- ii. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or TWTDS; (3-24-16)
- iii. Effluent limitation guidelines are promulgated for point sources covered by the general permit; (3-24-16)
- iv. A Water Quality Management plan containing requirements applicable to such point sources is approved; (3-24-16)
- v. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary; (3-24-16)
- vi. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general IPDES permit; or (3-24-16)
- vii. The discharge(s) is a significant contributor of pollutants. In making this determination, the Department may consider the following factors: (3-24-16)
  - (1) The location of the discharge with respect to waters of the United States; (3-24-16)
  - (2) The size of the discharge; (3-24-16)
  - (3) The quantity and nature of the pollutants discharged to waters of the United States; and (3-24-16)
  - (4) Other relevant factors. (3-24-16)

d. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. (3-24-16)

i. The owner or operator shall submit an application under Section 105 (Application for an Individual IPDES Permit), with reasons supporting the request, to the Department no later than ninety (90) days after the publication of the general permit. (3-24-16)

ii. The Department shall process the request under Sections 106 (Individual Permit Application Review), 107 (Decision Process), 108 (Draft Permit and Fact Sheet) and 109 (Public Notification and Comment). (3-24-16)

iii. The Department shall grant a request by issuing an individual permit if the reasons cited by the owner or operator are adequate to support the request. (3-24-16)

e. When an individual IPDES permit is issued to an owner or operator otherwise subject to a general IPDES permit, the applicability of the general permit to the individual IPDES permittee is automatically terminated on the effective date of the individual permit. (3-24-16)

f. A source excluded from a general permit, solely because it already has an individual permit, may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source. (3-24-16)

**06. Case-by-Case Requirements for Individual Permits. (3-24-16)**

a. The Department may require any owner or operator authorized by a general permit to apply for an individual IPDES permit as provided in Subsection 130.05.c., only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, a statement that on the effective date of the individual IPDES permit, the general permit as it applies to the individual permittee shall automatically terminate, and a statement that the owner or operator may appeal the Department's decision as provided in Section 204 (Appeals Process). The Department may grant additional time upon request of the applicant. (3-24-16)

b. Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (see 40 CFR 122.26(a)(1)(v), (a)(9)(iii), and Subsection 105.19), the Department may require the discharger to submit a permit application or other information regarding the discharge described in the Clean Water Act section 308. (3-24-16)

i. In requiring such information, the Department shall notify the discharger in writing and shall send an application form with the notice. (3-24-16)

ii. The discharger must apply for a permit within one hundred eighty (180) days of notice, unless permission for a later date is granted by the Department. (3-24-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. MODIFICATION, OR REVOCATION AND REISSUANCE OF IPDES PERMITS.**

**01. Procedures to Modify, or Revoke and Reissue Permits. (3-24-16)**

a. Permits may be modified, or revoked and reissued either at the request of any interested person (including the permittee) or upon the Department's initiative. However, permits may only be modified or revoked and reissued for the reasons specified in Subsection 201.02. All requests shall be in writing and shall contain facts or reasons supporting the request. (3-24-16)

b. If the Department tentatively decides to modify or revoke and reissue a permit, the Department shall prepare a draft permit under Section 108 (Draft Permit and Fact Sheet), incorporating the proposed changes. (3-24-16)

i. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated application. If the tentative decision is to revoke and reissue a permit, the Department shall require the submission of a new application. (3-24-16)

ii. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. (3-24-16)

iii. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued. (3-24-16)

iv. Minor modifications, as defined in Subsection 201.03, do not require the development of a draft permit, fact sheet, nor must minor modifications be subjected to public notification and comment. (3-24-16)

**02. Causes to Modify, or Revoke and Reissue Permits.** When the Department receives any pertinent information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under Subsection 201.01, or conducts a review of the permit file), the Department may determine whether or not one (1) or more of the causes listed in Subsections 201.02.c. and 201.02.d. for modification or revocation and reissuance or both exist. (3-24-16)

**a.** If cause exists, the Department may modify or revoke and reissue the permit accordingly, subject to the limitations of Subsection 201.01.b., and may request a new or updated application, if necessary. (3-24-16)

**b.** If cause does not exist under this section, the Department shall not modify or revoke and reissue the permit. (3-24-16)

**c.** The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees: (3-24-16)

i. There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice), which occurred after permit issuance, and which justify the application of permit conditions that are different or absent in the existing permit. (3-24-16)

ii. The Department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance: (3-24-16)

(1) For IPDES general permits (Section 130) this cause includes any information indicating that cumulative effects on the environment are unacceptable; and (3-24-16)

(2) For new source or new discharger IPDES permits (Section 120), this cause shall include any significant information derived from effluent testing required under Subsection 105.08 or 105.16 after issuance of the permit. (3-24-16)

iii. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows: (3-24-16)

(1) For promulgation of amended standards or regulations, when: (3-24-16)

(a) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under 40 CFR Part 133; (3-24-16)

(b) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and (3-24-16)

(c) A permittee requests modification in accordance with Subsection 201.01 or 203.01 within ninety (90) days after notice of the action on which the request is based; and (3-24-16)

(2) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA or Idaho promulgated regulations or effluent limitation guidelines, if the remand and stay concerns that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with Subsection 201.01 or 203.01 within ninety (90) days of judicial remand. (3-24-16)

iv. The Department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an IPDES compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline. (3-24-16)

v. When the permittee has filed a request for a variance under Clean Water Act section 301(c), 301(g), 301(i), 301(k), or 316(a) or for fundamentally different factors within the time specified in Section 310 (Variances). (3-24-16)

vi. When required to incorporate an applicable Clean Water Act 307(a) toxic effluent standard or prohibition, under Subsection 302.04. (3-24-16)

vii. When required by the reopener conditions in a permit, which are established in the permit under Subsection 302.05 or 40 CFR 403.18(e) (Pretreatment Standards). (3-24-16)

viii. Upon request of a permittee who qualifies for effluent limitations on a net basis, or when a discharger is no longer eligible for net limitations, as provided in Subsection 303.07. (3-24-16)

ix. As necessary under 40 CFR 403.8(e) (Pretreatment Program Requirements: Development and Implementation by POTW). (3-24-16)

x. Upon failure of an approved state to notify, as required by the Clean Water Act section 402(b)(3), another state whose waters may be affected by a discharge from the approved state. (3-24-16)

xi. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c). (3-24-16)

xii. To establish a notification level as provided in Subsection 302.08. (3-24-16)

xiii. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a loan under IDAPA 58.01.12, "Rules for Administration of Water Pollution Control Loans." In no case shall the compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline. (3-24-16)

xiv. For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in 40 CFR 122.34(b) when: (3-24-16)

(1) The permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s), and (3-24-16)

(2) The other entity fails to implement measure(s) that satisfy the requirement(s). (3-24-16)

xv. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions. (3-24-16)

xvi. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under the Clean Water Act section 402(a)(1) and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline). (3-24-16)

xvii. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with 40 CFR 122.23(h) and Section 130 (General Permits) is not a cause for modification pursuant to the requirements of this section. (3-24-16)

xviii. When required by a permit condition to incorporate a land application or sludge disposal plan for beneficial reuse of sewage sludge, to revise an existing land application or sludge disposal plan, or to add a land application or sludge disposal plan as required by IDAPA 58.01.16.650, "Wastewater Rules," and Section 380 (Sewage Sludge) of these rules. (3-24-16)

**d.** The following are causes to modify or, alternatively, revoke and reissue a permit: (3-24-16)

i. Cause exists for termination under Subsection 203.03, and the Department determines that modification or revocation and reissuance is appropriate; (3-24-16)

ii. The Department has received notification, as required in the permit, of a proposed transfer of the permit; or (3-24-16)

iii. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (Subsection 202.02) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee. (3-24-16)

**03. Minor Modifications of Permits.** Upon the consent of the permittee, the Department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this subsection without following the procedures of Sections 108 (Draft Permit and Fact Sheet), 109 (Public Notification and Comment), and Subsection 201.01. Any permit modification not processed as a minor modification under this subsection must be made for cause and must meet the requirements of Section 108 (Draft Permit and Fact Sheet) and Section 109 (Public Notification and Comment). Minor modifications may: (3-24-16)

**a.** Correct typographical errors; (3-24-16)

**b.** Require more frequent monitoring or reporting by the permittee; (3-24-16)

**c.** Change an interim compliance date in a schedule of compliance, provided the new date is not more than one hundred twenty (120) days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; (3-24-16)

**d.** Allow for a change in ownership or operational control of a facility where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department; (3-24-16)

**e.** Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under Section 120 (New Sources and New Discharges), and 40 CFR 122.29(d); (3-24-16)

**f.** Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; (3-24-16)

**g.** Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 or a modification that has been approved in accordance with the procedures in 40 CFR 403.18 as enforceable conditions of the POTW's permits; (3-24-16)

**h.** Incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of 40 CFR 122.42(e)(6); or (3-24-16)

~~**i.** *Make a change in a permit provision that will result in neither allowing an actual or potential increase in the discharge of a pollutant or pollutants into the environment nor result in a reduction in monitoring of a permit's compliance with applicable statutes and regulations.; or* (3-24-16)~~

**i.** Require electronic reporting requirements (to replace paper reporting requirements) including those specified in 40 CFR Part 127 (NPDES Electronic Reporting). ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**203. TERMINATION OF IPDES PERMITS.**

**01. Request to Terminate or Termination Initiated by the Department.** Permits may be terminated either at the request of any interested person (including the permittee) or upon the Department's own initiative. However, permits may only be terminated for the reasons specified in Subsection 203.03 or 203.04. ~~All requests for termination shall be in writing and shall contain facts or reasons supporting the request.~~ (3-24-16)( )

**a.** Request for termination by persons other than the permittee shall be submitted in writing to the Department. ( )

**b.** As of December 21, 2020, all NOTs submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, the permittee may be required to report electronically if specified by a particular permit. ( )

**02. Tentative Permit Termination.** Except as provided in Subsection 203.04, if the Department tentatively decides to terminate a permit under Subsection 203.03, the Department shall issue a notice of intent to terminate. A notice of intent to terminate shall be available for public comment, and the Department shall give notice of an opportunity for public meetings, as specified in Section 109 (Public Notification and Comment). (3-24-16)

**03. Cause to Terminate Permits.** The following are causes for terminating a permit during its term, or for denying a permit renewal application: (3-24-16)

**a.** Noncompliance by the permittee with any condition of the permit; (3-24-16)

**b.** The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; (3-24-16)

**c.** A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or (3-24-16)

**d.** A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW). (3-24-16)

**04. Expedited Termination Process for Terminated or Eliminated Discharge.** If the entire

discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the Department may terminate the permit by notice to the permittee. (3-24-16)

**a.** Termination by notice shall be effective thirty (30) days after notice is sent (expedited permit termination), unless the permittee objects within that time. (3-24-16)

**b.** If the permittee objects during that period, the Department shall follow procedures for termination in Subsection 203.02. (3-24-16)

**c.** Expedited permit termination procedures are not available to permittees that are subject to pending state and/or federal enforcement actions including citizen suits brought under federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under federal law. (3-24-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. CONDITIONS APPLICABLE TO ALL PERMITS.**

The following conditions apply to all IPDES permits. Additional conditions applicable to IPDES permits are in Sections 301 (Permit Conditions for Specific Categories), 302 (Establishing Permit Provisions), and 40 CFR 122.42(e). All conditions applicable to IPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation must be given in the permit. (3-24-16)

**01. Duty to Comply.** The permittee must comply with all conditions of the permit. (3-24-16)

**a.** Any permit noncompliance constitutes a violation of Idaho law, the Clean Water Act, and is grounds for: (3-24-16)

i. Enforcement action; (3-24-16)

ii. Permit termination, revocation and reissuance, or modification; or (3-24-16)

iii. Denial of a permit renewal application. (3-24-16)

**b.** The permittee shall comply with effluent standards or prohibitions established under the Clean Water Act section 307(a) for toxic pollutants and with standards for sewage sludge use or disposal established under the Clean Water Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, "Wastewater Rules," within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement. (3-24-16)

**02. Duty to Reapply.** If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit. If the permittee complies with the application requirements of Section 105 (Application for an Individual IPDES Permit), or the notice of intent requirements of Section 130 (General Permits) for a general permit, and a permit is not issued prior to the permit's expiration date, the permit shall remain in force as stipulated in Subsections 101.02 and 101.03. (3-24-16)

**03. Need to Halt or Reduce Activity.** In an enforcement action, a permittee may not assert as a defense that compliance with the conditions of the permit would have made it necessary for the permittee to halt or reduce the permitted activity. (3-24-16)

**04. Duty to Mitigate.** The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment. (3-24-16)

**05. Proper Operation and Maintenance.** The permittee shall at all times properly operate and

maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. (3-24-16)

**a.** Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. (3-24-16)

**b.** This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit or are required by IDAPA 58.01.16 "Wastewater Rules." (3-24-16)

**06. Permit Actions.** The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition. (3-24-16)

**07. Property Rights.** The permit does not convey any property rights of any sort, or any exclusive privilege. (3-24-16)

**08. Duty to Provide Information.** The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by the permit. (3-24-16)

**09. Inspection and Entry.** The permittee shall provide the Department's inspectors, or authorized representatives, including authorized contractors acting as representatives of the Department, upon presentation of credentials and other documents as may be required by law, access to: (3-24-16)

**a.** Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit; (3-24-16)

**b.** Any records that must be kept under the conditions of the permit and, at reasonable times, to copy such records; (3-24-16)

**c.** Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and (3-24-16)

**d.** Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location. (3-24-16)

**10. Monitoring and Records.** A permittee must comply with the following monitoring and recordkeeping conditions: (3-24-16)

**a.** Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. (3-24-16)

**b.** The permittee shall retain the following records: (3-24-16)

**i.** All monitoring information, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time; and (3-24-16)

**ii.** The permittee's sewage sludge use and disposal activities shall be retained for a period of at least five (5) years or longer as required by 40 CFR Part 503. (3-24-16)

**c.** Records of monitoring information shall include: (3-24-16)

**i.** All calibration and maintenance records; (3-24-16)

- ii. All original strip chart recordings for continuous monitoring instrumentation or other forms of data approved by the Department; (3-24-16)
  - iii. Copies of all reports required by the permit; (3-24-16)
  - iv. Records of all data used to complete the application or notice of intent for the permit; (3-24-16)
  - v. The date, exact place, and time of sampling or measurements; (3-24-16)
  - vi. The name of any individual(s) who performed the sampling or measurements; (3-24-16)
  - vii. The date(s) any analyses were performed; (3-24-16)
  - viii. The name of any individual(s) who performed the analyses; (3-24-16)
  - ix. The analytical techniques or methods used; and (3-24-16)
  - x. The results of the analysis. (3-24-16)
- d.** Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another test method is required by 40 CFR Part 401 through 471 or Part 501 through 503. (3-24-16)

**11. Signatory Requirements.** All applications, reports, or information submitted to the Department shall be signed and certified in accordance with Section 090 (Signature Requirements) and must include penalty provisions pursuant to Section 500 (Enforcement). (3-24-16)

**12. Reporting Requirements.** (3-24-16)

**a.** The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when: (3-24-16)

i. The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source as defined in Section 120 (New Sources and New Discharges) and 010 (Definitions); (3-24-16)

ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Subsection 301.01.a.; or (3-24-16)

iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites: (3-24-16)

(1) Not reported during the permit application process, or (3-24-16)

(2) Not reported pursuant to an approved land application or sludge disposal plan. (3-24-16)

**b.** The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. (3-24-16)

**c.** The permit is not transferable to any person except after notice to the Department. The Department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under Section 202 (Transfer of IPDES Permits). (3-24-16)

**d.** Monitoring results shall be reported at the intervals specified in the permit. (3-24-16)

i. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms (which

may be electronic) provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices. All reports and forms submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to report electronically if specified by a particular permit. (3-24-16)( )

ii. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136, or another method required for an industry-specific waste stream specified in the permit or under 40 CFR Part 401 through 471 or Part 501 through Part 503, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department. (3-24-16)

iii. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit. (3-24-16)

e. A permittee must submit reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit no later than fourteen (14) days following each schedule date of each requirement. As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. (3-24-16)( )

f. The permittee shall report to the Department any noncompliance which may endanger health or the environment as follows: (3-24-16)

i. Any information shall be provided orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances; (3-24-16)

ii. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of: (3-24-16)

(1) The noncompliance and its cause; (3-24-16)

(2) The period of noncompliance, including exact dates and times; (3-24-16)

(3) If the noncompliance has not been corrected, the anticipated time it is expected to continue; and (3-24-16)

(4) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; (3-24-16)

(5) As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. ( )

iii. The following shall be included as information which must be reported within twenty-four (24) hours: (3-24-16)

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit (see Subsection 300.07, Property Rights); (3-24-16)

(2) Any upset which exceeds any effluent limitation in the permit; and (3-24-16)

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within twenty-four (24) hours (see Subsection 302.09, Twenty-Four Hour Reporting); and (3-24-16)

iv. The Department may waive the written report on a case-by-case basis for reports under Subsection 300.12.f.iii. if the oral report has been received within twenty-four (24) hours. (3-24-16)

**g.** The permittee shall report all instances of noncompliance not reported under Subsections 300.12.d., e., and f., at the time monitoring reports are submitted. The reports of noncompliance shall contain the information listed in Subsection 300.12.f. As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. (3-24-16)(      )

**h.** Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or correct information. (3-24-16)

**13. Bypass Terms and Conditions.** (3-24-16)

**a.** Bypass, as defined in Section 010 (Definitions), is prohibited, and the Department may take enforcement action against a permittee for bypass, unless: (3-24-16)

i. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; (3-24-16)

ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and (3-24-16)

iii. The permittee submitted a notice of a bypass to the Department in accordance with Subsections 300.13.c. and d. As of December 21, 2020, all notices submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of CFR Part 127, permittees may be required to report electronically if specified by a particular permit. (3-24-16)(      )

**b.** The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three (3) conditions listed in Subsection 300.13.a. (3-24-16)

**c.** If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the Department, if possible at least ten (10) days before the date of the bypass. (3-24-16)

**d.** The permittee shall submit notice of an unanticipated bypass as required in Subsection 300.12.f. (24-hour notice). (3-24-16)

**e.** Bypasses not exceeding limitations, are allowed to occur, and are not subject to Subsection 300.13.a. or 300.13.d. if: (3-24-16)

i. The bypass does not cause effluent limitations to be exceeded, and (3-24-16)

ii. Only if it also is for essential maintenance to assure efficient operation. (3-24-16)

**14. Upset Terms and Conditions.** (3-24-16)

**a.** In any enforcement action for noncompliance with technology-based permit effluent limitations, a permittee may claim upset, as defined in Section 010 (Definitions), as an affirmative defense. A permittee seeking to establish the occurrence of an upset has the burden of proof. (3-24-16)

**b.** Any determination made in administrative review of a claim that noncompliance was caused by upset, before an action for noncompliance is commenced, is not final administrative action subject to judicial review. (3-24-16)

**c.** The following conditions are necessary for a permittee to demonstrate that an upset occurred. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that: (3-24-16)

i. An upset occurred and that the permittee can identify the cause(s) of the upset; (3-24-16)

ii. The permitted facility was at the time being properly operated; (3-24-16)

iii. The permittee submitted twenty-four (24)-hour notice of the upset as required Subsection 300.12.f.iii.(2); and (3-24-16)

iv. The permittee complied with any remedial measures required under Subsection 300.04. (3-24-16)

**15. Penalties and Fines.** Permits must include penalty and fine requirements pursuant to Section 500 (Enforcement). (3-24-16)

**301. PERMIT CONDITIONS FOR SPECIFIC CATEGORIES.**

In addition to conditions set forth in Section 300 (Conditions Applicable to all Permits), conditions identified in this section apply to all IPDES permits within the categories specified below. (3-24-16)

**01. Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers.** In addition to the reporting requirements under Subsection 300.12, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe: (3-24-16)

**a.** That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following notification levels: (3-24-16)

i. One hundred micrograms per liter (100 µg/L); (3-24-16)

ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; (3-24-16)

iii. Five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and (3-24-16)

iv. One milligram per liter (1 mg/L) for antimony; (3-24-16)

v. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Subsection 105.07; or (3-24-16)

- vi. The level established by the Department in accordance with Subsection 302.08; and (3-24-16)
- b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following notification levels: (3-24-16)
  - i. Five hundred micrograms per liter (500 µg/L); (3-24-16)
  - ii. One milligram per liter (1 mg/L) for antimony; (3-24-16)
  - iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Subsection 105.07; or (3-24-16)
  - iv. The level established by the Department in accordance with Subsection 302.08. (3-24-16)
- 02. Publicly Owned Treatment Works.** All POTWs must provide adequate notice to the Department of the following: (3-24-16)
  - a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to the Clean Water Act section 301 or 306 if it were directly discharging those pollutants; and (3-24-16)
  - b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit. For purposes of this subsection, adequate notice shall include information on: (3-24-16)
    - i. The quality and quantity of effluent introduced into the POTW, and (3-24-16)
    - ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW. (3-24-16)
- 03. Municipal Separate Storm Sewer Systems.** The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Department under 40 CFR 122.26(a)(1)(v) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. As of December 21, 2020, all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the MS4 to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, the owner, operator, or the duly authorized representative of the MS4 may be required to report electronically if specified by a particular permit. The report shall include: (3-24-16)( )
  - a. The status of implementing the components of the storm water management program that are established as permit conditions; (3-24-16)
  - b. Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with Subsection 105.18.b.iii.; (3-24-16)
  - c. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under Subsection 105.18.b.iv. and 105.18.b.v.; (3-24-16)
  - d. A summary of data, including monitoring data, that is accumulated throughout the reporting year; (3-24-16)
  - e. Annual expenditures and budget for the year following each annual report; (3-24-16)
  - f. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and (3-24-16)

**g.** Identification of water quality improvements or degradation. (3-24-16)

**04. Storm Water Dischargers.** The initial permits for discharges composed entirely of storm water issued pursuant to 40 CFR 122.26(e)(7) shall require compliance with the conditions of the permit as expeditiously as practicable but in no event later than three (3) years after the date of issuance of the permit. (3-24-16)

**05. Concentrated Animal Feeding Operations (CAFOs).** Any applicable permit must include provisions pursuant to 40 CFR 122.42(e). (3-24-16)

**302. ESTABLISHING PERMIT PROVISIONS.**

The Department shall establish conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of the Clean Water Act and state rules. These shall include conditions under Section 101 (duration of permits), Section 305 (compliance schedules), Section 304 (monitoring), and electronic reporting requirements identified under 40 CFR Part 127. An IPDES permit must include conditions meeting the following requirements, when applicable, in addition to other applicable sections of these rules. ~~(3-24-16)~~( )

**01. Incorporation.** All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit. (3-24-16)

**02. Applicable Requirements.** The Department shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Clean Water Act and Section 101 (Duration), and Subsections 304.01, and 305.01 of these rules. (3-24-16)

**a.** Applicable requirements include all statutory or regulatory requirements which take effect prior to final administrative disposition of the permit. (3-24-16)

**b.** Applicable requirements also include any requirement which takes effect prior to the modification or revocation and reissuance of a permit under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits). (3-24-16)

**c.** New or reissued permits, and to the extent allowed under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits) for modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in Sections 200 (Renewal of IPDES Permits), and 302 (Establishing Permit Provisions) through 304 (Monitoring and Reporting Requirements). (3-24-16)

**03. Technology-Based Effluent Limitations and Standards.** (3-24-16)

**a.** Technology-based effluent limitations and standards shall be based on: (3-24-16)

**i.** Effluent limitations and standards promulgated under the Clean Water Act section 301; (3-24-16)

**ii.** New source performance standards promulgated under the Clean Water Act section 306; (3-24-16)

**iii.** Effluent limitations determined on a case-by-case basis under the Clean Water Act section 402(a)(1); or (3-24-16)

**iv.** A combination of the three (3), in accordance with 40 CFR 125.3. (3-24-16)

**b.** For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of 40 CFR 122.29(d). (3-24-16)

**c.** The Department may authorize a discharger, subject to technology-based effluent limitations guidelines and standards in an IPDES permit, to forgo sampling of a pollutant found at 40 CFR Parts 401 through 471, if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. (3-24-16)

i. This waiver is good only for the term of the permit and is not available during the term of the first NPDES or IPDES permit issued to a discharger. (3-24-16)

ii. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. (3-24-16)

iii. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet. (3-24-16)

iv. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards. (3-24-16)

**04. Other Effluent Limitations and Standards.** (3-24-16)

a. If any applicable toxic effluent limitations and standards under the Clean Water Act sections 301, 302, 303, 307, 318, and 405 or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under the Clean Water Act section 307(a) for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Department shall initiate proceedings under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits) to modify or revoke and reissue the permit to conform to the more stringent toxic effluent standard or prohibition (see also Subsection 300.01). (3-24-16)

b. Standards for sewage sludge use or disposal under the Clean Water Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, "Wastewater Rules," shall be applied, unless those standards have been included in a permit issued under the appropriate provisions of: (3-24-16)

i. Subtitle C of the Solid Waste Disposal Act; (3-24-16)

ii. Part C of Safe Drinking Water Act; (3-24-16)

iii. The Clean Air Act; or (3-24-16)

iv. State permit programs approved by the EPA. (3-24-16)

c. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. (3-24-16)

d. If any applicable standard for sewage sludge use or disposal is promulgated under the Clean Water Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, "Wastewater Rules," that standard is more stringent than any limitation on the pollutant or practice in the permit, the Department may initiate proceedings under these regulations to modify or revoke and reissue the permit, in compliance with Section 201 (Modification, or Revocation and Reissuance of IPDES Permits), to conform to the standard for sewage sludge use or disposal. (3-24-16)

e. Include any requirements applicable to cooling water intake structures under the Clean Water Act section 316(b), in accordance with 40 CFR 125.80 through 125.99. (3-24-16)

**05. Reopener Clause.** For any permit issued to a TWTDS (including sludge-only facilities), the Department shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under the Clean Water Act section 405(d). The Department may promptly modify or revoke and reissue any permit containing the reopener clause required by this subsection if the standard for sewage sludge use or disposal: (3-24-16)

a. Is more stringent than any requirements for sludge use or disposal in the permit, or (3-24-16)

b. Controls a pollutant or practice not limited in the permit. (3-24-16)

**06. Water Quality Standards and Requirements.** Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under the Clean Water Act sections 301, 304, 306, 307, 318 and 405 shall be included in a permit if they are necessary to: (3-24-16)

a. Achieve water quality standards established in IDAPA 58.01.02, "Water Quality Standards," including narrative criteria for water quality and antidegradation provisions. (3-24-16)

i. Effluent limitations in a permit must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Department determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including narrative criteria for water quality. (3-24-16)

ii. When the Department determines whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a water quality standard, the Department shall use procedures which account for: (3-24-16)

(1) Existing controls on point and nonpoint sources of pollution; (3-24-16)

(2) The variability of the pollutant or pollutant parameter in the effluent; (3-24-16)

(3) The sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity); and where appropriate, (3-24-16)

(4) The dilution of the effluent in the receiving water; (3-24-16)

iii. When the Department determines, using the procedures in Subsection 302.06.a.ii., that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a state numeric criteria within a state water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant. (3-24-16)

iv. When the Department determines, using the procedures in Subsection 302.06.a.ii., that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity. (3-24-16)

v. Except as provided in this subsection, when the Department determines, using the procedures in Subsection 302.06.a.ii., toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Department demonstrates in the fact sheet of the IPDES permit, using the procedures in Subsection 302.06.a.ii., that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative state water quality standards. (3-24-16)

vi. When the state has not established a numeric water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable state water quality standard, the Department must establish effluent limits using one (1) or more of the following options: (3-24-16)

(1) Establish effluent limits using a calculated numeric water quality target or concentration value for the pollutant which the Department demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a target or concentration value may be derived: (3-24-16)

- (a) Using a proposed criterion, or an explicit policy or regulation interpreting its narrative water quality criterion, and (3-24-16)
- (b) Supplemented with other relevant information which may include EPA's Water Quality Standards Handbook, as currently revised, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration (FDA), and current EPA criteria documents; (3-24-16)
- (2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under the Clean Water Act section 304(a), supplemented where necessary by other relevant information; or (3-24-16)
- (3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided: (3-24-16)
  - (a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation; (3-24-16)
  - (b) The required fact sheet sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards; (3-24-16)
  - (c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and (3-24-16)
  - (d) The permit contains a reopener clause allowing the Department to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards. (3-24-16)
- vii. When developing water quality-based effluent limits under this subsection, the Department shall ensure that: (3-24-16)
  - (1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and (3-24-16)
  - (2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the state and approved by EPA pursuant to 40 CFR 130.7; (3-24-16)
    - b.** Attain or maintain a specified water quality through water quality related effluent limits established under the Clean Water Act section 302; (3-24-16)
    - c.** Conform to applicable water quality requirements under the Clean Water Act section 402(b)(5) when the discharge affects a state other than Idaho; (3-24-16)
    - d.** Incorporate any more stringent limitations, treatment standards, or schedules of compliance requirements established under federal or state law or regulations in accordance with the Clean Water Act section 301(b)(1)(C); (3-24-16)
    - e.** Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under the Clean Water Act section 208(b); or (3-24-16)
    - f.** Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 CFR 125.30 through 125.32. (3-24-16)
- 07. Technology-Based Controls for Toxic Pollutants.** (3-24-16)
  - a.** In determining whether to include limitations on toxic pollutants in a permit under this section, the

Department will establish limits in accordance with Subsections 302.03, 302.04, and 302.06 and in a notification under Section 301 (Permit Conditions for Specific Categories), or other relevant information. The fact sheet must explain the development of limitations included in the permit. (3-24-16)

**b.** An IPDES permit must include limitations to control all toxic pollutants which the Department determines (based on information reported in a permit application under Subsection 105.07 and 301.01.a., or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c). (3-24-16)

**c.** The requirement that the limitations control the pollutants meeting the criteria of Subsection 302.07.b. will be satisfied by: (3-24-16)

**i.** Limitations on those toxic pollutants; or (3-24-16)

**ii.** Limitations on other pollutants which, in the judgment of the Department, will provide treatment of the pollutants under Subsection 302.07.b. to the levels required by 40 CFR 125.3(c). (3-24-16)

**08. Notification Level.** An IPDES permit must include a condition requiring a notification level which exceeds the notification level of Subsection 301.01.a., upon a petition from the permittee or on the Department's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c). (3-24-16)

**09. Twenty-Four (24) Hour Reporting.** A permit shall list pollutants for which the permittee is required to report violations of maximum daily discharge limitations within twenty-four (24) hours under Subsection 300.12.f.iii.(3). This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance. (3-24-16)

**10. Permit Durations.** Permits must include permit durations pursuant to Subsection 101.01. (3-24-16)

**11. Monitoring Requirements.** Permits must include monitoring requirements pursuant to Section 304 (Monitoring and Reporting Requirements). (3-24-16)

**12. Pretreatment Program for POTWs.** A POTW permit must include pretreatment program conditions requiring the permittee to: (3-24-16)

**a.** Identify, in terms of character and volume of pollutants, any Significant Industrial Users discharging into the POTW subject to Pretreatment Standards under the Clean Water Act section 307(b) and 40 CFR Part 403; (3-24-16)

**b.** Submit a local program when required by and in accordance with 40 CFR Part 403, to ensure compliance with pretreatment standards to the extent applicable under the Clean Water Act section 307(b): (3-24-16)

**i.** The local program shall be incorporated into the permit as described in 40 CFR Part 403, and (3-24-16)

**ii.** The program must require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR Part 403; (3-24-16)

**c.** Provide written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1), following permit issuance or reissuance; and (3-24-16)

**d.** POTWs which are sludge-only facilities, are required to develop a pretreatment program under 40 CFR Part 403, when the Department determines that a pretreatment program is necessary to assure compliance with the Clean Water Act section 405(d). (3-24-16)

**13. Best Management Practices.** An IPDES permit must include best management practices (BMPs) to control or abate the discharge of pollutants when: (3-24-16)

- a.** Authorized under the Clean Water Act section 304(e) for the control of toxic pollutants and hazardous substances from ancillary industrial activities; (3-24-16)
  - b.** Authorized under the Clean Water Act section 402(p) for the control of storm water discharges; (3-24-16)
  - c.** Numeric effluent limitations are infeasible; or (3-24-16)
  - d.** The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Clean Water Act. (3-24-16)
- 14. Reissued Permits.** When a permit is renewed or reissued, it must include provisions pursuant to Section 200 (Renewal of IPDES Permits). (3-24-16)
- 15. Privately-Owned Treatment Works.** For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this section. (3-24-16)
- a.** Alternatively, the Department may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. (3-24-16)
  - b.** The Department's decision to issue a permit with no conditions applicable to any user, to impose conditions on one (1) or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works. (3-24-16)
- 16. Grants.** An IPDES permit must include any conditions imposed in grants made by the EPA to POTWs under the Clean Water Act sections 201 and 204, which are reasonably necessary for the achievement of effluent limitations under the Clean Water Act section 301. (3-24-16)
- 17. Sewage Sludge.** An IPDES permit must include any requirements under the Clean Water Act section 405 governing the disposal of sewage sludge from POTWs or any other TWTDS for any use for which regulations have been established, in accordance with any applicable regulations. (3-24-16)
- 18. Navigation.** An IPDES permit must include any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with Subsection 103.04 and 109.02. (3-24-16)
- 19. Qualifying State or Local Programs.** (3-24-16)
- a.** For storm water discharges associated with small construction activity disturbing one (1) acre or more, but less than five (5) acres as specified in 40 CFR 122.26(b)(15), the Department may include permit conditions that incorporate by reference qualifying state or local erosion and sediment control program requirements. Where a qualifying state or local program does not include one (1) or more of the elements in this subsection, then the Department must include those elements as conditions in the permit. (3-24-16)
  - b.** A qualifying state or local erosion and sediment control program is one that includes: (3-24-16)

    - i.** Requirements for construction site operators to implement appropriate erosion and sediment control best management practices; (3-24-16)
    - ii.** Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality; (3-24-16)
    - iii.** Requirements for construction site operators to develop and implement a storm water pollution prevention plan, which must include: (3-24-16)

- (1) Site descriptions; (3-24-16)
  - (2) Descriptions of appropriate control measures; (3-24-16)
  - (3) Copies of approved state or local requirements; (3-24-16)
  - (4) Maintenance procedures; (3-24-16)
  - (5) Inspection procedures; (3-24-16)
  - (6) Identification of non-storm water discharges; and (3-24-16)
  - iv. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts. (3-24-16)
  - c. For storm water discharges from a construction activity disturbing five (5) acres or more, including activities that disturb less than five (5) acres but are part of a larger common plan of development or sale that will ultimately disturb five (5) acres or more, as specified in 40 CFR 122.26(b)(14)(x), the Department may include permit conditions that incorporate by reference qualifying state or local erosion and sediment control program requirements. A qualifying state or local erosion and sediment control program is one that includes the elements listed in Subsections 302.19.a. and b. and any additional requirements necessary to achieve the applicable technology-based standards of best available technology and best conventional technology based on the best professional judgment of the permit writer. (3-24-16)
- 20. Water Quality Trading.** The Department may include provisions in IPDES permits that allow for compliance with water quality based permit limits to be achieved through water quality trading. (3-24-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**304. MONITORING AND REPORTING REQUIREMENTS.**

- 01. Monitoring Requirements.** A permit must include the following requirements for monitoring: (3-24-16)
  - a. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate); (3-24-16)
  - b. The type, intervals, and frequency of monitoring sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; (3-24-16)
  - c. Provisions for reporting the results of monitoring, including frequency, appropriate for the regulated activity based on the impact of that activity and as specified in 40 CFR Part 127 (NPDES Electronic Reporting). Reporting shall be no less frequent than specified in 40 CFR 122.44; ~~(3-24-16)~~ (\_\_\_\_)
  - d. The mass (or other measurement specified in the permit) for each pollutant limited in the permit; (3-24-16)
  - e. The volume of effluent discharged from each outfall; (3-24-16)
  - f. Other measurements as appropriate, including: (3-24-16)
    - i. Pollutants in internal waste streams under Subsection 303.08; (3-24-16)
    - ii. Pollutants in intake water for net limitations under Subsection 303.07; (3-24-16)

- iii. Frequency, rate of discharge, etc., for non-continuous discharges under Subsection 303.05; (3-24-16)
- iv. Pollutants subject to notification requirements under Subsection 301.01; and (3-24-16)
- v. Pollutants in sewage sludge or other monitoring as specified in 40 CFR Part 503; or as determined to be necessary on a case-by-case basis pursuant to the Clean Water Act section 405(d)(4), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, "Wastewater Rules"; (3-24-16)

g. According to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 for the analysis of pollutants or pollutant parameters, or another method ~~is~~ required under 40 CFR Part 401 through 471 or Part 501 through 503; ~~and. Consistent with 40 CFR Part 136, applicants or permittees have the option of providing matrix or sample specific minimum levels rather than the published levels. Further, where an applicant or permittee can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of "sufficiently sensitive," the analytical results are not consistent with the QA/QC specifications for that method, then the Department may determine that the method is not performing adequately and the Department should select a different method from the remaining EPA-approved methods that is sufficiently sensitive consistent with provisions outlined in Subsections 304.01.g.i. and ii. For the purposes of this section, a method is "sufficiently sensitive" when:~~ (3-24-16)( )

i. The method minimum level (ML) is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or ( )

ii. The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N or O, for the measured pollutant or pollutant parameter; and ( )

h. In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136, or methods are not otherwise required under 40 CFR Part 401 through 471 or Part 501 through 503, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters. (3-24-16)

**02. Reporting Monitoring Results.** (3-24-16)

a. Except as provided in Subsections 304.02.d. and 304.02.e., the Department will establish requirements to report monitoring results on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. All results must be electronically reported in compliance with 40 CFR Part 127. (3-24-16)( )

b. For sewage sludge use or disposal practices, the Department will establish requirements to monitor and report results on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR Part 503, Section 380 (Sewage Sludge) of these rules, and Idaho's Wastewater Rules, IDAPA 58.01.16.650, "Wastewater Rules," (where applicable), but in no case less than once a year. All results must be electronically reported in compliance with 40 CFR Part 127. (3-24-16)( )

c. The Department will establish requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. (3-24-16)

d. The Department will establish requirements to report monitoring results for storm water discharges associated with industrial activity, other than those addressed in Subsection 304.02.c., on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require the discharger to: (3-24-16)

i. Conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity; (3-24-16)

- ii. Evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed; (3-24-16)
  - iii. Maintain for a period of three (3) years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance; (3-24-16)
  - iv. Sign the report and certification in accordance with Section 090 (Signature Requirements); and (3-24-16)
  - v. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification that the facility is in compliance with the permit, or alternative requirements, once every three (3) years by an Idaho licensed professional engineer. (3-24-16)
- e. A permit that does not require monitoring results reports at least annually must require the permittee to report, at least annually, all instances of noncompliance not reported under Subsection 300.12. (3-24-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**370. PRETREATMENT STANDARDS.**

- 01. Purpose and Applicability.** This section and 40 CFR Part 403 apply to: (3-24-16)
- a. Pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in Subsection 370.04 and 40 CFR 403.3; (3-24-16)
  - b. POTWs which receive wastewater from sources subject to National Pretreatment Standards; and (3-24-16)
  - c. Any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which discharge to a sewer which is not connected to a POTW Treatment Plant. (3-24-16)
- 02. Objectives of General Pretreatment Regulations.** This section and 40 CFR Part 403 fulfill three (3) objectives: (3-24-16)
- a. To prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; (3-24-16)
  - b. To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and (3-24-16)
  - c. To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges. (3-24-16)
- 03. Department Program in Lieu of a POTW Program.** 40 CFR 403.8(a) requires certain POTWs develop a pretreatment program. The Department may, however, assume responsibility for implementing the POTW pretreatment program requirements set forth in 40 CFR 403.8(f) in lieu of requiring the POTW to develop a pretreatment program. This does not preclude POTWs from independently developing pretreatment programs. (3-24-16)
- 04. Term Interpretation.** When used in the context of 40 CFR Part 403, unless the context in which a

term is used clearly requires a different meaning, terms 40 CFR Part 403 that are incorporated by reference in these rules have the following meanings: (3-24-16)

- a. The terms Administrator or Regional Administrator mean the EPA Region 10 Administrator; (3-24-16)
  - b. The term Approval Authority means the Department of Environmental Quality; (3-24-16)
  - c. The term Approved POTW Pretreatment Program or Program or POTW Pretreatment Program means a program administered by a POTW that meets the criteria established in 40 CFR 403.8 and 403.9, and which has been approved by the Department in accordance with 40 CFR 403.1; (3-24-16)
  - d. The term Control Authority means the POTW for a facility with a Department-approved pretreatment program and the Department for a POTW without a Department-approved pretreatment program; (3-24-16)
  - e. The term Director means the Department of Environmental Quality with an NPDES permit program approved pursuant to the Clean Water Act section 402(b); (3-24-16)
  - f. The terms National Pretreatment Standard, Pretreatment Standard, or Standard mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to 40 CFR 403.5; and (3-24-16)
  - g. The term Water Management Division Director means a Director of the Water Management Division within the Region 10 office of the Environmental Protection Agency or this person's delegated representative. (3-24-16)
- 05. Exceptions to Incorporation by Reference.** The following sections of 40 CFR Part 403 are excluded from the incorporation by reference in Section 003 (Incorporation by Reference) of these rules. (3-24-16)
- a. 40 CFR 403.4 (State or Local Law). (3-24-16)
  - ~~b. 40 CFR 403.10 (Development and Submission of NPDES State Pretreatment Programs).~~ (3-24-16)
  - ~~eb.~~ 40 CFR 403.19 (Provisions of Specific Applicability to the Owatonna Wastewater Treatment Facility). (3-24-16)
  - ~~dc.~~ 40 CFR 403.20 (Pretreatment Program Reinvention Pilot Projects Under Project XL). (3-24-16)

# **IDAPA 59 – PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO**

## **59.01.02 – PERSI RULES FOR ELIGIBILITY**

**DOCKET NO. 59-0102-1701**

### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective on Sine Die, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 59-1306, 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:

Section 59-1302(15), Idaho Code, was amended in the 2017 legislative session. The definition of “Employer” as applied to all new employers must be in compliance with the Internal Revenue Service regulations governing governmental retirement plans.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the June 7, 2017 Idaho Administrative Bulletin, [Vol. 17-6, pages 71-74](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cheryl George, (208) 287-9231.

DATED this 6th day of July, 2017.

Don Drum  
Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8th Street, Boise, ID 83702  
P.O. Box 83720, Boise, ID 83720-0078  
Phone: (208) 287-9230  
Fax: (208) 334-3408

# **IDAPA 59 – PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO**

## **59.01.03 – PERSI CONTRIBUTION RULES**

**DOCKET NO. 59-0103-1702**

### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 59-1314(1), 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:

This rule applies to the PERSI Employee General member Contribution Rate. The actuarial valuation for the period ending June 30, 2016 reflected that the amortization period is above the maximum 25 year amortization period contained in Section 59-1322, Idaho Code. The PERSI Board has acted to adopt the rate increase as it is required to do to bring the amortization period to 25 years or less as required by Section 59-1322, Idaho Code. The rate increase becomes effective July 1, 2018.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the May 3, 2017 Idaho Administrative Bulletin, [Vol. 17-5, pages 94-97](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Employer contribution rates will increase by 0.62% of salaries, beginning July 1, 2018. This will affect the general fund to the extent the contributions required of the employer (State of Idaho and political subdivisions and government entities electing to participate in the system) are made from general fund dollars.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cheryl George, (208) 287-9231.

DATED this 5th day of July, 2017.

Don Drum  
Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8th Street, Boise, ID 83702  
P.O. Box 83720, Boise, ID 83720-0078  
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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 latest publication of the state Administrative Bulletin.

*The proposed rule public hearing request deadline is August 16, 2017, unless otherwise posted.  
The proposed rule written comment submission deadline is August 23, 2017, unless otherwise posted.  
(Temp & Prop) indicates the rulemaking is both Temporary and Proposed.  
(\*PH) indicates that a public hearing has been scheduled.*

#### **IDAPA 08 - IDAHO STATE BOARD AND STATE DEPARTMENT OF EDUCATION PO Box 83720, Boise, ID 83720-0036**

##### ***08.02.03, Rules Governing Thoroughness***

**08-0203-1702**, Allows students who took the Compass exam before the final November 2016 test administration to use it to meet college entrance exam graduation requirement; updates college entrance exam requirement for students on an Individualized Learning Plan; provides another option for students unable to participate in the ACT or statewide test day SAT.

**08-0203-1711**, Amends the Idaho Alternate Assessment Achievement Standards to comply with the Individuals with Disabilities Education Act and the Elementary and Secondary Education Act.

#### **IDAPA 10 – BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS 1510 E. Watertower Street, Meridian, ID 83642**

**\*10-0101-1701, Rules of Procedure. (\*PH)** Adds a new provision to clarify that the Board's website is used for informational and legal purposes; removes the Washington Accord from the list of unconditionally approved international engineering education accrediting organizations.

**\*10-0104-1701, Rules of Continuing Professional Development. (\*PH)** Deletes the rule that exempts engineers and land surveyors residing in other countries from the requirements of completing continuing professional development.

#### **IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE PO Box 83720, Boise, ID 83720-0036**

**16-0309-1701, Medicaid Basic Plan Benefits.** (Temp & Prop) Amendments allow schools to bill for services identified as needed retroactively, up to 30 days, once a recommendation or referral for a Medicaid reimbursable service delivered in a school setting is received.

**16-0310-1701, Medicaid Enhanced Plan Benefits.** (Temp & Prop) Amendments will increase the number of Behavioral Care Units by shortening the cost-reporting period for a care unit entering the market from a full year to a minimum 60 calendar days.

##### ***16.04.17 – Rules Governing Residential Habilitation Agencies***

**16-0417-1701**, Chapter repeal.

**16-0417-1702**, Chapter rewrite updates and revises terms and definitions and the residential rehabilitation agency certification requirements, and provides for enforcement remedies.

**IDAPA 18 – DEPARTMENT OF INSURANCE  
PO Box 83720, Boise, ID 83720-0043**

**18-0175-1701, Credit for Reinsurance Rules.** Includes the current NAIC Credit for Reinsurance Model Regulation #786 provisions supporting the modernization of reinsurance regulation; sets forth rules and procedural requirements necessary to carry out the provisions of Section 41-515, Idaho Code, as amended in 2017 by H0101.

**18-0181-1701, Corporate Governance Annual Disclosure.** New chapter will provide insurers with more detailed procedures for submitting the required CGAD filing and includes the contents deemed necessary by the Director of Insurance to carry out the provisions of Title 41, Chapter 64, Idaho Code.

**IDAPA 35 – IDAHO STATE TAX COMMISSION  
PO Box 36, Boise, ID 83722-0410**

**35-0102-1701, Sales and Use Tax Administrative Rules.** Clarifies that data cabling that is installed in a building will be presumed to be an improvement to real property.

**IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY  
1410 N. Hilton, Boise, ID 83706-1255**

**58-0101-1702, Rules for the Control of Air Pollution in Idaho.** Updates federal regulations incorporated by reference revised as of July 1, 2017 to ensure compliance with federal regulations and the Clean Air Act.

**58-0102-1702, Water Quality Standards.** Streamlines and reorganizes the table that contains criteria for protection of aquatic life and human health from toxic substances.

**58-0105-1701, Rules and Standards for Hazardous Waste.** Updates federal regulations incorporated by reference to include those revised as of July 1, 2017 to comply with federal regulations implementing the Resource Conservation and Recovery Act (RCRA).

**58-0125-1701, Rules Regulating the Idaho Pollutant Discharge Elimination System Program.** Updates federal regulations incorporated by reference effective July 1, 2017 to comply with the Clean Water Act.

**NOTICE OF ADOPTION OF TEMPORARY RULE**

IDAPA 35 – Idaho State Tax Commission  
**35-0103-1708, Property Tax Administrative Rules (eff. 7-1-17)T**

**NOTICE OF INTENT TO PROMULGATE - NEGOTIATED RULEMAKING****IDAPA 02 – Department of Agriculture**

**02-0801-1701, Sheep and Goat Rules of the Idaho Sheep and Goat Health Board (to participate respond by 8/18/17)**

**IDAPA 22 – Idaho State Board of Medicine**

**22-0113-1701, Rules for the Licensure of Dietitians (meeting scheduled)**

**IDAPA 27 – Board of Pharmacy**

**27-0101-1701, Rules of the Idaho State Board of Pharmacy (2<sup>nd</sup> Notice - meeting scheduled)**

**IDAPA 35 – Idaho State Tax Commission**

**35-0106-1702, Hotel/Motel Room and Campground Sales Tax Administrative Rules (meeting scheduled)**

**35-0109-1702, Idaho County Option Kitchen and Table Wine Tax Administrative Rules (to participate respond by 8/23/17)**

**35-0112-1702, Idaho Beer Tax Administrative Rules (to participate respond by 8/23/17)**

Please refer to the Idaho Administrative Bulletin, **August 2, 2017, Volume 17-8**, for the notices and text of all rulemakings, public hearings schedules, information on negotiated rulemakings, executive orders of the Governor, and agency contact information.

*Issues of the Idaho Administrative Bulletin can be viewed at [adminrules.idaho.gov](http://adminrules.idaho.gov).*

Office of the Administrative Rules Coordinator, Dept. of Administration, PO Box 83720, Boise, ID 83720-0306  
Phone: 208-332-1820; Email: [rulescoordinator@adm.idaho.gov](mailto:rulescoordinator@adm.idaho.gov)

# **CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

*Office of the Administrative Rules Coordinator  
Idaho Department of Administration*

*July 1, 1993 — Present*

## [CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES](#)

This online index provides a history of all agency rulemakings beginning with the first Administrative Bulletin in July 1993 to the most recent Bulletin publication. It tracks all rulemaking activities on each chapter of rules by the rulemaking docket numbers and includes negotiated, temporary, proposed, pending and final rules, public hearing notices, vacated rulemaking notices, notice of legislative actions taken on rules, and executive orders of the Governor.

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## **ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

**(Index of Current and Active Rulemakings)**

*Office of the Administrative Rules Coordinator  
Idaho Department of Administration*

*March 29, 2017 — August 2, 2017*

*(eff. PLR) - Final Effective Date Is Pending Legislative Review*

*(eff. date)L - Denotes Adoption by Legislative Action*

*(eff. date)T - Temporary Rule Effective Date*

*SCR # - denotes the number of a Senate Concurrent Resolution (Legislative Action)*

*HCR # - denotes the number of a House Concurrent Resolution (Legislative Action)*

*(This Abridged Index includes all active rulemakings.)*

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

***02.01.01, Idaho Rules of Practice and Procedure of the Department of Agriculture***

**02-0101-1701** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 17-7

**02-0101-1702\*** Proposed Rulemaking (Chapter Rewrite), Bulletin Vol. 17-7 (\*Changes chapter name to "Rules of Procedure")

***02.02.14, Rules for Weights and Measures***

**02-0214-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

**02-0214-1702** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

**02-0214-1703** Proposed Rulemaking, Bulletin Vol. 17-7

***02.04.14, Rules Governing Dairy Byproduct***

**02-0414-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

**02-0414-1702** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

***02.06.02, Rules Pertaining to the Idaho Commercial Feed Law***

**02-0602-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

***02.06.12, Rules Pertaining to the Idaho Fertilizer Law***

**02-0612-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

***02.06.17, Rules Governing the Disposal of Cull Onions and Potatoes***

**02-0617-1701** Adoption of Temporary Rule, Bulletin Vol. 17-3 (eff. 2-8-17)T

**02-0617-1701** Notice of Rescission of Temporary Rule, Bulletin Vol. 17-5 (Rescission effective 4-17-17)

***02.06.21, Rules for Voluntary Public Services of the Idaho Department of Agriculture Laboratories***

**02-0621-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

***02.06.22, Noxious Weed Rules***

**02-0622-1701** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 17-5

***02.06.41, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001***

**02-0641-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

***02.08.01, Sheep and Goat Rules of the Idaho Board of Sheep Commissioners***

**02-0801-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-8

***IDAPA 07 -- DIVISION OF BUILDING SAFETY***

***07.02.04, Rules Governing Plumbing Safety Inspections***

**07-0204-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

***07.02.06, Rules Concerning the Idaho State Plumbing Code***

**07-0206-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

***07.03.01, Rules of Building Safety***

**07-0301-1701** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 17-3

***07.03.11, Rules Governing Manufactured/Mobile Home Industry Licensing***

**07-0311-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

**07.03.12, Rules Governing Manufactured or Mobile Home Installations**

**07-0312-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

**07.04.01, Rules Governing Safety Inspections - General**

**07-0401-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

**07.04.02, Safety Rules for Elevators, Escalators, and Moving Walks**

**07-0402-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

**07.08.17, Idaho Minimum Safety Standards and Practices for Logging -- Cable Assisted Logging Systems**

**07-0817-1701** Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 17-6 (eff. 5-1-17)T

**07.09.01, Safety and Health Rules for Places of Public Employment**

**07-0901-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

**07.10.01, Rules Governing the Damage Prevention Board**

**07-1001-1701** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 17-3

**IDAHO 08 -- IDAHO STATE BOARD OF EDUCATION  
AND STATE DEPARTMENT OF EDUCATION****08.01.11, Registration of Postsecondary Educational Institutions and Proprietary Schools**

**08-0111-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-5

**08.01.13, Rules Governing the Idaho Opportunity Scholarship Program**

**08-0113-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-5

**08.02.01, Rules Governing Administration**

**08-0201-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-5

**08.02.02, Rules Governing Uniformity**

**08-0202-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

**08-0202-1702** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

**08-0202-1703** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-5

**08-0202-1704** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-5

**08-0202-1705** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-5

**08-0202-1706** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-5

**08-0202-1707** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-6

**08-0202-1708** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

**08-0202-1709** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

**08.02.03, Rules Governing Thoroughness**

**08-0203-1612** Adoption of Temporary Rule, Bulletin Vol. 16-12 (eff. 10-20-16)T

**08-0203-1701** Adoption of Temporary Rule, Bulletin Vol. 17-2 (eff. 12-15-16)T

**08-0203-1702** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

**08-0203-1703** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

**08-0203-1704** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

**08-0203-1705** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

**08-0203-1612** OAR Omnibus Notice of Legislative Action - Extension of Temporary Rule by SCR 121, Bulletin Vol. 17-5

**08-0203-1701** OAR Omnibus Notice of Legislative Action - Partial Rejection of Temporary Rule by SCR 121, Bulletin Vol. 17-5

**08-0203-1706** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-5

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**08-0203-1708** Temporary and Proposed Rulemaking, Bulletin Vol. 17-6 (eff. 4-20-17)T

**08-0203-1709** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

- 08-0203-1710** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7
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- 08-0204-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-5

**08.03.01, Rules of the Public Charter School Commission**

- 08-0301-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-5

**08.04.01, Rules of the Idaho Digital Learning Academy - State Board of Education Rules**

- 08-0401-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-6

**08.05.01, Rules Governing Seed and Plant Certification - Regents of the University of Idaho**

- 08-0501-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

**IDAPA 09 -- IDAHO DEPARTMENT OF LABOR****09.01.30, Unemployment Insurance Benefits Administration Rules**

- 09-0130-1701** Temporary and Proposed Rulemaking, Bulletin Vol. 17-7 (eff. 6-2-17)T

**IDAPA 10 -- IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS****10.01.01, Rules of Procedure**

- 10-0101-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-6
- 10-0101-1701** Proposed Rulemaking, Bulletin Vol. 17-8

**10.01.02, Rules of Professional Responsibility**

- 10-0102-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 16-11
- 10-0102-1701** Proposed Rulemaking, Bulletin Vol. 17-7

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- 10-0104-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-6
- 10-0104-1701** Proposed Rulemaking, Bulletin Vol. 17-8

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- 13-0104-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7
- 13-0104-1702** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7
- 13-0104-1703** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

**13.01.08, Rules Governing the Taking of Big Game Animals in the State of Idaho**

- 13-0108-1701P** Notice of Proclamation, Bulletin Vol. 17-5
- 13-0108-1702** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7
- 13-0108-1703** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7
- 13-0108-1704** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

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- 13-0109-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-3

- 13-0109-1702P** Notice of Proclamation, Bulletin Vol. 17-5  
**13-0109-1703P** Notice of Proclamation, Bulletin Vol. 17-7

***13.01.11, Rules Governing Fish***

- 13-0111-1701P** Notice of Proclamation, Bulletin Vol. 17-5  
**13-0111-1702P** Notice of Proclamation, Bulletin Vol. 17-7

***13.01.13, Rules Governing the Taking of American Crow in the State of Idaho***

- 13-0113-1701P** Notice of Proclamation, Bulletin Vol. 17-5

***13.01.17, Rules Governing the Use of Bait and Trapping for Taking Big Game Animals***

- 13-0117-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

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- Executive Order No. **2017-01** Bulletin Vol. 17-2  
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- 15-0202-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

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- 16-0204-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-5  
**16-0204-1701** (Second) Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-6

***16.02.10, Idaho Reportable Diseases***

- 16-0210-1701** Temporary and Proposed Rulemaking, Bulletin Vol. 17-1 (eff. 1-1-17)T  
**16-0210-1701** OAR Omnibus Notice of Legislative Action - Extension of Temporary Rule by SCR 121, Bulletin Vol. 17-5

***16.03.05, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)***

- 16-0305-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

***16.03.08, Rules Governing the Temporary Assistance for Families in Idaho (TAFI) Program***

- 16-0308-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

***16.03.09, Medicaid Basic Plan Benefits***

- 16-0309-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-5  
**16-0309-1702** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-6  
**16-0309-1703** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-6  
**16-0309-1701** Temporary and Proposed Rulemaking, Bulletin Vol. 17-8 (eff. 8-1-17)T

***16.03.10, Medicaid Enhanced Plan Benefits***

- 16-0310-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-5

- 16-0310-1702** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-6
- 16-0310-1703** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-6
- 16-0310-1704** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-6
- 16-0310-1705** Temporary and Proposed Rulemaking, Bulletin Vol. 17-7 (eff. 7-1-17)T
- 16-0310-1701** Temporary and Proposed Rulemaking, Bulletin Vol. 17-8 (eff. 9-1-17)T

***16.03.18, Medicaid Cost-Sharing***

- 16-0318-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-6

***16.03.19, Rules Governing Certified Family Homes***

- 16-0319-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-5

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- 16-0417-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 16-12
- 16-0417-1701** 2nd Notice of Intent to Promulgate a Rule (2nd Notice) - Negotiated Rulemaking, Bulletin Vol. 17-1
- 16-0417-1701** 3rd Notice of Intent to Promulgate a Rule (3rd Notice) - Negotiated Rulemaking, Bulletin Vol. 17-2
- 16-0417-1701** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 17-8
- 16-0417-1702** Proposed Rulemaking (Chapter Rewrite), Bulletin Vol. 17-8

***16.06.01, Child and Family Services***

- 16-0601-1701** Temporary and Proposed Rulemaking, Bulletin Vol. 17-7 (eff. 7-1-17)T

***IDAPA 17 -- INDUSTRIAL COMMISSION******17.02.07, Procedures to Obtain Compensation***

- 17-0207-1701** Adoption of Temporary Rule, Bulletin Vol. 17-5 (eff. 3-1-17)T

***17.02.08, Miscellaneous Provisions***

- 17-0208-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-6

***17.02.09, Medical Fees***

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