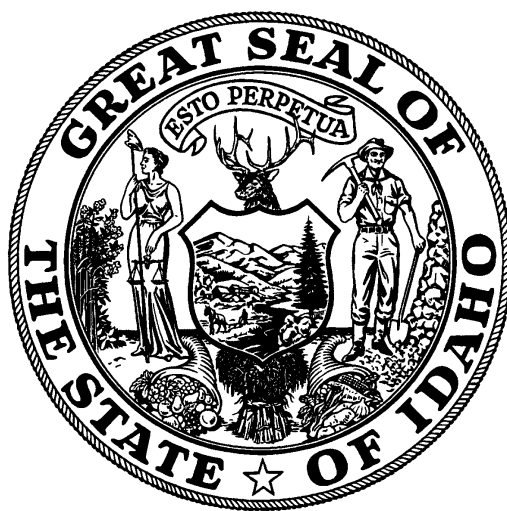


# **PENDING RULES**

## **COMMITTEE RULES**

### **REVIEW BOOK**

**Submitted for Review Before**  
**Senate Health & Welfare Committee**  
**63rd Idaho Legislature**  
**First Regular Session**



*Prepared by:*

*Office of the Administrative Rules Coordinator  
Department of Administration*

*January 2015*

**SENATE HEALTH & WELFARE COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

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**IDAPA 15 - OFFICE OF THE GOVERNOR  
IDAHO COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED**

**15.02.02 - VOCATIONAL REHABILITATION SERVICES**

**DOCKET NO. 15-0202-1401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 67-5407, 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:

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 September 3, 2014 Idaho Administrative Bulletin, [Vol. 14-9, pages 181 through 186](#).

**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:

These rules will have no effect on the state general fund. There is a negative fiscal impact, but the changes will be federally funded.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Bruce Christopherson, Rehabilitation Services Chief, at (208) 334-3220 ext. 110 or at [bchristopherson@icbvi.idaho.gov](mailto:bchristopherson@icbvi.idaho.gov).

DATED this 25th day of September, 2014.

Bruce Christopherson  
Rehabilitation Services Chief  
Idaho Commission for the Blind and Visually Impaired  
341 W. Washington St.  
P. O. Box 83720  
Boise, ID 83720-0012  
Phone: (208) 334-3220 ext. 110  
Fax: (208) 334-2963

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 67-5407, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2014.

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

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

The Idaho Commission for the Blind and Visually Impaired (ICBVI) is increasing the cost coverages available under the Vocational Rehabilitation (VR) Program Payment Policy. These changes are necessary to keep up with the increasing costs associated with vocational rehabilitation services.

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

**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:

These rules will have no affect on the state general fund. There is a negative fiscal impact, but the changes will be federally funded.

**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 July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 40](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Bruce Christopherson, Rehabilitation Services Chief, at (208) 334-3220 ext. 110 or at [bchristopherson@icbvi.idaho.gov](mailto:bchristopherson@icbvi.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 September 24, 2014.

DATED this 6th day of August, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0202-1401**

**110. ELIGIBILITY.**

**01. Eligibility Requirements.** Eligibility of a client for vocational rehabilitation services shall be based upon a determination by the Commission that: (4-2-08)

- a. The client is blind or visually impaired; (4-2-08)
- b. The client's blindness or visual impairment constitutes or results in a substantial impediment to

employment; and (4-2-08)

c. There is a reasonable expectation that vocational rehabilitation services will benefit the client in terms of securing, retaining, or regaining employment. (4-2-08)

d. The client has a disability priority which can include no significant disability (NSD), significant disability (SD), or most significant disability (MSD). ( )

**02. Residency Requirements.** A client must have legal residence status, be able to complete an employment eligibility verification, and be present in the state. (4-2-08)

**03. Presumptive Eligibility.** Individuals who are current SSI or SSDI beneficiaries are presumed to be eligible for vocational rehabilitation services unless the Commission can demonstrate by clear and convincing evidence that such individuals are incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of their disability. (4-2-08)

**04. Certificate of Ineligibility.** If an individual is determined ineligible for services, a certificate of ineligibility will be prepared and a copy provided the individual or the individual's representative. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. PAYMENT POLICY.**

**01. Upper Limits.** In order to ensure a reasonable cost to the Commission's vocational rehabilitation program for provision of certain enumerated services, and in accordance with 34 CFR 361.50, the Commission hereby establishes upper limits on dollar amounts it will contribute to clients for certain categories of services provided as part of an implemented IPE pursuant to Section 210 of these rules: (4-2-08)

a. Education expenses - public in-state institutions. ( )

i. Education expenses, including fees, tuition, and health insurance costs, for enrollment at public in-state institutions: Ninety percent (90%) of the actual costs for two (2) semesters per federal fiscal year at the institution of enrollment. (5-8-09)

ii. The Commission may assist with an advanced degree based on the rehabilitation needs of the individual client, but only if the client is unable to achieve employment with an undergraduate degree. ( )

b. Education expenses - private in-state institutions. ( )

i. Education expenses, including fees, tuition, and health insurance costs, for enrollment at Idaho private in-state colleges, private in-state vocational technical schools, private in-state universities, and other private in-state education and training institutions and including enrollment in summer school: Ninety percent (90%) of actual costs for two (2) semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year at ~~Boise State University, Idaho State University, or University of Idaho, whichever is higher~~ a public Idaho college or university. If the client receives any grant or scholarship (except merit based scholarships), it shall be applied first for tuition or fees, books and supplies, in that order, before any expenditure of funds by the Commission. (5-8-09) ( )

ii. The Commission may assist with an advanced degree based on the rehabilitation needs of the individual client, but only if the client is unable to achieve employment with an undergraduate degree. ( )

c. Education expenses - out-of-state institutions. Education expenses, including fees and tuition, for enrollment at out-of-state colleges, universities, vocational technical schools, and other education and training institutions, and including enrollment in summer school: Ninety percent (90%) of actual costs for two (2) semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year that would be incurred at

~~Boise State University, Idaho State University, or University of Idaho whichever is higher~~ a public Idaho college or university. If the client receives any grant or scholarship (~~except merit based scholarships~~), it shall be applied first for tuition or fees, books and supplies, in that order, before any expenditure of funds by the Commission. ~~(5-8-09)~~( )

i. If the client must attend an out-of-state institution because the course of study is not offered within the state of Idaho, the Commission, at its discretion may pay the “usual and customary” charges for fees and tuition up to the established limits. (4-2-08)

ii. If the course of study is offered in-state, but because of the additional costs caused by the accommodation for disability, it would be more cost effective for the Commission to have the client attend the out-of-state educational institution, the Commission, at its discretion, may pay the usual and customary fees and tuition charges for the out-of-state educational institution up to the established limit. (4-2-08)

iii. If the client chooses to attend an out-of-state institution even though the course of study is offered within the state of Idaho, the Commission will only pay an amount equal to the maximum cost for fees and tuition, up to the established limit, at the in-state-institution offering the course of study that is closest geographically to the Commission regional office assisting the client. (4-2-08)

d. Books and supplies. Actual costs of required books and supplies, including expenditures for books and supplies required for attendance of summer school. If the client receives any grant or scholarship (~~except merit based scholarships~~), it shall be applied first for tuition or fees, books and supplies, in ~~that~~ that order, before any expenditure of funds by the Commission. ~~(5-8-09)~~( )

e. Medical exams including written report. (4-2-08)

i. Specialist exam by M.D.: ~~Two~~ Three hundred dollars (\$~~2300~~) plus actual cost of related procedures such as x-rays. ~~(4-2-08)~~( )

ii. Psychological exam by licensed psychologist: Two hundred fifty dollars (\$~~2050~~) plus actual cost of psychometric tests. ~~(4-2-08)~~( )

iii. Ophthalmologist/Optomtrist exam: ~~Two~~ Three hundred dollars (\$~~2300~~) plus actual cost of visual field exam or other necessary tests. ~~(4-2-08)~~( )

(1) Low vision exam: One hundred ~~twenty five~~ forty dollars (\$~~12540~~). ~~(4-2-08)~~( )

(2) Follow-up low vision consultation: ~~Fifty~~ Sixty-five dollars (\$~~565~~). ~~(4-2-08)~~( )

(3) Eye report: Twenty-five dollars (\$25). (4-2-08)

iv. Eye glasses or contact lenses: Eighty ~~dollars~~ percent (\$~~80%~~) for frames and the usual and customary cost for lenses and contact lenses. Nine hundred dollars (\$900) for bioptics. ~~(5-8-08)~~( )

v. Audiologist exam: ~~Eighty~~ One hundred twenty-five dollars (\$~~8125~~). ~~(4-2-08)~~( )

vi. Physical exam (general basic medical): ~~Sixty~~ Eighty-five dollars (\$~~685~~). ~~(4-2-08)~~( )

f. Psychotherapy/Counseling sessions: Up to ten (10) hourly sessions at ~~eighty~~ one hundred dollars (\$~~8100~~) per hour. ~~(4-2-08)~~( )

g. Medication and medical supplies (including diabetic supplies): Three hundred dollars (\$300) per month for up to three (3) months, during which client must apply for reduced cost or free medication programs provided by drug companies or other sources of comparable benefits, including Medicaid, Medicare Part D, or other insurance. After the expiration of the three (3) month period, the Commission will pay the state Medicaid rate for medication and medical supplies. ~~(4-2-08)~~( )

h. Dental work, including but not limited to cleaning, fillings, extractions, crowns, and dentures: Five



- hundred dollars (\$500) per case. (4-2-08)
- i. Transportation. (4-2-08)
  - i. Public conveyance (bus, van, airfare): Actual cost. (4-2-08)
  - ii. Transportation costs associated with personal vehicle usage with or without personal driver: Two hundred dollars (\$200) per month within a twenty (20) mile radius (in-town commuting) and three hundred dollars (\$300) per month for commuting from greater than a twenty (20) mile radius (out-of-town commuting). ~~The Commission does not provide funds for a client's purchase of a motor vehicle~~ Exceptions can be approved by the Rehabilitation Services Chief. (5-8-09)(    )
  - iii. Cab subsidy programs (Scrip) must be used by clients where available. (4-2-08)
  - j. Maintenance: Three thousand dollars (\$3,000) per federal fiscal year and no more than five hundred dollars (\$500) per month. There is no limit on the number of months a client can receive maintenance up to the three thousand dollar (\$3,000) limit per federal fiscal year. These maximums also apply to room and board for post secondary education and to any rent payments. (3-29-12)
    - i. The Commission will not pay maintenance for basic living expenses incurred by a client that are not directly related to the client's participation in an IPE for vocational rehabilitation services. (4-2-08)
    - ii. If a client is participating in the Assessment and Training Center (ATC) and is not commuting to ATC for training, the maximum per month is three hundred dollars (\$300) for maintenance up to the three thousand dollars (\$3,000) per federal fiscal year. Over three hundred dollars (\$300) a month or three thousand dollars (\$3,000) per fiscal year requires approval from the VR Services Chief. Maintenance will not be paid during the ATC breaks. (3-29-12)
  - k. Copy fees: ~~Fifteen~~ Twenty dollars (~~\$15~~20) for obtaining a copy of any report or other record from an outside agency or entity required by the Commission in order to determine a client's eligibility or otherwise provide vocational rehabilitation services. (4-2-08)(    )
  - l. Tools and equipment: One thousand dollars (\$1,000) per case. Value of tools and equipment provided to client from existing Commission inventory will count towards the one thousand dollar (\$1,000) limit. If there is a change in client's employment outcome, the client shall return the original tools and equipment to the Commission. The Commission will not provide or purchase additional tools or equipment for the client for any new employment outcome until the original tools and equipment have been returned to the Commission. (4-2-08)
  - m. On-the-Job training fees: Three thousand dollars (\$3,000). (4-2-08)
  - n. Computers including hardware and software: One thousand dollars (\$1,000) per case. If the Commission determines that a change in computers is necessary as appropriate, the client shall return the original computer to the Commission. The Commission will not provide or purchase a new or different computer for the client until the original computer has been returned. (4-2-08)(    )
  - o. Self-employment plans: Three thousand dollars (\$3,000). (4-2-08)
  - p. Child care: Three hundred dollars (\$300) per child per month. The client shall apply and use Department of Health and Welfare child care funding as a comparable benefit before any expenditure of Commission funds towards IPE related child care. (4-2-08)
  - q. Vehicle purchase: The Commission may provide finances to modify an already owned vehicle to make it accessible for the client's use under the following circumstances: (    )
    - i. The cost of the modification cannot exceed the current Blue Book value of the vehicle; (    )
    - ii. The client must maintain insurance on the vehicle for replacement cost; (    )

- iii. The Commission encourages the use of loans from ITAP, and independent living centers; and ( )
- iv. The Commission can aid in the purchase of used vehicles as long as the used vehicles are a part of the approved self-employment plan or a part of the Business Enterprise Program. ( )
- 02. Exclusion of Surgery ~~and Organ Transplantation.~~** (4-2-08)
- ~~a-~~ The Commission does not provide funds for a client's surgery when the surgery is the only service required for the client to achieve an employment outcome or otherwise return to work. (4-2-08)( )
- ~~b-~~ *The Commission does not provide funds for a client's organ transplantation.* (4-2-08)
- 03. Authorization to Purchase.** When purchasing services from a vendor, the Commission requires a written authorization be issued prior to, or on the beginning date of, service. If services are provided without an approved written authorization to purchase, the Commission reserves the right to refuse payment on the vendor's invoice. Verbal authorization for a service may only be given by the Rehabilitation Services Chief or the Commission administrator. If a client fails to show up for an appointment, the client shall be responsible for payment of any charges resulting from the client's failure to show up for the appointment. (4-2-08)
- 04. Exception Policy.** Any and all exceptions to the upper limits established by Subsection 300.01 of these rules will be reviewed on an individual case basis, and require approval by the Rehabilitation Services Chief of the Commission. (4-2-08)

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.01.02 - EMERGENCY MEDICAL SERVICES (EMS) -- RULE DEFINITIONS

DOCKET NO. 16-0102-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rule for the definition of Emergency Medical Services (EMS) has no change and is being adopted as originally proposed. The complete text of the proposed and temporary rule was published in the July 2, 2014, Idaho Administrative Bulletin, [Vol. 14-7, pages 43 through 46](#).

**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:

This rulemaking has no fiscal impact to dedicated funds for EMS or the state general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Wayne Denny at (208) 334-4000.

DATED this 21st Day of November, 2014.

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

**THE FOLLOWING NOTICE WAS PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2014.

**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 56-1011 through 56-1023, 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 July 16, 2014.

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 2014 Legislature adopted Senate Bill 1328 that amended Section 56-1012, Idaho Code, for the definition of "Emergency Medical Services or EMS." This rulemaking aligns this chapter of rule definitions for all EMS chapters of rules with statute that becomes effective on July 1, 2014.

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

The 2014 Legislature approved rules and adopted statutes that take effect on July 1, 2014, which requires this change be made as a temporary rule to align with statute.

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

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

This rulemaking has no fiscal impact to dedicated funds for EMS or the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the 2014 Legislature approved SB 1328 which amended the definition of "Emergency Medical Services," effective on July 1, 2014. It was not feasible to negotiate these rules, since it is a temporary rule that needs to be in place July 1st, and the change is of a simple nature to align rules with statute.

**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 temporary and proposed rule, contact Wayne Denny at (208) 334-4000.

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 July 23, 2014.

DATED this 6th day of June, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0102-1401**

**011. DEFINITIONS AND ABBREVIATIONS C THROUGH E.**

For the purposes of the Emergency Medical Services (EMS) chapters of rules, the following definitions apply:

(7-1-14)

**01. Call Volume.** The number of requests for service that an agency either anticipated or responded to during a designated period of time. (7-1-14)

**02. Candidate.** Any individual who is requesting an EMS personnel license under Sections 56-1011 through 56-1023, Idaho Code, IDAPA 16.01.07, "Emergency Medical Services (EMS) - Personnel Licensing Requirements." (7-1-14)

**03. Certificate of Eligibility.** Documentation that an individual is eligible for affiliation with an EMS agency, having satisfied all requirements for an EMS Personnel Licensure except for affiliation, but is not licensed to practice. (7-1-14)

**04. Certification.** A credential issued to an individual by the Department for a specified period of time indicating that minimum standards have been met. (7-1-14)

**05. Certified EMS Instructor.** An individual approved by the Department, who has met the requirements in IDAPA 16.02.03, "Emergency Medical Services," to provide EMS education and training. (7-1-14)

**06. Compensated Volunteer.** An individual who performs a service without promise, expectation, or receipt of compensation other than payment of expenses, reasonable benefits or a nominal fee to perform such services. This individual cannot be a part-time or full-time employee of the same organization performing the same services as a volunteer and employee. (7-1-14)

**07. Credentialing.** The local process by which licensed EMS personnel are authorized to provide medical care in the out-of-hospital, hospital, and medical clinic setting, including the determination of a local scope of practice. (7-1-14)

**08. Credentialed EMS Personnel.** Individuals who are authorized to provide medical care by the EMS medical director, hospital supervising physician, or medical clinic supervising physician. (7-1-14)

**09. Critical Care.** The treatment of a patient with continuous care, monitoring, medication, or procedures requiring knowledge or skills not contained within the Paramedic curriculum approved by the State Health Officer. Interventions provided by Paramedics are governed by the scope of practice defined in IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission." (7-1-14)

**10. Critical Care Agency.** An ambulance or air medical EMS agency that advertises and provides all of the skills and interventions defined as critical care in IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission." (7-1-14)

**11. Department.** The Idaho Department of Health and Welfare. (7-1-14)

**12. Director.** The Director of the Idaho Department of Health and Welfare or his designee. (7-1-14)

**13. Division.** The Division of Public Health, Idaho Department of Health and Welfare. (7-1-14)

**14. Emergency.** A medical condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the person's health in serious jeopardy, or in causing serious impairments of bodily function or serious dysfunction of any bodily organ or part. (7-1-14)

**15. Emergency Medical Care.** The care provided to a person suffering from a medical condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence

of immediate medical attention to result in placing the person's health in serious jeopardy, or in causing serious impairments of bodily function or serious dysfunction of any bodily organ or part. (7-1-14)

- 16. Emergency Medical Responder (EMR).** An EMR is a person who: (7-1-14)
- a.** Has met the qualifications for licensure in Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.07, "Emergency Medical Services - Personnel Licensing Requirements"; (7-1-14)
  - b.** Is licensed by the Department under Sections 56-1011 through 56-1023, Idaho Code; (7-1-14)
  - c.** Carries out the practice of emergency medical care within the scope of practice for EMR determined by the Idaho Emergency Medical Services Physician Commission (EMSPC), under IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission"; and (7-1-14)
  - d.** Practices under the supervision of a physician licensed in Idaho. (7-1-14)
- 17. Emergency Medical Services (EMS).** ~~The system utilized in responding~~ Under Section 56-1012(12), Idaho Code, emergency medical services or EMS is aid rendered by an individual or group of individuals who do the following: ( )
- a.** Respond to a perceived individual need for immediate medical care in order to prevent loss of life, aggravation of physiological or psychological illness, or injury; (7-1-14)( )
  - b.** Are prepared to provide interventions that are within the scope of practice as defined by the Idaho Emergency Medical Services Physician Commission (EMSPC), under IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission"; ( )
  - c.** Use an alerting mechanism to initiate a response to requests for medical care; and ( )
  - d.** Offer, advertise, or attempt to respond as described in Section 56-1012(12), (a) through (c), Idaho Code. ( )
  - e.** Aid rendered by a ski patroller, as described in Section 54-1804(1)(h), Idaho Code, is not EMS. ( )
- 18. Emergency Medical Services Advisory Committee (EMSAC).** The statewide advisory board of the Department as described in IDAPA 16.01.01, "Emergency Medical Services (EMS) - Advisory Committee (EMSAC)." EMSAC members are appointed by the Director of the Idaho Department of Health and Welfare to provide counsel to the Department on administering the EMS Act. (7-1-14)
- 19. EMS Agency.** Any organization licensed by the Department under Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.03, "Emergency Medical Services (EMS) - Agency Licensing Requirements," that operates an air medical service, ambulance service, or non-transport service. (7-1-14)
- 20. EMS Bureau.** The Bureau of Emergency Medical Services (EMS) & Preparedness of the Idaho Department of Health and Welfare. (7-1-14)
- 21. EMS Medical Director.** A physician who supervises the medical activities of licensed personnel affiliated with an EMS agency. (7-1-14)
- 22. EMS Physician Commission (EMSPC).** The Idaho Emergency Medical Services Physician Commission created under Section 56-1013A, Idaho Code, also referred to as "the Commission." (7-1-14)
- 23. Emergency Medical Technician (EMT).** An EMT is a person who: (7-1-14)
- a.** Has met the qualifications for licensure in Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.07, "Emergency Medical Services - Personnel Licensing Requirements"; (7-1-14)

- b.** Is licensed by the EMS Bureau under Sections 56-1011 through 56-1023, Idaho Code; (7-1-14)
  - c.** Carries out the practice of emergency medical care within the scope of practice for EMT determined by the Idaho Emergency Medical Services Physician Commission (EMSPC), under IDAPA 16.02.02, “Rules of the Idaho Emergency Medical Services (EMS) Physician Commission”; and (7-1-14)
  - d.** Practices under the supervision of a physician licensed in Idaho. (7-1-14)
- 24. Emergency Scene.** Any setting outside of a hospital, with the exception of the inter-facility transfer, in which the provision of EMS may take place. (7-1-14)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.02.02 - RULES OF THE IDAHO EMERGENCY MEDICAL SERVICES**  
**(EMS) PHYSICIAN COMMISSION**

**DOCKET NO. 16-0202-1401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(a) and (b), Idaho Code, and as specified herein, the pending rule becomes final and of full force and effect on July 1, 2015, after review by the legislature, unless the rule is rejected by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1013A and 56-1023, 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:

To best protect the public's health and safety, the EMS Physician Commission is revising its Standards Manual that is incorporated by reference in this chapter of rules. The revision to these rules will ensure that the most recent edition of the manual has the force and effect of law.

Rule changes have been proposed that bring this chapter of rules into alignment with amendments to state law regarding EMS under Senate Bill 1328 (2014), especially the definition of "Emergency Medical Services" as well as other non-substantive technical/clerical corrections.

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 October 1, 2014, Idaho Administrative Bulletin, [Vol. 14-10, pages 241 through 244](#).

**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:

There is no anticipated fiscal impact to the state general fund related to this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Wayne Denny at (208) 334-4000.

DATED this 21st Day of November, 2014.

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

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE**



**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-1013A and 56-1023, 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 October 15, 2014.

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 best protect the public's health and safety, the EMS Physician Commission is revising its Standards Manual that is incorporated by reference in this chapter of rules. The revision to these rules will ensure that the most recent edition of the manual has the force and effect of law.

Rule changes are also needed to bring this chapter of rules into alignment with amendments to state law regarding EMS under Senate Bill 1328 (2014), especially the definition of "Emergency Medical Services" as well as other non-substantive technical/clerical corrections.

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

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

There is no anticipated fiscal impact to the state general fund or any other funds as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted and deemed not feasible because the content of the proposed updates to the EMS Physician Commission Standards Manual and to this chapter of rules already represents extensive input from stakeholders gathered on an ongoing basis during 2014.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 2015-1, is being incorporated by reference into these rules to give it the force and effect of law. The document is not being published in this chapter of rules due to its length and format, but it is available upon request from Idaho EMS.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Wayne Denny at (208) 334-4000.

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 October 22, 2014.

DATED this 21st day of August, 2014.

[LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0202-1401

**004. INCORPORATION BY REFERENCE.**

The Idaho Emergency Medical Services (EMS) Physician Commission has adopted the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 2014~~5~~-1, and hereby incorporates this Standards Manual by reference. Copies of the manual may be obtained on the Internet at [www.emspc.dhw.idaho.gov](http://www.emspc.dhw.idaho.gov) or from the Bureau of Emergency Medical Services and Preparedness located at 2224 East Old Penitentiary Road, Boise, ID, 83712-8249, whose mailing address is P.O. 83720, Boise, Idaho 83720-0036. (7-1-14)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

In addition to the applicable definitions in Section 56-1012, Idaho Code, and IDAPA 16.02~~1.03~~<sup>2</sup>, "Rules Governing Emergency Medical Services (EMS) -- Rule Definitions," the following terms are used in this chapter as defined below: (4-2-08)( )

~~01. **License.** A license issued by the EMS Bureau to an individual for a specified period of time indicating that minimum standards corresponding to one (1) of several levels of EMS proficiency have been met. (3-29-10)~~

~~02. **Licensed EMS Personnel.** Individuals who possess a valid license issued by the EMS Bureau. (3-29-10)~~

**031. Credentialed EMS Personnel.** Individuals who are authorized to provide medical care by the EMS medical director, hospital supervising physician, or medical clinic supervising physician. (4-2-08)

**042. Credentialing.** The local process by which licensed EMS personnel are authorized to provide medical care in the out-of-hospital, hospital, and medical clinic setting, including the determination of a local scope of practice. (3-29-10)

**053. Designated Clinician.** A licensed Physician Assistant (PA) or Nurse Practitioner designated by the EMS medical director, hospital supervising physician, or medical clinic supervising physician who is responsible for direct (on-line) medical supervision of licensed EMS personnel in the temporary absence of the EMS medical director. (3-29-10)

**064. Direct (On-Line) Supervision.** Contemporaneous instructions and directives about a specific patient encounter provided by a physician or designated clinician to licensed EMS personnel who are providing medical care. (3-29-10)

**075. Emergency Medical Services (EMS).** ~~The services utilized in responding to a perceived individual need for immediate care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.~~ Under Section 56-1012(12), Idaho Code, emergency medical services or EMS is aid rendered by an individual or group of individuals who do the following: (4-2-08)( )

a. Respond to a perceived need for medical care in order to prevent loss of life, aggravation of physiological or psychological illness, or injury; ( )

b. Are prepared to provide interventions that are within the scope of practice as defined by the Idaho Emergency Medical Services Physician Commission (EMSPC), under IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission"; ( )

c. Use an alerting mechanism to initiate a response to requests for medical care; and ( )

d. Offer, advertise, or attempt to respond as described in Section 56-1012(12), (a) through (c), Idaho Code. ( )

- e.** Aid rendered by a ski patroller, as described in Section 54-1804(1)(h), Idaho Code, is not EMS. ( )
- 086.** **Emergency Medical Services (EMS) Bureau.** The Bureau of Emergency Medical Services (EMS) and Preparedness of the Idaho Department of Health and Welfare. (4-2-08)
- 097.** **Emergency Medical Services (EMS) Physician Commission.** The Idaho Emergency Medical Services Physician Commission as created under Section 56-1013A, Idaho Code, hereafter referred to as “the Commission.” (4-2-08)
- 108.** **EMS Agency.** An organization licensed by the EMS Bureau to provide emergency medical services in Idaho. (4-2-08)
- 109.** **EMS Medical Director.** A physician who supervises the medical activities of licensed personnel affiliated with an EMS agency. (3-29-10)
- 120.** **Hospital.** A facility in Idaho licensed under Sections 39-1301 through 39-1314, Idaho Code, and defined in Section 39-1301(a)(1), Idaho Code. (4-2-08)
- 131.** **Hospital Supervising Physician.** A physician who supervises the medical activities of licensed EMS personnel while employed or utilized for delivery of services in a hospital. (3-29-10)
- 142.** **Indirect (Off-Line) Supervision.** The medical supervision, provided by a physician, to licensed EMS personnel who are providing medical care including EMS system design, education, quality management, patient care guidelines, medical policies, and compliance. (3-29-10)
- 13.** License. A license issued by the EMS Bureau to an individual for a specified period of time indicating that minimum standards corresponding to one (1) of several levels of EMS proficiency have been met. ( )
- 14.** Licensed EMS Personnel. Individuals who possess a valid license issued by the EMS Bureau. ( )
- 15.** **Medical Clinic.** A place devoted primarily to the maintenance and operation of facilities for outpatient medical, surgical, and emergency care of acute and chronic conditions or injury. (4-2-08)
- 16.** **Medical Clinic Supervising Physician.** A physician who supervises the medical activities of licensed EMS personnel while employed or utilized for delivery of services in a medical clinic. (3-29-10)
- 17.** **Medical Supervision.** The advice and direction provided by a physician, or under the direction of a physician, to licensed EMS personnel who are providing medical care, including direct and indirect supervision. (3-29-10)
- 18.** **Medical Supervision Plan.** The written document describing the provisions for medical supervision of licensed EMS personnel. (3-29-10)
- 19.** **Nurse Practitioner.** An Advanced Practice Professional Nurse, licensed in the category of Nurse Practitioner, as defined in IDAPA 23.01.01, “Rules of the Idaho Board of Nursing.” (4-2-08)
- 20.** **Out-of-Hospital.** Any setting outside of a hospital, including inter-facility transfers, in which the provision of emergency medical services may take place. (4-2-08)
- 21.** **Physician.** In accordance with Section 54-1803, Idaho Code, a person who holds a current active license issued by the Board of Medicine to practice medicine and surgery, osteopathic medicine and surgery, or osteopathic medicine in Idaho and is in good standing with no restriction upon, or actions taken against, his license. (3-29-10)

**22. Physician Assistant.** A person who meets all the applicable requirements to practice as a licensed physician assistant under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.03, “Rules for the Licensure of Physician Assistants.” (4-2-08)

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.10 - IDAHO REPORTABLE DISEASES

#### DOCKET NO. 16-0210-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1003, and 56-1005, 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:

These rules were amended for clarification and consistency with current taxonomy and public health practices for the protection of public health and safety. Echinococcosis was added to the list of reportable diseases to improve surveillance for this disease. Updates and changes to the proposed text were made to clarify reportable disease restrictions at health care facilities, daycares, food establishments, schools, and other areas of concern when public health may be at risk.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 3, 2014, Idaho Administrative Bulletin, [Vol. 14-9, pages 192 through 224](#).

**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:

There is no anticipated fiscal impact to state general funds, or any other funds except the costs of the rule promulgation which includes printing and publication.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kathryn Turner, at (208) 334-5939.

DATED this 21st Day of November, 2014.

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

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency and the Board of Health and Welfare have initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-1003, and 56-1005, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2014.

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:

These rules are being updated and language is being amended for clarity and consistency, and for the protection of public health and safety. These changes will align language in these rules with current taxonomy and public health practices. Echinococcosis is being added to the list of reportable diseases to improve surveillance for this disease. Updates are being made to clarify reportable disease restrictions at facilities, daycares, food establishments, and other areas of concern when the public health may be at risk.

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

**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 state general funds, or any other funds except the costs of the rule promulgation which includes printing and publication.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because these rules are for the protection of the public, and the nature of these amendments do not require negotiations. However, stakeholders have been consulted concerning the proposed rule changes.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, documents are being incorporated by reference into these rules to give them the force and effect of law. The documents are not being reprinted in this chapter of rules due to their length, format, and the cost for republication. The incorporated documents are in the current chapter, but are being updated to newer versions: Nationally Notifiable Diseases Surveillance System - Case Definitions; Human Rabies Prevention - United States, 2008; Compendium of Animal Rabies Control, 2011; and Standards for Cancer Registries, Eighteenth Edition.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kathryn Turner, at (208) 334-5939.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 7th Day of August, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0210-1401**

**004. DOCUMENTS INCORPORATED BY REFERENCE.**

The documents referenced in Subsections 004.01 through 004.06 of this rule are used as a means of further clarifying these rules. These documents are incorporated by reference and are available at the Idaho State Law Library or at the Department's main office listed in Section 005 of these rules. (4-2-08)

**01. Guideline for Isolation Precautions in Hospitals.** Siegel, J.D., et al., "Guideline for Isolation Precautions in Hospitals." Health Care Infection Control Practices Advisory Committee, Atlanta, GA: Centers for Disease Control and Prevention, 2007. (4-2-08)

**02. ~~Case Definitions for Infectious Conditions Under Public Health Surveillance, 2010. Morbidity and Mortality Weekly Report, 2010 Edition. Centers for Disease Control and Prevention. Division of Integrated Surveillance Systems at, <http://www.cdc.gov/nepi/diss/nndss/phs/infdis.htm>. National Notifiable Diseases Surveillance System - Case Definitions. <http://www.cdc.gov/nndss/script/casedefDefault.aspx>. (3-29-10)( )~~**

**a. A person, who has been diagnosed as having a specific disease or condition by a physician or other health care provider, is considered a case. The diagnosis may be based on clinical judgment, on laboratory evidence, or on both criteria. Individual case definitions are described in "National Notifiable Diseases Surveillance System Case Definitions," incorporated by reference in Section 004 of these rules.** ( )

**b. A laboratory detection of a disease or condition as listed in Section 050 of these rules and as further outlined in Sections 100 through 949 of these rules.** ( )

**03. Human Rabies Prevention -- United States, ~~1999~~ 2008.** Morbidity and Mortality Weekly Report, ~~January 8, 1999~~ May 23, 2008, Vol. ~~48, RR-1~~ 57.RR-3. Centers for Disease Control and Prevention. (4-2-08)( )

**04. Updated U.S. Public Health Service Guidelines for the Management of Occupational Exposures to HIV and Recommendations for Postexposure Prophylaxis.** Morbidity and Mortality Weekly Report, September 30, 2005, Vol. 54, RR09. Centers for Disease Control and Prevention. These guidelines are found online at <http://aidsinfo.nih.gov/contentfiles/HealthCareOccupExpoGL.pdf>. (3-29-10)

**05. Compendium of Animal Rabies Control, 2008~~11~~.** National Association of State Public Health Veterinarians, Inc., Morbidity and Mortality Weekly Report, ~~April 6, 2007~~ November 4, 2011, Vol. ~~58, RR-3~~ 60.RR-6. Centers for Disease Control and Prevention. This document is found online at <http://www.nasphv.org/Documents/RabiesCompendum.pdf>. (3-29-10)( )

**06. Standards for Cancer Registries, Volume II, Data Standards and Data Dictionary.** North American Association of Central Cancer Registries, ~~Twelfth~~ Eighteenth Edition, Record Layout Version ~~11-2~~ 14, ~~April 2007~~ September 2013. (4-2-08)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS A THROUGH K.**

For the purposes of this chapter, the following definitions apply. (4-2-08)

**01. Airborne Precautions.** Methods used to prevent airborne transmission of infectious agents, as described in "Guideline for Isolation Precautions in Hospitals," incorporated in Section 004 of these rules. (4-2-08)

**02. Approved Fecal Specimens.** Specimens of feces obtained from the designated person who has not taken any antibiotic orally or parenterally for two (2) days prior to the collection of the fecal specimen. The specimen must be collected and transported to the laboratory in a manner appropriate for the test to be performed. (4-2-08)

**03. Bite or Other Exposure to Rabies.** Bite or bitten means that the skin of the person or animal has been nipped or gripped, or has been wounded or pierced, including scratches, and includes probable contact of saliva with a break or abrasion of the skin. The term "exposure" also includes contact of saliva with any mucous membrane.

In the case of bats, even in the absence of an apparent bite, scratch, or mucous membrane contact, exposure may have occurred, as described in “Human Rabies Prevention -- United States, ~~1999~~ 2008,” incorporated in Section 004 of these rules. (4-2-08)(    )

- 04. Board.** The Idaho State Board of Health and Welfare as described in Section 56-1005, Idaho Code. (4-2-08)
- 05. Cancer Data Registry of Idaho (CDRI).** The agency performing cancer registry services under a contractual agreement with the Department as described in Section 57-1703, Idaho Code. (4-2-08)
- 06. Cancers.** Cancers that are designated reportable include the following as described in Section 57-1703, Idaho Code: (4-2-08)
- a.** In-situ or malignant neoplasms, but excluding basal cell and squamous cell carcinoma of the skin unless occurring on a mucous membrane and excluding in-situ neoplasms of the cervix. (4-2-08)
- b.** Benign tumors of the brain, meninges, pineal gland, or pituitary gland. (4-2-08)
- 07. Carrier.** A carrier is a person who can transmit a communicable disease to another person, but may not have symptoms of the disease. (4-2-08)
- 08. Case.** (4-2-08)
- a.** A person, who has been diagnosed as having a specific disease or condition by a physician or other health care provider, is considered a case. The diagnosis may be based on clinical judgment, on laboratory evidence, or on both criteria. Individual case definitions are described in “National Notifiable Diseases Surveillance System Case Definitions ~~for Infectious Conditions Under Public Health Surveillance~~,” incorporated in Section 004 of these rules. (4-2-08)(    )
- b.** A laboratory detection of a disease or condition as listed in Section 050 of these rules and as further outlined in Sections 100 through 949 of these rules. (4-2-08)
- 09. Cohort System.** A communicable disease control mechanism in which cases having the same disease are temporarily segregated to continue to allow supervision and structured attendance in a daycare or health care facility. (4-2-08)
- 10. Communicable Disease.** A disease which may be transmitted from one (1) person or an animal to another person either by direct contact or through an intermediate host, vector, inanimate object, or other means which may result in infection, illness, disability, or death. (4-2-08)
- 11. Contact.** A contact is a person who has been exposed to a case or a carrier of a communicable disease ~~and could possibly contract~~ while the disease was communicable, or a person by whom a case or carrier of a communicable disease could have been exposed to the disease ~~or infection~~. (4-2-08)(    )
- 12. Contact Precautions.** Methods used to prevent contact transmission of infectious agents, as described in the “Guideline for Isolation Precautions in Hospitals,” incorporated in Section 004 of these rules. (4-2-08)
- 13. Daycare.** Care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood or marriage to the person or persons providing the care, in a place other than the child’s or children’s own home or homes as described by Section 39-1102, Idaho Code. (4-2-08)
- 14. Department.** The Idaho Department of Health and Welfare or its designee. (4-2-08)
- 15. Director.** The Director of the Idaho Department of Health and Welfare or his designee as described under Sections 56-1003 and 39-414(2), Idaho Code, and Section 950 of these rules. (4-2-08)



**16. Division of Public Health Administrator.** A person appointed by the Director to oversee the administration of the Division of Public Health, Idaho Department of Health and Welfare, or his designee. (4-2-08)

**17. Droplet Precautions.** Methods used to prevent droplet transmission of infectious agents, as described in the “Guideline for Isolation Precautions in Hospitals,” incorporated in Section 004 of these rules. (4-2-08)

**18. Exclusion.** An exclusion for a food service facility means a person is prevented from working as a food employee or entering a food establishment except for those areas open to the general public as outlined in the IDAPA 16.02.19, “The Idaho Food Code.” (4-2-08)

**19. Extraordinary Occurrence of Illness Including Clusters.** Rare diseases and unusual outbreaks of illness which may be a risk to the public are considered an extraordinary occurrence of illness. Illnesses related to drugs, foods, contaminated medical devices, contaminated medical products, illnesses related to environmental contamination by infectious or toxic agents, unusual syndromes, or illnesses associated with occupational exposure to physical or chemical agents may be included in this definition. (4-2-08)

**20. Fecal Incontinence.** A condition in which temporarily, as with severe diarrhea, or long-term, as with a child or adult requiring diapers, there is an inability to hold feces in the rectum, resulting in involuntary voiding of stool. (4-2-08)

**21. Foodborne Disease Outbreak.** An outbreak is when two (2) or more persons experience a similar illness after ingesting a common food. (4-2-08)

**22. Food Employee.** An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces as defined in IDAPA 16.02.19, “The Idaho Food Code.” (4-2-08)

**23. Health Care Facility.** An establishment organized and operated to provide health care to three (3) or more individuals who are not members of the immediate family. This definition includes hospitals, intermediate care facilities, residential care and assisted living facilities. (4-2-08)

**24. Health Care Provider.** A person who has direct or supervisory responsibility for the delivery of health care or medical services. This includes: licensed physicians, nurse practitioners, physician assistants, nurses, dentists, chiropractors, and administrators, superintendents, and managers of clinics, hospitals, and licensed laboratories. (4-2-08)

**25. Health District.** Any one (1) of the seven (7) public health districts as established by Section 39-409, Idaho Code, and described in Section 030 of these rules. (4-2-08)

**26. Health District Director.** Any one (1) of the public health districts’ directors appointed by the Health District’s Board as described in Section 39-413, Idaho Code, or his designee. (4-2-08)

**27. Idaho Food Code.** Idaho Administrative Code that governs food safety, IDAPA 16.02.19, “Food Safety and Sanitation Standards for Food Establishments,” also known as “The Idaho Food Code.” These rules may be found online at <http://adminrules.idaho.gov/rules/current/16/0219.pdf>. (4-2-08)

**28. Isolation.** The separation of a person known or suspected to be infected with an infectious agent, or contaminated from chemical or biological agents, from other persons to such places, under such conditions, and for such time as will prevent transmission of the infectious agent or further contamination. The place of isolation will be designated by the Director under Section 56-1003(7), Idaho Code, and Section 065 of these rules. (4-2-08)

**011. DEFINITIONS L THROUGH Z.**  
For the purposes of this chapter, the following definitions apply. (4-2-08)

**01. Laboratory Director.** A person who is directly responsible for the operation of a licensed laboratory or his designee. (4-2-08)

**02. Laboratory.** A medical diagnostic laboratory which is inspected, licensed, or approved by the Department or licensed according to the provisions of the Clinical Laboratory Improvement Act by the United States Health Care and Financing Administration. Laboratory may also refer to the Idaho State Public Health Laboratory, and to the United States Centers for Disease Control and Prevention. (4-2-08)

**03. Livestock.** Livestock ~~includes cattle, swine, horses, mules, asses, native and non-native ungulates, and other animals determined by the Department as defined by the Idaho Department of Agriculture in IDAPA 02.04.03, "Rules Governing Animal Industry."~~ (4-2-08)(    )

**04. Medical Record.** Hospital or medical records are all those records compiled for the purpose of recording a medical history, diagnostic studies, laboratory tests, treatments, or rehabilitation. Access will be limited to those parts of the record which will provide a diagnosis, or will assist in identifying contacts to a reportable disease or condition. Records specifically exempted by statute are not reviewable. (4-2-08)

**05. Outbreak.** An outbreak is an unusual rise in the incidence of a disease. An outbreak may consist of a single case. (4-2-08)

**06. Personal Care.** The service provided by one (1) person to another for the purpose of feeding, bathing, dressing, assisting with personal hygiene, changing diapers, changing bedding, and other services involving direct physical contact. (4-2-08)

**07. Physician.** A person legally authorized to practice medicine and surgery, osteopathic medicine and surgery, or osteopathic medicine in Idaho as defined in Section 54-1803, Idaho Code. (4-2-08)

**08. Quarantine.** The restriction placed on the entrance to and exit from the place or premises where an infectious agent or hazardous material exists. The place of quarantine will be designated by the Director or Health District Board. (4-2-08)

**09. Rabies Post-Exposure Prophylaxis (rPEP).** The administration of a rabies vaccine series with or without the antirabies immune globulin, depending on pre-exposure vaccination status, following a documented or suspected rabies exposure, as described in "Human Rabies Prevention--United States, ~~1999~~ 2008," incorporated in Section 004 of these rules. (4-2-08)(    )

**10. Rabies-Susceptible Animal.** Any animal capable of being infected with the rabies virus. (4-2-08)

**11. Residential Care Facility.** A commercial or non-profit establishment organized and operated to provide a place of residence for three (3) or more individuals who are not members of the same family, but live within the same household. Any restriction for this type of facility is included under restrictions for a health care facility. (4-2-08)

**12. Restriction.** (4-2-08)

**a.** To limit the activities of a person to reduce the risk of transmitting a communicable disease. Activities of individuals are restricted or limited to reduce the risk of disease transmission until such time that they are no longer considered a health risk to others. (4-2-08)

**b.** A food employee who is restricted must not work with exposed food, clean equipment, utensils, linens, and unwrapped single-service or single-use articles. A restricted employee may still work at a food establishment as outlined in the IDAPA 16.02.19, "The Idaho Food Code." (4-2-08)

**13. Restrictable Disease.** A restrictable disease is a communicable disease, which if left unrestricted, may have serious consequences to the public's health. The determination of whether a disease is restrictable is based upon the specific environmental setting and the likelihood of transmission to susceptible persons. (4-2-08)

**14. Severe Reaction to Any Immunization.** Any serious or life-threatening condition which results directly from the administration of any immunization against a communicable disease. (4-2-08)

**15. Significant Exposure to Blood or Body Fluids.** Significant exposure is defined as a percutaneous injury, contact of mucous membrane or non-intact skin, or contact with intact skin when the duration of contact is prolonged or involves an extensive area, with blood, tissue, or other body fluids as defined in “Updated U.S. Public Health Service Guidelines for the Management of Occupational Exposures to HIV and Recommendations for Postexposure Prophylaxis,” incorporated in Section 004 of these rules. (3-29-10)

**16. Standard Precautions.** Methods used to prevent transmission of all infectious agents, as described in the “Guideline for Isolation Precautions in Hospitals,” incorporated in Section 004 of these rules. (4-2-08)

**17. State Epidemiologist.** A person employed by the Department to serve as a statewide epidemiologist or his designee. (4-2-08)

**18. Suspected Case.** A person diagnosed with or thought to have a particular disease or condition by a licensed physician or other health care provider. The suspected diagnosis may be based on signs and symptoms, or on laboratory evidence, or both criteria. Suspected cases of some diseases are reportable as described in Section 050 of these rules. (4-2-08)

**19. Vaccination of an Animal Against Rabies.** Vaccination of an animal by a licensed veterinarian with a rabies vaccine licensed or approved for the animal species and administered according to the specifications on the product label or package insert as described in the “Compendium of Animal Rabies Control, ~~2008~~ 2011,” incorporated in Section 004 of these rules. ~~(3-29-10)~~( )

**20. Veterinarian.** Any licensed veterinarian as defined in Section 54-2103, Idaho Code. (4-2-08)

**21. Waterborne Outbreak.** An outbreak is when two (2) or more persons experience a similar illness after ~~ingesting~~ exposure to water from a common ~~supply~~ source and an epidemiological analysis implicates the water as the source of the illness. ~~(4-2-08)~~( )

**22. Working Day.** A working day is from 8 a.m. to 5 p.m., Monday through Friday, excluding state holidays. (4-2-08)

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

**020. PERSONS REQUIRED TO REPORT REPORTABLE DISEASES, CONDITIONS, AND SCHOOL CLOSURES.**

**01. Physician.** A licensed physician who diagnoses, treats, or cares for a person with a reportable disease or condition must make a report of such disease or condition to the Department or Health District as described in these rules. The physician is also responsible for reporting diseases and conditions diagnosed or treated by physician assistants, nurse practitioners, or others under the physician’s supervision. (4-2-08)

**02. Hospital or Health Care Facility Administrator.** The hospital or health care facility administrator must report all persons who are diagnosed, treated, or receive care for a reportable disease or condition in his facility unless the attending physician has reported the disease or condition. (4-2-08)

**03. Laboratory Director.** The laboratory director must report to the Department or Health District the identification of, or laboratory findings suggestive of, the presence of the organisms, diseases, or conditions listed in Section 050 of these rules. (4-2-08)

**04. School Administrator.** A school administrator must report diseases and conditions to the Department or Health District as indicated in Section 050 of these rules. A school administrator must report the closure of any public, parochial, charter, or private school within one (1) working day when, in his opinion, such closing is related to a communicable disease. (4-2-08)

**05. Persons in Charge of Food Establishments.** ~~If the~~ A person in charge of ~~the~~ an eating or drinking establishment ~~has reason to suspect that any employee has a disease listed in Section 050 of these rules that is in a communicable form, he~~ must ~~immediately notify~~ report diseases and conditions to the Department or Health District

as indicated in [Section 050 of these rules](#) and obtain guidance on proper actions needed to protect the public. (4-2-08)( )

**06. Others Required to Report Reportable Diseases.** In addition to licensed physicians, reports must also be made by physician assistants, certified nurse practitioners, registered nurses, school health nurses, infection surveillance staff, public health officials, and coroners. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**030. WHERE TO REPORT REPORTABLE DISEASES AND CONDITIONS.**

Subsections 030.01 through 030.09 of this rule provide where information for reporting of suspected, identified, and diagnosed diseases and conditions are to be reported. The diseases and conditions in Sections 100 through 949 of these rules are reportable to the agencies listed in Subsections 030.01 through 030.09 of this rule. (4-2-08)

**01. Department of Health and Welfare, Bureau of Communicable Disease Prevention Epidemiology Program.** (4-2-08)

- a. Main Office Address: 450 West State Street, 4th Floor, Boise, ID 83720. (4-2-08)
- b. Phone: (208) 334-5939 and FAX: (208) 332-7307. (4-2-08)

**02. Health District I - Panhandle Health District.** The Panhandle Health District covers the counties of Benewah, Bonner, Boundary, Kootenai, and Shoshone. (4-2-08)

- a. Main Office Address: 8500 N. Atlas Road, Hayden, ID 83835. (4-2-08)
- b. Phone: (208) 772-3920 and FAX: 1-866-716-2599 Toll Free. (4-2-08)

**03. Health District II - Public Health Idaho North Central District.** The North Central District covers the counties of Clearwater, Idaho, Latah, Lewis, and Nez Perce. (4-2-08)

- a. Main Office Address: 215 10th Street, Lewiston, ID 83501. (4-2-08)
- b. Phone: (208) 799-3100 and FAX: (208) 799-0349. (4-2-08)

**04. Health District III - Southwest District Health.** Southwest District Health covers the counties of Adams, Canyon, Gem, Owyhee, Payette, and Washington. (4-2-08)

- a. Main Office Address: 13307 Miami Lane, Caldwell, ID 83607. (4-2-08)
- b. Phone: (208) 455-5442 and FAX: (208) 455-5350. (4-2-08)

**05. Health District IV - Central District Health Department.** The Central District Health Department covers the counties of Ada, Boise, Elmore and Valley. (4-2-08)

- a. Main Office Address: 707 N. Armstrong Place, Boise, ID 83704. (4-2-08)
- b. Phone: (208) 327-8625 and FAX: (208) 327-7100. (4-2-08)

**06. Health District V - South Central Public Health District.** The South Central Public Health District covers the counties of Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls. (4-2-08)

- a. Main Office Address: 1020 Washington Street N., Twin Falls, ID 83301. (4-2-08)
- b. Phone: (208) 737-5929 and FAX: (208) 736-3009. (4-2-08)

**07. Health District VI - Southeastern Idaho Public Health.** The Southeastern Idaho Public Health District covers the counties of Bannock, Bear Lake, Bingham, Butte, Caribou, Franklin, Oneida, and Power. (4-2-08)

- a. Main Office Address: 1901 Alvin Ricken Drive, Pocatello, ID 83201. (4-2-08)
- b. Phone: (208) 233-9080 and FAX: (208) 233-1916. (4-2-08)

**08. Health District VII - Eastern Idaho Public Health District.** The Eastern Idaho Public Health District covers the counties of Bonneville, Clark, Custer, Fremont, Jefferson, Lemhi, Madison and Teton. (4-2-08)

- a. Main Office Address: 1250 Hollipark Drive, Idaho Falls, ID 83401. (4-2-08)
- b. Phone: (208) 533-3152 and FAX: (208) 523-4365. (4-2-08)

**09. Cancer Data Registry of Idaho (CDRI).** (4-2-08)

- a. Main Office Address: 615 N. 7th Street, P.O. Box 1278, Boise, ID 83701. (4-2-08)
- b. Phone: (208) 338-5100. (4-2-08)

**10. Inter-Agency Notification.** The Health District must notify the Department of reportable diseases and conditions as provided listed in Section 050 of these rules. (4-2-08)(    )

a. The Department and the Health District will exchange reported information within one (1) working day on any reported case or suspected case of a reportable disease or condition when required in Sections 100 through 949 of these rules. (4-2-08)

b. The Department and the Health District will exchange reported information no later than weekly of all other cases of reportable diseases and conditions as specified under each disease or condition. (4-2-08)(    )

c. The Department will notify the Idaho Department of Agriculture of any identified or suspected source of an animal related disease when required in Sections 100 through 949 of these rules. (4-2-08)

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

**040. REPORT CONTENTS AND METHOD OF REPORTING.**

**01. Report Contents.** Each report of a reportable disease or condition must include: (4-2-08)

- a. The identity and address of the attending licensed physician or the person reporting; (4-2-08)
- b. The diagnosed or suspected disease or condition; (4-2-08)
- c. The name, current address, telephone number, birth date, age, race, ethnicity, and sex of the individual with the disease or other identifier from whom the specimen was obtained; (4-2-08)
- d. The date of onset of the disease or the date the test results were received; and (4-2-08)
- e. In addition, laboratory directors must report the identity of the organism or other significant test result. (4-2-08)

**02. How To Report.** A report of a case or suspected case may be made to the Department or Health District by telephone, mail, fax, or through electronic-disease reporting systems as listed in Sections 005 and 030 of these rules. (4-2-08)

**03. After Hours Notification.** ~~To~~ An after hours report of a disease after hours use or condition may

be made through the Idaho State EMS Communications ~~public health paging system~~ Center (State Comm) at (800) 632-8000. A public health official will be ~~paged immediately to assist you~~ contacted regarding the report. (4-2-08)( )

041. -- 049. (RESERVED)

**050. REPORTABLE OR RESTRICTABLE DISEASES, CONDITIONS AND REPORTING REQUIREMENTS.**

Reportable diseases and conditions must be reported to the Department or Health District by those required under Section 020 of these rules. The table below identifies the reportable and restrictable diseases and conditions, the timeframe for reporting, and the person or facility required to report.

REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS				
TABLE 050				
Reportable or Restrictable Diseases and Conditions	Section in Rule	Reporting Timeframe	Restrictable for DC = Daycare FS = Food Service Facility HC = Health Care Facility S = School	Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, & Hospital Administrators (Section 020)
Acquired Immune Deficiency Syndrome (AIDS), (including CD-4 lymphocyte counts <200 cells/mm <sup>3</sup> blood or < 14%)	100	Within 3 working days	None	
Amebiasis <u>and Free-living Amebae</u>	110	Within 3 working days	DC, FS, HC	Food Service Facility
Anthrax ( <i>Bacillus anthracis</i> )	120	Immediately	None	
Biotinidase Deficiency	130	Within 1 working day (in newborn screening)	None	
Botulism	140	Immediately	None	
Brucellosis ( <i>Brucella</i> species)	150	Within 1 working day	None	
Campylobacteriosis ( <i>Campylobacter</i> species)	160	Within 3 working days	DC, FS, HC	Food Service Facility
Cancer	170	Report to Cancer Data Registry of Idaho within 180 days of diagnosis or recurrence (including suspected cases)	None	
Chancroid	180	Within 3 working days	None	
<i>Chlamydia trachomatis</i> Infections	190	Within 3 working days	HC - ophthalmica neonatorum only	
Cholera ( <i>Vibrio cholerae</i> )	200	Within 1 working day	FS, HC, DC	Food Service Facility
Congenital Hypothyroidism	210	Within 1 working day (in newborn screening)	None	

REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS TABLE 050				
Reportable or Restrictable Diseases and Conditions	Section in Rule	Reporting Timeframe	Restrictable for DC = Daycare FS = Food Service Facility HC = Health Care Facility S = School	Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, & Hospital Administrators (Section 020)
Conjunctivitis	080, 090	No reporting required	DC, S	
Cryptosporidiosis ( <i>Cryptosporidium</i> species)	220	Within 3 working days	FS, HC, DC	
Cutaneous Fungal Infections	080, 090	No reporting required	DC, S	
Diarrhea (until common communicable diseases have been ruled out)	085	No reporting required	FS	
Diphtheria ( <i>Corynebacterium diphtheriae</i> )	230	Immediately	DC, FS, HC, S	School
<u>Echinococcosis</u>	<u>235</u>	<u>Within 3 working days</u>	<u>None</u>	
Encephalitis, Viral or Aseptic	240	Within 3 working days	None	
<i>Escherichia coli</i> O157:H7 and other Shiga-Toxin Producing <i>E. coli</i> (STEC)	250	Within 1 working day	DC, FS, HC	Food Service Facility School
Extraordinary Occurrence of Illness, including Clusters	260	Within 1 working day	None	
Fever	085	No reporting required	FS	
Food Poisoning, Foodborne Illness, and Waterborne Illnesses	270	Within 1 working day	None	
Galactosemia	280	Within 1 working day (in newborn screening)	None	
Giardiasis ( <i>Giardia lamblia</i> )	290	Within 3 working days	DC, FS, HC	Food Service Facility
<i>Haemophilus influenzae</i> Invasive Disease	300	Within 1 working day	DC, S	School
Hantavirus Pulmonary Syndrome	310	Within 1 working day	None	
Hemolytic-Uremic Syndrome (HUS) or Thrombotic thrombocytopenic purpura-HUS (TTP-HUS)	320	Within 1 working day	None	
Hepatitis A	330	Within 1 working day	DC, FS, HC	Food Service Facility
Hepatitis B	340	Within 1 working day	None	

REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS TABLE 050				
Reportable or Restrictable Diseases and Conditions	Section in Rule	Reporting Timeframe	Restrictable for DC = Daycare FS = Food Service HC = Health Care Facility S = School	Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, & Hospital Administrators (Section 020)
Hepatitis C	350	Within 3 working days	None	
Human Immunodeficiency Virus (HIV)	360	Within 3 working days	None	
Human T-Lymphotropic Virus	370	Within 3 working days	None	
Jaundice	085	No reporting required	FS	
Lead <i>Levels of Ten Micrograms or more per Deciliter of Whole Blood (ug/dL)</i> Poisoning	380	Within 3 working days	None	
Legionellosis	390	Within 3 working days	None	
Leprosy (Hansen's Disease)	400	Within 3 working days	None	
Leptospirosis	410	Within 3 working days	None	
Listeriosis ( <i>Listeria</i> species)	420	Within 3 working days	None	
Lyme Disease	430	Within 3 working days	None	
Malaria ( <i>Plasmodium</i> species)	440	Within 3 working days	None	
Maple Syrup Urine Disease	450	Within 1 working day (in newborn screening)	None	
Measles (Rubeola)	460	Within 1 working day	DC, HC, S	School
Meningitis, Viral or Aseptic	470	Within 3 working days	None	
Methicillin-resistant <i>Staphylococcus aureus</i> (MRSA) Invasive Disease	475	Within 3 working days	None	<b>Note:</b> Only Laboratory Directors need to report.
Methicillin-resistant <i>Staphylococcus aureus</i> (MRSA) Non-Invasive Disease	475, 080, 090	No reporting required	DC, FS, HC, S	
Mumps	480	Within 3 working days	DC, S, HC	School
Myocarditis, Viral	490	Within 3 working days	None	
<i>Neisseria gonorrhoeae</i> Infections	500	Within 3 working days	<i>None</i> <u>HC-ophthalmia neonatorum only</u>	
<i>Neisseria meningitidis</i> Invasive Disease	510	Within 1 working day	DC, HC, S	School



REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS TABLE 050				
Reportable or Restrictable Diseases and Conditions	Section in Rule	Reporting Timeframe	Restrictable for DC = Daycare FS = Food Service Facility HC = Health Care Facility S = School	Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, & Hospital Administrators (Section 020)
Norovirus	520	Within 1 working day	DC, FS, HC, S	
Novel Influenza A Virus	522	Within 1 working day	DC, FS, HC, S	
Pediculosis	080, 090	No reporting required	DC, S	
Pertussis ( <i>Bordetella pertussis</i> )	530	Within 1 working day	DC, HC, S	School
Phenylketonuria (PKU)	540	Within 1 working day (in newborn screening)	None	
Plague ( <i>Yersinia pestis</i> )	550	Immediately	HC, S	School
Pneumococcal Invasive Disease in Children less than Eighteen (18) Years of Age ( <i>Streptococcus pneumoniae</i> )	560	Within 3 working days	DC, S	School
<i>Pneumocystis</i> Pneumonia (PCP)	570	Within 3 working days	None	
Poliomyelitis	580	Within 1 working day	DC	School
Psittacosis	590	Within 3 working days	None	
Q Fever	600	Within 1 working day	None	
Rabies - Human, Animal, and Post-Exposure Prophylaxis (rPEP)	610	Immediately (human), Within 1 working day (animal or rPEP)	None	
Relapsing Fever, Tick-borne and Louse-borne	620	Within 3 working days	None	
Respiratory Syncytial Virus (RSV)	630	Within 1 working day	None	<b>Note:</b> Only Laboratory Directors need to report.
Reye Syndrome	640	Within 3 working days	None	
Rocky Mountain Spotted Fever	650	Within 3 working days	None	
Rubella (including Congenital Rubella Syndrome)	660	Within 1 working day	DC, HC, S	School
Salmonellosis (including Typhoid Fever) ( <i>Salmonella</i> species)	670	Within 1 working day	DC, FS, HC	Food Service Facility
Scabies	080, 090	No reporting required	DC, S	

REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS TABLE 050				
Reportable or Restrictable Diseases and Conditions	Section in Rule	Reporting Timeframe	Restrictable for DC = Daycare FS = Food Service Facility HC = Health Care Facility S = School	Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, & Hospital Administrators (Section 020)
Severe Acute Respiratory Syndrome (SARS)	680	Within 1 working day	DC, S	School
Severe Reaction to Any Immunization	690	Within 1 working day	None	
Shigellosis ( <i>Shigella</i> species)	700	Within 1 working day	DC, FS, HC, S	Food Service Facility School
Smallpox	710	Immediately	DC, HC, S	School
Sore Throat with Fever	085	No reporting required	FS	
Staphylococcal Infections other than MRSA	080, 085, 090	No reporting required	DC, FS, S	
Streptococcal Pharyngeal Infections	080, 090	No reporting required	DC, S	
<i>Streptococcus pyogenes</i> (group A strep), Invasive or Resulting in Rheumatic Fever	720	Within 3 working days	DC, HC, S	School
Syphilis	730	Within 3 working days	None	
Taeniasis	085	No reporting required	FS	
Tetanus	740	Within 3 working days	None	
Toxic Shock Syndrome	750	Within 3 working days	None	
Transmissible Spongiform Encephalopathies (TSE), including Creutzfeldt-Jakob Disease (CJD) and Variant CJD (vCJD)	760	Within 3 working days	None	
Trichinosis	770	Within 3 working days	None	
Tuberculosis ( <i>Mycobacterium tuberculosis</i> )	780	Within 3 working days	DC, FS, HC, S	School Food Service Facility
Tularemia ( <i>Francisella tularensis</i> )	790	Immediately; Identification of <i>Francisella tularensis</i> - within 1 working day	None	
Uncovered and Open or Draining Skin Lesions with Pus, such as a Boil or Open Wound	085	No reporting required	FS	

REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS TABLE 050				
Reportable or Restrictable Diseases and Conditions	Section in Rule	Reporting Timeframe	Restrictable for DC = Daycare FS = Food Service HC = Health Care Facility S = School	Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, & Hospital Administrators (Section 020)
Varicella (chickenpox)	080, 090	No reporting required	DC, S	
Vomiting (until noninfectious cause is identified)	085	No reporting required	FS	
West Nile Virus (WNV)	800	Within 3 working days	None	
Yersiniosis ( <i>Yersinia enterocolitica</i> and <i>Yersinia pseudotuberculosis</i> )	810	Within 3 working days; Identification of <i>Yersinia pestis</i> - immediately	FS	

(3-29-10)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**080. DAYCARE FACILITY - REPORTING AND CONTROL MEASURES.**

**01. Readily Transmissible Diseases.** Daycare reportable and restrictable diseases are those diseases that are readily transmissible among children and staff in daycare facilities as listed under Section 050 of these rules. (4-2-08)

**02. Restrictable Disease - Employee Work.** A person who is diagnosed to have a daycare restrictable disease must not work in any occupation in which there is direct contact with children in a daycare facility, as long as the disease is in a communicable form. (4-2-08)( )

**03. Restrictable Disease - Child Attendance.** A child who is diagnosed to have a daycare restrictable disease must not attend a daycare facility as long as the disease is in a communicable form. This restriction may be removed by the written certification of a licensed physician, public health nurse or school nurse that the person's disease is no longer communicable. (4-2-08)( )

**04. Prevention of the Transmission of Disease.** When satisfactory measures have been taken to prevent the transmission of disease, the affected child or employee may continue to attend or to work in a daycare facility if approval is obtained from the Department or Health District. (4-2-08)

**081. -- 084. (RESERVED)**

**085. FOOD SERVICE FACILITY - REPORTING AND CONTROL MEASURES.**

**01. Food or Beverage Transmitted Disease in a Communicable Form.** Under Section 050 of these rules, a person who is diagnosed determined to have one (1) or more of the diseases or conditions listed as restrictable for food establishments must not work as a food employee as long as the disease is in a communicable form. (4-2-08)( )

**02. Food Employee Health Examination.** The Division of Public Health Administrator may require a

food employee to submit to an examination to determine the presence of a disease that can be transmitted by means of food when there is reasonable cause to believe the food employee is afflicted with a disease listed in Section 050 of these rules as restrictable for food establishments and that disease is in a communicable form. (4-2-08)

**03. Notification of Disease in a Communicable Form.** If the person in charge of an eating or drinking establishment has reason to suspect that any employee has a disease listed in Section 050 of these rules as restrictable for food establishments, and that disease is in a communicable form, the person in charge must immediately notify the Department or Health District and obtain guidance on proper actions needed to protect the public. (4-2-08)

**086. -- 089. (RESERVED)**

**090. SCHOOL - REPORTING AND CONTROL MEASURES.**

**01. Restrictable Diseases.** School reportable and restrictable diseases are those diseases that are readily transmissible among students and staff in schools as listed under Section 050 of these rules. (4-2-08)

**02. Restrictions - Work.** Any person who is diagnosed to have a school restrictable disease must not work in any occupation that involves direct contact with students in a private, parochial, charter, or public school as long as the disease is in a communicable form. (4-2-08)

**03. Restrictions - Attendance.** Any person who is diagnosed with or reasonably suspected to have a school restrictable disease must not attend a private, parochial, charter, or public school as long as the disease is in a communicable form. (4-2-08)

**04. Determination Disease Is No Longer Communicable.** A licensed physician, public health nurse, school nurse or other person designated by the Department or Health District may determine when a person with a school restrictable disease ~~can~~ is no longer ~~transmit the disease to others~~ communicable. (4-2-08)(    )

**05. School Closure.** A school administrator must report the closure of any public, parochial, charter, or private school within one (1) working day when, in his opinion, such closing is related to a communicable disease. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**110. AMEBIASIS AND FREE-LIVING AMEBAE.**

**01. Reporting Requirements.** Each case of amebiasis or infection with free-living amebae (*Acanthamoeba spp.*, *Balamuthia mandrillaris*, or *Naegleria fowleri*) must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)(    )

**02. Investigation.** Each reported case of infection with free-living amebae must be investigated to determine the source of infection. Each reported case of amebiasis must be investigated to determine whether the person with amebiasis is employed as a food employee, provides personal care at a health care or daycare facility, or is a child attending a daycare facility. (4-2-08)(    )

**03. Restrictions - Daycare Facility.** A person excreting *Entamoeba histolytica* must not attend a daycare facility while fecally incontinent and must not work in any occupation in which they provide personal care to children in a daycare facility, unless an exemption is made by the Department or Health District. (4-2-08)

**a.** This restriction may be withdrawn if an effective therapeutic regimen is completed; or (4-2-08)

**b.** At least two (2) successive approved fecal specimens collected at least twenty-four (24) hours apart fail to show *Entamoeba histolytica* upon testing by a licensed laboratory. (4-2-08)(    )

**04. Restrictions - Food Service Facility.** A symptomatic person excreting *Entamoeba histolytica* is

restricted from working as a food employee. (4-2-08)

a. This restriction may be withdrawn if an effective therapeutic regimen is completed; or (4-2-08)

b. At least two (2) successive approved fecal specimens collected at least twenty-four (24) hours apart fail to show *Entamoeba histolytica* upon testing by a licensed laboratory. ~~(4-2-08)~~( )

**05. Restrictions - Health Care Facility.** A person excreting *Entamoeba histolytica* must not work in any occupation in which they provide personal care to persons confined to a health care facility, unless an exemption is made by the Department or Health District. (4-2-08)

a. This restriction may be withdrawn if an effective therapeutic regimen is completed; or (4-2-08)

b. At least two (2) successive approved fecal specimens collected at least twenty-four (24) hours apart fail to show *Entamoeba histolytica* upon testing by a licensed laboratory. ~~(4-2-08)~~( )

**06. Restrictions - Household Contacts.** A member of the household in which there is a case of amebiasis may not work in any occupations in Subsections 110.03 through 110.05 of this rule, unless approved by the Department or Health District. The household member must be asymptomatic and have at least one (1) approved fecal specimen found to be negative for ova and parasites on examination by a licensed laboratory prior to being approved for work. (4-2-08)

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

**120. ANTHRAX.**

**01. Reporting Requirements.** Each case or suspected case of anthrax in humans must be reported to the Department or Health District immediately, at the time of identification, day or night. (4-2-08)

**02. Investigation.** Each reported case of anthrax must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, and identify the source of infection. ~~(4-2-08)~~( )

**03. Handling of Report.** The Department and Health District will exchange reported information within one (1) working day of any reported case of anthrax. The Department will notify the Idaho Department of Agriculture of any identified source or suspected source of anthrax. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**160. CAMPYLOBACTERIOSIS.**

**01. Reporting Requirements.** Each case of campylobacteriosis must be reported to Department or Health District within three (3) working days of identification. (4-2-08)

**02. Investigation.** Each reported case of campylobacteriosis must be investigated to ~~determine the extent of the~~ confirm the diagnosis, identify clusters or outbreaks of the infection and identify the source of the disease. ~~(4-2-08)~~( )

**03. Restrictions - Daycare Facility.** A person excreting *Campylobacter* must not provide personal care in a daycare and an fecally incontinent person excreting *Campylobacter* must not attend a daycare facility unless an exemption is obtained from the Department or Health District. Before returning to work or daycare, the person must provide at least two (2) successive approved fecal specimens, collected at least twenty-four (24) hours apart, that fail to show *Campylobacter* upon testing by a licensed laboratory. ~~(4-2-08)~~( )

**04. Restrictions - Food Service Facility.** A symptomatic person excreting *Campylobacter* is restricted

from working as a food employee.

(4-2-08)

**05. Restrictions - Health Care Facility.** A person excreting *Campylobacter* must not provide personal care to persons in a health care facility unless an exemption is obtained from the Department or Health District. Before returning to work, the person must provide at least two (2) successive approved fecal specimens, collected at least twenty-four (24) hours apart, that fail to show *Campylobacter* upon testing by a licensed laboratory.

~~(4-2-08)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**180. CHANCROID.**

**01. Reporting Requirements.** Each case of chancroid must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

**02. Investigation and Notification of Contacts.** Each reported case of chancroid must be investigated to determine the source and extent of contact follow-up that is required. Each person diagnosed with chancroid is required to inform ~~his~~ all sexual contacts that they have been exposed to a sexually transmitted infection, or to provide specific information to health officials in order to locate these contacts. The contacts must be notified of the disease in order to be examined and treated according to Section 39-605, Idaho Code. ~~(4-2-08)~~( )

**181. -- 189. (RESERVED)**

**190. CHLAMYDIA TRACHOMATIS.**

**01. Reporting Requirements.** Each case of *Chlamydia trachomatis* infection must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

**02. Investigation.** Each reported case of *Chlamydia trachomatis* pelvic inflammatory disease ~~must~~ may be investigated to determine the extent of contact follow-up that is required. ~~(4-2-08)~~( )

**03. Prophylaxis of Newborns.** Prophylaxis against *Chlamydia trachomatis* ophthalmia neonatorum is required in IDAPA 16.02.12, "Rules Governing Procedures and Testing To Be Performed on Newborn Infants." (4-2-08)

**04. Restrictions - Health Care Facility.** ~~Cases of A person with~~ Cases of A person with *Chlamydia trachomatis* ophthalmia neonatorum in a health care facility ~~will must~~ will ~~be placed under contact isolations~~ must be placed under contact isolations ~~managed under the "Guideline for Isolation Precautions in Hospitals" as incorporated by reference in Section 004 of these rules.~~ managed under the "Guideline for Isolation Precautions in Hospitals" as incorporated by reference in Section 004 of these rules. ~~(4-2-08)~~( )

**191. -- 199. (RESERVED)**

**200. CHOLERA.**

**01. Reporting Requirements.** Each case or suspected case of cholera must be reported to the Department or Health District within one (1) working day. (4-2-08)

**02. Investigation.** Each reported case of cholera must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks ~~of the infection~~, and identify contacts, carriers, and the source of the infection. ~~(4-2-08)~~( )

**03. Handling of Report.** The Department and the Health District will exchange reported information within one (1) working day on any reported case of cholera. (4-2-08)

**04. Restrictions - Daycare Facility.** A person excreting *Vibrio cholerae* must not attend a daycare facility while fecally incontinent and must not work in any occupation that provides personal care to children in a

daycare facility while the disease is in a communicable form, unless an exemption is obtained from the Department or Health District. (4-2-08)

**05. Restrictions - Food Service Facility.** A symptomatic person excreting *Vibrio cholerae* ~~is restricted from working as a food employee~~ **must be managed** under IDAPA 16.02.19, "The Idaho Food Code." (4-2-08)(    )

**06. Restrictions - Health Care Facility.** A person excreting *Vibrio cholerae* must not work in any occupation that provides personal care to persons confined in a health care or residential facility while in a communicable form, unless an exemption is obtained from the Department or Health District. A person in a health care facility who has cholera must be managed under the "Guideline for Isolation Precautions in Hospitals," as incorporated in Section 004 of these rules. (4-2-08)

**07. Restrictions - Household Contacts.** A member of the household in which there is a case of cholera may not work in any occupations listed in Subsections 200.04 through 200.06 of this rule, unless approved by the Department or Health District. The household member must be asymptomatic and provide at least one (1) approved fecal specimen found to be negative on a culture by a licensed laboratory prior to being approved for work. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**220. CRYPTOSPORIDIOSIS.**

**01. Reporting Requirements.** Each case of cryptosporidiosis must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

**02. Investigation.** Each reported case must be investigated to ~~determine the extent of the~~ **identify clusters or outbreaks of the infection**, and identify the source of the infection. (4-2-08)(    )

**03. Restrictions - Daycare Facility.** A fecally incontinent person excreting *Cryptosporidium* must not attend a daycare facility. A person excreting *Cryptosporidium* must not provide personal care in a daycare facility, unless an exemption is obtained from the Department or Health District. This restriction will be withdrawn when: (3-29-10)

**a.** At least two (2) ~~approved successive~~ fecal specimens collected at least twenty-four (24) hours apart fail to show *Cryptosporidium* upon testing by a licensed laboratory; or (4-2-08)(    )

**b.** Diarrhea has ceased for twenty-four (24) hours. (4-2-08)

**04. Restrictions - Food Service Facility.** A symptomatic person excreting *Cryptosporidium* is restricted from working as a food employee. (3-29-10)

**05. Restrictions - Health Care Facility.** A person excreting *Cryptosporidium* must not provide personal care in a custodial institution, or health care facility while fecally incontinent, unless an exemption is obtained from the Department or Health District. This restriction will be withdrawn when: (3-29-10)

**a.** At least two (2) ~~approved successive~~ fecal specimens collected at least twenty-four (24) hours apart fail to show *Cryptosporidium* upon testing by a licensed laboratory; or (4-2-08)(    )

**b.** Diarrhea has ceased for twenty-four (24) hours. (4-2-08)

**221. -- 229. (RESERVED)**

**230. DIPHTHERIA.**

**01. Reporting Requirements.** Each case or suspected case of diphtheria must be reported to the Department or Health District immediately, at the time of identification, day or night. (4-2-08)

**02. Investigation and Response.** Each reported case of diphtheria must be investigated to determine if the illness is caused by a toxigenic strain of *Corynebacterium diphtheriae*, ~~the extent of the~~ identify clusters or outbreaks of the infection, and identify contacts, carriers, and the source of the infection. Contacts of a person with toxigenic diphtheria will be offered immunization against diphtheria. (4-2-08)(    )

**03. Handling of Report.** The Department and the Health District will exchange reported information within one (1) working day on any reported case or suspected case of diphtheria. (4-2-08)

**04. Restrictions - Daycare Facility.** A person diagnosed with diphtheria must be managed under Section 080 of these rules. (    )

**045. Restrictions - Health Care Facility.** (4-2-08)

**a.** A person with oropharyngeal toxigenic diphtheria in a health care facility must be managed under the "Guideline for Isolation Precautions in Hospitals," as incorporated in Section 004 of these rules. The Department or Health District may withdraw this isolation requirement after two (2) cultures of the nose and two (2) cultures from the throat, taken at least twenty-four (24) hours apart and at least twenty-four (24) hours after the completion of antibiotic therapy, fail to show toxigenic *Corynebacterium diphtheriae* upon testing by a licensed laboratory. (4-2-08)

**b.** A person with cutaneous toxigenic diphtheria must be placed under contact precautions. The Department or Health District may withdraw these precautions after two (2) cultures from the wound fail to show toxigenic *Corynebacterium diphtheriae* upon testing by a licensed laboratory. (4-2-08)

**056. Restrictions - Contacts.** Contacts of a person with toxigenic diphtheria are restricted from working as food employees, working in health care facilities, or from attending or working in daycare facilities or schools until they are determined not to be carriers by means of a nasopharyngeal culture or culture of other site suspected to be infected. These restrictions may be withdrawn by the Department or Health District. (4-2-08)

231. -- 234. (RESERVED)

**235. ECHINOCOCCOSIS.**

**01. Reporting Requirements.** Each case of echinococcosis must be reported to the Department or Health District within three (3) working days of identification. (    )

**02. Investigation.** Each reported case of echinococcosis must be investigated to confirm the diagnosis and to identify possible sources of the infection. (    )

236. -- 239. (RESERVED)

**240. ENCEPHALITIS, VIRAL OR ASEPTIC.**

**01. Reporting Requirements.** Each case of viral or aseptic encephalitis, including meningoencephalitis, must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)(    )

**02. Investigation.** Each reported case of viral or aseptic encephalitis ~~and meningitis~~ meningoencephalitis must be investigated to confirm the diagnosis, identify clusters or outbreaks of the infection, and identify the agent or source of the infection. (4-2-08)(    )

241. -- 249. (RESERVED)

**250. ESCHERICHIA COLI O157:H7 AND OTHER SHIGA-TOXIN PRODUCING E. COLI (STEC).**

**01. Reporting Requirements.** Each case or suspected case of *Escherichia coli* O157:H7 or other Shiga-toxin producing *E. coli* (STEC) must be reported to the Department or Health District within one (1) working



day of identification.

(4-2-08)

**02. Investigation.** Each reported case must be investigated to determine if the person is employed as a food employee, provides personal care at a health care or daycare facility, or is a child attending a daycare facility. The investigation ~~determines the extent of the~~ identifies clusters or outbreaks of the infection, and ~~identifies~~ the most likely source of the infection. (4-2-08)(    )

**03. Handling of Report.** The Department and the Health District will exchange reported information within one (1) working day on any reported case of *E. coli* O157:H7 or other Shiga-toxin producing *E. coli* (STEC). (4-2-08)

**04. Restrictions - Daycare Facility.** A person who is excreting *E. coli* O157:H7 or other STEC must not attend daycare facilities while fecally incontinent or provide personal care to children in a daycare facility while the disease is present in a communicable form without the approval of the Department or Health District. Before returning to work or attendance at a daycare, the person must provide two (2) successive approved fecal specimens negative for collected at least twenty-four (24) hours apart, that fail to show *E. coli* O157:H7 or other STEC ~~are sufficient to remove this restriction.~~ (4-2-08)(    )

**05. Restrictions - Food Service Facility.** A person diagnosed ~~to have with~~ *E. coli* O157:H7 or other STEC which can be transmitted from one (1) person to another through food or beverage must not work as a food employee as long as the disease is in a communicable form. ~~Food employees~~ must be managed under IDAPA 16.02.19, "The Idaho Food Code." (4-2-08)(    )

**06. Restrictions - Health Care Facility.** A person who is excreting *E. coli* O157:H7 or other STEC must not provide personal care to persons in a health care facility while the disease is present in a communicable form without the approval of the Department or Health District. Before returning to work, the person must provide two (2) successive approved fecal specimens negative for collected at least twenty-four (24) hours apart, that fail to show *E. coli* O157:H7 or other STEC ~~are sufficient to remove this restriction.~~ (4-2-08)(    )

251. -- 259. (RESERVED)

## 260. EXTRAORDINARY OCCURRENCE OF ILLNESS, INCLUDING CLUSTERS.

**01. Reporting Requirements.** Cases, suspected cases, and clusters of extraordinary or unusual illness must be reported to the Department or Health District within one (1) working day by the diagnosing person. (4-2-08)

**a.** ~~Extraordinary or u~~Unusual outbreaks include illnesses which may be a significant risk to the public, may involve a large number of persons, or are a newly described entity. (4-2-08)(    )

**b.** Even in the absence of a defined etiologic agent or toxic substance, clusters of unexplained acute illness and early-stage disease symptoms must be reported to the Department or Health District within one (1) working day and investigated. (4-2-08)

**02. Investigation.** Each reported case of extraordinary occurrence of illness, including clusters, must be investigated to confirm the diagnosis, determine the extent of the cluster or outbreak, identify the source of infection or exposure, and determine whether there is a risk to the public warranting intervention by a public health agency. Evaluation and control measures will be undertaken in consultation with the Department and other appropriate agencies. The Department may elect to investigate by conducting special studies as outlined in Section 070 of these rules. (4-2-08)(    )

**03. Handling of Report.** The Department and the Health District will exchange reported information within one (1) working day on any reported case or suspected case. (4-2-08)

261. -- 269. (RESERVED)

## 270. FOOD POISONING, FOODBORNE ILLNESS, AND WATERBORNE ILLNESS.

**01. Reporting Requirements.** Each case, ~~or~~ suspected case, or outbreak of food poisoning, foodborne illness, or waterborne illness must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)( )

**02. Investigation.** Each reported case or outbreak of food poisoning, foodborne illness, or waterborne illness must be investigated to confirm the diagnosis, determine the extent of ~~the outbreak~~ transmission, identify the source, and determine if actions need to be taken to prevent additional cases. (4-2-08)( )

**03. Handling of Report.** The Department and the Health District will exchange reported information within one (1) working day of any reported case or suspected case. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**290. GIARDIASIS.**

**01. Reporting Requirements.** Each case of giardiasis must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

**02. Investigation.** Each reported case of giardiasis must be investigated to determine if the person is employed as a food employee, provides personal care at a health care or daycare facility, or is a child attending a daycare facility. The investigation ~~determines the water sources used by the person with giardiasis, the extent of the~~ identifies clusters or outbreaks of the infection, and the most likely source of the infection. (4-2-08)( )

**03. Restrictions - Daycare Facility.** A person with diarrhea who is excreting *Giardia lamblia* must not attend daycare while fecally incontinent or provide personal care to children in a daycare facility while the disease is present in a communicable form or until therapy is completed. An asymptomatic person may provide these services or attend daycare with specific approval of the Department or Health District. (4-2-08)

**04. Restrictions - Food Service Facility.** A symptomatic person who is excreting *Giardia lamblia* ~~is restricted from working as a food employee~~ must be managed under IDAPA 16.02.19, "The Idaho Food Code." (4-2-08)( )

**05. Restrictions - Health Care Facility.** A person with diarrhea who is excreting *Giardia lamblia* must not provide personal care to persons in a health care facility while the disease is present in a communicable form or until therapy is completed. An asymptomatic person may provide these services with specific approval of the Department or Health District. (4-2-08)

**291. -- 299. (RESERVED)**

**300. HAEMOPHILUS INFLUENZAE INVASIVE DISEASE.**

**01. Reporting Requirements.** Each case or suspected case of *Haemophilus influenzae* invasive disease, including, but not limited to, meningitis, septicemia, bacteremia, epiglottitis, pneumonia, osteomyelitis and cellulitis, must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)( )

**02. Investigation.** Each reported case of *Haemophilus influenzae* invasive disease must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, identify contacts, and determine the need for antimicrobial prophylaxis of close contacts. (4-2-08)( )

**03. Handling of Report.** The Department and the Health District will exchange reported information within one (1) working day on any reported case of *Haemophilus influenzae* invasive disease. (4-2-08)

**04. Restrictions - Daycare Facility.** A person who is diagnosed with ~~a~~ invasive disease caused by ~~invasive~~ *Haemophilus influenzae* must not work in an occupation providing personal care to children, or attend a

daycare facility as long as the disease is in a communicable form.

(4-2-08)( )

**05. Restrictions - School.** A person who is diagnosed with ~~a~~ **invasive** disease caused by ~~invasive~~ *Haemophilus influenzae* must not work in any occupation where there is direct contact with students or attend a private, parochial, charter, or public school as long as the disease is in a communicable form.

(4-2-08)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**380. LEAD POISONING.**

**01. Reporting Requirements.** Each case of lead poisoning ~~determined by symptoms or a blood lead level of ten (10) micrograms or more per deciliter (10 ug/dL) of whole blood,~~ must be reported to the Department or Health District within three (3) working days of the identification of the case: when determined by symptoms or a blood level of:

(4-2-08)( )

**a.** Ten (10) micrograms or more per deciliter (10 ug/dL) of blood in adults eighteen (18) years and older; or

( )

**b.** Five (5) micrograms or more per deciliter (5 ug/dL) of blood in children under eighteen (18) years of age.

( )

**02. Investigation.** Each reported case of lead poisoning or excess lead exposure ~~must~~ may be investigated to confirm blood lead levels, determine the source, and whether actions need to be taken to prevent additional cases.

(4-2-08)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**460. MEASLES (RUBEOLA).**

**01. Reporting Requirements.** Each case or suspected case of measles must be reported to the Department or Health District within one (1) working day of identification.

(4-2-08)

**02. Investigation.** Each reported case of measles must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, identify the source of the infection, and to identify susceptible contacts.

(4-2-08)( )

**03. Handling of Report.** The Department and the Health District will exchange reported information within one (1) working day on any reported case of measles.

(4-2-08)

**04. Restrictions - Daycare Facility and School.**

(4-2-08)

**a.** A child diagnosed with measles must not attend a daycare facility or school as long as the disease is in a communicable form.

(4-2-08)

**b.** In the event of a case of measles in a daycare or school, susceptible children must be excluded until adequate immunization is obtained, or the threat of further spread of the disease is contained, as provided in Sections 33-512(7) and 39-1118, Idaho Code.

(4-2-08)

**c.** A person who is diagnosed as having measles must not work in any occupation in which there is direct contact with children, as long as the disease is in a communicable form.

(4-2-08)

**05. Restrictions - Health Care Facility.** A person diagnosed with measles in a health care facility must be managed under the "Guideline for Isolation Precautions in Hospitals," as incorporated by reference in

Section 004 of these rules.

(4-2-08)

**461. -- 469. (RESERVED)**

**470. MENINGITIS, VIRAL OR ASEPTIC.**

**01. Reporting Requirements.** Each case of viral or aseptic meningitis must be reported to the Department or Health District within three (3) working days of identification. ~~(4-2-08)~~( )

**02. Investigation.** ~~Each reported case of viral or aseptic meningitis must be investigated to confirm the diagnosis, identify clusters or outbreaks of the infection, and identify the agent or source of the infection.~~ ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**480. MUMPS.**

**01. Reporting Requirements.** Each case of mumps must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

**02. Investigation.** Each reported case of mumps must be investigated to ~~determine the immunization history or if the cause for an~~ confirm the diagnosis, identify clusters or outbreaks ~~is unusual~~ of the infection, identify the source of the infection, and to identify susceptible contacts. ~~(4-2-08)~~( )

**03. Restrictions.** A person with mumps must be restricted from daycare, school, or work for five (5) days after the onset of parotid swelling. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. NEISSERIA GONORRHOEAE.**

**01. Reporting Requirements.** Each case of *Neisseria gonorrhoeae* infection must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

**02. Investigation.** A person diagnosed with urethral, cervical, oropharyngeal, or rectal gonorrhea is required to inform ~~his~~ all sexual contacts or provide sufficient information to health officials in order to locate these contacts. The contacts must be advised of their exposure to a sexually transmitted infection and informed they should seek examination and treatment. ~~(4-2-08)~~( )

**03. Prophylaxis of Newborns.** Prophylaxis against gonococcal ophthalmia neonatorum is described in IDAPA 16.02.12, "Rules Governing Procedures and Testing To Be Performed on Newborn Infants." (4-2-08)

**04. Isolation - Health Care Facility.** A person with gonococcal ophthalmia neonatorum in a health care facility must be managed under the "Guideline for Isolation Precautions in Hospitals," as incorporated in Section 004 of these rules. (4-2-08)

**501. -- 509. (RESERVED)**

**510. NEISSERIA MENINGITIDIS INVASIVE DISEASE.**

**01. Reporting Requirements.** Each case or suspected case of *Neisseria meningitidis* invasive disease, including meningitis and septicemia, must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

**02. Investigation.** Each reported case of *Neisseria meningitidis* invasive disease must be investigated to confirm the diagnosis, ~~to determine the extent of the~~ identify clusters or outbreaks of the infection, identify contacts, and determine the need for antimicrobial prophylaxis or immunization of close contacts. (4-2-08)(    )

**03. Handling of Report.** The Department and the Health District will exchange reported information within one (1) working day on any reported case of *Neisseria meningitidis* invasive disease. (4-2-08)

**04. Restrictions - Daycare Facility.** A person who is diagnosed with a disease caused by *Neisseria meningitidis* must not provide personal care to children, or attend a daycare facility, as long as the disease is present in a communicable form. (4-2-08)

**05. Restrictions - Health Care Facility.** A person with *Neisseria meningitidis* in a health care facility or residential care facility must be placed under respiratory isolation until twenty-four (24) hours after initiation of effective therapy. (4-2-08)

**06. Restrictions - School.** A person who is diagnosed with a disease caused by *Neisseria meningitidis* must not work in any occupation that involves direct contact with students, or attend a private, parochial, charter, or public school as long as the disease is present in a communicable form. (4-2-08)

**511. -- 519. (RESERVED)**

**520. NOROVIRUS.**

**01. Reporting Requirements.** Each case or suspected case of norovirus must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

**02. Investigation.** Each reported case of norovirus must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, and identify the source of the infection. (4-2-08)(    )

**03. Restrictions - Daycare Facility.** A person excreting norovirus must not attend or provide personal care in a daycare while symptomatic, unless an exemption is obtained from the Department or Health District. This restriction will be withdrawn once asymptomatic, ~~unless hygienic practices are insufficient~~ for at least twenty-four (24) hours. (4-2-08)(    )

**04. Exclusions - Food Service Facility.** A person suspected of infection with, or diagnosed with, norovirus is excluded from working as a food employee while symptomatic, unless an exemption is made by the Department or Health District. This exclusion will be withdrawn once the person is asymptomatic, ~~unless hygienic practices are insufficient~~ for at least twenty-four (24) hours. (4-2-08)(    )

**05. Restrictions - Health Care Facility.** A person excreting norovirus must not provide personal care in a health care facility, unless an exemption is obtained from the Department or Health District. This restriction will be withdrawn once asymptomatic, ~~unless hygienic practices are insufficient~~ for at least twenty-four (24) hours. (4-2-08)(    )

**06. Restrictions - School.** A person excreting norovirus must not attend or work in a private, parochial, charter, or public school while symptomatic, unless an exemption is obtained from the Department or Health District. This restriction will be withdrawn once asymptomatic, ~~unless hygienic practices are insufficient~~ for at least twenty-four (24) hours. (4-2-08)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**530. PERTUSSIS.**

**01. Reporting Requirements.** Each case or suspected case of pertussis must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

**02. Investigation.** Each reported case of pertussis must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, identify susceptible contacts, and identify the source of the infection. (4-2-08)( )

**03. Restrictions - Daycare Facility.** A person who is diagnosed with pertussis must not work in any occupation in which there is direct contact with children, or attend a daycare facility, as long as the disease is in a communicable form. (4-2-08)

**04. Restrictions - Health Care Facility.** A person who is diagnosed with pertussis must not work in any occupation in which there is direct contact with other persons in a health care facility as long as the disease is in a communicable form. (4-2-08)

**05. Restrictions - School.** A person diagnosed with pertussis must not attend or work in a private, parochial, charter, or public school as long as the disease is in a communicable form. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**550. PLAGUE.**

**01. Reporting Requirements.** Each case or suspected case of plague must be reported to the Department or Health District immediately, at the time of identification, day or night. (4-2-08)

**02. Investigation.** Each reported case of plague must be investigated to confirm the diagnosis, determine the source, ~~the extent of the~~ identify clusters or outbreaks of the infection, and whether there has been person-to-person transmission. (4-2-08)( )

**03. Handling of Report.** Each case of plague reported to the Department is reported to the Idaho Department of Agriculture if animals are involved. (4-2-08)

**04. Restrictions - Daycare Facility.** A person who is diagnosed with pneumonic plague must not work in any occupation in which there is direct contact with children, or attend a daycare facility, as long as the disease is in a communicable form. ( )

**04.5. Restrictions - Health Care Facility.** (4-2-08)

**a.** A person with or suspected of having pneumonic plague in a health care facility must be managed under the "Guideline for Isolation Precautions in Hospitals," as incorporated in Section 004 of these rules. (4-2-08)

**b.** A person with or suspected of having bubonic plague in health care facility must be managed under the "Guideline for Isolation Precautions in Hospitals," as incorporated in Section 004 of these rules. (4-2-08)

**06. Restrictions - School.** A person diagnosed with pneumonic plague must not attend or work in any occupation in which there is direct contact with children, in a private, parochial, charter, or public school as long as the disease is in a communicable form. ( )

**057. Prophylaxis of Contacts.** Household members and face-to-face contacts of a person with pneumonic plague must be placed on chemoprophylaxis and placed under surveillance for seven (7) days. A person who refuses chemoprophylaxis must be maintained under droplet precautions with careful surveillance for seven (7) days. (4-2-08)

**551. -- 559. (RESERVED)**

560. PNEUMOCOCCAL INVASIVE DISEASE IN CHILDREN LESS THAN EIGHTEEN YEARS OF AGE.

01. **Reporting Requirements.** Each case of pneumococcal invasive disease in children under eighteen (18) years of age including, but not limited to, meningitis, septicemia, and bacteremia, ~~and pneumonia~~, must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)( )

02. **Investigation.** Each reported case of pneumococcal invasive disease in children must be investigated to confirm the diagnosis and determine relevant vaccine history. (4-2-08)

03. **Restrictions - Daycare Facility.** A person who is diagnosed with pneumococcal invasive disease must not attend daycare or work in any occupation in which there is direct contact with children in a daycare facility as long as the disease is in a communicable form. (4-2-08)

04. **Restrictions - School.** A person diagnosed with pneumococcal invasive disease must not attend or work in any occupation in which there is direct contact with children in a private, parochial, charter, or public school as long as the disease is in a communicable form. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

580. POLIOMYELITIS.

01. **Reporting Requirements.** Each case or suspected case of poliomyelitis infection must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

02. **Investigation.** Each reported case of poliomyelitis infection must be investigated to confirm the diagnosis, to determine whether the case is polio vaccine associated or wild virus associated, ~~to determine the extent of the~~ identify clusters or outbreaks of the infection, whether there has been person-to-person transmission, and to identify susceptible contacts, carriers, and source of the infection. (4-2-08)( )

03. **Immunization of Personal Contacts.** The immunization status of personal contacts is determined and susceptible contacts are offered immunization. (4-2-08)

04. **Restrictions - Daycare Facility.** A person who is diagnosed with poliomyelitis infection must not work in any occupation in which there is direct contact with children, or attend a daycare facility, as long as the disease is in a communicable form. ( )

05. **Restrictions - School.** A person diagnosed with poliomyelitis infection must not attend or work in any occupation in which there is direct contact with children, in a private, parochial, charter, or public school as long as the disease is in a communicable form. ( )

581. -- 589. (RESERVED)

590. PSITTACOSIS.

01. **Reporting Requirements.** Each case of psittacosis must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

02. **Investigation.** Each reported case must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, and identify possible sources of the infection. (4-2-08)( )

03. **Handling of Report.** Any identified sources or suspected sources of infection must be reported to the Department which will notify the Idaho Department of Agriculture if birds or other animals are involved. (4-2-08)

**591. -- 599. (RESERVED)**

**600. Q FEVER.**

**01. Reporting Requirements.** Each case or suspected case of Q fever must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

**02. Investigation.** Each reported case of Q fever must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, and identify the source of the infection. (4-2-08)(    )

**03. Handling of Report.** Any identified or suspected sources of infection must be reported to the Department which will notify the Idaho Department of Agriculture if animals are involved. (4-2-08)

**601. -- 609. (RESERVED)**

**610. RABIES - HUMAN, ANIMAL, AND POST-EXPOSURE PROPHYLAXIS (rPEP).**

**01. Reporting Requirements.** (4-2-08)

**a.** Each case or suspected case of rabies in humans must be reported to the Department or Health District immediately, at the time of identification, day or night. (4-2-08)

**b.** Each case of rabies in animals must be reported to the Department or Health District within one (1) working day of identification. Each case of rabies in animals must also be reported to the Department of Agriculture as required in IDAPA 02.04.03, "Rules Governing Animal Industries." (3-29-10)

**c.** Each instance of rabies post-exposure prophylaxis (rPEP) series initiation must be reported to the Department or Health District within one (1) working day. (4-2-08)

**02. Investigation.** (4-2-08)

**a.** Each reported case or suspected case of rabies in humans must be investigated to confirm the diagnosis, identify the source and other persons or animals that may have been exposed to the source, and identify persons who may need to undergo rPEP. (3-29-10)

**b.** Each suspected or confirmed case of rabies in animals will be investigated to determine if potential human or animal exposure has occurred and identify persons who may need to undergo rPEP. (3-29-10)

**c.** Each reported rPEP series initiation must be investigated to determine if additional individuals require rPEP and identify the source of possible rabies exposure. (3-29-10)

**03. Handling of Report.** The Health District must notify the Department ~~and the Idaho Department of Agriculture~~ within one (1) working day of each reported case of this disease. (4-2-08)(    )

**04. Management of Exposure to Rabies.** All exposures to a suspected or confirmed rabid animal must be managed under the guidelines in the "Compendium of Animal Rabies Control, ~~2008~~ 2011," incorporated by reference in Section 004 of these rules. In the event that a human or animal case of rabies occurs, any designated representative of the Department, Health District, or Idaho Department of Agriculture, will establish such isolation and quarantine of animals involved as deemed necessary to protect the public health. (3-29-10)(    )

**a.** The handling of a rabies-susceptible animal that has bitten a person must be as follows: (4-2-08)

**i.** Any livestock which has bitten a person must be managed by the Idaho Department of Agriculture. (4-2-08)



ii. Any healthy domestic dog, cat, or ferret that has bitten a person must be observed for ten (10) days following the bite under the supervision of a licensed veterinarian or other person designated by the Idaho Department of Agriculture, Health District, or the Department. Such observation must be within an enclosure or with restraints deemed adequate to prevent contact with any member of the public or other animals. (4-2-08)

iii. It is the animal owner's responsibility to carry out the quarantine of the biting animal and to follow instructions provided for the quarantine of the animal. (4-2-08)

iv. Any domestic dog, cat, or ferret that has not been vaccinated against rabies by a licensed veterinarian and can not be quarantined, must be destroyed by a means other than shooting in the head. The head must be submitted to an approved laboratory for rabies analysis. (4-2-08)

v. Rabies susceptible animals other than domestic dogs, cats, ferrets, or livestock must be destroyed and the head submitted to an approved laboratory for rabies analysis, unless an exemption is given by the Department or Health District. (3-29-10)

vi. No person will destroy, or allow to be destroyed, the head of a rabies-susceptible animal that has bitten a person without authorization from the Department or Health District. (4-2-08)

**b.** The handling of a rabies-susceptible animal that has not bitten a person, but has within the past one hundred eighty (180) days been bitten, mouthed, mauled by, or closely confined in the same premises with a known rabid animal must be as follows: (4-2-08)

i. Any domestic dog, cat, ferret, or livestock which has not been vaccinated as recommended by the American Veterinary Medical Association, must be placed in quarantine for a period of six (6) months under the observation of a licensed veterinarian or a person designated by the Idaho Department of Agriculture, Health District, or the Department and vaccinated according to the Rabies Compendium. An animal with current vaccinations, including livestock, should be revaccinated immediately with an appropriate rabies vaccine and quarantined for forty-five (45) days. These provisions apply only to animals for which an approved rabies vaccine is available. (4-2-08)

ii. The quarantine of such animal must be within an enclosure deemed adequate by a person designated by the Idaho Department of Agriculture, the Department, or Health District to prevent contact with any person or rabies-susceptible animal. (4-2-08)

iii. The owner of the animal is financially responsible for the cost of isolating and quarantining the animal and for specimen collection and testing. (4-2-08)

iv. Destruction of such animal is permitted as an alternative to quarantine. (4-2-08)

**c.** Any rabies-susceptible animal other than domestic dogs, cats, ferrets, or livestock that are suspected of having rabies, or which have been in close contact with an animal known to be rabid, must be destroyed. The animal must be tested by an approved laboratory for rabies if a person has been bitten or has had direct contact with the animal which might result in the person becoming infected unless an exemption is granted by the Department or Health District. (3-29-10)

**05. City or County Authority.** Nothing in these rules is intended or will be construed to limit the power of any city or county in its authority to enact more stringent requirements to prevent the transmission of rabies. (4-2-08)

**611. -- 619. (RESERVED)**

**620. RELAPSING FEVER, TICK-BORNE AND LOUSE-BORNE.**

**01. Reporting Requirements.** Each case of tick-borne or louse-borne relapsing fever must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

**02. Investigation.** Each reported case of tick-borne or louse-borne relapsing fever must be investigated

to confirm the diagnosis, ~~determine the extent and source of the~~ identify clusters or outbreaks of the infection, and whether transmission was from lice or ticks. (4-2-08)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**660. RUBELLA - INCLUDING CONGENITAL RUBELLA SYNDROME.**

**01. Reporting Requirements.** Each case or suspected case of rubella or congenital rubella syndrome must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

**02. Investigation.** Each reported case of rubella or congenital rubella syndrome must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, identify any contacts who are susceptible and pregnant, and document the presence of the congenital rubella syndrome. (4-2-08)(    )

**03. Restrictions - Daycare Facility.** A person who is diagnosed with rubella must not attend daycare, ~~be present~~, or work in any occupation in which there is close contact with children in a daycare facility as long as the disease is in a communicable form. (4-2-08)(    )

**04. Restrictions - Health Care Facility.** A person who is diagnosed with rubella must not work in any occupation in which there is close contact with other persons in a health care facility as long as the disease is in a communicable form. (4-2-08)(    )

**05. Restrictions - Schools.** A person who is diagnosed with rubella must not attend, be present, or work in any occupation in which there is close contact with children or other persons in a private, parochial, charter, or public school as long as the disease is in a communicable form. (4-2-08)(    )

**06. Restrictions - Personal Contact.** A person who is diagnosed with rubella must not work in occupations in which there is close contact with women likely to be pregnant as long as the disease is in a communicable form. (4-2-08)(    )

**661. -- 669. (RESERVED)**

**670. SALMONELLOSIS - INCLUDING TYPHOID FEVER.**

**01. Reporting Requirements.** Each case or suspected case of salmonellosis or typhoid fever must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

**02. Investigation.** Each reported case of salmonellosis or typhoid fever must be investigated to confirm the diagnosis, ~~to determine the extent of the~~ identify clusters or outbreaks of the infection, and to identify contacts, carriers, and the source of ~~contamination~~ infection. (4-2-08)(    )

**03. Handling of Report.** The Department and the Health District will exchange reported information within one (1) working day on any suspected or reported case. (4-2-08)

**04. Restrictions - Chronic Carrier.** Chronic carriers, which are those who excrete *Salmonella* for more than one (1) year after onset, are restricted from working as food employees. Chronic carriers must not work in any occupation in which they provide personal care to children in daycare facilities, or to persons who are confined to health care facilities or residential care facilities, until *Salmonella* is not identified by a licensed laboratory in any of three (3) successive approved fecal specimens collected at least seventy-two (72) hours apart. (4-2-08)

**05. Restrictions - Non-Typhi Salmonella.** (4-2-08)

**a.** A fecally incontinent person excreting non-Typhi *Salmonella* must not attend a daycare facility. (4-2-08)

**b.** A person excreting non-Typhi *Salmonella* must not work in any occupation in which they provide personal care to children in a daycare facility or provide personal care to persons confined to a health care facility, unless an exemption is obtained from the Department or Health District. (4-2-08)

**c.** A symptomatic food employee excreting non-Typhi *Salmonella* must be managed under the IDAPA 16.02.19, "The Idaho Food Code." (4-2-08)

**d.** ~~If hygienic practices are insufficient, b~~Before a person can attend or work in a daycare facility or a health care facility, or work as a food employee, the person must provide two (2) successive approved fecal specimens ~~which are negative for~~ collected at least twenty-four (24) hours apart, that fail to show *Salmonella* ~~upon testing by a licensed laboratory; collected not less than twenty four (24) hours apart and forty eight (48) hours after the last dose of antimicrobials.~~ (4-2-08)(    )

**e.** The Department may withdraw this restriction on a case of non-Typhi *Salmonella* provided that the person is asymptomatic. (4-2-08)

**f.** Any member of a household in which there is a case of non-Typhi salmonellosis must not work as a food employee until ~~he produces~~ the member provides at least one (1) negative approved fecal specimen ~~for that fails to show~~ *Salmonella* upon testing by a licensed laboratory. (4-2-08)(    )

**06. Restrictions - Salmonella Typhi.** (4-2-08)

**a.** Any person with typhoid fever will remain subject to the supervision of the Department until *Salmonella Typhi* is not isolated by a licensed laboratory from three (3) successive approved fecal specimens. ~~These specimens are to be~~ collected at least twenty-four (24) hours apart and not earlier than one (1) month after onset. (4-2-08)(    )

**b.** A food employee excreting *Salmonella Typhi* must be managed under IDAPA 16.02.19, "The Idaho Food Code." (4-2-08)

**c.** Any member of a household in which there is a case of *Salmonella Typhi* must not work in the occupations described in Subsection 670.05.d. of this rule until the member provides at least two (2) fecal specimens successive approved fecal specimens ~~are negative for~~ collected twenty-four (24) hours apart that fail to show *Salmonella* upon testing by a licensed laboratory. (4-2-08)(    )

**d.** All chronic carriers of *Salmonella Typhi* must abide by a written agreement called a typhoid fever carrier agreement. This agreement is between the chronic carrier and the Department or Health District. Failure of the carrier to abide by the carrier agreement may cause the carrier to be isolated under Section 065 of these rules. The carrier agreement requires: (4-2-08)

i. The carrier cannot work as a food employee; (4-2-08)

ii. Specimens must be furnished for examination in a manner described by the Department or Health District; and (4-2-08)

iii. The Department or Health District must be notified immediately of any change of address, occupation, and cases of illness suggestive of typhoid fever in his family or among immediate associates. (4-2-08)

**e.** Chronic carriers of typhoid fever may be released from carrier status when *Salmonella Typhi* is not identified by a licensed laboratory in any of six (6) consecutive approved fecal and urine specimens collected at least one (1) month apart. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**700. SHIGELLOSIS.**

**01. Reporting Requirements.** Each case or suspected case of shigellosis must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

**02. Investigation.** Each reported case of shigellosis must be investigated to confirm the diagnosis and ~~determine the extent of the~~ identify clusters or outbreaks of the infection. An attempt must be made to identify contacts, carriers, and the source of the infection. (4-2-08)(    )

**03. Handling of Report.** The Department and the Health District will exchange reported information within one (1) working day on any suspected or reported case. (4-2-08)

**04. Restrictions - Daycare Facility.** (4-2-08)

**a.** A person excreting *Shigella* must not attend a daycare facility while fecally incontinent. (4-2-08)

**b.** A person excreting *Shigella* must not work in any occupation in which he provides personal care to children in a daycare facility while the disease is present in a communicable form, unless an exemption is obtained from the Department or Health District. During an outbreak in a daycare facility, a cohort system may be approved. (4-2-08)

**c.** The Department or Health District may withdraw the daycare restriction when the person has provided ~~that~~ two (2) successive approved fecal specimens collected at least twenty-four (24) hours apart ~~are~~ negative for that fail to show *Shigella* upon testing by a licensed laboratory. (4-2-08)(    )

**05. Exclusions - Food Service Facility.** (4-2-08)

**a.** A food employee excreting *Shigella* must be managed under IDAPA 16.02.19, "The Idaho Food Code." (4-2-08)

**b.** The Department or Health District may withdraw the food service restriction when the employee has provided ~~that~~ two (2) successive approved fecal specimens collected at least twenty-four (24) hours apart ~~are~~ negative for that fail to show *Shigella* upon testing by a licensed laboratory. (4-2-08)(    )

**06. Restrictions - Health Care Facility.** (    )

**a.** A person excreting *Shigella* must not work in any occupation in which he provides personal care to persons who are confined to a health care facility while the disease is present in a communicable form, unless an exemption is obtained from the Department or Health District. During an outbreak in a facility, a cohort system may be approved. (    )

**b.** The Department or Health District may withdraw the health care facility restriction when the employee has provided two (2) successive approved fecal specimens collected at least twenty-four (24) hours apart that fail to show Shigella upon testing by a licensed laboratory. (    )

**c.** During an outbreak in a facility, a cohort system may be approved. (4-2-08)(    )

**07. Restrictions - Household Contacts.** No member of a household, in which there is a case of shigellosis, may work in any occupations in Subsections 700.04 through 700.06 of this rule, unless the Department or Health District approves and at least one (1) approved fecal specimen is negative for *Shigella* upon testing by a licensed laboratory. (4-2-08)(    )

**701. -- 709. (RESERVED)**

**710. SMALLPOX.**

**01. Reporting Requirements.** Each case or suspected case of smallpox must be reported to the Department or Health District immediately, at the time of identification, day or night. (4-2-08)

**02. Investigation.** Each reported case of smallpox must be investigated promptly to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, and identify the source of the infection and susceptible contacts. (4-2-08)(    )

**03. Restrictions - Daycare Facility.** (4-2-08)

**a.** A person diagnosed with smallpox must not attend a daycare facility as long as the disease is in a communicable form. (4-2-08)

**b.** In the event of an outbreak, the Department or Health District may exclude susceptible children and employees from daycare facilities where a case has been identified until adequate immunization is obtained or the threat of further spread is contained. (4-2-08)

**04. Restrictions - Health Care Facility.** A person diagnosed or suspected of having smallpox in a health care facility must be managed under the "Guideline for Isolation Precautions in Hospitals," as incorporated in Section 004 of these rules. (4-2-08)

**05. Restrictions - Public Gatherings.** A person diagnosed with smallpox must not attend public gatherings as long as the disease is in a communicable form. (4-2-08)

**06. Restrictions - School.** (4-2-08)

**a.** A person diagnosed with smallpox, regardless of age, must not attend a private, parochial, charter, or public school as long as the disease is in a communicable form. (4-2-08)

**b.** In the event of an outbreak, the Department or Health District may exclude susceptible children and employees from schools where a case has been identified until adequate immunization is obtained or the threat of further spread is contained under Section 33-512(7), Idaho Code. (4-2-08)

**07. Restrictions - Working.** A person diagnosed with smallpox must not work in any occupation as long as the disease is in a communicable form. (4-2-08)

**711. -- 719. (RESERVED)**

**720. STREPTOCOCCUS PYOGENES (GROUP A STREP) INFECTIONS ~~WHICH ARE INVASIVE OR RESULT IN RHEUMATIC FEVER.~~**

**01. Reporting Requirements.** Each case of *Streptococcus pyogenes* (group A strep) infection which is invasive or results in rheumatic fever or necrotizing fasciitis must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)(    )

**02. Investigation.** Each reported case of *Streptococcus pyogenes* (group A strep) infection which is invasive or results in rheumatic fever or necrotizing fasciitis must be investigated to confirm the diagnosis, to determine if the infection is part of an outbreak, and to identify the source of the infection. (4-2-08)(    )

**03. Restrictions - Daycare Facility.** An infected person must not attend or work in a daycare until twenty-four (24) hours has elapsed after treatment is initiated or until he is no longer infectious as determined by a physician, the Department or Health District. (4-2-08)

**04. Restrictions - Health Care Facility.** An infected person must not work in a health care facility until twenty-four (24) hours has elapsed after treatment is initiated or until he is no longer infectious as determined by a physician, the Department or Health District. (4-2-08)

**05. Restrictions - School.** An infected person must not attend or work in a private, parochial, charter, or public school until twenty-four (24) hours has elapsed after treatment is initiated or until the patient is no longer infectious as determined by a physician, the Department or Health District. (4-2-08)

721. -- 729. (RESERVED)

730. SYPHILIS.

**01. Reporting Requirements.** Each case or suspected case of syphilis must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

**02. Investigation.** Each reported case of primary, secondary, or early latent syphilis must be investigated by the Department or Health District. Each person diagnosed with primary, secondary, or early latent infectious syphilis is required to inform ~~his~~ all sexual contacts that they may have been exposed to a sexually transmitted infection, or provide sufficient information to public health officials so they may locate contacts and assure that each is offered prompt diagnosis and treatment under Section 39-605, Idaho Code. ~~(4-2-08)~~( )

**03. Testing Without an Informed Consent.** A physician may order blood tests for syphilis when an informed consent is not possible and there has been, or is likely to be, significant exposure to a person's blood or body fluids by a person providing emergency or medical services. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

770. TRICHINOSIS.

**01. Reporting Requirements.** Each case of trichinosis must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

**02. Investigation.** Each reported case of trichinosis must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, and identify the source of the infection. ~~(4-2-08)~~( )

**03. Handling of Report.** The Department will notify the Idaho Department of Agriculture and other regulatory agencies as applicable. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

810. YERSINIOSIS, OTHER THAN PLAGUE.

**01. Reporting Requirements.** Each case of yersiniosis, other than plague, must be reported to the Department or Health District within three (3) working days of identification. Plague must be reported immediately as described in Section 550 of these rules. (4-2-08)

**02. Investigation.** Each reported case of yersiniosis must be investigated to confirm the diagnosis, identify carriers, and the source of the infection. (4-2-08)

**03. Restrictions - Food Service Facility.** A symptomatic person ~~excreting Yersinia is restricted from~~ working as a food employee must be managed under IDAPA 16.02.19, "The Idaho Food Code." ~~(4-2-08)~~( )

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.19 - FOOD SAFETY AND SANITATION STANDARDS FOR FOOD ESTABLISHMENTS (THE IDAHO FOOD CODE)

DOCKET NO. 16-0219-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of 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 37-121 and 39-1603, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rule for the donation of harvested wild game meat to food banks and other organizations is being adopted with no changes to the text as originally proposed. The complete text of the proposed and temporary rule was published in the October 1, 2014, Idaho Administrative Bulletin, [Vol. 14-10, pages 245 through 247](#).

**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:

This rulemaking will have no fiscal impact to state general funds or any other funds.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Patrick Guzzle, at (208) 334-5936.

DATED this 21st Day of November, 2014.

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

**THE FOLLOWING NOTICE WAS PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is September 1, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 37-121 and 39-1603, Idaho Code.

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

**Tuesday, October 14, 2014, 1:00 p.m.**

**Hilton Garden Inn**  
**7699 W. Spectrum Street**  
**Garden East Room**  
**Boise, Idaho**

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 Department is proposing changes to allow individuals who have harvested wild game meat and would like to donate it to food banks and other organizations that help feed Idaho's citizens, and that are willing to accept wild game meat, to do so. The provisions in this proposed rule provides a way for these organizations to be able to accept donated wild game meat.

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

To provide for the public health, safety, or welfare by allowing donations of wild game meat to feed Idaho's citizens that are hungry and want to accept this meat for their families. The temporary rule is needed in order to allow hunters to donate during this year's hunting season. The provisions also provide a way for these organizations to be able to accept donated wild game meat.

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

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

This rulemaking will have no fiscal impact to state general funds or any other funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted and the Negotiated Rulemaking Notices for Docket 16-0219-1401 published in both the March 5, 2014, Idaho Administrative Bulletin, **Vol. 14-3, page 21** and the April 2, 2014, Idaho Administrative Bulletin, **Vol. 14-4, page 13**.

**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 temporary and proposed rule, contact Patrick Guzzle, at (208) 334-5936.

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 October 22, 2014.

DATED this 21 st day of August, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0219-1401**



**325. GAME ANIMALS.**

Modification to Section 3-201.17(A)(4), is made by deleting Section 3-201.17(A)(4) and replacing it with Subsections 325.01 through 325.04 of these rules. (4-6-05)( )

**01. Field Dressed Game Animals.** Uninspected wild game animals and wild poultry may be custom processed or prepared and served upon request by an individual having ownership of the animal, ~~and~~ **Except as allowed in Subsection 325.04 of this rule, uninspected wild game animals and wild poultry** must be processed for or served to that owner and for the family or guests of that individual animal owner only. (4-6-05)( )

**02. Processing Game Animals.** Game animals and birds are to be completely separated from other food during storage, processing, preparation and service with the use of separate equipment or areas or by scheduling and cleaning, providing there is compliance with the following: (4-6-05)

**a.** Slaughtering and cleaning of game animals or birds can not be done in the food establishment, except for meat processing establishments with kill floors; and (4-6-05)

**b.** Game animals and other animal carcasses are free of any visible dirt, filth, fecal matter or hair before such carcasses enter the food establishment, except for meat processing establishments with kill floors; and (4-6-05)

**c.** An identifying tag with the owner's name must be on each carcass or divided parts and packaged or wrapped parts; and (4-6-05)

**d.** Each carcass or divided parts and packaged or wrapped parts are marked or tagged with a "Not for sale" label. **Except as allowed in Subsection 325.04 of this rule,** these may not be sold, given away, or served to any members of the public. (4-6-05)( )

**03. Un-Inspected Game Animals.** Any un-inspected game animals prepared and served in a food establishment may only be prepared and served at the request of the owner of the animals for the owner and invited family or friends at a private dinner. **Except as allowed in Subsection 325.04 of this rule,** these animals may not be served, sold, or given away to any members of the public. (4-6-05)( )

**04. Donated Game Meat.** Legally harvested game meat may be donated to a food bank or food pantry when the following conditions are met: ( )

**a.** The end recipient of the donated game meat signs an acknowledgement statement indicating that he is aware that the meat has been donated and that the meat itself is uninspected, wild-harvested game meat. ( )

**b.** The game meat must have been processed by: ( )

**i.** A facility that is subject to inspection by the regulatory authority with jurisdiction over meat products; ( )

**ii.** The facility packages the game meat into portions that require no further processing or cutting by the food bank or food pantry; and ( )

**c.** The meat is labeled by the processor with the following: ( )

**i.** Species identification; ( )

**ii.** The name and address of the meat processing facility; and ( )

**iii.** The words "Processed for Donation or Private Use" and "Cook to 165° F." ( )

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.27 - IDAHO RADIATION CONTROL RULES

#### DOCKET NO. 16-0227-1401 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1003, 56-1007, 56-1041, 56-1043, 56-1044, and 56-1046, 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 chapter of rules is being repealed in its entirety. Companion Docket No. [16-0227-1402](#) to rewrite the current chapter of rules is published simultaneously in this Idaho Administrative Bulletin.

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 September 3, 2014, Idaho Administrative Bulletin, [Vol. 14-9, page 225](#).

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

There is no anticipated fiscal impact to the state general fund as a result of this rulemaking. Please see the fiscal impact statement under Docket No. [16-0227-1402](#) for the fiscal impact related to the rewrite of this chapter.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this pending rule, contact Katey Anderson at (208) 334-2235, ext. 245.

DATED this 21st Day of November, 2014.

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

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-1003, 56-1007, 56-1041, 56-1043, 56-1044, and 56-1046, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2014.

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 chapter of rules is being repealed in its entirety. Companion Docket No. 16-0227-1402 to rewrite the current chapter of rules is published simultaneously in this Idaho Administrative Bulletin.

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

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

There is no anticipated fiscal impact to the state general fund as a result of this rulemaking. Please see the fiscal impact statement under Docket No. 16-0227-1402 for the fiscal impact related to the rewrite of this chapter.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. A Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014, Idaho Administrative Bulletin, [Vol. 14-6, pages 59 and 60](#). A follow-up Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014, Idaho Administrative Bulletin, [Vol. 14-7, page 47](#).

**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 Katey Anderson at (208) 334-2235, ext. 245.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 7th Day of August, 2014.

### **LSO RULES ANALYSIS MEMO**

**IDAPA 16.02.27 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 Section 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 of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, 56-203, 56-209, 56-236 through 56-240, 56-242, 56-250 through 56-257, 56-260 through 56-266, Idaho Code, and 42 CFR 435.

**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:

These rule changes clarify definitions and align with federal regulations in regard to eligibility rules for parent and caretaker relatives and presumptive eligibility for Medicaid applicants. There are no changes in the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 1, 2014, Idaho Administrative Bulletin, [Vol. 14-10, pages 248 through 252](#).

**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:

There is no anticipated fiscal impact to the state general fund, or to any other funds, due to this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Camille Schiller at (208) 334-5969.

DATED this 7th Day of November, 2014.

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

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-209, 56-236 through 56-240, 56-242, 56-250 through 56-257, 56-260 through 56-266, Idaho Code, and 42 CFR 435.

**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 October 15, 2014.

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

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

These rule changes are being made to clarify definitions and to align with federal regulations to ensure that the Department is in compliance with those regulations. These changes include amending eligibility and presumptive eligibility rules with regard to parent and caretaker relatives.

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

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

There is no anticipated fiscal impact to the state general fund, or to any other funds, due to this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because the changes being made are simple in nature and are being made for clarification and alignment with federal regulations.

**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 Camille Mongelli at (208) 334-5969.

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 October 22, 2014.

DATED this 28th day of August, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0301-1401**

**010. DEFINITIONS (A THROUGH L).**

For the purposes of this chapter, the following terms apply.

(3-20-14)

**01. Advanced Payment of Premium Tax Credit.** Payment of federal tax credits specified in 26 U.S.C. Part 36B (as added by section 1401 of the Affordable Care Act) which are provided on an advance basis to an eligible individual enrolled in a Qualified Health Plan (QHP) through an exchange in accordance with sections 1402 and 1412 of the Affordable Care Act. (3-20-14)

**02. Adult.** Any individual who has passed the month of his nineteenth birthday. (3-20-14)

**03. Affordable Care Act.** The Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152). (3-20-14)

- 04. Applicant.** A person applying for public assistance from the Department, including individuals referred to the Department from a Health Insurance Exchange or Marketplace. (3-20-14)
- 05. Application.** An application for benefits including an Application for Assistance (AFA) or other application recognized by the Department, including referrals from a Health Insurance Exchange or Marketplace. (3-20-14)
- 06. Application Date.** The date the Application for Assistance (AFA) is received by the Department or by the Health Insurance Exchange or Marketplace electronically, telephonically, in person, or the date the application is postmarked, if mailed. (3-20-14)
- 07. Caretaker Relative.** A caretaker relative is a relative of a *dependent* child by full- or half-blood, adoption, or marriage with whom the child is living and who assumes primary responsibility for the child's care. A caretaker relative is one of the following: (3-20-14)(    )
- a.** A child's natural, adoptive, or step-parents; (3-20-14)
  - b.** A child's natural, adoptive, or step-grandparents; (3-20-14)
  - c.** A child's natural, adoptive, half- or step-siblings; (3-20-14)
  - d.** A child's natural, adoptive, half- or step-uncle, aunt, first cousin, nephew, niece; first cousin once removed; or (3-20-14)
  - e.** A current or former spouse of a qualified relative listed above. (3-20-14)
- 08. Child.** Any individual from birth through the end of the month of his nineteenth birthday. (3-20-14)
- 09. Citizen.** A person having status as a “national of the United States” defined in 8 U.S.C. 1101(a)(22) that includes both citizens of the United States and non-citizen nationals of the United States. (3-20-14)
- 10. Cost-Sharing.** A participant payment for a portion of Medicaid service costs such as deductibles, co-insurance, or co-payment amounts. (3-20-14)
- 11. Creditable Health Insurance.** Creditable health insurance is coverage that provides benefits for inpatient and outpatient hospital services and physicians' medical and surgical services. Creditable coverage excludes liability, limited scope dental, vision, specified disease, or other supplemental-type benefits. (3-20-14)
- 12. Department.** The Idaho Department of Health and Welfare. (3-20-14)
- 13. Disenrollment.** The end of an individual's participation in a Health Care Assistance program. (3-20-14)
- 14. Electronic Account.** An electronic file that includes all information collected and generated by the state regarding each individual's Health Care Assistance eligibility and enrollment, including all documentation required and information collected as part of an eligibility review, or during the course of an appeal. (3-20-14)
- 15. Eligibility.** The determination of whether or not an individual is eligible for participation in a Health Care Assistance program. (3-20-14)
- 16. Enrollment.** The process of adding eligible individuals to a Health Care Assistance program. (3-20-14)
- 17. Extended Medicaid.** Extended Medicaid is four (4) additional months of medical assistance for a parent or relative caretaker who becomes ineligible for Title XIX Medicaid due to an increase in spousal support payments. (3-20-14)

- 18. Federal Poverty Guidelines (FPG).** The federal poverty guidelines issued annually by the Department of Health and Human Services (HHS). The Federal Poverty Guidelines (FPG) are available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>. (3-20-14)
- 19. Health Assessment.** Health Assessment is an examination performed by a primary care provider in order to determine the appropriate health plan for a Medicaid-eligible individual. (3-20-14)
- 20. Health Care Assistance (HCA).** Health coverage, including Title XIX or Title XXI benefits granted by the Department for persons or families under the authority of Title 56, Chapter 2, Idaho Code, as well as private health insurance plans purchased with a Premium Tax Credit described in Subsection 010.01 of this rule. (3-20-14)
- 21. Health Insurance Exchange or Marketplace.** A resource where individuals, families, and small businesses can: (3-20-14)
- a.** Learn about their health coverage options; (3-20-14)
  - b.** Compare health insurance plans based on costs, benefits, and other important features: (3-20-14)
  - c.** Choose a health coverage plan; and (3-20-14)
  - d.** Enroll in health coverage. (3-20-14)
- 22. Health Insurance Premium Program (HIPP).** The Premium Assistance program in which Title XIX and Title XXI participants may participate. (3-20-14)
- 23. Health Plan.** A set of health services paid for by Idaho Medicaid, or health insurance coverage obtained through the Health Insurance Exchange or Marketplace. (3-20-14)
- 24. Health Questionnaire.** A tool used to assist Health and Welfare staff in determining the correct Health Plan for the Medicaid applicant. (3-20-14)
- 25. Internal Revenue Code.** The federal tax law used to determine eligibility under Title 26 U.S.C. for individual income and self-employment income. (3-20-14)
- 26. Internal Revenue Service (IRS).** The U.S. government agency in charge of tax laws. These laws are used to determine income eligibility. The IRS website is at <http://www.irs.gov>. (3-20-14)
- 27. Insurance Affordability Programs.** Insurance affordability programs include Title XIX title XXI and all insurance programs available in the Health Insurance Exchange or Marketplace. (3-20-14)
- 28. Lawfully Present.** An individual who is a qualified non-citizen as described in Section 221 of these rules. (3-20-14)
- 29. Lawfully Residing.** An individual who is lawfully present in the United States and is a resident of the state in which they are applying for health care coverage. (3-20-14)

**(BREAK IN CONTINUITY OF SECTIONS)**

- 400. PARENTS AND CARETAKER RELATIVES ELIGIBLE FOR MEDICAID COVERAGE.**  
In order for an ~~adult~~ individual in a household budget unit to be eligible for Medicaid coverage, the ~~adult~~ individual must meet the requirements in Subsections 400.01 through 400.06 of this rule. (~~3-20-14~~)(      )
- 01. Parent, Caretaker Relative, or a Pregnant Woman.** The ~~adult~~ individual must be a parent,

caretaker relative, or a pregnant woman in the household budget unit. (3-20-14)( )

**02. Responsible for Eligible Dependent Child.** The ~~adult~~ individual must be responsible for an eligible dependent child, which includes the unborn child of a pregnant woman. (3-20-14)( )

**03. Live in Same Household.** The ~~adult~~ individual must live in the same household with the eligible dependent child. (3-20-14)( )

**04. MAGI Income Eligibility.** The ~~adult~~ individual must meet all income requirements of the Medicaid program for eligibility determined according to MAGI methodologies identified in Sections 300 through 303, and 411 of these rules. Eligibility is based on: (3-20-14)( )

a. The number of members included in the household budget unit; and (3-20-14)

b. All countable income for the household budget unit. (3-20-14)

**05. Member of More Than One Budget Unit.** No person may receive benefits in more than one (1) budget unit during the same month. (3-20-14)

**06. More Than One Medicaid Budget Unit in Home.** If there is more than one (1) Medicaid budget unit in a home, each budget unit is considered a separate unit. (3-20-14)

**(BREAK IN CONTINUITY OF SECTIONS)**

**545. PRESUMPTIVE ELIGIBILITY FOR CHILDREN AND PARENTS.**

Presumptive eligibility determination for qualifying medical coverage groups can only be provided by a qualified hospital defined in Section 011 or these rules. (3-20-14)

**01. Presumptive Eligibility Decisions.** Decisions of presumptive eligibility can only be made for children up to age nineteen (19), parents ~~or caretaker relatives~~ with ~~an~~ eligible child~~ren~~ in their household, ~~caretaker relatives~~, or pregnant women, who meet program requirements for MAGI-based Medicaid coverage for families and children. (3-20-14)( )

**02. Presumptive Eligibility Determination.** Presumptive eligibility determinations are made by a qualified hospital when an individual receiving medical services is not covered by health care insurance and the financial assessment by hospital staff indicates the individual is eligible for Medicaid Coverage in Idaho. This determination is made by hospital staff through an online presumptive application process: (3-20-14)

a. Prior to completion of a full Medicaid application; and (3-20-14)

b. Prior to a determination being made by the Department on the full application. (3-20-14)

**03. Presumptive Eligibility Period.** The presumptive eligibility period begins on the date the presumptive application is filed online and ends with the earlier of the following: (3-20-14)

a. The date the full eligibility determination is completed by the Department; or (3-20-14)

b. The end of the ~~current~~ month ~~after the month~~ the qualified hospital completed the presumptive eligibility determination. (3-20-14)( )



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

**16.03.03 - RULES GOVERNING CHILD SUPPORT SERVICES**

**DOCKET NO. 16-0303-1401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 Section 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 of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 7-1206, 32-1209, 32-1214G, 32-1217, 56-203A, and 56-1004, Idaho Code, and 42 CFR 435.

**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:

These rule changes update references to current statutes, income withholding processes, and definitions for appropriate good cause factors considered for recreational license suspension and enforcement proceedings of child support orders. 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 October 1, 2014, Idaho Administrative Bulletin, **Vol. 14-10, pages 253 through 258.**

**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:

There is no anticipated fiscal impact to the state general funds, or to any other funds, due to this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kandace Yearsley (208) 334-0620.

DATED this 7th Day of November, 2014.

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

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 7-1206, 32-1209, 32-1214G, 32-1217, 56-203A, and 56-1004, Idaho Code, and 42 CFR 435.

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

**Friday, October 10, 2014, 9:30 a.m.**

**Department of Health & Welfare**  
**2nd Floor Conference Room**  
**450 West State Street**  
**Boise, Idaho**

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

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

These rule changes are being made to update references for current statutes, and the income withholding processes by removing an outdated form in Appendix A. Changes are also being made to clarify good cause factors that can be considered during suspension of license proceedings and which may not be appropriate when applying the factors to recreational licenses. Definitions and appropriate factors are being added to these rules around license suspension proceedings for the enforcement of child support orders.

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

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

There is no anticipated fiscal impact to the state general funds, or to any other funds, due to this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because the Department determined that the income withholding changes are technical corrections and the recreational license suspension rule changes would not likely be a change on which the Department and those whose licenses may be affected could reach consensus.

**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 Kandace Yearsley (208) 334-0620.

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 October 22, 2014.

DATED this 28th day of August, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0303-1401**

**000. LEGAL AUTHORITY.**

The Department of Health and Welfare is authorized to promulgate these rules under Sections 7-1206, 32-1207, 32-1209, 32-1214G, 32-1217, 56-203A, and 56-1004, Idaho Code. ~~(5-8-09)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

602. FORM OF INCOME WITHHOLDING ORDER.

Income withholding orders issued ~~pursuant to~~ under Section ~~7-1204~~ 32-1207, Idaho Code, ~~shall be in substantially the following form set forth in Appendix A at the end of this chapter~~ will use the Income Withholding For Support form found online at: <http://healthandwelfare.idaho.gov/Portals/0/Children/Child%20Support/IWO.pdf>.

(7-1-98)( )

(BREAK IN CONTINUITY OF SECTIONS)

604. GOOD CAUSE DETERMINATION IN LICENSE SUSPENSION PROCEEDINGS.

01. **Definitions.** ~~“Person” means an individual.~~ The following definitions apply for this section of rules: (7-1-98)( )

**a.** “Obligor” means an individual who is ordered to pay child support under an order issued by a court or authorized administrative authority. ( )

**b.** “Obligee” means an individual who is ordered to receive child support under an order issued by a court or authorized administrative authority. ( )

**c.** “Motor Vehicle License” means a license required to operate any type of motor vehicle. ( )

**d.** “Occupational or Professional License” means a license issued to allow a person to practice or engage in any business, occupation, or profession. ( )

**e.** “Recreational License” means a license, certificate, or permit authorizing an individual to engage in any recreational activity including, but not limited to, hunting, fishing, and trapping. ( )

02. **Res Judicata.** No issues that have been previously litigated may be considered at the license suspension hearing. (7-1-98)

03. **Good Cause in Motor Vehicle and Occupational License Suspension Proceedings.** A The license suspension shall be denied or stayed if the obligor proves ~~that~~ one (1) of the following ~~has resulted in a current inability to pay the child support obligation~~ conditions exist: (7-1-98)( )

**a.** The obligor ~~is~~ has been declared physically disabled by Social Security, workman’s compensation, or another competent authority that works with disabled individuals, and that the disability has directly resulted in the current inability to pay the child support obligation; (7-1-98)( )

**b.** The obligor is experiencing the effects of an extended illness or accident that has directly resulted in the current inability to pay the child support obligation; (7-1-98)( )

**c.** The obligor is a student whose enrollment is a result of a referral from Vocational Rehabilitation, workman’s compensation, or other competent authority working with disabled individuals; ~~or~~ (7-1-98)( )

**d.** The obligor is incarcerated in any county, ~~or~~ state, or federal correctional facility, and proves that he or she has no assets. (7-1-98)( )

**e.** The obligor is receiving TAFI- or Supplemental Security Income benefits; (7-1-99)( )

**f.** The obligor has court-ordered physical custody of all of the children listed in the order or orders for support; (3-30-01)( )

**g.** Child support is being collected directly from the obligor’s income through an income withholding

order issued by the Department to the obligor’s employer or other income source. (7-1-99)

**04. Not Good Cause in Motor Vehicle and Occupational License Suspension Proceedings.** Any factor not defined as good cause in Subsection 604.03 is not good cause for a denial or stay of a license suspension, including but not limited to the following: (7-1-98)( )

- a. The obligor is unemployed, underemployed, or has difficulty maintaining consistent employment; (7-1-98)
- b. The obligor ~~is~~ claims to be disabled but has not applied for disability or other benefits, or has been refused benefits; (7-1-98)( )
- c. The obligor asserts that the child support obligation is too high; (7-1-98)
- d. The obligor has been denied full visitation with the child or children; or (7-1-98)
- e. The obligor alleges the obligee misuses the child support. (7-1-98)

**05. Good Cause in Recreational License Suspension Proceedings.** The license suspension shall only be stayed if the obligor proves one (1) of the following conditions exist: ( )

- a. The obligor is receiving TAFI or Supplemental Security Income benefits; or ( )
- b. The obligor has court-ordered physical custody of all of the children listed in the order or orders for support. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

~~APPENDIX A – ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT~~

~~ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT~~

<i>State</i>	_____	<i>Original Order/Notice</i>	_____
<i>Co./City/Dist. of</i>	_____	<i>Amended Order/Notice</i>	_____
<i>Date of Order/Notice</i>	_____	<i>Terminate Order/Notice</i>	_____
<i>Court/Case Number</i>	_____		
<i>Employer/Withholder’s Federal EIN Number</i>	_____ )	<i>RE: *</i>	_____
	)	<i>Employee/Obligor’s Name (Last, First, MI)</i>	
	)	<i>Employee/Obligor’s Social Security Number</i>	
<i>Employer/Withholder’s Name</i>	)	<i>*</i>	
<i>Employer/Withholder’s Name</i>	)	<i>Employee/Obligor’s Case Identifier</i>	
	)	<i>Custodial Parent’s Name (Last, First, MI)</i>	
	)		
<i>Child(ren)’s Name(s):</i>	<i>DOB</i>	<i>Child(ren)’s Name(s):</i>	<i>DOB</i>

~~ORDER INFORMATION: This is an Order/Notice to Withhold Income for Child Support based upon an order for~~

support from \_\_\_\_\_ By law, you are required to deduct these amounts from the above-named employee's/obligor's income until \_\_\_\_\_ even if the Order/Notice is not issued by your State.

~~If checked, you are required to enroll the child(ren) identified above in any health insurance coverage available through the employee's/obligor's employment. \_\_\_\_\_~~

\$ \_\_\_\_\_ per \_\_\_\_\_ in current support  
\$ \_\_\_\_\_ per \_\_\_\_\_ in past due support      Arrears 12 weeks or greater? yes no  
\$ \_\_\_\_\_ per \_\_\_\_\_ in medical support  
\$ \_\_\_\_\_ per \_\_\_\_\_ in other (specify)  
\$ \_\_\_\_\_ per \_\_\_\_\_ in other (specify)

for a total of \$ \_\_\_\_\_ per \_\_\_\_\_ to be forwarded to the payee below.

~~You do not have to vary your pay cycle to be in compliance with the support order. If your pay cycle does not match the ordered support payment cycle, use the following to determine how much to withhold:~~

~~\$ \_\_\_\_\_ per weekly pay period. \$ \_\_\_\_\_ per semimonthly pay period (twice a month).  
\$ \_\_\_\_\_ per biweekly pay period (every two weeks). \$ \_\_\_\_\_ per monthly pay period.~~

~~REMITTANCE INFORMATION: Follow the laws and procedures of the employee's/obligor's principal place of employment even if such laws and procedures are different from this paragraph:~~

~~You must begin withholding no later than the first pay period occurring \_\_\_\_\_ working days after the date of this Order/Notice. Send payment within \_\_\_\_\_ working days of the paydate date of withholding. You are entitled to deduct a fee of \_\_\_\_\_ to defray the cost of withholding. The total withheld amount, including your fee, cannot exceed \_\_\_\_\_% the employee/obligor's aggregate disposable weekly earnings. For the purpose of the limitation on withholding, the following information is needed (see #9 below):~~

~~When remitting payment provide the paydate/date of withholding and the case identifier \_\_\_\_\_.  
If remitting by EFT/EDI, use this FIPS code: \*; \_\_\_\_\_; Bank routing code: \* \_\_\_\_\_;  
Bank account number: \* \_\_\_\_\_.~~

~~Make it payable to: Payee and case identifier~~

~~Send check to: Payee's Address~~

~~Authorized by \_\_\_\_\_~~

~~Print Name \_\_\_\_\_~~

**ADDITIONAL INFORMATION TO EMPLOYERS AND OTHER WITHHOLDERS**

~~\_\_\_\_\_ If checked you are required to provide a copy of this form to your employee.~~

~~1- Priority: Withholding under this Order/Notice has priority over any other legal process under State law against the same income. Federal tax levies in effect before receipt of this order have priority. If there are Federal tax levies in effect please contact the requesting agency listed below.~~

~~2- Combining Payments: You can combine withheld amounts from more than one employee/obligor's income in a single payment to each agency requesting withholding. You must, however, separately identify the portion of the single payment that is attributable to each employee/obligor.~~

~~3- Reporting the Paydate/Date of Withholding: You must report the paydate/date of withholding when sending the payment. The paydate/date of withholding is the date on which the employee is paid and controls the income, i.e. the date the income check or cash is given to the employee, or the date in which the income is deposited directly in his/her account.~~

~~4. Employee/Obligor with Multiple Support Withholdings: If you receive more than one Order/Notice against this employee/obligor and you are unable to honor them all in full because together they exceed the withholding limit of the State of the employee's principal place of employment (see #9 below), you must allocate the withholding based on the law of the State of the employee's principal place of employment. If you are unsure of that State's allocation law, you must honor all Orders/Notices' current support withholdings before you withhold for any arrearages, to the greatest extent possible under the withholding limit. You should immediately contact the last agency that sent you an Order/Notice to find the allocation law of the state of the employee's principal place of employment.~~

~~5. Termination Notification: You must promptly notify the payee when the employee/obligor is no longer working for you. Please provide the information requested and return a copy of this order/notice to the agency identified below.~~

~~EMPLOYEE'S/OBLIGOR'S NAME: \_\_\_\_\_  
EMPLOYEE'S CASE IDENTIFIER: \_\_\_\_\_ DATE OF SEPARATION: \_\_\_\_\_  
LAST KNOWN HOME ADDRESS \_\_\_\_\_  
NEW EMPLOYER'S ADDRESS \_\_\_\_\_~~

~~6. Lump Sum Payments: You may be required to report and withhold from lump sum payments such as bonuses, commissions, or severance pay. If you have any questions about lump sum payments, contact the person or authority below.~~

~~7. Liability: If you fail to withhold income as the Order/Notice directs, you are liable for both the accumulated amount you should have withheld from the employee/obligor's income and any other penalties set by State law.~~

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

~~8. Anti discrimination: You are subject to a fine determined under State law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against any employee/obligor because of a child support withholding.~~

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

~~9. Withholding Limits: You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. Section 1673(b)); or 2) the amounts allowed by the State of the employee's/obligor's principal place of employment. The Federal limit applies to the aggregate disposable weekly earnings (ADWE). ADWE is the net income left after making mandatory deductions such as: State, Federal, local taxes; Social Security taxes; and Medicare taxes. The Federal CCPA limit is 50% of the ADWE for child support and alimony, which is increased by: 1) 10% if the employee does not support a second family; and/or 2) 5% if arrears are more than 12 weeks old. (see boxes on front)~~

~~10. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_~~

Requesting Agency \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you or your employee/obligor have any questions, contact:

by telephone at \_\_\_\_\_ or  
by FAX at \_\_\_\_\_ or  
by Internet \_\_\_\_\_

(7-1-98)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO**  
**DOCKET NO. 16-0304-1401**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 Section 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 of full force and effect upon adoption of 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 56-203, Idaho Code, and 7 CFR 271.2.

**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 change will align the definition of “trafficking,” in this chapter with the revised federal definition under 7 CFR 271.2. This rulemaking expands the definition of “trafficking” to include fraudulent activities previously not considered to be program violations.

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 October 1, 2014, Idaho Administrative Bulletin, **Vol. 14-10, pages 259 - 260**.

**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:

There is no anticipated fiscal impact to the state general fund as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Malinda Reissig at (208) 334-2235, ext. 245.

DATED this 7th Day of November, 2014.

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

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 56-203, Idaho Code, and 7 CFR 271.2.

**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 October 15, 2014.

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 change will align the definition of “trafficking,” in this chapter with the revised federal definition under 7 CFR 271.2. This rulemaking expands the definition of “trafficking” to include fraudulent activities previously not considered to be program violations.

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

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

There is no anticipated fiscal impact to the state general fund or any other funds as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. Negotiated rulemaking was deemed not feasible as this rule change is simple in nature.

**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 Malinda Jones at (208) 334-5779.

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 October 22, 2014.

DATED this 29th day of August, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-1401**

**698. INTENTIONAL PROGRAM VIOLATION (IPV).**

An IPV includes the actions listed in Subsections 698.01 through 698.06 of these rules. The client must intentionally, knowingly, and willfully commit a program violation. (3-30-07)

**01. False Statement.** A person makes a false statement to the Department, either orally or in writing, to get Food Stamps. (6-1-94)

**02. Misleading Statement.** A person makes a misleading statement to the Department, either orally or in writing, to get Food Stamps. (6-1-94)

**03. Misrepresenting.** A person misrepresents facts to the Department, either orally or in writing, to get Food Stamps. (6-1-94)



- 04. Concealing.** A person conceals or withholds facts to get Food Stamps. (6-1-94)
- 05. Violation of Regulations.** A person commits any act violating the Food Stamp Act, Federal regulations, or State Food Stamp regulations. The violation may relate to use, presentation, transfer, acquisition, receipt, or possession of Food Stamps. (3-30-07)
- 06. Trafficking in Food Stamps.** Trafficking in Food Stamps means ~~the buying or selling of Food Stamps or other benefit instruments for cash, or consideration other than eligible food. Trafficking includes the exchange of firearms, ammunition, explosives, or controlled substances, as defined in Section 802 of Title 21, USC, for benefit instruments.~~ any of the following: (3-30-07)( )
- a.** The buying, selling, stealing, or otherwise effecting an exchange of food stamp benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; ( )
- b.** Attempting to buy, sell, steal, or otherwise affect an exchange of food stamp benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; ( )
- c.** The exchange of firearms, ammunition, explosives, or controlled substances, as defined in Section 802 of Title 21, U.S.C., for food stamp benefits; ( )
- d.** Purchasing a product with food stamp benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount; ( )
- e.** Purchasing a product with food stamp benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with food stamp benefits in exchange for cash or consideration other than eligible food; or ( )
- f.** Intentionally purchasing products originally purchased with food stamp benefits in exchange for cash or consideration other than eligible food. ( )

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

**DOCKET NO. 16-0305-1401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 Section 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 of full force and effect upon adoption of 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 56-202, 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:

These rule changes clarify participant liability for incurred medical expenses and improve the administration of the AABD program for participants in long-term care settings. There are no changes in the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 1, 2014, Idaho Administrative Bulletin, [Vol. 14-10, pages 261 through 266](#).

**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:

The anticipated annual fiscal impact for this rulemaking for the change in nursing home patient liability is a total impact of \$571,536, with federal matching funds at 71.82% and state matching funds at 28.18%.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Camille Schiller at (208) 334-5969.

DATED this 7th Day of November, 2014.

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

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 56-202, 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 October 15, 2014.

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:

These rule changes are needed to clarify participant liability for pre-existing medical expenses based on guidance received from the Centers for Medicaid and Medicare (CMS). The Department is also changing the rules to improve the administration of the AABD program for participants in long-term care settings, which include a change to the share of cost determination for participants who enter or leave a nursing home during the middle of the month.

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

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

The anticipated annual fiscal impact for this rulemaking for the change in nursing home patient liability is a total impact of \$571,536, with federal matching funds at 71.82% and state matching funds at 28.18%. The anticipated annual fiscal impact for the share of cost for patient liability uses the same federal and state matching funds for a total impact of \$403,200.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because the changes being made are simple in nature and are being made for clarification and alignment with federal regulations.

**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 Camille Mongelli at (208) 334-5969.

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 October 22, 2014.

DATED this 29th day of August, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-1401**

#### **304. PROSPECTIVE ELIGIBILITY.**

Eligibility for AABD cash and Medicaid is prospective. Expected income for the month is compared to the participant's income limit that month. *See Section 612 for patient liability income rules.* (7-1-99)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

#### **722. PATIENT LIABILITY.**

Patient liability is the participant's income counted toward the cost of long-term care. Patient liability ~~starts~~ begins ~~the month after~~ the first full calendar month the patient ~~lives~~ is receiving benefits in a long-term care facility.  
(7-1-99)( )

**723. PATIENT LIABILITY FOR PERSON WITH NO COMMUNITY SPOUSE.**

For a participant with no community spouse, patient liability is computed as described in Subsections 723.01 through 723.03 of this rule. (5-3-03)

**01. Income of Participants in Long-Term Care.** For a single participant, or participant whose spouse is also in long-term care and chooses the SSI method of calculating the amount of income and resources, the patient liability is his total income less the deductions in Subsection 723.03 of this rule. (5-3-03)

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

**03. Income of Participant in Facility.** A participant residing in the long-term care facility at least one (1) full calendar month, beginning with his most recent admission, must have the deductions in Subsection 723.03 subtracted from his income, after the AABD exclusions are subtracted from the income. Total monthly income includes income paid into an income (Miller) trust that month. The income deductions must be subtracted in the order listed. Remaining income is patient liability. (3-15-02)

**a. AABD Income Exclusions.** Subtract income excluded in determining eligibility for AABD cash. (7-1-99)

**b. Aid and Attendance and UME Allowances.** Subtract a VA Aid and Attendance allowance and Unusual Medical Expense (UME) allowance for a veteran or surviving spouse, unless the veteran lives in a state operated veterans' home. (3-30-01)

**c. SSI Payment Two (2) Months.** Subtract the SSI payment for a participant entitled to receive SSI at his at-home rate for up to two (2) months, while temporarily in a long-term care facility. (7-1-99)

**d. AABD Payment.** Subtract the AABD payment, and income used to compute the AABD payment, for a participant paid continued AABD payments up to three (3) months in long-term care. (7-1-99)

**e. First Ninety (\$90) Dollars of VA Pension.** Subtract the first ninety (\$90) dollars of a VA pension for a veteran in a private long-term care facility or a State Veterans Nursing Home. (5-3-03)

**f. Personal Needs.** Subtract forty dollars (\$40) for the participant's personal needs. For a veteran or surviving spouse in a private long-term care facility or a State Veterans Nursing Home the first ninety (\$90) dollars of VA pension substitutes for the forty dollar (\$40) personal needs deduction. (5-3-03)

**g. Employed and Sheltered Workshop Activity Personal Needs.** For an employed participant or participant engaged in sheltered workshop or work activity center activities, subtract the lower of the personal needs deduction of two hundred dollars (\$200) or his gross earned income. The participant's total personal needs allowance must not exceed two hundred and thirty dollars (\$230). For a veteran or surviving spouse with sheltered workshop or earned income, and a protected VA pension, the total must not exceed two hundred dollars (\$200). This is a deduction only. No actual payment can be made to provide for personal needs. (3-30-01)

**h. Home Maintenance.** Subtract two hundred and twelve dollars (\$212) for home maintenance cost if the participant had an independent living situation, before his admission for long-term care. His physician must certify in writing the participant is likely to return home within six (6) months, after the month of admission to a long-term care facility. This is a deduction only. No actual payment can be made to maintain the participant's home. (7-1-99)

**i. Maintenance Need.** Subtract a maintenance need deduction for a family member, living in the long-

term care participant's home. A family member is claimed, or could be claimed, as a dependent on the Federal Income Tax return of the long-term care participant. The family member must be a minor or dependent child, dependent parent, or dependent sibling of the long-term care participant. The maintenance need deduction is the AFDC payment standard for the dependents, computed according to the AFDC State Plan in effect before July 16, 1996. (7-1-99)

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

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

**l.** Guardian Fees. Subtract court-ordered guardianship fees of the lesser of ten percent (10%) of the monthly benefit handled by the guardian, or twenty-five dollars (\$25). Where the guardian and trustee is the same person, the total deduction for guardian and trust fees must not exceed twenty-five dollars (\$25) monthly. (3-20-14)

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

**n.** Impairment Related Work Expenses. Subtract impairment-related work expenses for an employed participant who is blind or disabled under AABD criteria. Impairment-related work expenses are purchased or rented items and services that are purchased or rented to perform work. The items must be needed because of the participant's impairment. The actual monthly expense of the impairment-related items is subtracted. Expenses must not be averaged. (3-20-14)

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

**p.** Incurred Medical Expenses. Subtract amounts for certain limited medical or remedial care expenses that have current balances owed and are deemed medically necessary as defined in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." Current medical expenses that are not covered by the Idaho Medicaid Plan, or by a third party, may be deducted from the base participation amount. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**725. PATIENT LIABILITY FOR PARTICIPANT WITH COMMUNITY SPOUSE.**

After income ownership is decided, patient liability is determined using steps in Table 725.

TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY		
Step	Procedure	
01.	AABD Income Exclusions	Subtract income excluded in determining eligibility for AABD cash.
02.	Aid and Attendance and UME Allowances	Subtract a VA Aid and Attendance allowance and Unusual Medical Expense (UME) allowance for a veteran or surviving spouse, unless the veteran lives in a state operated veterans' home.

<b>TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY</b>		
<b>Step</b>	<b>Procedure</b>	
03.	SSI Payment Two (2) Months	Subtract the SSI payment for a participant entitled to receive SSI at his at-home rate for up to two (2) months, while temporarily in a long-term care facility.
04.	AABD Cash	Subtract the AABD cash payment and income used to compute AABD cash, for a participant eligible to have his AABD cash continued up to three (3) months, while he is in long-term care.
05.	VA Pension	Subtract the first ninety (90%) of the VA pension for a veteran.
06.	Personal Needs	Subtract forty dollars (\$40) for the participant's personal needs. Do not allow this deduction for a veteran.
07.	Employed and Sheltered Workshop Activity Needs	For an employed participant or participant engaged in sheltered workshop or work activity center activities subtract the lower of two hundred dollars (\$200) or his earned income.
08.	Community Spouse Allowance: Step a.	<p>Compute the Community Spouse Allowance (CSA) using Step a. through Step c.</p> <p>Compute the Shelter Adjustment.</p> <p>Add the current Food Stamp Program Standard Utility Allowance to the community spouse's shelter costs.</p>
		<p>Shelter costs include rent, mortgage principal and interest, homeowner's taxes, insurance, and condominium or cooperative maintenance charges. The Standard Utility Allowance must be reduced by the value of any utilities included in maintenance charges for a condominium or cooperative.</p> <p>Subtract the Shelter Standard from the shelter and utilities. The Shelter Standard is thirty percent (30%) of one hundred fifty percent (150%) of one-twelfth (1/12) of the income official poverty line defined by the Federal Office of Management and Budget (OMB) for a family of two (2) persons.</p> <p>The Shelter Adjustment is the positive balance remaining.</p>
09.	Community Spouse Allowance: Step b.	<p>Compute the Community Spouse Need Standard (CSNS).</p> <p>Add the Shelter Adjustment to the minimum CSNS. The minimum CSNS equals one hundred fifty percent (150%) of one-twelfth (1/12) of the income official poverty line defined by the OMB for a family unit of two (2) members. The minimum CSNS is revised annually in July. The total CSNS may not exceed the maximum CSNS. The maximum CSNS is computed by multiplying one thousand five hundred dollars (\$1,500) by the percentage increase in the consumer price index for all urban Consumers (all items; U.S. city average) between September 1988 and the September before the current calendar year. The maximum CSNS is revised annually in January.</p>

<b>TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY</b>	
<b>Step</b>	<b>Procedure</b>
10. Community Spouse Allowance: Step c.	<p>Compute the Community Spouse Allowance.                      Subtract the community spouse's gross income from the CSNS. The community spouse's income includes income produced by his resources. Round any remaining cents to the next higher dollar. Any positive balance remaining is the CSA. The CSA is subtracted as actually paid to the community spouse, up to the computed maximum.</p> <p>A larger spouse support amount must be used as the CSA, if court-ordered. The CSA ordered by a court is not subject to the CSA limit.</p>
11. Family Member Allowance (FMA)	<p>Compute the family member's gross income.                      Subtract the family member's gross income from the minimum CSNS.                      Divide the difference by three (3).                      Round cents to the next higher dollar.</p> <p>Any remainder is the FMA for that family member. The FMA is allowed, whether or not it is actually paid by the participant.</p> <p>A family member is, or could be claimed, as a dependent on the Federal income tax return of either spouse. The family member must be a minor or dependent child, dependent parent or dependent sibling of either spouse. The family member must live in the community spouse's home.</p>
12. Medicare and Health Insurance Premiums	<p>Subtract expenses for Medicare and other health insurance premiums, and deductibles or coinsurance charges, not subject to payment by a third party. Deduction of Medicare Part B premiums is limited to the first two (2) months of Medicaid eligibility.                      Do not subtract the Medicare Part B premiums if the participant got SSI or AABD cash the month prior to the month for which patient liability is being computed.</p>
13. Mandatory Income Taxes	<p>Subtract taxes mandatorily withheld from unearned income for income tax purposes. To qualify for deduction of mandatory taxes, the tax must be withheld from income before the participant receives the income.</p>
14. Guardian Fees	<p>Subtract court-ordered guardianship fees of the lesser of ten percent (10%) of the monthly benefit handled by the guardian, or twenty-five dollars (\$25). Where the guardian and trustee are the same person, the total deduction for guardian and trust fees must not exceed twenty-five dollars (\$25) monthly.</p>
15. Trust Fees	<p>Subtract up to twenty-five dollars (\$25) monthly paid to the trustee for administering the participant's trust.</p>
16. Impairment Related Work Expenses	<p>Subtract impairment-related work expenses for an employed participant who is blind or disabled under AABD criteria.                      Impairment-related work expenses are purchased or rented items and services, purchased or rented to perform work.                      The items must be needed because of the participant's impairment.                      The actual monthly expense of the impairment-related items is subtracted.                      Expenses must not be averaged.</p>

TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY		
	Step	Procedure
17.	Income Garnisheed for Child Support	Subtract income garnisheed for child support to the extent the expense is not already accounted for in computing the Family Member Allowance.
18.	<u>Incurred Medical Expenses</u>	<u>Subtract amounts for certain limited medical or remedial care expenses that have current balances owed and are deemed medically necessary as defined in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." Current medical expenses that are not covered by the Idaho Medicaid Plan, or by a third party, may be deducted from the base participation amount.</u>

(5-3-03)( )



## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is acted on by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202(b), 56-203(7) & (9), 56-250 through 56-257, and 56-264, Idaho Code; also HB 395 (2014) which specifically amends 56-255(5)(c), Idaho Code, and HB 476 (2014) which specifically amends 56-255(3)(e), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rules for these Medicaid benefits are being adopted as originally proposed. Medicaid benefits for dental services that reflect evidence-based practice for adults with disabilities and special health needs were restored, and developmental disability budget modifications for community-supported employment are being allowed. The complete text of the proposed rule was published in the July 2, 2014, Idaho Administrative Bulletin, [Vol.14-7, pages 48 through 73](#). These rules were also adopted as temporary rules effective July 1st, 2014.

**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:

The fiscal impact for HB 395 for dental services is \$1,418,100 to the State General Fund for SFY 2015. The fiscal impact for HB 476 for community-supported employment is \$235,000 to the State General Fund for SFY 2015.

The above fiscal impacts are the State's matching funds for these services and are covered with the Department's Medicaid Division budget for SFY 2015 under SB 1424.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Stephanie Perry at (208) 364-1878.

DATED this 8th day of October, 2014.

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

THE FOLLOWING NOTICE WAS PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-203(7) & (9), 56-250 through 56-257, and 56-264, Idaho Code; also HB 395 (2014) which specifically amends 56-255(5)(c), Idaho Code, and HB 476 (2014) which specifically amends 56-255(3)(e), Idaho Code.

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

<b>Tuesday, July 15, 2014</b> <b>10:00 a.m. (MDT)</b>	<b>Wednesday, July 16, 2014</b> <b>10:00 a.m. (MDT)</b>	<b>Thursday, July 17, 2014</b> <b>10:00 a.m. (PDT)</b>
<b>2nd Floor Large Conf Room</b> <b>150 Shoup Avenue</b> <b>Idaho Falls, ID 83402</b>	<b>Conf Room D-East &amp; West</b> <b>3232 Elder Street</b> <b>Boise, ID 83705</b>	<b>3rd Floor Conf Room</b> <b>1118 "F" Street</b> <b>Lewiston, ID 83501</b>

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 2014 legislature adopted House Bills 395 and 476 that restored Medicaid cuts to participants made by the 2011 legislature under House Bill 260. Specifically, as of July 1, 2014, Medicaid benefits for dental services that reflect evidence-based practice for adults with disabilities and special health needs will be restored, and developmental disability budget modifications for community-supported employment will be allowed. All participants on the Enhanced Plan will have dental benefits. The rule changes in this docket realign this chapter of rules with these amendments to statute.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate since these rule changes are being made to comply with deadlines in amendments to governing law, and confer benefits as stated above.

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

**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 fiscal impact for HB 395 for dental services is \$1,418,100 to the State General Fund for SFY 2015. The fiscal impact for HB 476 for community-supported employment is \$235,000 to the State General Fund for SFY 2015.

The above fiscal impacts are the State's matching funds for these services and will be covered with the Department's Medicaid Division budget for SFY 2015 under SB 1424.

**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 7, 2014, Idaho Administrative Bulletin, [Vol. 14-5, pages 60 and 61](#).

**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 temporary and proposed rule, contact Stephanie Perry at (208) 364-1878.

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 July 23, 2014.

DATED this 10th day of June, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-1401**

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-19-07)

**02. Scope.** These rules establish the Medicaid Enhanced Plan Benefits covered under Title XIX and Title XXI. Participants who are eligible for Enhanced Plan Benefits are also eligible for benefits under IDAPA 16.03.09, "Medicaid Basic Plan Benefits," ~~with the exception of coverage for dental services.~~ Dental services for the Medicaid Enhanced Plan are covered under Sections 080 through 085~~7~~ of these rules. Outpatient behavioral health benefits are contained in IDAPA 16.03.09. "Medicaid Basic Plan Benefits." ~~(3-20-14)( )~~

**03. Scope of Reimbursement System Audits.** These rules also provide for the audit of providers' claimed costs against these rules and Medicare standards. The Department reserves the right to audit financial and other records of the provider, and, when warranted, the records of entities related to the provider. Audits consist of the following types of records: (3-19-07)

- a.** Cost verification of actual costs for providing goods and services; (3-19-07)
- b.** Evaluation of provider's compliance with the provider agreement, reporting form instructions, and any applicable law, rule, or regulation; (3-19-07)
- c.** Effectiveness of the service to achieve desired results or benefits; and (3-19-07)
- d.** Reimbursement rates or settlement calculated under this chapter. (3-19-07)

**04. Exception to Scope for Audits and Investigations.** Audits as described in these rules do not apply to the audit processes used in conducting investigations of fraud and abuse under IDAPA 16.05.07, "Investigation and Enforcement of Fraud, Abuse, and Misconduct." (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**075. ENHANCED PLAN BENEFITS: COVERED SERVICES.**

Individuals who are eligible for the Medicaid Enhanced Plan Benefits are eligible for all benefits covered under IDAPA 16.03.09, "Medicaid Basic Plan Benefits," ~~with the exception of coverage for dental services.~~ In addition to those benefits, individuals in the enhanced plan are eligible for the following enhanced benefits as provided for in this chapter of rules. ~~(5-8-09)( )~~

**01. Dental Services.** Dental Services are provided as described under Sections 080 through 089 of these rules. (3-29-12)

- 02. Enhanced Hospital Benefits.** Organ transplants are provided under the Enhanced Hospital services as described in Sections 090 through 099 of these rules. (3-19-07)
- 03. Enhanced Outpatient Behavioral Health Benefits.** Enhanced Outpatient Behavioral Health services are described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (3-20-14)
- 04. Enhanced Home Health Benefits.** Private Duty Nursing services are provided under the Enhanced Home Health as described in Sections 200-219 of these rules. (3-19-07)
- 05. Therapies.** Physical, Speech, and Occupational Therapy Providers as described in Section 215 of these rules. (3-19-07)
- 06. Long Term Care Services.** The following services are provided under the Long Term Care Services. (3-30-07)
- a.** Nursing Facility Services as described in Sections 220 through 299 of these rules. (3-19-07)
  - b.** Personal Care Services as described in Sections 300 through 308 of these rules. (3-30-07)
  - c.** A & D Wavier Services as described in Sections 320 through 330 of these rules. (3-30-07)
- 07. Hospice.** Hospice services as described in Sections 450 through 459 of these rules. (3-19-07)
- 08. Developmental Disabilities Services.** (3-19-07)
- a.** Developmental Disability Standards as described in Sections 500 through 506 of these rules. (3-19-07)
  - b.** Children's Developmental Disability Services as described in Sections 520 through 528, 660 through 666, and 680 through 686 of these rules. (7-1-13)
  - c.** Adult Developmental Disabilities Services as described in Sections 507 through 520, and 649 through 657 of these rules. (7-1-13)
  - d.** ICF/ID as described in Sections 580 through 649 of these rules. (3-19-07)
  - e.** Developmental Disabilities Agencies as described in Sections 700 through 719 of these rules. (3-19-07)
- 09. Service Coordination Services.** Service coordination as described in 720 through 779 of these rules. (3-19-07)
- 10. Breast and Cervical Cancer Program.** Breast and Cervical Cancer Program is described in Sections 780 through 800 of these rules. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**081. DENTAL SERVICES: DEFINITIONS.**

For the purposes of dental services covered in Sections 080 through 087 of these rules, the following definitions apply: (3-29-12)

- 01. Adult.** A person who is past the month of his twenty-first birthday. (3-29-12)
- 02. Child.** A person from birth through the month of his twenty-first birthday. (3-29-12)

03. **Idaho Smiles.** A dental insurance program provided to eligible Medicaid participants through a selective contract between the Department and a dental insurance carrier. (3-29-12)

~~04. **Medicare/Medicaid Coordinated Plan (MMCP).** Medical assistance in which Medicaid purchases services from a Medicare Advantage Organization (MAO) and provides other Medicaid-only services covered under the Medicaid Enhanced Plan in accordance with IDAPA 16.03.17, "Medicare/Medicaid Coordinated Plan Benefits." (3-29-12)~~

**082. DENTAL SERVICES: PARTICIPANT ELIGIBILITY.**

~~All Children, and adults, and pregnant women on Medicaid's Pregnant Woman (PW) Program who meet the eligibility criteria for participating in Medicaid's Enhanced Plan are eligible for Idaho Smiles dental benefits described in Section 083 of these rules. Adults who are eligible for Medicaid's HCBS Aged and Disabled (A&D) Waiver or Developmental Disabilities (DD) Waiver are eligible for Idaho Smiles adult dental benefits and additional dental services described in Section 326.09 and Section 703.13 of these rules. Participants who are over age twenty-one (21), who are eligible for both Medicare A and Medicare B, and who have chosen to enroll in a Medicare/Medicaid Coordinated Plan (MMCP) under IDAPA 16.03.17, "Medicare/Medicaid Coordinated Plan Benefits," Section 100, receive dental benefits from the MMCP insurance carrier and not from Idaho Smiles. (4-4-13)( )~~

**083. DENTAL SERVICES: COVERAGE AND LIMITATIONS.**

Some covered dental services may require authorization from the Idaho Smiles contractor. (3-29-12)

01. **Dental Coverage for Children.** Children are covered for dental services that include: (3-29-12)

a. ~~Preventative~~ Medically necessary preventive and problem-focused exams, diagnostic, and restorative services, endodontic, periodontic, prosthodontic, treatment for conditions of the gums and dental pulp, braces and other orthodontic treatments, dentures, crowns, and oral surgery; and (3-29-12)( )

b. Other dental services ~~that are determined medically necessary by the Department,~~ as required by the Early and Periodic Screening and Diagnostic Testing (EPSDT) guidelines specified in Section 1905(r) of the Social Security Act, ~~are also covered.~~ (3-29-12)( )

02. **Children's Orthodontics Limitations.** Orthodontics are limited to children who meet the Enhanced Plan eligibility requirements, and the Idaho Medicaid Handicapping Malocclusion Index as evaluated by the state Medicaid dental consultant and the dental insurance contractor's dental consultant. The Malocclusion Index is found in Appendix A of these rules. (3-29-12)

03. **Dental Coverage and Limitations for Adults.** ~~Adults who are not pregnant and who are not covered under the A&D or DD Waivers are limited to the dental services coverage using the Current Dental Terminology (CDT) codes listed in the following table:~~ Adults are covered for medically necessary preventive and problem-focused exams, diagnostic and restorative services, treatment for conditions of the gums and dental pulp, dentures, oral surgery, and adjunctive dental services within the limits of coverage established by the Department.

<b>TABLE 083.03—ADULT DENTAL SERVICES CODES</b>	
<b>Dental Code</b>	<b>Description</b>
D0140	Limited oral evaluation. Problem focused
D0220	Intraoral periapical film
D0230	Additional intraoral periapical films
D0330	Panoramic film
D7140	Extraction
D7210	Surgical removal of erupted tooth

<b>TABLE 083.03 – ADULT DENTAL SERVICES CODES</b>	
<b>Dental Code</b>	<b>Description</b>
D7220	Removal of impacted tooth, soft tissue
D7230	Removal of impacted tooth, partially bony
D7240	Removal of impacted tooth, completely bony
D7241	Removal of impacted tooth, with complications
D7250	Surgical removal of residual tooth roots
D7260	Oroantral fistula closure
D7261	Primary closure of sinus perforation
D7285	Biopsy of hard oral tissue
D7286	Biopsy of soft oral tissue
D7450	Excision of malignant tumor <1.25 cm
D7451	Excision of malignant tumor >1.25 cm
D7510	Incision and drainage of abscess
D7511	Incision and drainage of abscess, complicated
D9110	Minor palliative treatment of dental pain
D9220	Deep sedation/anesthesia first 30 minutes
D9221	Regional block anesthesia
D9230	Analgesia, anxiolysis, nitrous oxide
D9241	IV conscious sedation first 30 minutes
D9242	IV conscious sedation each additional 15 minutes
D9248	Non IV conscious sedation
D9420	Hospital call
D9610	Therapeutic parenteral drug single administration
D9630	Other drugs and/or medicaments by report

(4-4-13)( )

~~04. Dental Coverage for Pregnant Women. Pregnant women on Medicaid's Basic, Enhanced, or PW plans are covered for preventative and problem focused exams, diagnostic, restorative, endodontic, periodontic, and oral surgery benefits. Specific information about pregnant women is available online at <http://www.healthandwelfare.idaho.gov/Medical/Medicaid/MedicalCare/DentalServices/tabid/696/Default.aspx>. (3-29-12)~~

~~054. Benefit Limitations. The dental insurance contractor may establish limitations and restrictions for benefits according to the terms of its contract with the Department. (3-29-12)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**326. AGED AND DISABLED WAIVER SERVICES: COVERAGE AND LIMITATIONS.**

**01. Adult Day Health.** Adult day health is a supervised, structured service generally furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week. It is provided outside the home of the participant in a non-institutional, community-based setting, and it encompasses health services, social services, recreation, supervision for safety, and assistance with activities of daily living needed to ensure the optimal functioning of the participant. Adult day health services provided under this waiver will not include room and board payments. (4-4-13)

**02. Adult Residential Care Services.** Adult residential care services consist of a range of services provided in a homelike, non-institutional setting that include residential care or assisted living facilities and certified family homes. Payment is not made for the cost of room and board, including the cost of building maintenance, upkeep and improvement. (4-4-13)

**a.** Adult residential care services consist of a range of services provided in a congregate setting licensed under IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho," that include: (4-4-13)

- i. Medication assistance, to the extent permitted under State law; (4-4-13)
- ii. Assistance with activities of daily living; (3-19-07)
- iii. Meals, including special diets; (3-19-07)
- iv. Housekeeping; (3-19-07)
- v. Laundry; (3-19-07)
- vi. Transportation; (3-19-07)
- vii. Opportunities for socialization; (3-19-07)
- viii. Recreation; and (3-19-07)
- ix. Assistance with personal finances. (3-19-07)
- x. Administrative oversight must be provided for all services provided or available in this setting. (3-19-07)

xi. A written individual service plan must be negotiated between the participant or his legal representative, and a facility representative. (3-19-07)

**b.** Adult residential care services also consist of a range of services provided in a setting licensed under IDAPA 16.03.19, "Rules Governing Certified Family Homes," that include: (4-4-13)

- i. Medication assistance, to the extent permitted under State law; (4-4-13)
- ii. Assistance with activities of daily living; (4-4-13)
- iii. Meals, including special diets; (4-4-13)
- iv. Housekeeping; (4-4-13)
- v. Laundry; (4-4-13)
- vi. Transportation; (4-4-13)
- vii. Recreation; and (4-4-13)
- viii. Assistance with personal finances. (4-4-13)

- ix. Administrative oversight must be provided for all services provided or available in this setting. (4-4-13)
- x. A written individual service plan must be negotiated between the participant or his legal representative, and a facility representative. (4-4-13)
- 03. Specialized Medical Equipment and Supplies.** (4-4-13)
- a.** Specialized medical equipment and supplies include: (4-4-13)
- i. Devices, controls, or appliances that enable a participant to increase his abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which he lives; and (4-4-13)
- ii. Items necessary for life support, ancillary supplies and equipment necessary for the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan. (4-4-13)
- b.** Items reimbursed with waiver funds are in addition to any medical equipment and supplies furnished under the Medicaid State plan and exclude those items that are not of direct medical or remedial benefit to the participant. (4-4-13)
- 04. Non-Medical Transportation.** Non-medical transportation enables a waiver participant to gain access to waiver and other community services and resources. (4-4-13)
- a.** Non-medical transportation is offered in addition to medical transportation required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," and will not replace it. (4-4-13)
- b.** Whenever possible, family, neighbors, friends, or community agencies who can provide this service without charge, or public transit providers will be utilized. (3-19-07)
- 05. Attendant Care.** Services provided under a Medicaid Home and Community-Based Services waiver that involve personal and medically oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care, or activities of daily living (ADL). These services may include personal assistance and medical tasks that can be done by unlicensed persons, or delegated to an unlicensed person by a licensed health care professional or the participant. Services are based on the participant's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. This assistance may take the form of hands-on assistance (actually performing a task for the person) or cuing to prompt the participant to perform a task. (4-4-13)
- 06. Chore Services.** Chore services include the following services when necessary to maintain the functional use of the home, or to provide a clean, sanitary, and safe environment: (4-4-13)
- a.** Intermittent assistance may include the following. (4-4-13)
- i. Yard maintenance; (3-19-07)
- ii. Minor home repair; (3-19-07)
- iii. Heavy housework; (3-19-07)
- iv. Sidewalk maintenance; and (3-19-07)
- v. Trash removal to assist the participant to remain in the home. (4-4-13)
- b.** Chore activities may include the following: (3-19-07)



- i. Washing windows; (3-19-07)
- ii. Moving heavy furniture; (3-19-07)
- iii. Shoveling snow to provide safe access inside and outside the home; (3-19-07)
- iv. Chopping wood when wood is the participant's primary source of heat; and (3-19-07)
- v. Tacking down loose rugs and flooring. (3-19-07)

**c.** These services are only available when neither the participant, nor anyone else in the household is capable of performing or financially providing for them, and where no other relative, caregiver, landlord, community volunteer, agency, or third-party payer is willing to provide them or is responsible for their provision. (4-4-13)

**d.** In the case of rental property, the landlord's responsibility under the lease agreement will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (4-4-13)

**07. Companion Services.** Companion services include non-medical care, supervision, and socialization provided to a functionally impaired adult. Companion services are in-home services to ensure the safety and well-being of a person who cannot be left alone because of frail health, a tendency to wander, inability to respond to emergency situations, or other conditions that would require a person on-site. The service provider, who may live with the participant, may provide voice cuing and occasional assistance with toileting, personal hygiene, dressing, and other activities of daily living. Providers may also perform light housekeeping tasks that are incidental to the care and supervision of the participant. However, the primary responsibility is to provide companionship and be there in case they are needed. (4-4-13)

**08. Consultation.** Consultation services are services to a participant or family member. Services are provided by a Personal Assistance Agency to a participant or family member to increase their skills as an employer or manager of their own care. Such services are directed at achieving the highest level of independence and self-reliance possible for the participant and the participant's family. Services include consulting with the participant and family to gain a better understanding of the special needs of the participant and the role of the caregiver. (4-4-13)

~~**09. Dental Services.** Dental services include exams, radiographs, diagnostic and preventative services, basic restorations, periodontics, oral surgery, maxillofacial surgery, and adjunctive dental services. These services and the medically necessary dental benefits described in these rules are provided through the Idaho Smiles program. The State's Medicaid dental contract for the Idaho Smiles program includes the complete list of all dental services available to waiver participants. Waiver dental services are limited to participants who are past the month of their twenty-first birthdays. Waiver participants who are under age twenty-one (21) will continue to receive children's dental benefits under the State Plan. (4-4-13)~~

~~**10. Home Delivered Meals.** Home delivered meals are meals that are delivered to the participant's home to promote adequate participant nutrition. One (1) to two (2) meals per day may be provided to a participant who: (4-4-13)~~

- ~~a. Rents or owns a home; (4-4-13)~~
- ~~b. Is alone for significant parts of the day; (4-4-13)~~
- ~~c. Has no caregiver for extended periods of time; and (4-4-13)~~
- ~~d. Is unable to prepare a meal without assistance. (4-4-13)~~

~~**11. Homemaker Services.** Homemaker services consist of performing for the participant, or assisting him with, or both, the following tasks: laundry, essential errands, meal preparation, and other routine housekeeping duties if there is no one else in the household capable of performing these tasks. (4-4-13)~~

**121. Environmental Accessibility Adaptations.** Environmental accessibility adaptations include minor housing adaptations that are necessary to enable the participant to function with greater independence in the home, or without which, the participant would require institutionalization or have a risk to health, welfare, or safety. Such adaptations may include: (4-4-13)

**a.** The installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but must exclude those adaptations or improvements to the home that are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. (4-4-13)

**b.** Unless otherwise authorized by the Department, permanent environmental modifications are limited to a home that is the participant's principal residence, and is owned by the participant or the participant's non-paid family. (4-4-13)

**c.** Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (4-4-13)

**132. Personal Emergency Response System (PERS).** PERS is an electronic device that enables a waiver participant to secure help in an emergency. The participant may also wear a portable "help" button to allow for mobility. The system is connected to the participant's phone and programmed to signal a response center once a "help" button is activated. The response center is staffed by trained professionals. This service is limited to participants who: (4-4-13)

**a.** Rent or own a home, or live with unpaid caregivers; (4-4-13)

**b.** Are alone for significant parts of the day; (3-19-07)

**c.** Have no caregiver for extended periods of time; and (4-4-13)

**d.** Would otherwise require extensive, routine supervision. (3-19-07)

**143. Respite Care.** Respite care includes short-term breaks from care giving responsibilities to non-paid caregivers. The caregiver or participant is responsible for selecting, training, and directing the provider. While receiving respite care services, the waiver participant cannot receive other services that are duplicative in nature. Respite care services provided under this waiver do not include room and board payments. Respite care services may be provided in the participant's residence, a certified family home, a developmental disabilities agency, a residential care or assisted living facility, or an adult day health facility. (4-4-13)

**154. Skilled Nursing.** Skilled nursing includes intermittent or continuous oversight, training, or skilled care that is within the scope of the Nurse Practice Act. Such care must be provided by a licensed registered nurse, or licensed practical nurse under the supervision of a registered nurse, licensed to practice in Idaho. These services are not appropriate if they are less cost effective than a Home Health visit. (4-4-13)

**165. Habilitation.** Habilitation services assist the participant to reside as independently as possible in the community, or maintain family unity. (4-4-13)

**a.** Residential habilitation. Residential habilitation services consist of an integrated array of individually tailored services and supports furnished to eligible participants. These services and supports are designed to assist the participants to reside successfully in their own homes, with their families, or in certified family homes. The services and supports that may be furnished consist of the following: (4-4-13)

**i.** Self-direction consists of identifying and responding to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-30-07)

ii. Money management consists of training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-30-07)

iii. Daily living skills consist of 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, as well as following home safety, first aid, and emergency procedures; (3-30-07)

iv. Socialization consists of training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. 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. Socialization training does not include participation in nontherapeutic activities that are merely diversional or recreational in nature; (3-30-07)

v. Mobility consists of 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; or (3-30-07)

vi. Behavior shaping and management consist of training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors, or extension of therapeutic services that consist of reinforcing physical, occupational, speech, and other therapeutic programs. (3-30-07)

vii. Personal assistance services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the person or the person's primary caregiver(s) are unable to accomplish on his or her own behalf. Personal assistance activities include direct assistance with grooming, bathing, and eating, assistance with medications that are ordinarily self-administered, supervision, communication assistance, reporting changes in the waiver participant's condition and needs, household tasks essential to health care at home to include general cleaning of the home, laundry, meal planning and preparation, shopping, and correspondence. (4-4-13)

**b.** Day habilitation. Day habilitation consists of assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that take place in a non-residential setting, separate from the home or facility in which the participant resides. Services will normally be furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week, unless provided as an adjunct to other day activities included in a participant's plan of care. Day habilitation services will focus on enabling the participant to attain or maintain his or her maximum functional level and will be coordinated with any physical therapy, occupational therapy, or speech-language pathology services listed in the plan of care. In addition, day habilitation services may serve to reinforce skills or lessons taught in school, therapy, or other settings. (4-4-13)

**176.** **Supported Employment.** Supported employment consists of competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of a severe disability. Because of the nature and severity of their disability, these individuals need intensive supported employment services or extended services in order to perform such work. (3-30-07)

**a.** Supported employment services rendered under this waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation must be maintained in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973, as amended, or the IDEA. (4-4-13)

**b.** Federal Financial Participation (FFP) cannot be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize the employer's participation in a supported employment program, payments that are passed through to beneficiaries of a supported employment program, or payments for vocational training that is not directly related to a waiver participant's supported employment program. (4-4-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**329. AGED AND DISABLED WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

Each provider must have a signed provider agreement with the Department for each of the services it provides. (3-19-07)

**01. Employment Status.** Unless otherwise specified by the Department, each individual service provider must be an employee of record or fact of an agency. The Department may enter into provider agreements with individuals in situations in which no agency exists, or no fiscal intermediary agency is willing to provide services. Such agreements will be reviewed annually to verify whether coverage by a personal assistance agency or fiscal intermediary agency is still not available. (5-8-09)

**02. Fiscal Intermediary Services.** An agency that has responsibility for the following: (5-8-09)

**a.** To directly assure compliance with legal requirements related to employment of waiver service providers; (3-19-07)

**b.** To offer supportive services to enable participants or families consumers to perform the required employer tasks themselves; (3-19-07)

**c.** To bill the Medicaid program for services approved and authorized by the Department; (3-19-07)

**d.** To collect any participant participation due; (3-19-07)

**e.** To pay personal assistants and other waiver service providers for service; (3-19-07)

**f.** To perform all necessary withholding as required by state and federal labor and tax laws, rules and regulations; (3-19-07)

**g.** To assure that personal assistants providing services meet the standards and qualifications under in this rule; (5-8-09)

**h.** To maintain liability insurance coverage; (5-8-09)

**i.** To conduct, at least annually, participant satisfaction or quality control reviews that are available to the Department and the general public; (5-8-09)

**j.** To obtain such criminal background checks and health screens on new and existing employees of record and fact as required. (5-8-09)

**03. Provider Qualifications.** All providers of homemaker services, respite care, adult day health, transportation, chore services, companion services, attendant care, adult residential care, and home delivered meals must meet, either by formal training or demonstrated competency, the training requirements contained in the provider training matrix and the standards for direct care staff and allowable tasks or activities in the Department's Aged and Disabled waiver as approved by CMS. (4-4-13)

**a.** A waiver provider cannot be a relative of any participant to whom the provider is supplying services. (3-19-07)

**b.** For the purposes of Section 329 of these rules, a relative is defined as a spouse or parent of a minor child. (3-19-07)

**c.** Individuals who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**04. Specialized Medical Equipment and Supplies.** Providers of specialized medical equipment and supplies must be enrolled in the Medicaid program as participating medical vendor providers. Providers must ensure

all items meet applicable standards of manufacture, design and installation. Preference will be given to equipment and supplies that are the most cost-effective option to meet the participant's needs. (4-4-13)

**05. Skilled Nursing Service.** Skilled nursing service providers must be licensed in Idaho as a registered nurse or licensed practical nurse in good standing, or must be practicing on a federal reservation and be licensed in another state. Skilled nursing providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**06. Consultation Services.** Consultation services must be provided through a Personal Assistance Agency by a person who has demonstrated skills in training participants/family members in hiring, firing, training, and supervising their own care providers. (4-4-13)

**07. Adult Residential Care.** Adult residential care providers will meet all applicable state laws and regulations. In addition, the provider must ensure that adequate staff are provided to meet the needs of the participants accepted for admission. Adult residential care providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.03.19, "Rules Governing Certified Family Homes," or IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (4-4-13)

**08. Home Delivered Meals.** Providers of home delivered meals must be a public agency or private business, and must exercise supervision to ensure that: (4-4-13)

**a.** Each meal meets one-third (1/3) of the Recommended Daily Allowance, as defined by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; (4-4-13)

**b.** Meals are delivered in accordance with the service plan, in a sanitary manner, and at the correct temperature for the specific type of food; (4-4-13)

**c.** Documentation is maintained demonstrating that the meals served are made from the highest USDA grade for each specific food served; (4-4-13)

**d.** The agency or business is inspected and licensed as a food establishment under IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments"; (4-4-13)

**e.** A Registered Dietitian documents the review and approval of menus, menu cycles, and any changes or substitutions; and (4-4-13)

**f.** Either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule have been met. (4-4-13)

**09. Personal Emergency Response Systems.** Personal emergency response system providers must demonstrate that the devices installed in a waiver participant's home meet Federal Communications Standards, or Underwriter's Laboratory Standards, or equivalent standards. (4-4-13)

**10. Adult Day Health.** Providers of adult day health must meet the following requirements: (4-4-13)

**a.** Services provided in a facility must be provided in a facility that meets the building and health standards identified in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." (4-4-13)

**b.** Services provided in a home must be provided in a home that meets the standards of home certification identified in IDAPA 16.03.19, "Rules Governing Certified Family Homes." (4-4-13)

**c.** Services provided in a residential adult living facility must be provided in a residential adult living facility that meets the standards identified in IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (4-4-13)

**d.** Adult day health providers who provide direct care or services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**e.** Providers of adult day health must notify the Department on behalf of the participant, if the adult day health is provided in a certified family home other than the participant's primary residence. The adult day health provider must provide care and supervision appropriate to the participant's needs as identified on the plan. (4-4-13)

**f.** Adult day health providers who provide direct care or services must be free from communicable disease. (4-4-13)

**g.** All providers of adult day health services must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**11. Non-Medical Transportation Services.** Providers of non-medical transportation services must: (4-4-13)

**a.** Possess a valid driver's license; (4-4-13)

**b.** Possess valid vehicle insurance; and (4-4-13)

**c.** Meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**12. Attendant Care.** Attendant care providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." All providers of attendant care must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**13. Homemaker Services.** The homemaker must be an employee of record or fact of an agency. Homemaker service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." All providers of homemaker services must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**14. Environmental Accessibility Adaptations.** All services must be provided in accordance with applicable state or local building codes and meet state or local building, plumbing, and electrical requirements for certification. (4-4-13)

**15. Residential Habilitation Supported Living.** When residential habilitation services are provided by an agency, the agency must be certified by the Department as a residential habilitation agency under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies," and supervise the direct services provided. Individuals who provide residential habilitation services in the home of the participant (supported living) must be employed by a residential habilitation agency. Providers of residential habilitation services must meet the following requirements: (4-4-13)

**a.** Direct service staff must meet the following minimum qualifications: (3-30-07)

**i.** Be at least eighteen (18) years of age; (3-30-07)

**ii.** Be a high school graduate, or have a GED, or demonstrate the ability to provide services according to a plan of service; (4-4-13)

**iii.** Have current CPR and First Aid certifications; (3-30-07)

- iv. Be free from communicable disease; (4-4-13)
- v. Each staff person assisting with participant medications must successfully complete and follow the “Assistance with Medications” course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. (3-30-07)
- vi. Residential habilitation service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks;” (4-4-13)
- vii. Have appropriate certification or licensure if required to perform tasks which require certification or licensure. Direct service staff must also have taken a traumatic brain injury training course approved by the Department. (3-30-07)
- b.** The provider agency is responsible for providing direct service staff with a traumatic brain injury training course approved by the Department, and training specific to the needs of the participant. (4-4-13)
- c.** Prior to delivering services to a participant, agency direct service staff must complete an orientation program. The orientation program must include the following subjects: (4-4-13)
  - i. Purpose and philosophy of services; (3-30-07)
  - ii. Service rules; (3-30-07)
  - iii. Policies and procedures; (3-30-07)
  - iv. Proper conduct in relating to waiver participants; (3-30-07)
  - v. Handling of confidential and emergency situations that involve the waiver participant; (3-30-07)
  - vi. Participant rights; (3-30-07)
  - vii. Methods of supervising participants; (3-30-07)
  - viii. Working with individuals with traumatic brain injuries; and (3-30-07)
  - ix. Training specific to the needs of the participant. (3-30-07)
- d.** Additional training requirements must be completed within six (6) months of employment with the residential habilitation agency and include at a minimum: (3-29-12)
  - i. Instructional techniques: Methodologies for training in a systematic and effective manner; (3-30-07)
  - ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors; (3-30-07)
  - iii. Feeding; (3-30-07)
  - iv. Communication; (3-30-07)
  - v. Mobility; (3-30-07)
  - vi. Activities of daily living; (3-30-07)
  - vii. Body mechanics and lifting techniques; (3-30-07)

- viii. Housekeeping techniques; and (3-30-07)
- ix. Maintenance of a clean, safe, and healthy environment. (3-30-07)
- e. The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed. (4-4-13)

**16. Day Habilitation.** Providers of day habilitation services must have a minimum of two (2) years of experience working directly with persons with a traumatic brain injury, must provide documentation of standard licensing specific to their discipline, and must have taken a traumatic brain injury course approved by the Department. Day habilitation providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

- 17. Respite Care.** Providers of respite care services must meet the following minimum qualifications: (4-4-13)
- a. Have received care giving instructions in the needs of the person who will be provided the service; (4-4-13)
  - b. Demonstrate the ability to provide services according to a plan of service; (4-4-13)
  - c. Be free of communicable disease; and (4-4-13)
  - d. Respite care service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**18. Supported Employment.** Supported employment services must be provided by an agency that supervises the direct service and is accredited by the Commission on Accreditation of Rehabilitation Facilities or other comparable standards, or meet State requirements to be a State-approved provider. Supported employment service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." Providers must also take a traumatic brain injury training course approved by the Department. (4-4-13)

- 19. Chore Services.** Providers of chore services must meet the following minimum qualifications: (4-4-13)
- a. Be skilled in the type of service to be provided; and (4-4-13)
  - b. Demonstrate the ability to provide services according to a plan of service. (4-4-13)
  - c. Chore service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)
  - d. Meet, either by formal training or demonstrated competency, the training requirements in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

~~**22. Dental Services.** Providers are credentialed by the contractor to ensure they meet the licensing requirements of the Idaho Board of Dentistry. Providers' duties are based on the contract requirements and are monitored and enforced by the contractor. (4-4-13)~~

**(BREAK IN CONTINUITY OF SECTIONS)**



**515. ADULT DEVELOPMENTAL DISABILITY SERVICES: QUALITY ASSURANCE AND IMPROVEMENT.**

**01. Quality Assurance.** Quality Assurance consists of audits and reviews to assure compliance with the Department's rules and regulations. If problems are identified during the review or audit, the provider must implement a corrective action plan within forty-five (45) days after the results are received. The Department may terminate authorization of service for providers who do not comply with the corrective action plan. (3-19-07)

**02. Quality Improvement.** The Department may gather and utilize information from providers to evaluate customer satisfaction, participant satisfaction, outcomes monitoring, care management, quality assurance, quality improvement activities, and health and safety. These findings may lead to quality improvement activities to improve provider processes and outcomes for participants. (3-19-07)

**03. Exception Review.** ~~In order to assure health and safety of the participant, the Department will complete an exception review of plans of service or addendums requesting residential habilitation High or Intense Supported Living when the request services that exceeds the assigned budget authorized by the assessor, and when the services requested on the plan are required, based on medical necessity in accordance with Subsection 012.14 of these rules. Requests for these services will be authorized when one (1) of the following conditions are met:~~ (3-29-12)( )

**a.** Services are needed to assure the health and safety of participants who require residential high or intense supported living, and the services requested on the plan or addendum are required based on medical necessity as defined in Subsection 012.14 of these rules. ( )

**b.** Supported employment services as defined in Section 703 of these rules are needed for the participant to obtain or maintain employment. The request must be submitted on the Department-approved Exception Review Form and is reviewed and approved based on the following: ( )

**i.** A supported employment service recommendation must be submitted that includes: recommended amount of service, level of support needed, employment goals, and a transition plan. When the participant is transitioned from the Idaho Division of Vocational Rehabilitation (IDVR) services, the recommendation must be completed by IDVR. When a participant is in an established job, the recommendation must be completed by the supported employment agency identified on the plan of service or addendum: ( )

**ii.** The participant's plan of service was developed by the participant and his person-centered planning team and includes a goal for supported employment services. Prior to the submission of an exception review with an addendum, a comprehensive review of all services on the participant's plan must occur. The participant's combination of services must support the increase or addition of supported employment services; and ( )

**iii.** An acknowledgement signed by the participant and his legal guardian, if one exists, that additional budget dollars approved to purchase supported employment services must not be reallocated to purchase any other Medicaid service. ( )

**04. Concurrent Review.** The Department will obtain the necessary information to determine that participants continue to meet eligibility criteria, services continue to be clinically necessary, services continue to be the choice of the participant, and services constitute appropriate care to warrant continued authorization or need for the service. (3-19-07)

**05. Abuse, Fraud, or Substandard Care.** Reviewers finding suspected abuse, fraud, or substandard care must refer their findings for investigation to the Department and other regulatory or law enforcement agencies for investigation. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**703. ADULT DD WAIVER SERVICES: COVERAGE AND LIMITATIONS.**

**01. Residential Habilitation.** Residential habilitation services consist of an integrated array of individually tailored services and supports furnished to eligible participants. These services and supports are designed to assist the participants to reside successfully in their own homes, with their families, or in certified family homes. The services and supports that may be furnished consist of the following: (4-4-13)

**a.** Habilitation services aimed at assisting the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: (3-19-07)

**i.** 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; (3-19-07)

**ii.** Money management including training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-19-07)

**iii.** 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; (3-19-07)

**iv.** 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. (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. Socialization training does not include participation in non-therapeutic activities which are merely diversional or recreational in nature); (3-19-07)

**v.** 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; (3-19-07)

**vi.** 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. (3-19-07)

**b.** 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. (3-19-07)

**c.** Skills training to teach waiver participants, family members, alternative family caregiver(s), or a participant's roommate or neighbor to perform activities with greater independence and to carry out or reinforce habilitation training. Services are focused on training and are not designed to provide substitute task performance. Skills training is provided to encourage and accelerate development in independent daily living skills, self-direction, money management, socialization, mobility and other therapeutic programs. (3-19-07)

**02. Chore Services.** Chore services include the following services when necessary to maintain the functional use of the home or to provide a clean, sanitary, and safe environment. (4-4-13)

**a.** Intermittent Assistance may include the following: (4-4-13)

**i.** Yard maintenance; (4-4-13)

**ii.** Minor home repair; (4-4-13)

- iii. Heavy housework; (4-4-13)
  - iv. Sidewalk maintenance; and (4-4-13)
  - v. Trash removal to assist the participant to remain in the home. (4-4-13)
  - b.** Chore activities may include the following: (4-4-13)
    - i. Washing windows; (4-4-13)
    - ii. Moving heavy furniture; (4-4-13)
    - iii. Shoveling snow to provide safe access inside and outside the home; (4-4-13)
    - iv. Chopping wood when wood is the participant's primary source of heat; and (4-4-13)
    - v. Tacking down loose rugs and flooring. (4-4-13)
  - c.** These services are only available when neither the participant, nor anyone else in the household, is capable of performing or financially providing for them, and where no other relative, caregiver, landlord, community volunteer, agency, or third-party payer is willing to provide them, or is responsible for their provision. (4-4-13)
  - d.** In the case of rental property, the landlord's responsibility under the lease agreement will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (4-4-13)
- 03. Respite Care.** Respite care includes short-term breaks from care giving responsibilities to non-paid caregivers. The caregiver or participant is responsible for selecting, training, and directing the provider. While receiving respite care services, the waiver participant cannot receive other services that are duplicative in nature. Respite care services provided under this waiver do not include room and board payments. Respite care services may be provided in the participant's residence, the private home of the respite provider, the community, a developmental disabilities agency, or an adult day health facility. (4-4-13)
- 04. Supported Employment.** Supported employment consists of competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred; or for whom competitive employment has been interrupted or intermittent as a result of a severe disability. Because of the nature and severity of their disability, these individuals need intensive supported employment services or extended services in order to perform such work. (4-4-13)
- a.** Supported employment services rendered under the waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation must be maintained in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973 as amended, or the IDEA. (4-4-13)
  - b.** Federal Financial Participation (FFP) cannot be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize the employers' participation in a supported employment program; payments that are passed through to beneficiaries of supported employment programs; or payments for vocational training that are not directly related to a waiver participant's supported employment program. (4-4-13)
- 05. Non-Medical Transportation.** Non-medical transportation enables a waiver participant to gain access to waiver and other community services and resources. (4-4-13)
- a.** Non-medical transportation is offered in addition to medical transportation required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," and will not replace it. (4-4-13)
  - b.** Whenever possible, family, neighbors, friends, or community agencies who can provide this

service without charge or public transit providers will be utilized. (4-4-13)

**06. Environmental Accessibility Adaptations.** Environmental accessibility adaptations include minor housing adaptations that are necessary to enable the participant to function with greater independence in the home, or without which, the participant would require institutionalization or have a risk to health, welfare, or safety. Such adaptations may include: (4-4-13)

**a.** The installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but must exclude those adaptations or improvements to the home that are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. (4-4-13)

**b.** Unless otherwise authorized by the Department, permanent environmental modifications are limited to a home that is the participant's principal residence, and is owned by the participant or the participant's non-paid family. (4-4-13)

**c.** Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (4-4-13)

**07. Specialized Medical Equipment and Supplies.** (4-4-13)

**a.** Specialized medical equipment and supplies include: (4-4-13)

**i.** Devices, controls, or appliances that enable a participant to increase his abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which he lives; and (4-4-13)

**ii.** Items necessary for life support, ancillary supplies and equipment necessary for the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan. (4-4-13)

**b.** Items reimbursed with waiver funds are in addition to any medical equipment and supplies furnished under the Medicaid State Plan and exclude those items that are not of direct medical or remedial benefit to the participant. (4-4-13)

**08. Personal Emergency Response System (PERS).** PERS is an electronic device that enables a waiver participant to secure help in an emergency. The participant may also wear a portable "help" button to allow for mobility. The system is connected to the participant's phone and programmed to signal a response center once a "help" button is activated. The response center is staffed by trained professionals. This service is limited to participants who: (4-4-13)

**a.** Rent or own a home, or live with unpaid caregivers; (4-4-13)

**b.** Are alone for significant parts of the day; (4-4-13)

**c.** Have no caregiver for extended periods of time; and (4-4-13)

**d.** Would otherwise require extensive, routine supervision. (4-4-13)

**09. Home Delivered Meals.** Home delivered meals are meals that are delivered to a participant's home to promote adequate participant nutrition. One (1) to two (2) meals per day may be provided to a participant who: (4-4-13)

**a.** Rents or owns a home; (4-4-13)

**b.** Is alone for significant parts of the day; (4-4-13)

c. Has no caregiver for extended periods of time; and (4-4-13)

d. Is unable to prepare a meal without assistance. (4-4-13)

**10. Skilled Nursing.** Skilled nursing includes intermittent or continuous oversight, training, or skilled care that is within the scope of the Nurse Practice Act. Such care must be provided by a licensed registered nurse, or licensed practical nurse, under the supervision of a registered nurse licensed to practice in Idaho. (4-4-13)

**11. Behavior Consultation/Crisis Management.** Behavior Consultation/Crisis Management services which provide direct consultation and clinical evaluation of participants who are currently experiencing or may be expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a participant. These services also provide emergency back-up involving the direct support of the participant in crisis. (3-19-07)

**12. Adult Day Health.** Adult day health is a supervised, structured service generally furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week. It is provided outside the home of the participant in a non-institutional, community-based setting, and it encompasses health services, social services, recreation, supervision for safety, and assistance with activities of daily living needed to ensure the optimal functioning of the participant. Adult day health services provided under this waiver will not include room and board payments. Adult day health cannot exceed thirty (30) hours per week, either alone or in combination with developmental therapy and occupational therapy. (4-4-13)

~~**13. Dental Services.** Dental services include exams radiographs, diagnostic and preventative services, basic restorations, periodontics, oral surgery, maxillofacial surgery, and adjunctive dental services. These services and the medically necessary dental benefits described in these rules are provided through the Idaho Smiles program. The State's Medicaid dental contract for the Idaho Smiles program includes the complete list of all dental services available to waiver participants. Waiver dental services are limited to participants who are past the month of their twenty first birthdays. Waiver participants who are under age twenty one (21) will continue to receive children's dental benefits under the State Plan. (4-4-13)~~

**143. Self-Directed Community Supports.** Participants eligible for the DD Waiver may choose to self-direct their individualized budget rather than receive the traditional waiver services described in this section of rule. The requirements for this option are outlined in IDAPA 16.03.13, "Consumer Directed Services." (3-19-07)

**154. Place of Service Delivery.** Waiver services may be provided in the participant's personal residence, a certified family home, day habilitation/supported employment program, or community. The following living situations are specifically excluded as a place of service for waiver services: (3-19-07)

a. Licensed skilled, or intermediate care facilities, certified nursing facility (NF) or hospital; and (3-19-07)

b. Licensed Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID); and (3-19-07)

c. Residential Care or Assisted Living Facility. (3-19-07)

d. Additional limitations to specific services are listed under that service definition. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**705. ADULT DD WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

All providers of waiver services must have a valid provider agreement with the Department. Performance under this agreement will be monitored by the Department. (3-19-07)

**01. Residential Habilitation -- Supported Living.** When residential habilitation services are provided by an agency, the agency must be certified by the Department as a Residential Habilitation Agency under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies," and must supervise the direct services provided. Individuals who provide residential habilitation services in the home of the participant (supported living) must be employed by a Residential Habilitation Agency. Providers of residential habilitation services must meet the following requirements: (4-4-13)

- a.** Direct service staff must meet the following minimum qualifications: (3-19-07)
  - i.** Be at least eighteen (18) years of age; (3-19-07)
  - ii.** Be a high school graduate, or have a GED, or demonstrate the ability to provide services according to a plan of service; (4-4-13)
  - iii.** Have current CPR and First Aid certifications; (3-19-07)
  - iv.** Be free from communicable disease; (4-4-13)
  - v.** Each staff person assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. (4-4-13)
  - vi.** Residential habilitation service providers who provide direct care or services must satisfactorily complete a criminal background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
  - vii.** Have appropriate certification or licensure if required to perform tasks which require certification or licensure. (3-19-07)
- b.** All skill training for agency direct service staff must be provided by a Qualified Intellectual Disabilities Professional (QIDP) who has demonstrated experience in writing skill training programs. (3-29-12)
- c.** Prior to delivering services to a participant, agency direct service staff must complete an orientation program. The orientation program must include the following subjects: (3-29-12)
  - i.** Purpose and philosophy of services; (3-19-07)
  - ii.** Service rules; (3-19-07)
  - iii.** Policies and procedures; (3-19-07)
  - iv.** Proper conduct in relating to waiver participants; (3-19-07)
  - v.** Handling of confidential and emergency situations that involve the waiver participant; (3-19-07)
  - vi.** Participant rights; (3-19-07)
  - vii.** Methods of supervising participants; (3-19-07)
  - viii.** Working with individuals with developmental disabilities; and (3-19-07)
  - ix.** Training specific to the needs of the participant. (3-19-07)
- d.** Additional training requirements must be completed within six (6) months of employment with the residential habilitation agency and include at a minimum: (3-29-12)
  - i.** Instructional techniques: Methodologies for training in a systematic and effective manner;

- (3-19-07)
- ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors; (3-19-07)
- iii. Feeding; (3-19-07)
- iv. Communication; (3-19-07)
- v. Mobility; (3-19-07)
- vi. Activities of daily living; (3-19-07)
- vii. Body mechanics and lifting techniques; (3-19-07)
- viii. Housekeeping techniques; and (3-19-07)
- ix. Maintenance of a clean, safe, and healthy environment. (3-19-07)
- e. The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed. (3-19-07)
- 02. Residential Habilitation -- Certified Family Home (CFH). (3-29-12)**
- a. An individual who provides direct residential habilitation services in his own home must be certified by the Department to operate a certified family home under IDAPA 16.03.19, "Rules Governing Certified Family Homes," and must receive residential habilitation program coordination services provided through the Department, or its contractor, for the residential habilitation services he provides. (3-29-12)
- b. CFH providers providing residential habilitation services as a DD Waiver provider must meet the following minimum qualifications: (3-29-12)
  - i. Be at least eighteen (18) years of age; (3-29-12)
  - ii. Be a high school graduate, have a GED, or demonstrate the ability to provide services according to a plan of service; (3-29-12)
  - iii. Have current CPR and First Aid certifications; (3-29-12)
  - iv. Be free from communicable disease; (4-4-13)
  - v. Each CFH provider of residential habilitation services assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing, or other Department-approved training. (3-29-12)
  - vi. CFH providers of residential habilitation services who provide direct care and services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks;" and (3-29-12)
  - vii. Have appropriate certification or licensure if required to perform tasks which require certification or licensure. (3-29-12)
- c. All skill training for CFH providers who are providing residential habilitation services must be provided through the Department or its contractor by qualified intellectual disabilities professional (QIDP) who has demonstrated experience in writing skill training programs. (3-29-12)
- d. Prior to delivering residential habilitation services to a participant, the CFH provider must complete

an orientation training in the following areas as provided by either the Department, or its contractor or both, and include the following areas: (3-29-12)

- i. Purpose and philosophy of services; (3-29-12)
  - ii. Service rules; (3-29-12)
  - iii. Policies and procedures; (3-29-12)
  - iv. Proper conduct in relating to waiver participants; (3-29-12)
  - v. Handling of confidential and emergency situation that involve the waiver participant; (3-29-12)
  - vi. Participant rights; (3-29-12)
  - vii. Methods of supervising participants; (3-29-12)
  - viii. Working with individuals with developmental disabilities; and (3-29-12)
  - ix. Training specific to the needs of the participant. (3-29-12)
- e.** Additional training requirements for CFH providers providing residential habilitation waiver services must be completed by the CFH provider within six (6) months of certification date and include a minimum of the following: (3-29-12)
- i. Instructional Techniques: Methodologies for training in a systematic and effective manner; (3-29-12)
  - ii. Managing behaviors: techniques and strategies for teaching adaptive behaviors; (3-29-12)
  - iii. Feeding; (3-29-12)
  - iv. Communication; (3-29-12)
  - v. Mobility; (3-29-12)
  - vi. Activities of daily living; (3-29-12)
  - vii. Body mechanics and lifting techniques; (3-29-12)
  - viii. Housekeeping techniques; and (3-29-12)
  - ix. Maintenance of a clean, safe, and healthy environment. (3-29-12)
- f.** The Department or its contractor will be responsible for providing on-going training to the CFH provider of residential habilitation specific to the needs of the participant as needed. (3-29-12)
- 03. Chore Services.** Providers of chore services must meet the following minimum qualifications: (3-19-07)
- a.** Be skilled in the type of service to be provided; and (3-19-07)
  - b.** Demonstrate the ability to provide services according to a plan of service. (3-19-07)
  - c.** Chore service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)



- 04. Respite Care.** Providers of respite care services must meet the following minimum qualifications: (4-4-13)
- a.** Have received care giving instructions in the needs of the person who will be provided the service; (3-19-07)
  - b.** Demonstrate the ability to provide services according to a plan of service; (4-4-13)
  - c.** Be free of communicable disease; and (4-4-13)
  - d.** Respite care service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
- 05. Supported Employment.** Supported employment services must be provided by an agency that supervises the direct service and is accredited by the Commission on Accreditation of Rehabilitation Facilities or other comparable standards, or meets State requirements to be a State-approved provider. Supported employment service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)
- 06. Non-Medical Transportation.** Providers of non-medical transportation services must: (4-4-13)
- a.** Possess a valid driver's license; and (3-19-07)
  - b.** Possess valid vehicle insurance. (3-19-07)
- 07. Environmental Accessibility Adaptations.** All services must be provided in accordance with applicable state or local building codes and meet state or local building, plumbing, and electrical requirements for certification. (4-4-13)
- 08. Specialized Medical Equipment and Supplies.** Providers of specialized medical equipment and supplies must be enrolled in the Medicaid program as participating medical vendor providers. Providers must ensure all items meet applicable standards of manufacture, design, and installation. Preference will be given to equipment and supplies that are the most cost-effective option to meet the participant's needs. (4-4-13)
- 09. Personal Emergency Response System.** Personal emergency response system providers must demonstrate that the devices installed in a waiver participant's home meet Federal Communications Standards, or Underwriter's Laboratory standards, or equivalent standards. (4-4-13)
- 10. Home Delivered Meals.** Providers of home-delivered meals must be a public agency or private business, and must exercise supervision to ensure that: (4-4-13)
- a.** Each meal meets one-third (1/3) of the Recommended Daily Allowance, as defined by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; (4-4-13)
  - b.** Meals are delivered in accordance with the service plan, in a sanitary manner, and at the correct temperature for the specific type of food; (4-4-13)
  - c.** A Registered Dietitian documents the review and approval of menus, menu cycles, and any changes or substitutions; and (4-4-13)
  - d.** The agency or business is inspected and licensed as a food establishment under IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments." (4-4-13)
- 11. Skilled Nursing.** Skilled nursing service providers must be licensed in Idaho as a registered nurse or licensed practical nurse in good standing, or must be practicing on a federal reservation and be licensed in another

state. Skilled nursing providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**12. Behavior Consultation or Crisis Management.** Behavior Consultation or Crisis Management Providers must meet the following: (3-19-07)

**a.** Work under the direct supervision of a licensed psychologist or Ph.D. in Special Education, with training and experience in treating severe behavior problems and training and experience in applied behavior analysis; and (4-4-13)

**b.** Must have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, special education or a closely related course of study; or (3-19-07)

**c.** Be a licensed pharmacist; or (3-19-07)

**d.** Be a Qualified Intellectual Disabilities Professional (QIDP). (3-19-07)

**e.** Emergency back-up providers must meet the minimum residential habilitation provider qualifications described under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies." (3-19-07)

**f.** Behavior consultation or crisis management providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**13. Adult Day Health.** Providers of adult day health must meet the following requirements: (4-4-13)

**a.** Services provided in a facility must be provided in a facility that meets the building and health standards identified in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)"; (4-4-13)

**b.** Services provided in a home must be provided in a home that meets the standards of home certification identified in IDAPA 16.03.19, "Rules Governing Certified Family Homes"; (4-4-13)

**c.** Adult day health providers who provide direct care or services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; (4-4-13)

**d.** Providers of adult day health must notify the Department on behalf of the participant, if the adult day health is provided in a certified family home other than the participant's primary residence. The adult day health provider must provide care and supervision appropriate to the participant's needs as identified on the plan. (4-4-13)

**e.** Adult day health providers who provide direct care or services must be free from communicable disease. (4-4-13)

~~**14. Dental Services.** Providers are credentialed by the contractor to ensure they meet the licensing requirements of the Idaho Board of Dentistry. Providers' duties are based on the contract requirements and are monitored and enforced by the contractor. (4-4-13)~~

**15.4. Service Supervision.** The plan of service which includes all waiver services is monitored by the plan monitor or targeted service coordinator. (3-19-07)

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.11 - RULES GOVERNING INTERMEDIATE CARE FACILITIES FOR PEOPLE WITH INTELLECTUAL DISABILITIES (ICF/ID)

#### DOCKET NO. 16-0311-1401 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. In accordance with Section 67-5224(5)(a) and (b), Idaho Code, and as specified herein, the pending rule becomes final and of full force and effect on July 1, 2015, after review by the legislature, unless the rule is rejected by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This action is authorized pursuant to Sections 39-1303a, and 39-1307, 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:

There are no changes to repeal this chapter in the pending rule and it is being adopted as proposed. The notice of the proposed repeal of this chapter was published in the September 3, 2014, Idaho Administrative Bulletin, [Vol. 14-9, page 236](#). The chapter rewrite is published in the same Bulletin under Docket No. [16-0311-1402](#).

**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:

There is no anticipated fiscal impact to the state general fund or to any other funds due to this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Debby Ransom at (208) 334-6626.

DATED this 21st Day of November, 2014.

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

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Sections 39-1303a, and 39-1307, Idaho Code.

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

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**Friday, September 12, 2014, 9:00 a.m. MDT**

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**Licensing & Certification Central Office**  
**3232 Elder Street, Conference Rm. D-East**  
**Boise, Idaho 83705**

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

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

The ICF/ID rules in this chapter have not been updated for quite some time. Changes in treatment and intervention strategies for individuals with intellectual disabilities have progressed substantially making these rules obsolete and no longer applicable to current best practices and procedures. This chapter is being repealed in its entirety and rewritten under Docket No. 16-0311-1402 that is published in this same bulletin.

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

**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 to any other funds due to this rulemaking.

**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 7, 2014, Idaho Administrative Bulletin, [Vol. 14-5, pages 62 and 63](#).

**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 Debby Ransom at (208) 334-6626.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 7th Day of August, 2014.

**LSO RULES ANALYSIS MEMO**

**IDAPA 16.03.11 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.11 - INTERMEDIATE CARE FACILITIES FOR PEOPLE WITH INTELLECTUAL DISABILITIES (ICFS/ID)

#### DOCKET NO. 16-0311-1402 (CHAPTER REWRITE)

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. In accordance with Section 67-5224(5)(a) and (b), Idaho Code, as specified herein, the pending rule becomes final and of full force and effect on July 1, 2015, after review by the legislature, unless the rule is rejected by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This action is authorized pursuant to Sections 39-1303a, and 39-1307, 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:

There are no substantive changes in the rewrite of this chapter in the pending rule and it is being adopted as originally proposed. Technical corrections were made for grammar and typographical errors. The original text of the proposed rule rewrite was published in the September 3, 2014, Idaho Administrative Bulletin, [Vol. 14-9, pages 237 through 262](#). The chapter repeal is published in the same Bulletin under Docket No. [16-0311-1401](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, documents are being incorporated by reference into these rules to give them the force and effect of law. The documents are not being reprinted in this chapter of rules due to their length, format, and the cost for republication. The incorporated documents are:

Code of Federal Regulations (CFR), 42 CFR Part 483, 42 CFR 1001.1301, and 42 CFR 442.101;  
IDAPA 07.03.01, "Rules of Building Safety;" and  
National Fire Protection Association (NFPA) Standard 101, The Life Safety Code, (Edition 2000).

**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:

There is no anticipated fiscal impact to the state general fund or to any other funds due to this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Debby Ransom at (208) 334-6626.

DATED this 21st Day of November, 2014.

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

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Sections 39-1303a, and 39-1307, Idaho Code.

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

**Friday, September 12, 2014, 9:00 a.m. MDT**

**Licensing & Certification Central Office**  
**3232 Elder Street, Conference Rm. D-East**  
**Boise, Idaho 83705**

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

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

The ICF/ID rules in this chapter have not been updated for quite some time. Changes in treatment and intervention strategies for individuals with intellectual disabilities have progressed substantially making these rules obsolete and no longer applicable to current practices and procedures. The rewrite of this chapter updates the licensing and enforcement areas of these rules, and incorporates by reference several documents needed for health and safety standards. These rules allow for best practice, active treatment, and intervention strategies for individuals with intellectual disabilities and related conditions. The repeal of this chapter is published in this same bulletin under Docket No. 16-0311-1401.

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

**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 to any other funds due to this rulemaking.

**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 7, 2014, Idaho Administrative Bulletin, [Vol. 14-5, pages 62 and 63](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, documents are being incorporated by reference into these rules to give them the force and effect of law. The documents are not being reprinted in this chapter of rules due to their length, format, and the cost for republication. The incorporated documents are:

Code of Federal Regulations (CFR), 42 CFR Part 48, 42 CFR 1001.1301, and 42 CFR 442.101; IDAPA 07.03.01, "Rules of Building Safety;" and National Fire Protection Association (NFPA) Standard 101, The Life Safety Code, (Edition 2000).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Debby Ransom at (208) 334-6626.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 7th day of August, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0311-1402

IDAPA 16  
TITLE 03  
CHAPTER 11

16.03.11 - INTERMEDIATE CARE FACILITIES FOR PEOPLE WITH  
INTELLECTUAL DISABILITIES (ICFS/ID)

**000. LEGAL AUTHORITY.**

The Board of Health and Welfare is authorized under Sections 39-1301 through 39-1314, Idaho Code, to adopt, amend, and enforce rules, regulations, and standards for licensure that promote safe and adequate treatment, and to protect the health and safety of individuals being cared for in intermediate care facilities for people with intellectual disabilities defined in Section 39-1301(c), Idaho Code. The Department is authorized under 42 CFR Part 483 to set conditions of participation for intermediate care facilities for individuals with intellectual disabilities (ICFs/ID). Under Sections 56-1002, 56-1003, 56-1004, 56-1004A, 56-1005, 56-1007, and 56-1009, Idaho Code, the Department and the Board of Health and Welfare have prescribed powers and duties to provide for the administration and enforcement of Department programs and rules. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter of rules is IDAPA 16.03.11, "Intermediate Care Facilities for People with Intellectual Disabilities (ICFs/ID)." ( )

**02. Scope.** These rules include the licensing standards and requirements for the administration of intermediate care facilities for the active treatment of individuals with intellectual disabilities and related conditions. This service delivery system provides care through small community-based facilities with the least restrictive alternatives including deinstitutionalization, normalization, and individual programming to enhance each individual's self-sufficiency for personal development and health needs. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the Department may have written statements that pertain to the interpretation of this chapter, or to the documentation of compliance with these rules. ( )

**003. ADMINISTRATIVE APPEALS.**

Administrative appeals and contested cases are governed by the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

**004. INCORPORATION BY REFERENCE.**

The following are incorporated by reference in this chapter of rules: ( )

**01. Code of Federal Regulations (CFR).** The Board has adopted by reference certain Codes of Federal Regulations (CFR), Standards and Certification, Part 483, in this chapter. 42 CFR Part 483 may be found online at: <http://www.ecfr.gov/cgi-bin/text-idx?SID=f030c6d2c3e752bba7d12ce1015a4e7a&node=42:5.0.1.1.2.9&rgn=div6>. Modifications and additions to the "Conditions of Participation for Intermediate Care Facilities for Individuals with Intellectual Disabilities" are made in Subsections 004.02 through 004.13 of this rule. ( )

**02. 42 CFR 483.400 - Basis and Purpose.** No additions or modifications have been adopted for this subpart. ( )

**03. 42 CFR 483.405 - Relationship to Other Health and Human Services (HHS) Regulations.** No additions or modifications have been adopted for this subpart. ( )

**04. 42 CFR 483.410 - Condition of Participation: Governing Body and Management.** Additions and modifications for this subpart are found in Sections 100-199 of these rules. ( )

**05. 42 CFR 483.420 - Condition of Participation: Client Protections.** Additions and modifications for this subpart are found in Sections 200-299 of these rules. ( )

**06. 42 CFR 483.430 - Condition of Participation: Facility Staffing.** Additions and modifications for this subpart are found in Sections 300-399 of these rules. ( )

**07. 42 CFR 483.440 - Condition of Participation: Active Treatment Services.** No additions or modifications have been adopted for this subpart. ( )

**08. 42 CFR 483.450 - Condition of Participation: Client Behavior and Facility Practices.** Additions and modifications for this subpart are found in Sections 500-599 of these rules. ( )

**09. 42 CFR 483.460 - Condition of Participation: Health Care Services.** No additions or modifications have been adopted for this subpart. ( )

**10. 42 CFR 483.470 - Condition of Participation: Physical Environment.** Additions and modifications for this subpart are found in Sections 700-799 of these rules. ( )

**11. 42 CFR 483.480 - Condition of Participation: Dietetic Services.** Additions and modifications for this subpart are found in Sections 800-899 of these rules. ( )

**12. 42 CFR 1001.1301 - Failure to Grant Immediate Access.** No additions or modifications have been adopted for this subpart. ( )

**13. 42 CFR 442.101 - Obtaining Certification.** No additions or modifications have been adopted for this subpart. ( )

**14. IDAPA 07.03.01, Rules of Building Safety.** IDAPA 07.03.01, "Rules of Building Safety," as adopted by the Division of Building Safety, Building Code Advisory Board. The rules are available online at: <http://adminrules.idaho.gov/rules/current/07/0301.pdf>. The Building Safety rules adopt The International Building Code that may be obtained from the International Code Council, Western Regional Office, 5360 Workman Mill Road, Whittier, CA 90601-2298, phone: (888) 422-7233, and online at <http://www.iccsafe.org>. ( )

**15. National Fire Protection Association (NFPA) Standard 101, The Life Safety Code, (edition 2000).** The following document is incorporated by reference in these rules: National Fire Protection Association (NFPA) Standard 101, The Life Safety Code, (2000), published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471. A copy is available for review at the Department's Division of Licensing and Certification located at 3232 Elder Street, Boise, Idaho 83705. The NFPA 101: Life Safety Code may be accessed online at: <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=101>. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET 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.** ( )



**a.** The mailing address of the Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ( )

**b.** The mailing address of the Division of Licensing and Certification, P.O. Box 83720, Boise, Idaho 83720-0009. ( )

**03. Street Address.** ( )

**a.** The street address of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ( )

**b.** The street address of the Division of Licensing and Certification is located at 3232 Elder Street, Boise, Idaho 83705. ( )

**04. Telephone.** ( )

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

**b.** The telephone number of the Division of Licensing and Certification, Bureau of Facility Standards is (208) 334-6626. ( )

**05. Internet Websites.** ( )

**a.** The Department internet website is found at <http://www.healthandwelfare.idaho.gov>. ( )

**b.** The Division of Licensing and Certification, Bureau of Facility Standards internet website is found at <http://www.facilitystandards.idaho.gov>. ( )

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.**

**01. Confidentiality of Records.** Any disclosure of confidential information used or disclosed in the course of the Department’s business is subject to the restrictions in state or federal law, and must comply with IDAPA 16.05.01, “Use and Disclosure of Department Records.” ( )

**02. Public Records Act.** The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ( )

**03. Disclosure of an Individual’s Identity.** Under Section 39-1310, Idaho Code, information received by the Department through filed reports, inspections, or as required by law, will not be disclosed publicly in such a manner as to identify individuals except as necessary in a proceeding involving a question of licensure. ( )

**04. Public Availability of Survey Reports.** The Department will post on the Division of Licensing and Certification’s website, survey reports and findings of complaint investigations relating to a facility at <http://www.facilitystandards.idaho.gov>. ( )

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

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

**01. Criminal History and Background Check.** An intermediate care facility for people with intellectual disabilities (ICF/ID) must comply with the Department’s criminal history and background check rules in IDAPA 16.05.06, “Criminal History and Background Checks.” ( )

**02. Individuals Subject to Criminal History Checks.** Owners, administrators, employees, and

contractors, hired or contracted with after October 1, 2007, who have direct access to individuals residing in an ICF/ID must complete and receive a Department criminal history and background check clearance as provided in IDAPA 16.05.06, "Criminal History and Background Checks." ( )

**010. DEFINITIONS AND ABBREVIATIONS -- A THROUGH K.**

For the purposes of this chapter of rules, the following terms apply. ( )

**01. Active Treatment.** Aggressive, consistent implementation of a program of specialized and generic training, treatment, health, and related services directed toward the acquisition of skills necessary for the individual to function with as much self-determination and independence as possible. It includes the prevention or deceleration of regression or loss of current optimal functional status. ( )

**02. Administrator.** The person delegated the responsibility for management of a facility. ( )

**03. Advocate.** A person who assists the individual in exercising their rights within the facility and as a citizen of the United States. ( )

**04. Alteration.** Any change or modification to the building or property that does affect Life Safety Code compliance or a change in space usage or utilization of the facility, including additions, remodeling or systems modifications. ( )

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

**06. Certification.** Federal program approval (Medicare, Medicaid, etc.) of the facility to participate in the delivery of program care to eligible individuals under applicable federal requirements. ( )

**07. Client.** A term used in the Code of Federal Regulations (CFR) for an "individual" residing in an intermediate care facility for individuals with intellectual disabilities who requires active treatment. A "client" is synonymous with the terms "individual" and "resident" in this chapter. ( )

**08. Department.** The Idaho Department of Health and Welfare. ( )

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

**10. Discharge.** The permanent movement of an individual to another facility or setting that operates independently from the ICF/ID. ( )

**11. Enclosure.** Any barrier designed, constructed, or used to contain an individual within a designated area for the purposes of behavior modification, and does not meet the definition of a "time out" room as stated in 42 CFR 483.450(c)(1). ( )

**12. Governmental Unit.** The State of Idaho, any county, municipality, or other political subdivision, or any department, division, board, or other agency thereof. ( )

**13. Individual.** A term used in the Code of Federal Regulations (CFR) for an "individual" residing in an intermediate care facility for individuals with intellectual disabilities who requires active treatment. An "individual" is synonymous with the terms "client" and "resident" in this chapter. ( )

**14. Individual Program Plan (IPP).** A written plan developed by the interdisciplinary team for each individual in the ICF/ID. The IPP is based on a completed, thorough review of the individual's preferences, lifestyle, cultural background, strengths, needs, and capabilities in all major life areas essential to increasing independence and ensuring rights. Each individual's IPP addresses what an individual needs in order to function with as much independence as possible by stating: ( )

**a.** The desired outcomes the individual is trying to achieve; ( )

**b.** The specific steps and actions that will be taken to reach the desired outcomes; and ( )

c. Any additional adaptive equipment, assistive technology, services, and supports required to meet the individual's needs. ( )

**15. Initial License.** The first license issued to a facility. ( )

**16. Interdisciplinary Team (IDT).** Professionals, paraprofessionals, and non-professionals who possess the knowledge, skills, and expertise necessary to accurately identify the comprehensive array of the individual's needs and design a program which is responsive to those needs. The IDT must include the individual unless inability or unwillingness is documented, his parent, guardian, or representative unless documented to be inappropriate or unobtainable, a physician, a social worker, and other appropriate professional and non-professional staff, at least one (1) of whom is a Qualified Intellectual Disabilities Professional. ( )

**17. Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/ID).** An institution that meets federal conditions of participation and has as its primary purpose the provision of health or rehabilitation services to individuals with intellectual disabilities or related conditions receiving care and services under the Medicaid program, which is organized and operated to provide services to four (4) or more individuals, not related to the owner. ( )

**011. DEFINITIONS AND ABBREVIATIONS -- L THROUGH Z.**

For the purposes of this chapter of rules, the following terms apply. ( )

**01. Legal Guardian.** A court-appointed surrogate designated to advocate on behalf of the individual. The guardian's role is to encourage self-reliance and independence as well as make decisions on behalf of the individual. ( )

**02. Licensee.** Any person, firm, partnership, corporation, company, association, joint stock association, governmental unit, legal entity, legal successor thereof, or organization to whom a license is issued. ( )

**03. National Fire Protection Association (NFPA).** The National Fire Protection Association, from whom copies of applicable safety standards referenced herein are available at cost. Requests should be addressed to NFPA Publication Department, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471 or [www.NFPA.org](http://www.NFPA.org). ( )

**04. Noxious Stimuli.** A startling, unpleasant, or painful action used in response to an individual's behavior that has a potentially aversive or harmful effect. ( )

**05. On Duty.** Personnel are considered "on duty" when working with, or available to meet an individual's needs. ( )

**06. Outside Service.** Any service provided at a location other than the premises for which the license was issued, pursuant to Section 39-1305, Idaho Code. Includes off-site treatment locations regardless of ownership or operating party, schools, vocational programs, and separately licensed Developmental Disabilities Agencies per Section 39-4605, Idaho Code. ( )

**07. Owner.** Any recognized legal entity, governmental unit, or person having legal ownership of an ICF/ID. ( )

**08. Parent.** A person who by birth, through adoption, or through fostering is considered legally responsible for a child under the age of eighteen (18), unless otherwise ordered by a court of competent jurisdiction. ( )

**09. Participate.** To provide input through whatever means necessary to ensure an individual's IPP is responsive to the individual's needs. ( )

**10. Physician.** An individual licensed to practice medicine and surgery by the Idaho State Board of Medicine or the Idaho State Board of Podiatry under Section 39-1301(h), Idaho Code. ( )

**11. Provisional License.** A license issued to a facility that conforms substantially with these rules, during which time the facility is to correct deficiencies, or to implement administrative or major structural changes. ( )

**12. Qualified Intellectual Disabilities Professional (QIDP).** 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). ( )

**13. Related to Owner.** An individual who is related to an owner of an intermediate care facility by blood, marriage, adoption, fostering, or legal guardianship. ( )

**14. Renovations, Minor.** Changes or modifications to the building or property that do not affect the structural integrity of the building, the fire safety, the physical spaces within the building, or the functional operation for which the facility is licensed. ( )

**15. Resident.** A term used in the International Building Code for an “individual” residing in an intermediate care facility for individuals with intellectual disabilities who requires active treatment. A “resident” is synonymous with the terms “individual” and “client” in this chapter. ( )

**16. Sufficient Staff.** Sufficient numbers of staff to meet each individual’s needs and to implement the active treatment program defined in each individual’s IPP. ( )

**17. Transfer.** A transfer means any of the following: ( )

**a.** The temporary movement of an individual between facilities; ( )

**b.** The temporary movement from an ICF/ID to a psychiatric or medical hospital for medical reasons; ( )

**c.** The permanent movement of an individual between living units of the same facility; or ( )

**d.** The permanent movement of an entire facility to a new location, including individuals served, staff and records. ( )

**18. Waiver.** Provision by the Department to allow for an exception to rule on a case-by-case basis. ( )

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

**020. LICENSE REQUIRED.**

An intermediate care facility for people with intellectual disabilities (ICF/ID) cannot be established, maintained, or operated within Idaho without obtaining a license from the Department as required in Sections 39-1301 through 39-1314, Idaho Code. An ICF/ID must be in compliance with Idaho statutes, federal regulations, and this chapter of rules in order to hold a license. ( )

**021. ICF/ID LICENSURE REQUIREMENTS.**

**01. Facility Name.** Each ICF/ID must use a distinctive name for the facility which is registered with the Secretary of State of Idaho. The facility cannot change its name without written notification to the Department at least thirty (30) days prior to the date the proposed name change is to be effective. ( )

**02. Physical Location.** Each ICF/ID must meet the requirements under Sections 67-6530 through 67-6532, Idaho Code, for local planning and zoning laws or ordinances. Facilities serving eight (8) or fewer individuals with intellectual disabilities are not required to secure conditional use permits, zoning variances, or zoning clearance. ( )

**03. Size Limitations.** The maximum size of an ICF/ID must be no more than fifteen (15) beds. An

ICF/ID that has continuously operated under current ownership since July 1, 1980, or before, and continues to operate under that ownership, is exempt from this requirement. ( )

**04. Compliance with Water and Sanitation Rules.** Each ICF/ID must have a statement from the Public Health District indicating that the water supply and sewage disposal systems meet the Department requirements in Sections 700 through 799 of these rules. ( )

**05. Approval of Facility Construction Plans.** Each ICF/ID must obtain written Department approval prior to any proposed construction of a facility or alterations to an ICF/ID. Construction or alteration plans must be provided to the Department prior to licensing of the facility. ( )

**022. INSPECTION OF FACILITY.**

**01. Representatives of the Department.** The Department is authorized to enter an ICF/ID, or its buildings associated with its operation, at all reasonable times for the purpose of inspection. The Department may, at its discretion, utilize the services of any legally qualified person or organization, either public or private, to examine and inspect any ICF/ID for licensing requirements. ( )

**02. Accessible With or Without Prior Notification.** The Department or its representatives may enter a facility for the purpose of inspections with or without prior notification to the facility. ( )

**03. Inspection of Records.** For the purposes of these rules, the Department is authorized to inspect all records required by the Department to be maintained by the facility. ( )

**04. Inspection of Outside Services.** The Department is authorized to inspect any outside services that a licensed facility uses for its individuals. ( )

**023. -- 024. (RESERVED)**

**025. INITIAL APPLICATION FOR LICENSURE.**

Each person or entity planning to operate an ICF/ID must apply to the Department for an initial license. ( )

**01. Form of Application.** The applicant must complete an initial application form provided by the Department. The application and documents required in Subsection 025.02 of this rule must be submitted to the Department at least ninety (90) days prior to the planned opening date. ( )

**02. Documents Required.** In addition to the application form, the following documents must be submitted with the application prior to approval of a license: ( )

**a.** A certificate of occupancy from the local building and fire authority. ( )

**b.** Acceptable policies and procedures governing the facility, including a sample of an individual record, as required by the Department. ( )

**c.** If the facility is owned by a corporation, the names and addresses of all officers and stockholders having more than five percent (5%) ownership. ( )

**026. CHANGE OF OWNERSHIP (CHOW).**

A new owner must submit a new application for licensure, and must receive the license from the Department before operating the facility. A "change in ownership" is a change in the person or legal organization that has final decision-making authority over the daily operation of an existing ICF/ID. ( )

**01. CHOW of ICF/ID.** An ICF/ID must apply for a change of ownership when: ( )

**a.** The form of legal organization of the facility changes, such as when a sole proprietorship becomes a partnership or corporation; ( )

- b. Title of the ICF/ID is transferred from the current licensee to another party; ( )
- c. The ICF/ID is leased to another party, or the facility's existing lease is terminated; ( )
- d. An event occurs that terminates or dissolves a partnership or sole proprietorship; or ( )
- e. The licensee is a corporation; and ( )
  - i. The corporation is dissolved; or ( )
  - ii. A new corporation is formed through consolidation or merger with one (1) or more other corporations, and the licensed corporation no longer exists. ( )
- 02. No CHOW.** Ownership does not change when: ( )
  - a. The licensee contracts with another party to manage the facility and to act as the licensee's agent. The licensee must retain final decision-making authority over daily operating decisions; or ( )
  - b. When the licensee is a corporation, some or all of its corporate stock is transferred, and the corporation continues to exist. ( )
- 03. Application for Change of Ownership.** An ICF/ID must apply to the Department for a change of ownership at least ninety (90) days prior to the proposed date of the change, using an initial licensing application form. ( )
- 027. -- 029. (RESERVED)**
- 030. ISSUANCE OF LICENSE.**  
An ICF/ID license is issued when the Department finds that the applicant has demonstrated compliance with the requirements in Idaho statutes and these rules. ( )
  - 01. License Issued Only to Named Applicant and Location.** Each license is issued only for the premises and persons or governmental units named in the application, as required in Section 39-1305, Idaho Code. ( )
  - 02. License Specifies Maximum Allowable Beds.** Each license specifies the maximum allowable number of beds in each facility, which may be exceeded only on an emergency basis, for the minimum amount of time required to address the emergency. This emergency exception must be authorized by the Department. ( )
  - 03. Initial License.** When the Department determines that all required application information has been received and demonstrates compliance, a license is issued. The initial license expires at the end of the calendar year in which the license was issued. ( )
  - 04. Provisional License.** A provisional license issued to an ICF/ID is valid for a period not to exceed six (6) months from the date of issuance by the Department. A provisional license may be issued in order for the facility to: ( )
    - a. Implement administrative changes; ( )
    - b. Implement structural changes to a facility's premises; or ( )
    - c. Work on correcting deficiencies to bring the facility into compliance with statutory requirements and these rules. ( )
- 031. EXPIRATION AND RENEWAL OF LICENSE.**  
An ICF/ID license issued by the Department is valid until the end of the calendar year in which it is issued. The license is renewed annually unless the license is revoked or suspended. ( )

**032. -- 039. (RESERVED)**

**040. DISPLAY OF LICENSE.**

Under Section 39-1305, Idaho Code, an ICF/ID must post its license in a conspicuous place on the premises visible to the general public. ( )

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

**050. DENIAL OR REVOCATION OF LICENSE.**

Under Section 39-1306, Idaho Code, the Department may deny an application for an ICF/ID license or revoke an existing license. ( )

**01. Notice to Deny or Revoke.** The Department will send a written notice to the applicant or licensee by certified mail, registered mail, or personal delivery service, to deny or revoke a license or application. The notice will inform the applicant or licensee of the opportunity to request a hearing as provided in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

**02. Major Deficiency.** The Department may deny an application for a license or revoke an existing license if a major deficiency exists in the compliance of the ICF/ID with the provisions of Idaho Code, federal regulations, or of these rules. A major deficiency is: ( )

**a.** Any violation of ICF/ID requirements contained in Idaho Code, federal regulations, or these rules that would endanger the health, safety, or welfare of any individual; ( )

**b.** Any repeated violations of any requirements in Idaho Code, federal regulations, or these rules; or ( )

**c.** The accumulation of minor violations at the facility that, taken as a whole, would endanger the health, safety, or welfare of any individual. ( )

**03. Prior Record Related to Licensure.** The Department may deny an application for a license or revoke an existing license when the owner or administrator has: ( )

**a.** Had any health or personal care license denied or revoked; ( )

**b.** Been found to have operated any health or personal care facility without a license; or ( )

**c.** Been enjoined from operating any health or personal care facility in an action related to improper operation of a facility. ( )

**04. Personnel Inadequacies.** The Department may deny an application for a license or revoke an existing license when the owner or administrator lacks sufficient staff in number or qualification to properly care for the proposed or actual number and needs of individuals. ( )

**05. Inadequate or False Disclosure.** The Department may deny an application for a license or revoke an existing license when the owner or administrator has misrepresented, or failed to fully disclose, any facts or information or any items in any application or any other document requested by the Department, when such facts and information were required to have been disclosed. ( )

**06. Prior Criminal Record.** The Department may deny an application for a license or revoke an existing license when the owner or administrator has been convicted of any crime or infraction associated with the operation of a licensed health or personal care facility. ( )

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

**060. SUMMARY SUSPENSION OF LICENSE.**

The Director may summarily suspend any ICF/ID license in the event of any emergency endangering the health, safety, or welfare of an individual in the facility. The Director will provide an opportunity for a contested case hearing under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

**061. -- 069. (RESERVED)**

**070. RETURN OF SUSPENDED, REVOKED, OR RELINQUISHED LICENSE.**

Each ICF/ID license is the property of the State of Idaho and must be returned to the Department immediately upon its suspension, revocation, or the voluntary closure of the facility. ( )

**071. -- 079. (RESERVED)**

**080. WAIVER.**

Under Section 39-1306, Idaho Code, a temporary or permanent waiver to these rules and minimum standards, either in whole or in part, may be granted by the Department to an ICF/ID on a case-by-case basis under the following conditions: ( )

**01. Waiver for Good Cause.** The Department finds good cause to grant a waiver and no individual's health, safety, or welfare is endangered by the waiver being granted. ( )

**02. No Precedent.** Precedent will not be set by granting the requested waiver, and such waiver will have no force or effect in any other proceeding. ( )

**081. -- 099. (RESERVED)**

**100. GOVERNING BODY AND MANAGEMENT.**

The requirements of Sections 100 through 199 of these rules are modifications and additions to the requirements in 42 CFR 483.410 - 483.410(e), Condition of Participation: Governing Body and Management incorporated in Section 004 of these rules. ( )

**101. GOVERNING BODY DUTIES.**

**01. Unrelated to Owner.** The governing body of each ICF/ID must assure that individuals residing at the ICF/ID are unrelated to the owner. ( )

**02. Appointment of Administrator.** The governing body of each licensed ICF/ID must appoint an administrator. ( )

**102. ADMINISTRATOR.**

**01. Administrator Requirements.** Each ICF/ID must have an administrator who: ( )

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

**b.** Is responsible and accountable for implementation of the policies established by the governing body; ( )

**c.** Has a minimum three (3) years direct experience working in an ICF/ID setting; and ( )

**d.** Meets all other qualifications required by the facility's governing body. ( )

**02. Administrator Duties.** The administrator's responsibilities and duties are to: ( )

**a.** Implement and monitor written policies and procedures for each service of the ICF/ID and the operation of its physical plant. The administrator must see that these policies and procedures are adhered to and must make them available to authorized representatives of the Department. ( )



**b.** Implement and monitor written policies and procedures for the recruitment and employment of sufficient staff and personnel in number and qualification to perform each service and for the operation of the ICF/ID. The administrator must see that the policies and procedures for administration of personnel requirements in Section 120 of these rules are adhered to and available to authorized representatives of the Department. ( )

**c.** Compile, complete, and submit all reports and records required by the Department. ( )

**d.** Notify the Department immediately of an anticipated or actual termination of any service vital to the continued safe operation of the ICF/ID or the health, safety, and welfare of its individuals and personnel. ( )

**e.** When not on duty, delegate the necessary authority to an administrator designee who is competent to handle the administrator's duties. Delegation of authority must occur according to the ICF/ID policies and procedures set by the facility's governing body. In the event of an emergency, the administrator designee must know how to contact the administrator. ( )

**103. -- 109. (RESERVED)**

**110. FACILITY RECORDS.**

**01. Records Available Upon Request.** Each ICF/ID must be able to print and provide paper copies of electronic records upon the request of the individual who is the subject of the requested records, the individual's legal guardian, payer, or the Department. ( )

**02. Census Register.** Each ICF/ID must maintain a census register that lists: ( )

**a.** The name of each individual residing in the facility; ( )

**b.** The individual's date of admission and discharge; and ( )

**c.** A daily census of each individual who is in the facility on any given day. ( )

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

**120. ADMINISTRATIVE REQUIREMENTS -- PERSONNEL.**

Each ICF/ID must employ personnel sufficient in number and qualifications to meet, at a minimum, the quality of care mandated by law and these rules for all individuals' needs in the facility. ( )

**01. Job Descriptions.** Current job descriptions outlining the authority, responsibilities, and duties of all personnel in the facility, including the administrator, must be established and maintained as required by the governing body. A copy of an employee's particular job description must be provided to each employee. ( )

**02. Policies and Procedures.** The facility must ensure that explicit and uniform policies and procedures are established for each employment position concerning hours of work, overtime, and related personnel matters. A statement of these policies must be provided to each employee. ( )

**03. Daily Work Schedules.** Daily work schedules must be maintained that show the personnel on duty at any given time for the previous three (3) month period. These schedules must be kept up to date and identify the employee as follows: ( )

**a.** First and last names; ( )

**b.** Professional designations such as registered nurse (RN), licensed practical nurse, (LPN), QIDP; and ( )

**c.** Employment position in the facility. ( )

**04. Organizational Chart.** A current organizational chart that clearly indicates lines of authority

within the facility's organizational structure must be available at the facility to be viewed by all employees, or kept in each employee's possession while on duty. ( )

**05. Personnel Records.** A separate personnel record must be maintained for each employee of the facility that contains the following information: ( )

**a.** The employee's name, current address, and telephone number; ( )

**b.** The employee's Social Security Number; ( )

**c.** The employee's educational background; ( )

**d.** The employee's work experience; ( )

**e.** The employee's other qualifications to provide ICF/ID care. If licensure is required to provide a service the employee was hired to provide, the facility must have written verification of the original license number and date the current license expires; ( )

**f.** The employee's criminal history and background check (CHC) clearance must be printed and on file, when a CHC is required; ( )

**g.** The employee's date of employment; ( )

**h.** The employee's date of termination including the reason for termination; ( )

**i.** The employee's position in the facility and a description of that position; and ( )

**j.** The employee's hours and work schedule, paydays, overtime, and related personnel matters. ( )

**06. Health and Age Requirements.** All personnel employed by an ICF/ID must meet and observe the following requirements: ( )

**a.** Each employee must be free of communicable disease and infected skin lesions while on duty; and ( )

**b.** At the time of employment, each employee must have a tuberculin skin test consistent with current tuberculosis control procedures. ( )

**c.** No employee who is less than eighteen (18) years of age can provide direct individual care in an ICF/ID. ( )

**07. Training Requirements.** Each ICF/ID must have and follow structured written training programs designed to train each employee in the responsibilities specified in the written job description, and to provide for quality of care and compliance with these rules. Signed evidence of personnel training, indicating dates, hours, and topic, must be retained at the facility. This training must include at a minimum: ( )

**a.** Initial orientation for new employees; and ( )

**b.** Continuing in-service training designed to, at a minimum, meet the quality of care mandated by law and these rules for individuals residing in the facility. ( )

**121. -- 199. (RESERVED)**

**200. CLIENT PROTECTIONS.**

The requirements of Sections 200 through 299 of these rules are modifications and additions to the requirements in 42 CFR 483.420 - 483.420(d)(4), Condition of Participation: Client Protections incorporated in Section 004 of these rules. ( )

**201. INDIVIDUAL ADVOCATE.**

An individual advocate is a person whose primary responsibility is to help assure the individual's rights are not violated and to act in the best interest of the individual. ( )

**202. APPOINTED ADVOCATE.**

The administrator of an ICF/ID must appoint an advocate for an individual with input from the individual's IDT when the following exists: ( )

**01. Parent or Legal Guardian Unable to Participate.** The individual's parent or legal guardian is unable or unwilling to participate, or is unavailable after reasonable efforts to contact them for participation have been made. ( )

**02. Individual Unable to Make Informed Decisions.** An individual "lacks capacity to make informed decisions" as defined in Section 66-402(9), Idaho Code. The IDT must determine and document in the individual's record the specific impairment that has rendered the individual incapable of understanding his own rights. ( )

**03. Requested by Individual, Parent, or Guardian.** An advocate is requested by the individual, his parent, or his guardian. ( )

**04. Advise Individual of Rights.** The fact that an individual has been determined to be incompetent or incapable does not absolve the facility from advising the individual of his rights to the extent that the individual is able to understand them. ( )

**05. Advocate Selection.** The administrator must assure that all individuals are represented only by persons who are not employed by the facility. The priority for selection of advocates will be in the following order: ( )

- a. Parent(s); ( )
- b. An interested family member; or ( )
- c. Other interested parties. ( )

**203. ADVOCATES' RIGHTS.**

Each advocate has the following rights: ( )

**01. Be Informed.** To be informed of activities related to the individual that may be of interest to them or of significant changes in the individual's condition. ( )

**02. Visitation Rights.** To visit the individual and all parts of the facility that provide services to the individual at any reasonable hour and without prior notice, unless contraindicated by the individual's needs or such practice infringes upon the privacy and rights of others. ( )

**03. Prompt Communications.** To receive prompt replies to any communication sent to the facility regarding the individual. ( )

**04. Written Interpretation of Evaluations.** To be given within thirty (30) days of admission to the facility, a written interpretation of the evaluation that is conducted for the individual. The administrator of the facility must provide a written interpretation of any and all subsequent evaluations. ( )

**05. Discharge Counseling.** To be counseled as to the advantages and disadvantages of discharging the individual from the facility, including admission to another facility. ( )

**06. Prompt Notification of Significant Events.** To be notified promptly in the event of any unusual occurrence, including serious illness or accident, impending death, and/or death; and in the case of death, to be told of autopsy findings if an autopsy is performed. ( )

**07. Access to Individual's Records.** To be given access to all of the individual's records that pertain to their active treatment, subject to the requirements specified in IDAPA 16.05.01, "Use and Disclosure of Department Records." ( )

**204. -- 299. (RESERVED)**

**300. FACILITY STAFFING.**

The requirements of Sections 300 through 399 of these rules are modifications and additions to the requirements in 42 CFR 483.430 - 483.430(e)(4), Condition of Participation: Facility Staffing incorporated in Section 004 of these rules. ( )

**301. INTERNS AND VOLUNTEERS.**

Volunteers and interns must be under the direct supervision of facility staff during all times of direct contact with individuals. ( )

**302. -- 399. (RESERVED)**

**400. ACTIVE TREATMENT SERVICES.**

The requirements of Sections 400 through 499 of these rules are modifications and additions to the requirements in 42 CFR 483.440 - 483.440(f)(4), Condition of Participation: Active Treatment Services incorporated in Section 004 of these rules. ( )

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

**500. CLIENT BEHAVIOR AND FACILITY PRACTICES.**

The requirements of Sections 500 through 599 of these rules are modifications and additions to the requirements in 42 CFR 483.450 - 483.450(e)(4)(iii), Condition of Participation: Client Behavior and Facility Practices incorporated in Section 004 of these rules. ( )

**501. MANAGEMENT OF INAPPROPRIATE INDIVIDUAL BEHAVIOR.**

The application of painful or noxious stimuli and the use of enclosures are prohibited. ( )

**502. -- 599. (RESERVED)**

**600. HEALTH CARE SERVICES.**

The requirements of Sections 600 through 699 of these rules are for modifications and additions to the requirements in 42 CFR 483.460 - 483.460(n)(2), Condition of Participation: Health Care Services incorporated in Section 004 of these rules. ( )

**601. -- 699. (RESERVED)**

**700. PHYSICAL ENVIRONMENT.**

The requirements of Sections 700 through 799 of these rules are modifications and additions to the requirements in 42 CFR 483.470 - 483.470(1)(4), Condition of Participation: Physical Environment, incorporated in Section 004 of these rules. Other documents incorporated in Section 004 of these rules related to an ICF/ID physical environment are the NFPA's Life Safety Code and IDAPA 07.03.01, "Rules of Building Safety." ( )

**701. ENVIRONMENTAL SANITATION STANDARDS.**

Each ICF/ID must ensure that its environment promotes the health, safety, independence, and learning of each individual in the facility. ( )

**702. ENVIRONMENTAL STANDARDS -- WATER, SEWER, AND GARBAGE.**

**01. Water Supply.** Each ICF/ID must have a water supply that is adequate, safe, and of a sanitary quality. The water supply must: ( )

- a. Be from an approved public or municipal water supply; or ( )
- b. Be from a private water supply that meets the standards approved by the Department, when an approved public or municipal water supply is not available. ( )
- 02. Private Water Supply.** An ICF/ID using a private water supply must: ( )
  - a. Submit water samples to the local Public Health District Laboratory for bacteriological examination at least once every three (3) months; and ( )
  - b. Keep copies of the Public Health District laboratory reports on file at the facility and available to authorized representatives of the Department. ( )
- 03. Adequate Water Supply.** Each ICF/ID must have a sufficient amount of water under adequate pressure to meet sanitary and fire sprinkler system requirements of the facility at all times, according to the requirements in IDAPA 07.02.06, "Rules Concerning Idaho State Plumbing Code," and the NFPA Life Safety Code incorporated in Section 004 of these rules. ( )
- 04. Sewage Disposal.** Each ICF/ID must discharge all sewage and liquid wastes into a municipal sewage system where such a system is available. Where a municipal sewage system is not available, sewage and liquid wastes must be collected, treated, and disposed of in a manner approved by the Department. ( )
- 05. Garbage and Refuse Disposal.** Each ICF/ID must provide garbage and refuse disposal at its facility that meets the following requirements: ( )
  - a. The premises and all buildings must be kept free from accumulation of weeds, trash, and rubbish; ( )
  - b. Materials not directly related to the maintenance and operation of the facility must not be stored on the premises; ( )
  - c. All containers used for storage of garbage and refuse must be constructed of durable, nonabsorbent material, and must not leak. Containers must be provided with tight-fitting lids unless stored in a vermin-proof room or enclosure; ( )
  - d. Garbage containers must be maintained in a sanitary manner. Sufficient containers must be afforded to hold all garbage and refuse that accumulates between periods of removal from the facility; and ( )
  - e. Storage areas must be kept clean and sanitary. ( )

**703. ENVIRONMENTAL STANDARDS -- CHEMICALS AND PESTICIDES.**

- 01. Rodent and Pest Control.** Each ICF/ID must be maintained free from insects, rodents, vermin, and other pests. ( )
  - a. Chemicals and pesticides must be selected on the basis of the pest involved and used only in the manner prescribed by the manufacturer that is registered with the Idaho Department of Agriculture; and ( )
  - b. Chemicals and pesticides used in the facility's pest control program must be used and stored to meet local, state, and federal requirements. ( )
- 02. Chemical Storage.** All toxic chemicals must be properly labeled and stored according to the manufacturer's instructions. Toxic chemicals must not be stored in individual areas, with drugs, or in any area where food is stored, prepared, or served. ( )

**704. ENVIRONMENTAL STANDARDS -- LINENS AND LAUNDRY SERVICES.**

**01. Linens Provided.** Each ICF/ID must have available at all times a quantity of linens sufficient for the proper care and comfort of its individuals. The linens must: ( )

- a. Be of good quality, not thread-bare, torn, or badly stained; and ( )
- b. Be handled, processed, and stored in an appropriate manner that prevents contamination. ( )

**02. Laundry Facilities.** Unless a laundry service is used as described in Subsection 704.03 of this rule, each ICF/ID must have adequate laundry facilities for the sanitary washing and drying of the linens and other washable goods laundered in the facility. An individual's personal laundry must be collected, sorted, washed, and dried in a sanitary manner, and must not be washed with the general linens. The laundry area must: ( )

- a. Be situated in an area separate and apart from where food is stored, prepared, or served; ( )
- b. Be well-lighted and ventilated; ( )
- c. Be adequate in size for the needs of the facility; ( )
- d. Be maintained in a sanitary manner; and ( )
- e. Be kept in good repair. ( )

**03. Laundry Services.** When an ICF/ID sends its linens and individuals' personal laundry out for laundry services, the facility must ensure that: ( )

- a. Soiled linens and clothing are handled in a proper manner to prevent cross-contamination and material damage prior to sending out; ( )
- b. Clean linens and clothing received from a laundry service are stored in a proper manner to prevent potential re-contamination or material damage; and ( )
- c. Each individual's personal laundry is collected, transported, sorted, washed, and dried in a sanitary manner and is not washed with general linens. ( )

**705. ENVIRONMENTAL STANDARDS -- HOUSEKEEPING SERVICES.**

Each ICF/ID must have sufficient housekeeping and maintenance personnel and equipment to maintain the interior and exterior of the facility in a safe, clean, orderly, and attractive manner. ( )

**01. Facility Interior.** Floors, walls, ceilings, and other interior surfaces, equipment, and furnishings must be maintained in a clean and sanitary manner. ( )

**02. Housekeeping Procedures.** Each ICF/ID must have written procedures for cleaning surfaces and equipment that is explained to each person engaged in housekeeping duties. An individual in the facility who is engaged in facility housekeeping duties as part of his training program must be supervised by the facility's program personnel according to the individual's assessed needs. ( )

**03. Requirements After Individual Discharged.** After discharge of an individual the facility must ensure that the individual's room is thoroughly cleaned, including the bed, bedding, linens, and furnishings. ( )

**04. Deodorizers.** Deodorizers and other products must not be used to cover odors caused by poor housekeeping or unsanitary conditions. ( )

**05. Housekeeping Equipment.** All housekeeping equipment must be in good repair and maintained in a clean and sanitary manner. ( )

**706. -- 709. (RESERVED)**

**710. PHYSICAL FACILITY STANDARDS -- EXISTING GENERAL REQUIREMENTS.**

Each ICF/ID must meet the minimum standards related to physical construction and maintenance for all of its buildings used for ICF/ID services as required in Sections 711 through 712 of these rules. All buildings are subject to approval by the Department. ( )

**711. PHYSICAL FACILITY STANDARDS -- EXISTING CONSTRUCTION.**

Each ICF/ID must use buildings that are of such character and quality to be suitable for the services and usage provided in its buildings. Other requirements for existing buildings are: ( )

- 01. Good Repair.** Each building used by the ICF/ID and its equipment must be in good repair. ( )
  - a.** The walls and floors must be of such character as to permit frequent cleaning. ( )
  - b.** Walls and ceilings in kitchens, bathrooms, and utility rooms must have smooth, cleanable surfaces. ( )
  - c.** The building must be kept clean and sanitary, and every reasonable precaution must be taken to prevent the entrance of insects and rodents. ( )
- 02. Stairways.** Each stairway in an ICF/ID must have sturdy handrails on both sides of the stairs, and all open stairwells must be protected with guardrails. Each stairway must have a nonskid tread covering the entire surface of the stair. ( )
- 03. Porches and Verandas.** Each open porch and veranda must be protected by sturdy guardrails of a height measuring a minimum of forty-two (42) inches. ( )
- 04. Telephone.** Each ICF/ID must have telephone access that provides a reliable means of communication to each individual in the facility for private conversations and to contact emergency services. ( )
- 05. Dining Areas.** Each ICF/ID must provide one (1) or more attractively furnished, multi-purpose areas of an adequate size for individuals' dining, diversional, and social activities. Each area must be: ( )
  - a.** Well-lighted; ( )
  - b.** Ventilated; and ( )
  - c.** Equipped with tables and chairs that have easily cleanable surfaces. ( )
- 06. Storage Areas.** Each ICF/ID must provide general storage areas and medical storage areas. ( )
  - a.** For each licensed bed in the facility there must be a minimum of ten (10) square feet of general storage area; ( )
  - b.** In addition, each individual's bedroom must have suitable storage for personal clothing, possessions, and individual adaptive equipment; and ( )
  - c.** The facility must provide safe and adequate storage space for medical supplies and an area appropriate for the preparation of medications. ( )
- 07. Lighting.** Each ICF/ID must meet the following lighting requirements: ( )
  - a.** In addition to natural lighting, artificial lighting is required to provide an average illumination of ten (10) foot-candles (107 lux) over the area of a room at thirty (30) inches (standard household lighting level) above the floor level. ( )
  - b.** With the exception of emergency egress lighting, all artificial lighting must be controllable by switches. ( )

- c. Task lighting and reading lights must be available to meet each individual's needs. ( )
- 08. Ventilation.** Each ICF/ID must be ventilated and precautions must be taken to prevent offensive odors. ( )
- 09. Heating and Air Conditioning.** Each ICF/ID must provide heating and air conditioning systems throughout each building that are capable of maintaining a temperature range between sixty-eight (68°F) degrees and eighty-one (81°F) degrees Fahrenheit in all weather conditions. An ICF/ID cannot use any of the following: oil space heaters, recessed gas wall heaters, or floor furnaces. ( )
- 10. Plumbing.** Each ICF/ID must meet the following plumbing requirements: ( )
- a. All plumbing fixtures must be clean and in good repair. ( )
- b. Vacuum breakers must be installed where necessary to prevent backsiphonage. ( )
- c. The temperature of hot water at plumbing fixtures used by individuals in the facility must be between one hundred (100°F) degrees and one hundred twenty (120°F) degrees Fahrenheit. ( )
- 712. PHYSICAL FACILITY STANDARDS -- INDIVIDUAL ACCOMMODATIONS FOR EXISTING CONSTRUCTION.**  
Each ICF/ID must provide accommodations for each individual that meet the following requirements: ( )
- 01. Multi-Bedroom.** No more than two (2) individuals can be housed in any multi-bedroom. ( )
- 02. Windows.** Each individual's room window area must be no less than one-eighth (1/8) of the floor area and must be able to open. ( )
- a. Suitable window shades or drapes must be provided to control lighting in the room. ( )
- b. Windows must be located to permit an individual to have a view through the windows from a sitting position, allow for natural light, and room ventilation. ( )
- c. Windows must be constructed to prevent any drafts when closed. ( )
- 03. Location of Bedroom.** Each individual's bedroom must be an approved room that is not located: ( )
- a. In a way that its outside walls are below grade; ( )
- b. In any attic story; ( )
- c. In any trailer house; ( )
- d. In any other room not approved; or ( )
- e. In a way that it can only be reached by passing through another individual's room, a utility room, or any other similar rooms. ( )
- 04. Room Size.** Each individual's room must have dimensions that allow for no less than three (3) feet between beds. ( )
- 05. Ceilings.** Each individual's room must have a ceiling height of seven and one-half (7 1/2) feet or more. ( )
- 06. Bathrooms.** Each ICF/ID must have toilet rooms and hand washing facilities that are constructed



as follows: ( )

**a.** Toilet rooms and bathrooms for individuals and personnel must not open directly into any room in which food, drink, or utensils are handled or stored. Toilet rooms or bathrooms may open into great rooms containing kitchen and dining areas if the doors are equipped with self-closures and ventilation is activated automatically with lighting. ( )

**b.** Toilet rooms and bathrooms must be separated from all rooms by solid walls or partitions. Adequate provisions to insure an individual's privacy must be made. ( )

**c.** Toilet rooms and bathrooms must be constructed for ease of cleaning. ( )

**d.** When an individual in an ICF/ID requires the use of a wheelchair, there must be at least one (1) toilet room and one (1) bathing area large enough to accommodate wheelchairs. ( )

**e.** Inside bathrooms and toilet rooms with no exterior window, must have forced ventilation to the outside. ( )

**f.** Toilet rooms must be so arranged that it is not necessary for an individual to pass through another individual's room to reach the toilet facilities. ( )

**g.** When an ICF/ID serves an individual with physical impairments, handrails or grab-bars must be provided in the individual's toilet rooms and bathrooms, and must be located so as to be functionally adequate. ( )

**07. Bath Linens.** Each individual must be provided with an individual towel and washcloth. ( )

**08. Beds.** Each individual must be provided with his own bed that is thirty-six (36) inches wide or more, substantially constructed, and in good repair. Roll-away beds, cots, and folding beds cannot be used. Each individual's bed must be clean and: ( )

**a.** Have satisfactory springs in good repair; ( )

**b.** Have a comfortable mattress that is standard in size for the bed; and ( )

**c.** Each mattress must be maintained, and for individuals known to be incontinent, water repellent. ( )

**09. Interior Design.** The interior design of each ICF/ID must provide the functional arrangement of a home to encourage a personalized atmosphere for its individuals. ( )

**10. Furnishings and Equipment.** Each ICF/ID must have furniture and equipment that is maintained in a sanitary manner, kept in good repair, and is located to permit convenient use by its individuals. ( )

**11. Corridors and Hallways.** Each ICF/ID must ensure corridors and hallways are free of accessory equipment that projects into such areas or otherwise poses a hazard or impedes easy passage. ( )

**713. -- 729. (RESERVED)**

**730. PHYSICAL FACILITY STANDARDS -- NEW CONSTRUCTION.**

Each ICF/ID must comply with IDAPA 07.03.01, "Rules of Building Safety," incorporated in Section 004 of these rules, or with locally adopted code when more stringent. In addition to the construction and the physical facility standards for new construction, a facility must also comply with Sections 730 through 732 of these rules. Additions to existing facilities, conversions of an existing building to a facility, and portions of facilities undergoing remodeling or alterations other than repairs, must meet these required standards. ( )

**731. PHYSICAL FACILITY STANDARDS -- NEW CONSTRUCTION REQUIREMENTS.**

**01. New Facility Life Safety Code Requirements.** Each new ICF/ID must meet the provisions of the National Fire Protection Association (NFPA) Standard 101, The Life Safety Code, as incorporated in Section 004 of these rules, applicable to an ICF/ID, as specified below: ( )

**a.** Each new facility housing sixteen (16) individuals or less on the first floor only, must meet the requirements of Chapter 32, New Residential Board and Care Occupancies, Small Facilities, Impractical Evacuation Capabilities, specifically the sections found within 32.1, 32.2 and 32.7, and the applicable provisions of chapters 1 through 10. ( )

**b.** Each new facility housing individuals on other than the first floor must meet the requirements of NFPA 101, the Life Safety Code, Chapter 18, New Health Care Occupancies, Limited Care Facility. ( )

**02. Plans, Specifications, and Inspections.** Plans, specifications, and inspections of each new ICF/ID construction or any addition, alteration, conversion, or remodeling of an existing structure are governed by the following rules: ( )

**a.** Plans for new construction of an ICF/ID must be prepared by an architect licensed in the state of Idaho; ( )

**b.** Employment of an architect can be waived by the Department in connection with certain minor alterations. ( )

**03. Approved by Department.** Each ICF/ID must submit plans and specifications to the Department prior to beginning any work on the construction of new buildings, additions, or structural changes to existing facilities, or conversion of existing buildings to be used as an ICF/ID. The Department will review and approve plans and specifications to assure compliance with the applicable construction standards, codes, rules, and regulations. ( )

**04. Preliminary Plans.** Preliminary plans must be submitted and must include: ( )

**a.** The assignment of all spaces, size of areas and rooms, and indication in outline of the fixed and movable equipment and furniture; ( )

**b.** Drawings of each floor, attic, and basement; ( )

**c.** The total floor area and number of beds; ( )

**d.** Drawings of approaches or site plans, roads, parking areas, and sidewalks; ( )

**e.** An outline describing the general construction, including interior finishes, acoustical materials, heating, electrical, and ventilation systems; and ( )

**f.** Plans drawn to scale of sufficient size to clearly present the proposed design, but not less than a scale of one-eighth (1/8) inch to one (1) foot. ( )

**05. Working Drawings.** Each ICF/ID must develop working drawings in close cooperation with the Department and other appropriate agencies and receive written Department approval prior to beginning construction. The drawings and specifications must: ( )

**a.** Be well-prepared with accurate dimensions; ( )

**b.** Include all necessary explanatory notes, schedules, and legends; ( )

**c.** Be complete and adequate for contract purposes; and ( )

**d.** Be stamped with the architect's seal. ( )

**06. Inspection.** Each ICF/ID must be inspected and approved by the Department prior to occupancy. The Department must be notified at least six (6) weeks prior to completion of construction to schedule a final inspection. ( )

**07. ICF/ID Regulations.** Each ICF/ID being constructed must meet or exceed construction features that are applicable for all local, state, and national codes. In the event of a conflict in requirements between codes, the most restrictive will apply. ( )

**08. Site Requirements.** Each ICF/ID site location must: ( )

**a.** Be served by an all-weather road kept open to motor vehicles at all times of the year; ( )

**b.** Be accessible to physician, professional, and habilitation services, medical facilities, shopping centers, and population centers where employees may be recruited and retained; ( )

**c.** Be remote from railroads, factories, airports, and similar noise, odor, smoke, dust, or other nuisances; ( )

**d.** Be accessible to public utilities and services such as electrical power, telephone service, and fire protection; ( )

**e.** Have adequate off-street parking available; and ( )

**f.** Comply with homeowner association covenants, conditions, and restrictions. ( )

**732. PHYSICAL FACILITY STANDARDS -- INDIVIDUAL ACCOMODATIONS FOR NEW CONSTRUCTION.**

Each ICF/ID must provide accommodations for each individual that meets the following requirements: ( )

**01. Bedrooms.** Each individual bedroom must be of sufficient size to allow for the following: ( )

**a.** Eighty (80) square feet or more of usable floor space per bed in a multiple-occupancy bedroom; and ( )

**b.** One hundred (100) square feet or more of usable floor space for a single occupancy bedroom. ( )

**02. Multi-Bedrooms.** No more than two (2) individuals can be housed in any multi-bedroom. ( )

**03. Windows.** Each individual's room window area must be no less than eight percent (8%) of the floor area and must be able to open. ( )

**a.** Suitable window shades or drapes must be provided to control lighting in the room. ( )

**b.** Windows must be located to permit an individual to have a view through the windows from a sitting position, allow for natural light, and room ventilation. ( )

**c.** Windows must be constructed to prevent any drafts when closed. ( )

**04. Location of Bedroom.** Each individual's bedroom must be an approved room that is not located: ( )

**a.** In a way that its outside walls are below grade; ( )

**b.** In any attic story; ( )

**c.** In any trailer house; ( )

- d. In any other room not approved; or ( )
- e. In a way that it can only be reached by passing through another individual's room, a utility room, or any other similar rooms. ( )

**05. Bathrooms.** Each ICF/ID must have one (1) toilet, one (1) tub or shower, and one (1) lavatory bowl for every four (4) licensed beds in the facility. Tubs, showers, and lavatory bowls must be connected to hot and cold running water. Toilet and bathing rooms must not be accessed through another individual's sleeping room. ( )

**06. Living and Dining Areas.** Each ICF/ID must provide a minimum of thirty (30) square feet per licensed bed for living, dining, and recreational activities. This area must be for the sole use of individuals, and under no circumstances can these rooms be used as bedrooms by an individual or personnel. A hall or entry is not acceptable as a living room or recreation room. ( )

**07. Closets.** Each individual must have closet space provided in his bedroom that is four (4) square feet or more per licensed bed. When a common closet is used for two (2) individuals, there must be a physical separation for the clothing of each individual. ( )

**733. -- 739. (RESERVED)**

**740. FIRE AND LIFE SAFETY STANDARDS -- EXISTING FACILITY.**

All buildings on the premises of an ICF/ID must meet all the requirements of local, state, and national codes concerning fire and life safety standards that are applicable to ICFs/ID. ( )

**01. General Requirements.** Each ICF/ID must meet the following general requirements for the fire and life safety standards: ( )

a. The facility must be structurally sound and must be maintained and equipped to assure the safety of the individuals who reside there, employees, and the public. ( )

b. On the premises of each facility where natural or man-made hazards are present, suitable fences, guards, and railings must be provided to protect the individuals who reside there, employees, and the public. ( )

**02. Existing Life Safety Code Requirements.** Each ICF/ID must meet provisions of the National Fire Protection Association (NFPA) Standard 101, The Life Safety Code, incorporated in Section 004 of these rules, applicable to an ICF/ID, as specified below: ( )

a. Each existing facility housing sixteen (16) or fewer individuals on a single story must meet the requirements of Chapter 33, Existing Residential Board and Care Occupancies, Small Facilities, Impractical Evacuation Capabilities, specifically the sections found within 33.1, 33.2 and 33.7, and the applicable provisions of Chapters 1 through 10 of the NFPA Standard 101, The Life Safety Code. ( )

b. Existing fire sprinkler systems in a facility are permitted to continue in service until building footprint modifications are made, or a change of ownership, provided the lack of conformity with these standards does not present a serious hazard to the occupants as determined by the authority having jurisdiction. ( )

c. Sprinkler systems for a facility must be connected to the building fire alarm system and be supervised. ( )

d. Sprinkler systems installed in a newly constructed or converted facility must be designed to the standards of NFPA 13, NFPA 13-R or NFPA 13-D. Multipurpose sprinkler and domestic piping systems are prohibited. ( )

**03. Existing Licensed Facilities.** Each existing ICF/ID housing seventeen (17) or more individuals, or any number of individuals residing in multiple story buildings, must meet the requirement of Chapter 19, Existing Health Care Occupancies, Limited Care Facilities, and the applicable provision of Chapters 1 through 10 of the NFPA

Standard 101, The Life Safety Code, incorporated in Section 004 of these rules. ( )

**04. Portable Fire Extinguishers.** Each ICF/ID must have portable fire extinguishers installed throughout the facility in accordance with applicable provisions of NFPA Standard 10, "Portable Fire Extinguishers." ( )

**05. Portable Comfort Space Heating Devices Prohibited.** The use of portable comfort space heating devices of any kind is prohibited in an ICF/ID. ( )

**06. Emergency Battery Operated Lighting.** Each ICF/ID must provide emergency battery-operated lighting for at least the exit passageway lighting, hall lighting, and the fire alarm system, in accordance with NFPA 101, The Life Safety Code, Section 7.9, as incorporated in Section 004 of these rules. ( )

**741. FIRE AND LIFE SAFETY STANDARDS -- EMERGENCY PLANS.**

**01. Emergency Plans for Protection and Evacuation of Individuals.** In cooperation with the local fire authority, the administrator of each ICF/ID must develop a prearranged written plan for employee response for protection of the individuals who reside there and for orderly evacuation of these individuals in case of an emergency. These plans must include procedures to meet all potential emergencies and disasters relevant to the facility, such as fire, severe weather, and missing individuals. ( )

**a.** The written emergency plan for each facility must contain a diagram of the building showing emergency protection equipment, evacuation routes, and exits. This diagram must be conspicuously posted in a common area within the facility. An outline of emergency instructions must be posted with the diagram. ( )

**b.** The facility must communicate the written emergency plan to staff and train staff in the use of the written emergency plan. ( )

**c.** The facility must periodically review the written emergency plan and thoroughly test it to assure rapid and efficient function of the plan. ( )

**d.** The facility must hold unannounced evacuation drills at least quarterly for each shift of personnel for a total of no less than twelve (12) per year. The evacuation drills must be irregularly scheduled throughout all shifts and under varied conditions. At least one (1) drill per shift must be held on a Sunday or holiday. The facility must actually evacuate individuals during at least one (1) drill each year on each shift. ( )

**e.** The facility must document evacuation drills, cite the problems investigated, and take the appropriate corrective action for the identified problems. ( )

**02. Report of Fire.** Each ICF/ID must submit to the Department a separate report of each fire incident that occurs within the facility within thirty (30) days of the occurrence. The facility must use the Department's reporting form, "Facility Fire Incident Report," available online at: <http://www.facilitystandards.idaho.gov>. The facility must provide all specific data concerning the fire including the date, origin, extent of damage, method of extinguishment, and injuries, if any, for each fire incident. A reportable fire incident is when a facility has an incident: ( )

**a.** That causes staff to activate the facility emergency plan in whole or in part; ( )

**b.** That causes an alarm throughout, causing staff or residents to activate the facility emergency plan, in whole, or in part; ( )

**c.** That causes a response by the fire department or emergency services to investigate an alarm or incident; ( )

**d.** That is unplanned in which residents are evacuated, prepared to evacuate, partially evacuated, or protected in place, due to smoke, fire, unknown gases/odors, or other emergency; or ( )

- e. That results in an injury, burn, smoke inhalation, death, or other fire or emergency-related incident. ( )

**03. Maintenance of Equipment.** Each ICF/ID must establish routine test, check, and maintenance procedures for alarm systems, extinguishment systems, and all essential electrical systems. Each facility must meet the following requirements: ( )

- a. The use of any defective equipment on the premises of any facility is prohibited. ( )

b. The administrator of the ICF/ID must have all newly acquired equipment and appliances inspected for safe condition and function prior to use by any individual residing there, employee, or visitor to the facility. ( )

c. The administrator of the ICF/ID must show written evidence of adequate preventive maintenance procedures for equipment directly related to the health and safety of the individuals who reside there. ( )

d. The facility must have the fire alarm system and smoke detection system serviced at least annually by an authorized servicing agency. Servicing must be in accordance with the applicable provision of NFPA Standard 72, The National Fire Alarm Code. ( )

e. The facility's automatic sprinkler systems, if installed, must be serviced at least annually by an authorized servicing agency. Servicing must be in accordance with the applicable provisions of NFPA Standard 25, "Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems." Facilities protected by an NFPA 13D sprinkler system must be serviced and tested annually by an authorized servicing agency to include a visual inspection of all heads, testing of all water flow and tamper devices at a minimum. ( )

f. The facility must have all portable fire extinguishers serviced annually in accordance with the applicable provisions of NFPA Standard 10, "Portable Fire Extinguishers." ( )

g. The facility must establish routine in-house test and check procedures covering alarm systems, extinguishment systems, and essential electrical systems. ( )

**742. -- 749. (RESERVED)**

**750. VEHICLES.**

Each ICF/ID that transports individuals must have a vehicle safety policy that meets the following: ( )

**01. Vehicle Safety Policy Content.** Each ICF/ID must develop, implement, monitor, and maintain a written vehicle safety policy for each vehicle owned, leased, or used that includes: ( )

- a. The establishment of a preventative maintenance program for each vehicle; ( )

- b. Vehicle inspections and other regular maintenance needed to ensure individuals' safety; and ( )

c. Inspection of wheelchair lifts, securing devices, and other devices necessary to ensure individuals' safety. ( )

**02. Motor Vehicle Licensing Requirements.** Each ICF/ID must meet and adhere to all laws, rules, and regulations, including licensing, registration, and insurance requirements applicable to drivers and vehicles for each vehicle type used. ( )

**751. -- 799. (RESERVED)**

**800. DIETETIC SERVICES.**

The requirements of Sections 800 through 899 of these rules are modifications and additions to the requirements of 42 CFR 483.480 - 483.480(d)(5), Condition of Participation: Dietetic Services incorporated in Section 004 of these rules. ( )

**801. PURCHASING AND STORAGE OF FOOD.**

Each ICF/ID must purchase and store food as follows: ( )

**01. Food Source.** Each ICF/ID must obtain all food and drink from an approved source identified in IDAPA 16.02.19, "The Idaho Food Code." ( )

**02. Record of Food Purchases.** At a minimum, each ICF/ID must keep a record of food purchases that includes invoices for the preceding thirty-day (30) period. ( )

**03. Food Supply.** Each ICF/ID must maintain on its premises the following food supplies: ( )

**a.** Staple food items sufficient for a one-week (1) period; and ( )

**b.** Perishable food items sufficient for a two-day (2) period. ( )

**04. Temperature Requirements.** Each refrigerator and freezer must be equipped with a reliable, easily read thermometer to ensure the following guidelines are met: ( )

**a.** Refrigerators must be maintained at forty-one (41°F) degrees Fahrenheit or below; and ( )

**b.** Freezers must be maintained at ten (10°F) degrees Fahrenheit or below. ( )

**802. -- 999. (RESERVED)**

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

**16.03.17 - MEDICARE/MEDICAID COORDINATED PLAN BENEFITS**

**DOCKET NO. 16-0317-1401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is acted on by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202(b), 56-251(2)(c), 56-255(4), and 56-263, Idaho Code; Medicare Prescription Drug Improvement and Modernization Act of 2003, P.L. 108-173, Section 231; and Section 1937 of the Social Security Act.

**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:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the temporary and proposed rule was published in the June 4, 2014, Idaho Administrative Bulletin, [Vol. 14-6, pages 61 through 66](#).

The proposed rulemaking would implement a voluntary managed care plan for adult participants who are eligible for both Medicaid and Medicare, in accordance with the intent of House Bill 260 (2011), now codified under Section 56-263, Idaho Code. The changes in the proposed rulemaking updated the list of Medicaid-only services benefits to include Aged and Disabled Waiver services, prescribed drugs and home and community based services, self-directed community supports, and targeted service coordination for persons with developmental disabilities.

**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:

Since the services are shifting from a fee-for-services to a capitation payment model, these rule changes are intended to be budget-neutral. Therefore, there is no anticipated fiscal impact to the state general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Alexandra Fernandez at (208) 287-1156.

DATED this 16th day of September, 2014.

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

**THE FOLLOWING NOTICE WAS PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**



**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-251(2)(c), 56-255(4), and 56-263, Idaho Code; Medicare Prescription Drug Improvement and Modernization Act of 2003, P.L. 108-173, Section 231; and Section 1937 of the Social Security Act.

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

<b>Tuesday, June 17, 2014 10:00 a.m. (MDT)</b>	<b>Thursday, June 19, 2014 10:00 a.m. (PDT)</b>	<b>Thursday, June 19, 2014 2:00 p.m. (MDT)</b>
<b>Conf. Room D-East &amp; West 3232 Elder Street Boise, ID 83705</b>	<b>3rd Floor Conf. Room 1118 "F" Street Lewiston, ID 83501</b>	<b>2nd Floor Large Conf. Room 150 Shoup Avenue Idaho Falls, ID 83402</b>

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:

This rulemaking is needed to implement a managed care plan for participants who are dually eligible, in accordance with the intent of House Bill 260 (2011), now codified under Section 56-263, Idaho Code. The changes in this rulemaking update the list of Medicaid-only services benefits to include Aged and Disabled Waiver services, prescribed drugs and home and community based services, self-directed community supports, and targeted service coordination for persons with developmental disabilities.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate since the Medicare-Medicaid Coordinated Plan (MMCP), as described in this chapter, is being amended to include additional benefits. These benefits include Aged and Disabled Waiver services, prescribed drugs and home and community based services, self-directed community supports, and targeted service coordination for persons with developmental disabilities.

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

**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:

Since the services are shifting from a fee-for-services to a capitation payment model, these rule changes are intended to be budget-neutral. Therefore, there is no anticipated fiscal impact to the state general fund.

**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 2, 2014, Idaho Administrative Bulletin, [Vol. 14-4, page 15](#).

**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 temporary and proposed rule, contact Alexandra Fernandez at (208) 287-1156.

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 June 25, 2014.

DATED this 19th day of May, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0317-1401

**010. DEFINITIONS.**

For the purposes of this chapter of rules, the following definitions are used: (4-2-08)

**01. Capitated Payment.** The amount paid to a Medicare Advantage Organization for Medicare/Medicaid Coordinated Plan services as expressed in a per member per month amount. (4-2-08)

**02. Department.** The Idaho Department of Health and Welfare or a person authorized to act on behalf of the Department. (4-2-08)

**03. Dual-Eligible.** Individuals who meet all the eligibility requirements under Section 100 of these rules. (4-2-08)

**04. Evidence of Coverage.** The Medicare Advantage Plan contract the MAO has with the participant. This document explains the covered services, including services included in Medicare Parts A, B, and D. It also defines the Medicare Advantage Plan obligations, and explains the participant's rights and responsibilities. (4-2-08)( )

**05. Medicare.** Medicare is a federal health insurance program for people age sixty-five (65) or older, people under age sixty-five (65) with certain disabilities, and people of all ages with End-Stage Renal Disease. It has three (3) types of coverage: Part A Hospital Insurance, Part B Medical Insurance, and Prescription Drug Coverage. It is administered under Title XVIII of the Social Security Act. (4-2-08)

**06. Medicare Advantage Organizations (MAOs).** Insurance companies approved by the Centers for Medicare/Medicaid Services to offer Medicare Advantage Plans in accordance with Title XVIII, Part C, of the Social Security Act and 42 CFR, Part 422, which include those services available under Medicare Parts A, B, and D, and who are Medicaid providers authorized to enroll participants in the Medicare/Medicaid Coordinated Plan. (4-2-08)( )

**07. Medicare Advantage Plan.** A health plan approved by Medicare but offered by a private company that contracts with Medicare to provide Medicare Part A, Part B, and Part D benefits. The Medicare Advantage Plan under this chapter is a special integrated plan offered by participating MAOs that includes the services listed under Section 301 of these rules a benefit package in its "Evidence of Coverage" approved by CMS. (4-2-08)( )

**08. Medicare/Medicaid Coordinated Plan (MMCP).** Medical assistance in which Medicaid purchases services from an MAO and provides other Medicaid-only services covered under the Medicaid Basic Plan or the Medicaid Enhanced Plan in accordance with these rules. (4-2-08)( )

**09. Medicaid.** Idaho's Medical Assistance program administered under Title XIX of the Social Security Act. (4-2-08)

**10. Medicaid Basic Plan.** The medical assistance benefits included under IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (4-2-08)

**11. Medicaid Enhanced Plan.** The medical assistance benefits included under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (4-2-08)

12. Medical Assistance. Payments made by Medicaid. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**102. MEDICARE/MEDICAID COORDINATED PLAN (MMCP): PARTICIPANT RESPONSIBILITIES.**

Participants who select the MMCP must comply with the following requirements: (4-2-08)

**01. Selecting the Medicare/Medicaid Coordinated Plan.** The participant must contact a participating MAO and request to sign up for the MMCP. Participation in the MMCP begins the month following the month the participant signs an application for the Medicare Advantage Plan that includes MAO-covered services listed under Section 301 of these rules in its "Evidence of Coverage." (4-2-08)(\_\_\_\_)

**02. Compliance with Medicare Advantage Organization Requirements.** The participant must comply with all of the requirements of the participating MAO, including the requirement to pay for services provided by out-of-network providers. Out-of-network providers are those who do not have a contract with the MAO with which the participant is enrolled. (4-2-08)

- 03. Notification to the Provider.** (4-2-08)

**a.** The participant must present his Medicare Advantage card when seeking any of the services listed under Section 301 of these rules in the MAO's "Evidence of Coverage." (4-2-08)(\_\_\_\_)

**b.** The participant must present his Medicaid card when seeking any of the Medicaid-covered services listed under Section 302 of these rules in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," or IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (4-2-08)(\_\_\_\_)

**04. Termination of the Medicare/Medicaid Coordinated Plan.** The participant can terminate his MMCP at any time. Coverage will continue until the end of the month in which the termination date falls. The participant will subsequently be automatically reenrolled in the Medicaid benefit plan, either Basic or Enhanced, in which they were initially enrolled. (4-2-08)

103. -- 199. (RESERVED)

**GENERAL PROVIDER PROVISIONS MAO CONTRACT REQUIREMENT**  
(Sections 200 Through 299)

**200. PROVIDER APPLICATION PROCESS CONTRACT WITH MEDICAID.**  
A prospective provider may apply for a provider number with the Department as described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 200. Any MAO seeking to offer MMCP services must have a contract with the State Medicaid agency. An MAO retains responsibility under the contract for providing benefits, or arranging for benefits to be provided, for individuals entitled to receive medical assistance under Title XIX. (4-2-08)(\_\_\_\_)

201. -- ~~204.~~ (RESERVED)

**~~205. AGREEMENTS WITH PROVIDERS.~~**  
~~All provisions of IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205, apply to providers of services under the MMCP.~~ (4-2-08)

- ~~206. -- 209.~~ (RESERVED)

**~~210. CONDITIONS FOR PAYMENT.~~**  
~~All provisions of IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 210, apply to providers of services under~~

~~the MMCP.~~

~~(4-2-08)~~

~~211.—299. (RESERVED)~~

**COVERED SERVICES**  
**(Sections 300 Through 303~~1~~)**

**300. MEDICARE/MEDICAID COORDINATED PLAN (MMCP): COVERAGE AND LIMITATIONS.**

Medicare Advantage Plans and Medicaid are subject to applicable federal managed care requirements that provide participant protections regarding acceptable marketing activities, information regarding cost sharing, quality assurance, grievance systems, and participant rights. (4-2-08)

**01. MMCP-Covered Services.** The MMCP-covered services include the following: (4-2-08)

**a. MAO-Covered Services.** Services covered by the MAO as listed ~~under Section 301 of these rules~~ in its “Evidence of Coverage.” The MAO may limit or expand the scope of services as defined in the “Evidence of Coverage.” MAO-covered services, including Medicare Parts A, B, and D benefits, are detailed in the MMCP contract. (4-2-08)(~~\_\_\_\_\_~~)

**b. Medicaid-Only Services.** Services listed under ~~Section 302 of these rules~~ IDAPA 16.03.09, “Medicaid Basic Plan Benefits,” or IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” provided by Medicaid providers that are not MAOs. Medicaid may cover additional services that are not included in the MAO’s “Evidence of Coverage.” (4-2-08)(~~\_\_\_\_\_~~)

**02. Services Excluded from the MMCP.** Services not ~~listed under Sections 301 or 302 of these rules~~ included in the MAO “Evidence of Coverage” or listed under the IDAPA 16.03.09, “Medicaid Basic Plan Benefits,” or IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” are not covered under the MMCP. (4-2-08)(~~\_\_\_\_\_~~)

**03. Premiums and Cost-Sharing.** The participant will not pay for any premiums or cost-sharing when covered under the MMCP, except as provided under Subsection 102.02 of these rules. (4-2-08)

~~**301. MAO COVERED SERVICES.**~~

~~Under the MMCP, an MAO must cover, at a minimum, the following services:~~

~~(4-2-08)~~

~~01. Inpatient Hospital Services.~~

~~(4-2-08)~~

~~02. Outpatient Hospital Services.~~

~~(4-2-08)~~

~~03. Emergency Room Services.~~

~~(4-2-08)~~

~~04. Ambulatory Surgical Center Services.~~

~~(4-2-08)~~

~~05. Physician Services.~~

~~(4-2-08)~~

~~06. Other Practitioner Services (Nurse Practitioner, Nurse Midwife, Chiropractor, Podiatrist, Physician Assistant).~~

~~(4-2-08)~~

~~07. Prevention Services (Adult Physicals, Screening Services).~~

~~(4-2-08)~~

~~08. Laboratory and Radiological Services.~~

~~(4-2-08)~~

~~09. Prescribed Drugs (Medicare Covered Drugs).~~

~~(4-2-08)~~

~~10. Family Planning Services.~~

~~(4-2-08)~~

~~11. Inpatient Psychiatric Services.~~

~~(4-2-08)~~

- ~~12. Outpatient Mental Health Services. (4-2-08)~~
- ~~13. Home Health Care. (4-2-08)~~
- ~~14. Therapy Services. (4-2-08)~~
- ~~15. Speech, Hearing, and Language Services. (4-2-08)~~
- ~~16. Medical Equipment and Supplies. (4-2-08)~~
- ~~17. Prosthetic Devices. (4-2-08)~~
- ~~18. Vision Services. (4-2-08)~~
- ~~19. Dental Services. (4-2-08)~~
- ~~20. Primary Care Case Management. (4-2-08)~~
- ~~21. Prevention and Health Assistance Benefits. (4-2-08)~~
- ~~22. Medicare Part D Excluded Drugs Covered by Medicaid. (4-2-08)~~
- ~~23. Specialized Medical Equipment and Supplies. (4-2-08)~~
- ~~24. Dentures. (4-2-08)~~
- ~~25. Rural Health Clinic Services. (4-2-08)~~
- ~~26. Federally Qualified Health Center (FQHC) Services. (4-2-08)~~
- ~~27. Indian Health Clinic Services. (4-2-08)~~
- ~~302. MEDICAID ONLY SERVICES.  
Medicaid will cover the following services only if the MAO's "Evidence of Coverage" does not cover them: (4-2-08)~~
- ~~01. Psychosocial Rehabilitation (PSR). IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 123 through 146. (4-2-08)~~
- ~~02. Nursing Facility Services. IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 220 through 296. (4-2-08)~~
- ~~03. Personal Care Services (PCS). IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 300 through 308. (4-2-08)~~
- ~~04. Non-Emergency Transportation Services. IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 870 through 875. (4-2-08)~~
- ~~05. Home and Community Based (HCBS) Waiver Services. IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 326 and 703. (4-2-08)~~
- ~~06. Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID). IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 581 through 632. (4-2-08)~~
- ~~07. Developmental Disability Agency (DDA) Services. IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 650 through 656. (4-2-08)~~

**3031. MEDICARE/MEDICAID COORDINATED PLAN BENEFITS: PROVIDER REIMBURSEMENT.**

Each provider must apply for and be approved as a Medicaid provider under the MMCP before it can be reimbursed.  
(4-2-08)

**01. Medicaid-Only Service Providers.** Medicaid-only service providers are reimbursed according to the reimbursement methodology in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," related to the Medicaid-only service. Medicaid-only service providers are also subject to the General Provider Provisions under IDAPA 16.03.09, "Medicaid Basic Plan Benefits."  
(4-2-08)

**02. Medicare Advantage Organizations.** Each MAO will be paid a monthly per member per month (PMPM) rate that is defined in the [Medicaid Provider Agreement MAO contract](#). The MAO is responsible for submitting a monthly invoice to the Department in the Department-specified electronic format. This invoice must include the name of the Medicaid participant, the Medicaid ID number, and the time frame of coverage. The PMPM rate paid to the MAO includes the participant's Medicare premium, any cost-sharing required by the MAO, and the services listed [under Section 301 of these rules](#) in its "Evidence of Coverage."  
(4-2-08)( )

**3042. -- 999. (RESERVED)**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.22 - RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES IN IDAHO**  
**DOCKET NO. 16-0322-1401**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. In accordance with Section 67-5224(5)(a) and (b), Idaho Code, and as specified herein, the pending rule becomes final and of full force and effect on July 1, 2015, after review by the legislature, unless the rule is rejected by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code.

**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 39-3305, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The proposed text is being amended to clarify that training is needed, when policies and procedures are added, modified or deleted. A formatting change to the rule was made by adding a 3-numbered section for clarification of training needs. The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the August, 6, 2014, Idaho Administrative Bulletin, [Vol. 14-8, pages 46 through 69](#).

**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:

There is no anticipated fiscal impact to the state general fund or to any other funds due to this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Jamie Simpson at (208) 334-1962.

DATED this 21st Day of November, 2014.

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

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 39-3305, 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 20, 2014.

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 ensure the health and safety of residents living in residential care or assisted living facilities, these rules providing the licensing requirements and standards of care are being updated. Assisted living facility operators have requested operational relief for some of the standards and requirements, and the Department has negotiated with these facilities to streamline its licensing process to meet best practice and current technology standards while maintaining the residents' health and safety. The changes add definitions, allow and provide the requirements and enforcement for a plan of operation for an administrator of multiple facilities, and provides options for facilities around availability of employees to work prior to receiving a Department criminal history clearance, while maintaining resident safety.

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

**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 anticipated fiscal impact to the state general fund or to any other funds due to this rulemaking.

**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 7, 2014, Idaho Administrative Bulletin, **Vol. 14-5, pages 64 and 65.**

**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 Jamie Simpson at (208) 334-1962.

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 27, 2014.

DATED this 14th day of August, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0322-1401**

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

**01. Criminal History and Background Check.** A residential care or assisted living facility must complete a criminal history and background check on employees and contractors hired or contracted with after October 1, 2007, who have direct patient access to residents in the residential care or assisted living facility. The Department check conducted under IDAPA 16.05.06, "Criminal History and Background Checks," satisfies this requirement. Other criminal history and background checks may be acceptable provided they meet the criteria in Subsection 009.02 of this rule and the entity conducting the check issues written findings. The entity must provide a copy of these written findings to both the facility and the employee. (3-26-08)



**02. Scope of a Criminal History and Background Check.** The criminal history and background check must, at a minimum, be fingerprint-based and include a search of the following record sources: (3-26-08)

- a. Federal Bureau of Investigation (FBI); (3-26-08)
- b. Idaho State Police Bureau of Criminal Identification; (3-26-08)
- c. Sexual Offender Registry; (3-26-08)
- d. Office of Inspector General List of Excluded Individuals and Entities; and (3-26-08)
- e. Nurse Aide Registry. (3-26-08)

**03. Availability to Work.** Any direct patient access individual hired or contracted with on or after October 1, 2007, must self-disclose all arrests and convictions before having access to residents. ( )

**a.** The individual is allowed to only work under supervision until the criminal history and background check is completed, ~~unless:~~ ( )

**i.** The individual has completed an alternative criminal history and background check that includes a search of the record sources listed in Subsections 009.02.b. through 009.02.e. of this rule; and ( )

**ii.** The facility determines there is no potential danger to residents. ( )

**b.** This alternative criminal history and background check is only in effect until the Department has issued a clearance or denial based on the Department's completed fingerprint based background check. ( )

**c.** If a disqualifying crime ~~as~~ described in IDAPA 16.05.06, "Criminal History and Background Checks," is disclosed, the individual cannot have access to any resident. (~~3-26-08~~)( )

**04. Submission of Fingerprints.** The individual's fingerprints must be submitted to the entity conducting the criminal history and background check within twenty-one (21) days of his date of hire. (3-26-08)

**05. New Criminal History and Background Check.** An individual must have a criminal history and background check when: (3-26-08)

- a. Accepting employment with a new employer; and (3-26-08)
- b. His last criminal history and background check was completed more than three (3) years prior to his date of hire. (3-26-08)

**06. Use of Previous Criminal History and Background Check.** Any employer may use a previous criminal history and background check obtained under these rules if: (3-26-08)

- a. The individual has received a criminal history and background check within three (3) years of his date of hire; (3-26-08)
- b. The employer has documentation of the criminal history and background check findings; (3-26-08)
- c. The employer completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal Identification; and (3-26-08)
- d. No disqualifying crimes are found. (3-26-08)

**07. Employer Discretion.** The new employer, at its discretion, may require an individual to complete a criminal history and background check at any time, even if the individual has received a criminal history and background check within three (3) years of his date of hire. (3-26-08)

**010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.**

**01. Abuse.** The non-accidental act of sexual, physical or mental mistreatment, or injury of a resident through the action or inaction of another individual. (3-30-06)

**02. Accident.** An unexpected, unintended event that can cause a resident injury. (3-30-06)

**03. Activities.** All organized and directed social and rehabilitative services a facility provides, arranges, or cooperates with. (3-30-06)

**04. Activities of Daily Living.** The performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment, including bathing, washing, dressing, toileting, grooming, eating, communicating, continence, and mobility. (3-30-06)

**05. Administrator.** An individual, properly licensed by the Bureau of Occupational Licensing, who is responsible for day to day operation of a residential care or assisted living facility. (3-30-06)

**06. Administrator's Designee.** An administrator's designee is a person authorized to act in the absence of the administrator and who is knowledgeable of facility operations, the residents and their needs, emergency procedures, the location and operation of emergency equipment and how the administrator can be reached in the event of an emergency. ( )

**067. Adult.** A person who has attained the age of eighteen (18) years. (3-30-06)

**078. Advance Directive.** A written instruction, such as a living will or durable power of attorney for health care, recognized under State Law, whether statutory or as recognized by the courts of the State, and relates to the provision of medical care when the individual is unable to communicate. (3-30-06)

**089. Advocate.** An authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a population group served by a facility. (3-30-06)

**109. Ambulatory Person.** A person who, unaided by any other person, is physically and mentally capable of walking a normal path to safety, including the ascent and descent of stairs. (3-30-06)

**101. Assessment.** The conclusion reached using uniform criteria which identifies resident strengths, weaknesses, risks and needs, to include functional, medical and behavioral needs. (3-30-06)

**112. Authentication.** Proof of authorship. (3-30-06)

**123. Authorized Provider.** An individual who is a nurse practitioner or clinical nurse specialist or physician assistant. (3-30-06)

**134. Basement.** That portion of a building that is partly or completely below grade plane. A basement will be considered as a story above grade plane where the finished surface of the floor above the basement is: (1) More than six (6) feet (1829 mm) above grade plane; (2) More than six (6) feet (1829 mm) above the finished ground level for more than fifty percent (50%) of the total building perimeter; or (3) More than twelve (12) feet (3658 mm) above the finished ground level at any point. International Building Code-2003. (3-30-06)

**145. Behavioral Plan.** A written plan which decreases the frequency or intensity of maladaptive behaviors and increases the frequency of adaptive behaviors and introduces new skills. (3-30-06)

**156. Call System.** A signaling system whereby a resident can contact staff directly from their sleeping room, toilet room, and bathing area. The system may be voice communication; an audible or visual signal; and, may include wireless technology. The call system cannot be configured in such a way as to breach a resident's right to privacy at the facility, including but not limited to, the resident's living quarters, common areas, medical treatment and other services, written and telephonic communications, or in visits with family, friends, advocates, and resident

groups. (3-29-10)

**167. Chemical Restraint.** A medication used to control behavior or to restrict freedom of movement and is not a standard treatment for the resident's condition. (3-30-06)

**178. Client of the Department.** Any person who receives financial aid, or services, or both from an organized program of the Department. (3-30-06)

**189. Complaint.** A formal expression of dissatisfaction, discontent, or unhappiness by or on behalf of a resident concerning the care or conditions at the facility. This expression could be oral, in writing, or by alternative means of communication. (3-30-06)

**1920. Complaint Investigation.** A survey to investigate the validity of allegations of noncompliance with applicable state requirements. (3-30-06)

**201. Core Issue.** A core issue is any one (1) of the following: abuse; neglect; exploitation; inadequate care; a situation in which the facility has operated for more than thirty (30) days without a licensed administrator designated the responsibility for the day to day operations of the facility; inoperable fire detection or extinguishing systems with no fire watch in place pending the correction of the system; or surveyors denied access to records, residents or facilities. (3-30-06)

**212. Criminal Offense.** Any crime as defined in Section 18-111, Idaho Code, in 18 U.S.C. Section 4A1.2(o), and 18 U.S.C. Sections 1001 through 1027. (3-30-06)

**223. Deficiency.** A determination of non-compliance with a specific rule or part of a rule. (3-30-06)

**234. Dementia.** A chronic deterioration of intellectual function and other cognitive skills severe enough to interfere with the ability to perform activities of daily living and instrumental activities of daily living. (3-30-06)

**245. Department.** The Idaho Department of Health and Welfare. (3-30-06)

**256. Developmental Disability.** A developmental disability, as defined in Section 66-402, Idaho Code, means chronic disability of a person which appears before the age of twenty-two (22) years of age and: (3-30-06)

**a.** Is attributable to an impairment, such as an intellectual disability, cerebral palsy, epilepsy, autism, or other conditions found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and (3-30-06)

**b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity of independent living, or economic self-sufficiency; and (3-30-06)

**c.** Reflects the need for a combination and sequence of special, interdisciplinary or direct care, treatment or other services which are of life-long or extended duration and individually planned and coordinated. (3-30-06)

**267. Director.** The Director of the Idaho Department of Health and Welfare or his designee. (3-30-06)

**278. Electronic Signature, E-Signature.** The system for signing electronic documents by entering a unique code or password that verifies the identity of the person signing and creates an individual "signature" on the record. (3-30-06)

**289. Exit Conference.** A meeting with the facility administrator or designee to: (1) provide review, discussion and written documentation of non-core issues (Punch List), and (2) to provide preliminary findings of core issues. (3-30-06)

**2930. Exploitation.** The misuse of a resident's funds, property, resources, identity or person for profit or

advantage, for example: (3-29-10)

- a. Charging a resident for services or supplies not provided; or (3-29-10)
- b. Charging a resident for services or supplies not disclosed in the written admission agreement between the resident and the facility. (3-29-10)

**011. DEFINITIONS AND ABBREVIATIONS F THROUGH M.**

**01. Follow-Up Survey.** A survey conducted to confirm that the facility is in compliance and has the ability to remain in compliance. (3-30-06)

**02. Functional Abilities Assessment.** An assessment of the resident's degree of independence with which the resident performs activities of daily living and instrumental activities of daily living. (3-30-06)

**03. Governmental Unit.** The state, any county, municipality, or other political subdivision or any Department, division, board, or other agency thereof. (3-30-06)

**04. Grade Plane.** A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane will be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six (6) feet (1829 mm) from the building, between the building and a point six (6) feet (1829 mm) from the building. International Building Code - 2003. (3-30-06)

**05. Hands On.** Physical assistance to the resident beyond verbal prompting. (3-30-06)

**06. Hourly Adult Care.** Nonresident daily services and supervision provided by a facility to individuals who are in need of supervision outside of their personal residence for a portion of the day. (3-30-06)

**07. Immediate Danger.** Any resident is subject to an imminent or substantial danger. (3-30-06)

**08. Inadequate Care.** When a facility fails to provide the services required to meet the terms of the Negotiated Service Agreement, or provide for room, board, activities of daily living, supervision, first aid, assistance and monitoring of medications, emergency intervention, coordination of outside services, a safe living environment, or engages in violations of resident rights or takes residents who have been admitted in violation of the provisions of Section 39-3307, Idaho Code. (3-30-06)

**09. Incident.** An event that can cause a resident injury. (3-30-06)

**10. Incident, Reportable.** A situation when a facility is required to report information to the Licensing and Certification Unit. (3-29-10)

a. Resident injuries of unknown origin. This includes any injury, the source of which was not observed by any person or the source of the injury could not be explained by the resident; or the injury includes severe bruising on the head, neck, or trunk, fingerprint bruises anywhere on the body, laceration, sprains, or fractured bones. Minor bruising and skin tears on the extremities need not be reported. (3-30-06)

b. Resident injury resulting from accidents involving facility-sponsored transportation. Examples: falling from the facility's van lift, wheel chair belt coming loose during transport, or an accident with another vehicle. (3-30-06)

c. Resident elopement of any duration. Elopement is when a resident who is unable to make sound decisions physically leaves the facility premises without the facility's knowledge. (3-30-06)

d. An injury due to resident-to-resident incident. (3-30-06)

e. An incident that results in the resident's need for hospitalization, treatment in a hospital emergency

room, fractured bones, IV treatment, dialysis, or death. (3-30-06)

**11. Independent Mobility.** A resident's ability to move about freely of their own choice with or without the assistance of a mobility device such as a wheelchair, cane, crutches, or walker. (3-30-06)

**12. Instrumental Activities of Daily Living.** The performance of secondary level of activities that enables a person to live independently in the community, including preparing meals, access to transportation, shopping, laundry, money management, housework, and medication management. (3-30-06)

**13. Legal Guardian or Conservator.** A court-appointed individual who manages the affairs or finances or both of another who has been found to be incapable of handling his own affairs. (3-30-06)

**14. License.** A permit to operate a facility. (3-30-06)

**15. Licensing and Certification Unit.** The ~~section of the~~ Department's **Division of Licensing and Certification** is responsible for licensing and surveying residential care or assisted living facilities. **In this chapter of rules, "Licensing and Certification Unit" and "Licensing and Survey Agency" are synonymous.** (3-29-10)( )

**16. Medication.** Any substance or drug used to treat a disease, condition, or symptom, which may be taken orally, injected, or used externally and is available through prescription or over-the-counter. (3-30-06)

**17. Medication Administration.** It is a process where a prescribed medication is given to a resident by one (1) of several routes by licensed nurses. (3-30-06)

**18. Medication Assistance.** The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a person who cannot independently self-administer medications. IDAPA 23.01.01. "Rules of the Idaho State Board of Nursing," Section 010. (3-30-06)

**19. Medication Dispensing.** The act of filling, labeling and providing a prescribed medication to a resident. (3-30-06)

**20. Medication, Self-Administration.** The act of a resident taking a single dose of his own medication from a properly labeled container and placing it internally in, or externally on, his own body as a result of an order by a authorized provider. (3-30-06)

**21. Mental Disorders.** Health conditions that are characterized by alterations in thinking, mood or behavior (or some combination thereof), that are all mediated by the brain and associated with distress and or impaired functioning. (3-30-06)

**22. Mental Illness.** Refers collectively to all diagnosable mental disorders. (3-30-06)

**23. Monitoring Visit.** A visit by a representative of the Licensing and Certification Unit for the purpose of assuring residents are not in immediate danger. (3-29-10)

**24. Neglect.** Failure to provide food, clothing, shelter, or medical care necessary to sustain the life and health of a resident. (3-30-06)

**25. Negotiated Service Agreement.** The plan reached by the resident and/or their representative and the facility based on the assessment, physician or authorized provider's orders, admission records, and desires of the resident, and which outlines services to be provided and the obligations of the facility and the resident. (3-30-06)

**26. Non-Core Issue.** Any finding of deficiency that is not a core issue. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**110. FACILITY LICENSE APPLICATION.**

**01. Facility License.** License application forms are available upon written request or online at the Licensing and Survey Agency's website at <http://www.facilitystandards.idaho.gov>. The applicant must provide the following information: (3-30-06)

**a.** A written statement that the applicant has thoroughly read and reviewed the statute, Title 39, Chapter 33, Idaho Code, and IDAPA 16.03.22, "Rules for Residential Care or Assisted Living Facilities in Idaho," and is prepared to comply with both; (3-30-06)

**b.** The applicant must provide a written statement and documentation that ~~discloses any~~ demonstrate ~~no~~ license revocation or other ~~disciplinary~~ enforcement action has been taken or is in the process of being taken, against a license held or previously held by the ~~entity~~ applicant in Idaho or any other state or jurisdiction; (3-30-06)( )

**c.** When the applicant is a firm, association, organization, partnership, business trust, corporation, government entity, or company, the administrator and other members of the organization ~~who provide direct resident care or~~ who directly influence the facility's operation must provide the information contained in Subsections 110.01.a. and 110.01.b. of these rules. (3-30-06)( )

**d.** Each shareholder or investor holding ten percent (10%) or more interest in the business must be listed on the application; (3-30-06)

**e.** A copy of the Certificate of Assumed Business Name from Secretary of State of Idaho; (3-30-06)

**f.** A statement from the local fire authority that the facility is located in a lawfully constituted fire district or affirmation that a lawfully constituted fire authority will respond to a fire at the facility; (3-30-06)

**g.** A statement from a licensed electrician or the local or state electrical inspector that all wiring in the facility complies with current electrical codes; (3-30-06)

**h.** When the facility does not use an approved municipal water or sewage treatment system, a statement from a local environmental health specialist with the public health district indicating that the water supply and sewage disposal system meet the Department's requirements and standards; (3-30-06)

**i.** A complete set of printed operational policies and procedures as described in Sections 150 through 162 of these rules. (3-30-06)

**j.** A detailed floor plan of the facility, including measurements of all rooms, or a copy of architectural drawings must be submitted for evaluation by the Licensing and Survey Agency. See Sections 250-260, 400-410, and 430 of these rules. (3-30-06)

**k.** A copy of the Purchase Agreement, Lease Agreement, or Deed. (3-30-06)

**l.** For facilities with nine (9) beds or more, signatures must be obtained from the following: (3-30-06)

**i.** The local zoning official documenting that the facility meets local zoning codes for occupancy; (3-30-06)

**ii.** The local building official documenting that the facility meets local building codes for occupancy; (3-30-06)

and

**iii.** The local fire official documenting that the facility meets local fire codes for occupancy. (3-30-06)

**02. Written Request for Building Evaluation.** The applicant must request in writing to the Licensing and Survey Agency for a building evaluation of existing buildings. The request must include the physical address of the building that is to be evaluated; the name, address, and telephone number of the person who is to receive the

building evaluation report. (3-30-06)

**03. Building Evaluation Fee.** This application and request must be accompanied by a five hundred dollar (\$500) initial building evaluation fee. (3-30-06)

**04. Identification of the Licensed Administrator.** The applicant must provide the following information for the licensed administrator: (3-30-06)

a. A copy of the administrator license; (3-30-06)

b. A current primary residence of the administrator. (3-30-06)

**05. Failure to Complete Application Process.** Failure of the applicant to complete the Licensing and Survey Agency's application process within six (6) months, of the original date of application, may result in a denial of the application. If the application is denied the applicant is required to initiate a second licensing process. (3-30-06)

**111. -- 114. (RESERVED)**

**115. EXPIRATION AND RENEWAL OF LICENSE.**

**01. Application for License Renewal.** The facility must submit a Licensing and Survey Agency application for renewal of a license at least thirty (30) days prior to the expiration of the existing license. (3-30-06)

**02. Existing License.** The existing license, unless suspended, surrendered, or revoked, remains in force and effect until the Licensing and Survey Agency has acted upon the application renewal, when such application for renewal has been filed. ~~(3-30-06)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**126. EFFECT OF ENFORCEMENT ACTION AGAINST A LICENSE.**

The Department will not review an application of an applicant who has an action, either current or in process, against a license held by the applicant either in Idaho or any other state or jurisdiction. ( )

~~126~~7. -- 129. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**152. ADMISSION POLICIES.**

**01. Admissions.** Each facility must develop written admission policies and procedures. The written admission policy must include; (3-30-06)

a. The purpose, quantity and characteristics of available services; (3-30-06)

b. Any restrictions or conditions imposed because of religious or philosophical reasons. (3-30-06)

c. Limitations concerning delivery of routine personal care by persons of the opposite gender. (3-30-06)

d. Notification of any residents who are on the sexual offender registry and who live in the facility. The registry may be accessed online at [http://isp.idaho.gov/sor\\_id/search.html](http://isp.idaho.gov/sor_id/search.html). (3-30-06)

- e. Appropriateness of placement to meet the needs of the resident, when there are non resident adults or children residing in the facility. (3-30-06)
- 02. Fee Description.** A written description of how fees will be handled by the facility. (3-30-06)
- 03. Resident Funds Policies.** When a resident's funds are deposited with the facility or administrator, the facility must manage the residents' funds as provided in Sections 39-3316 (1), (5) & (6), Idaho Code, and Section 505 and Subsections 550.05 and 550.06 of these rules. Each facility must develop written policies and procedures outlining how residents' funds will be handled. (3-30-06)
- a. A statement if the facility does not manage resident funds. (3-30-06)
- b. If the facility manages resident funds, how funds are handled and safeguarded. (3-30-06)
- 04. Resident Admission, Discharge, and Transfer.** The facility must have policies addressing admission, discharge, and transfer of residents to, from, or within the facility. (3-30-06)
- 05. Policies of Acceptable Admissions.** Written descriptions of the conditions for admitting residents to the facility must include: (3-30-06)
- a. A resident will be admitted or retained only when the facility has the capability, capacity, and services to provide appropriate care, or the resident does not require a type of service for which the facility is not licensed to provide or which the facility does not provide or arrange for, or if the facility does not have the personnel, appropriate in numbers and with appropriate knowledge and skills to provide such services; (3-30-06)
- b. No resident will be admitted or retained who requires ongoing skilled nursing or care not within the legally licensed authority of the facility. Such residents include: (3-30-06)
- i. A resident who has a gastrostomy tube, arterial-venous (AV) shunts, or supra-pubic catheter inserted within the previous twenty-one (21) days; (3-30-06)
- ii. A resident who is receiving continuous total parenteral nutrition (TPN) or intravenous (IV) therapy; (3-30-06)
- iii. A resident who requires physical restraints, including bed rails, an exception is a chair with locking wheels or chair in which the resident can not get out of; (3-30-06)
- iv. A resident who is comatose, except for a resident who has been assessed by a physician or authorized provider who has determined that death is likely to occur within fourteen (14) to thirty (30) days; (3-30-06)
- v. A resident who is on a mechanically supported breathing system, except for residents who use ~~CPAP, (continuous positive airway pressure)~~ devices only for sleep apnea, such as CPAP or BiPAP; ~~(3-30-06)~~ ( )
- vi. A resident who has a tracheotomy who is unable to care for the tracheotomy independently; (3-30-06)
- vii. A resident who is fed by a syringe; (3-30-06)
- viii. A resident with open, draining wounds for which the drainage cannot be contained; (3-30-06)
- ix. A resident with a Stage III or IV pressure ulcer; (3-30-06)
- x. A resident with any type of pressure ulcer or open wound that is not improving bi-weekly; (3-30-06)
- ~~xi. A resident who has MRSA (methicillin resistant staphylococcus aureus) in an active stage~~



~~(infective stage).~~

~~(3-30-06)~~

c. For any resident who has needs requiring a nurse, the facility must assure a licensed nurse is available to meet the needs of the resident. (3-30-06)

d. A resident will not be admitted or retained who has physical, emotional, or social needs that are not compatible with the other residents in the facility; (3-30-06)

e. A resident that is violent or a danger to himself or others; (3-30-06)

f. Any resident requiring assistance in ambulation must reside on the first story unless the facility complies with Sections 401 through 404 of these rules; (3-30-06)

g. Residents who are not capable of self evacuation must not be admitted or retained by a facility which does not comply with the NFPA Standard #101, "Life Safety Code, 2000 Edition, Chapter 33, Existing Residential Board and Care Impracticable Evacuation Capability;" and (3-30-06)

~~h. Until July 1, 2010, Waivered Level 3 Small Facilities will be exempt from complying with the requirements under Subsection 152.05.g. of this rule, including the requirement to have at least a residential fire sprinkler system. On July 1, 2010, all Waivered Level 3 Small Facilities that admit or retain residents who are incapable of self-evacuation will be required to comply with the requirements under Subsection 152.05.g. of this rule. This includes being equipped with at least an operable residential fire sprinkler system. Any facility sold prior to July 1, 2010, must meet the requirements under Subsection 403.03 of these rules before a new license will be issued.~~

~~(3-30-07)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**215. REQUIREMENTS FOR A FACILITY ADMINISTRATOR.**

Each facility must be organized and administered under one (1) licensed administrator assigned as the person responsible for the operation of the facility. Multiple facilities under one (1) administrator may be allowed by the Department based on an approved plan of operation described in Section 216 of these rules. ~~(3-30-06)~~( )

**01. Administrator Responsibility.** The administrator is responsible for assuring that policies and procedures required in Title 39, Chapter 33, Idaho Code and IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho" are implemented. (3-30-06)

**02. Availability of Administrator.** The facility's administrator must be on site sufficiently to provide for safe and adequate care of the residents to meet the terms in the Negotiated Service Agreement. The facility's administrator or his designee must be available to be on-site at the facility within two (2) hours. (3-30-06)

**03. Thirty Day Operation Limit.** The facility may not operate for more than thirty (30) days without a licensed administrator. (3-30-06)

**04. Representation of Residents.** The owner or administrator, ~~his~~ their relatives, or employees cannot act as or seek to become the legal guardian of, or have power of attorney for any resident. Specific limited powers of attorney to address emergency procedures where competent consent cannot otherwise be obtained are permitted. ~~(3-30-06)~~( )

**05. Responsibility for Acceptable Admissions.** The administrator must assure that no resident is knowingly admitted or retained who requires care as defined in Section 39-3307, Idaho Code, and Subsection 152.05 of these rules. (3-30-06)

**06. Sexual Offender.** The administrator must assure that a non-resident on the sexual offender registry is not allowed to live or work in the facility. The registry may be accessed online at [http://isp.idaho.gov/sor\\_id/search.html](http://isp.idaho.gov/sor_id/search.html). (3-30-06)

**07. Notification of Adult Protection and Law Enforcement.** The administrator must assure that adult protection and law enforcement are notified in accordance with Section 39-5310, Idaho Code. (3-30-06)

**08. Procedures for Investigations.** The administrator must assure the facility procedures for investigation of incidents, accidents, and allegations of abuse, neglect, or exploitation are implemented to assure resident safety. (3-30-06)

**09. Identify and Monitor Patterns of Incidents and Accidents.** The administrator must identify and monitor patterns related to incidents and accidents and develop interventions to prevent recurrences. ( )

**109. Notification of Reportable Incidents.** The administrator must assure notification to the Licensing and Certification Unit of reportable incidents. (3-29-10)

**101. Administrator's Designee.** A person authorized in writing to act in the absence of the administrator ~~and who is knowledgeable of facility operations, the residents and their needs, emergency procedures, the location and operation of emergency equipment, and how the administrator can be reached in the event of an emergency.~~ An administrator's designee may act in the absence of the administrator for no longer than thirty (30) consecutive days when the administrator: (3-30-06)( )

**a. Is on vacation;** ( )

**b. Has days off;** ( )

**c. Is ill; or** ( )

**d. Is away for training or meetings.** ( )

**142. Ability to Reach Administrator or Designee.** The administrator or his designee must be reachable and available at all times. (3-30-06)

**123. Minimum Age of Personnel.** The administrator will assure that no personnel providing hands-on care or supervision services will be under eighteen (18) years of age unless they have completed a certified nursing assistant (CNA) certification course. (3-30-06)

**134. Notification to Licensing and Certification Unit.** The facility must notify the Licensing and Certification Unit, in writing, within three (3) business days of a change of administrator. (3-29-10)

**216. REQUIREMENTS FOR A MULTIPLE FACILITY ADMINISTRATOR.** Each facility must have a Department approved plan of operation to have one (1) administrator assigned as the person responsible for the operation of multiple facilities. ( )

**01. Approved Plan of Operation.** Under Section 39-3321, Idaho Code, multiple facilities under one (1) administrator may be approved when the following is provided in the plan of operation: ( )

**a. The multiple facility administrator must provide proof of a current license in Idaho with no actions or pending actions taken against licensee;** ( )

**b. The plan must provide for full-time on-site supervision by trained and experienced staff, including:** ( )

**i. Who is responsible for on-site management of each facility when administrator is not on-site; and** ( )

**ii. How each individual responsible for on-site management of each facility is qualified to perform those duties.** ( )

**02. Facility Change To An Approved Plan of Operation.** A new plan of operation must be submitted to the Department and approved before any facility in the plan is changed. ( )

**03. Number of Facilities or Beds Allowed Under One Administrator.** Based on an approved plan of operation, the Department will allow one (1) licensed administrator to oversee: ( )

**a.** Up to three (3) facilities when each of the facilities has sixteen (16) beds or fewer; ( )

**b.** Two (2) facilities when either of the facilities has more than sixteen (16) beds but less than fifty (50) beds, and the combined number of beds for both facilities cannot exceed eighty (80) beds; or ( )

**c.** One (1) facility with fifty (50) beds or more. A plan of operation for a multiple facility administrator will not be approved for a facility with fifty (50) beds or more. ( )

**04. No Unresolved Core Issues.** None of the multiple facilities operated under one (1) administrator can have any unresolved core issue deficiencies described in Section 010 of these rules. The administrator approved to oversee more than one (1) facility must have an established record of compliance, which includes: ( )

**a.** No repeat deficiencies; ( )

**b.** No enforcement actions; ( )

**c.** A history of submitting acceptable plans of corrections within the time frame established in Subsection 130.08 of these rules; ( )

**d.** A history of submitting acceptable evidence of resolution of deficiencies within the time frame established in Subsection 130.09 of these rules; and ( )

**e.** The administrator's record must show that he has two (2) years or more of experience working as a licensed residential care administrator in Idaho. ( )

**05. Administrator Hours On-site in Each Facility.** The administrator must be on-site at each facility for at least: ( )

**a.** Ten (10) hours per week in facilities with fewer than sixteen (16) beds; ( )

**b.** Fifteen (15) hours per week in facilities with more than (16) beds; and ( )

**c.** Each facility's record must include documentation of the number of hours per week the administrator is on-site. For each week the Administrator is not on-site, the documentation must include the reasons for his absence such as illness, vacation, or training. ( )

**06. Administrator Response Time for Each Facility.** A multiple facility administrator must not have a primary residence more than seventy-five (75) miles from any of the facilities. Each facility with a multiple facility administrator must be within two (2) hours driving distance from each other. ( )

**07. On-Site Supervision in Each Facility.** The plan of operation must include full-time on-site supervision by trained and experienced staff. ( )

**08. Dually Licensed Administrator.** A skilled nursing facility and an assisted living facility with less than fifty (50) beds may have a multiple facility administrator with an approved plan of operation. A dually licensed administrator, who is licensed in Idaho as both a Nursing Home Administrator and a Residential Care Facility Administrator, may be approved as a multiple facility administrator only when the two (2) facilities are on the same property or campus. ( )

**217. RESCIND APPROVAL FOR MULTIPLE FACILITY ADMINISTRATOR**

**01. Rescind Plan of Operation Approval.** When the conditions in the approved plan of operation are not met, the ability to have one (1) administrator for multiple facilities will be rescinded by the Department. ( )

**02. Reasons for Rescission or Denial of a Multiple Facility Administrator.** Any and all facilities with a multiple facility administrator included in its approved plan of operation that receives repeat deficiencies, enforcement actions, or fails to submit acceptable plans of correction and evidence of resolution within the time frames established in Subsections 130.08 and 130.09 of these rules, may have its multiple facility administrator approval rescinded. ( )

**03. Rescission Review of Department Action.** When the facility disagrees with the reasons for the rescission of the ability to have a multiple facility administrator, the administrator can request a rescission review. This request does not stay the rescission. The request must: ( )

**a.** Be in writing; ( )

**b.** Be received within fourteen (14) days of the date the Department's rescission letter was issued; and ( )

**c.** State the specific reasons for disagreement with the Department's rescission action. ( )

**04. Review Decision.** Within thirty (30) days from the date the review request is received, the Department will review and issue a decision. This decision is not appealable. ( )

~~216.~~—218. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**221. REQUIREMENTS FOR TERMINATION OF ADMISSION AGREEMENT.**

**01. Conditions for Termination of the Admission Agreement.** The admission agreement cannot be terminated, except under the following conditions: (3-30-06)

**a.** Giving the other party thirty (30) calendar days written notice for any reason; (3-30-06)

**b.** The resident's death; (3-30-06)

**c.** Emergency conditions that requires the resident to be transferred to protect the resident or other residents in the facility from harm; (3-30-06)

**d.** The resident's mental or medical condition deteriorates to a level requiring care as described in Section 33-3307, Idaho Code, and Subsection 152.05 of these rules; (3-30-06)

**e.** Nonpayment of the resident's fees; (3-30-06)

**f.** When the facility can not meet resident needs due to changes in services, in house or contracted, or inability to provide the services; or (3-30-07)

**g.** Other written conditions as may be mutually established between the resident, the resident's legal guardian or conservator and the administrator of the facility at the time of admission. (3-30-06)

**02. Facility Responsibility During Resident Discharge.** The facility is responsible to assist the resident with transfer by providing a list of skilled nursing facilities, other residential care or assisted living facilities, and certified family homes that may meet the needs of the resident. (3-30-06)

**03. Resident's Appeal of Involuntary Discharge.** A resident may appeal all discharges with the

exception of an involuntary discharge in the case of non-payment, emergency conditions that require the resident to be transferred to protect the resident or other residents in the facility from harm. (3-30-06)

**a.** Before a facility discharges a resident, the facility must notify the resident, and if known, a family member, or his legal representative of the discharge and the reasons for the discharge. (3-30-06)

**b.** This notice must be in writing and in a language and manner the resident or his representative can understand. (3-30-06)

**04. Written Notice of Discharge.** The written notice of discharge must include the following: (3-30-06)

**a.** The reason for the discharge; (3-30-06)

**b.** Effective date of the discharge; (3-30-06)

**c.** A statement that the resident has the right to appeal the discharge to the Department within thirty (30) calendar days of receipt of written notice of discharge; (3-30-06)

**d.** The name and address of where the appeal must be submitted; (3-30-06)

**e.** The name, address, and telephone number of the local ombudsman, for residents sixty (60) years of age or older; and (3-30-06)

**f.** The name, address and telephone number of ~~CO-AD~~ [Disability Rights Idaho](#), for residents with developmental disabilities or mental illness. (~~3-30-06~~)(    )

**g.** If the resident fails to pay fees to the facility, as agreed to in the admission agreement, during the discharge appeal process, the resident's appeal of the involuntary discharge becomes null and void and the discharge notice applies. (3-30-06)

**h.** When the notice does not contain all the above required information, the notice is void and must be reissued. (3-30-06)

**05. Receipt of Appeal.** Request for an appeal must be received by the Department within thirty (30) calendar days of the resident's or resident's representative's receipt of written notice of discharge to stop the discharge before it occurs. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**305. LICENSED PROFESSIONAL NURSE RESPONSIBILITY REQUIREMENTS.**

The licensed professional nurse must assess and document, including date and signature, for each resident as described in Subsections 305.01 through 305.08 of these rules. (3-30-06)

**01. Resident Response to Medications and Therapies.** Conduct a nursing assessment of each resident's response to medications and prescribed therapies. (3-30-06)

**02. Current Medication Orders and Treatment Orders.** Assure the residents' medication and treatment orders are current by verifying: (    )

**a.** ~~T~~That the medication listed on the medication distribution container, including over-the-counter medications as appropriate, are consistent with physician or authorized provider orders: (    )

**b.** That the physician or authorized provider orders related to therapeutic diets, treatments, and medications for each resident are followed; and (    )

**c.** A copy of the actual written, signed and dated orders ~~must be~~ **are** present in each resident's care record. ~~(3-30-06)~~(\_\_\_\_)

**03. Resident Health Status.** Conduct a nursing assessment of the health status of each resident by identifying symptoms of illness, or any changes in mental or physical health status. (3-30-06)

**04. Recommendations.** Make recommendations to the administrator regarding any medication needs, other health needs requiring follow up, or changes needed to the Negotiated Service Agreement. (3-30-06)

**05. Progress of Previous Recommendations.** Conduct a review and follow-up of the progress on previous recommendations made to the administrator regarding any medication needs or other health needs that require follow up. Report to the attending physician or authorized provider and state agency if recommendations for care and services are not implemented that have affected or have the potential to affect the health and safety of residents. (3-30-06)

**06. Self-Administered Medication.** Conduct an initial nursing assessment on each resident participating in a self-administered medication program as follows: (3-30-06)

- a.** Before the resident can self-administer medication to assure resident safety; and (3-30-06)
- b.** Evaluate the continued validity of the assessment to assure the resident is still capable to safely continue the self-administered medication for the next ninety (90) days. (3-30-06)

**07. Medication Interactions and Usage.** Conduct a review of the resident's use of all prescribed and over-the-counter medications for side effects, interactions, abuse or a combination of these adverse effects. The nurse must notify the resident's physician or authorized provider of any identified concerns. (3-30-06)

**08. Resident and Facility Staff Education.** Assess, document and recommend any health care related educational needs, for both the resident and facility staff, as the result of the assessment or at the direction of the resident's health care provider. (3-30-06)

**306. -- 309. (RESERVED)**

**310. REQUIREMENTS FOR MEDICATION.**

**01. Medication Distribution System.** Each facility must use medi-sets or blister packs **for prescription medications**. The facility may use multi-dose medication distribution systems that are provided for resident's receiving medications from the Veterans Administration or Railroad benefits. The medication system must be filled by a pharmacist and appropriately labeled in accordance with pharmacy standards and physician or authorized provider instructions. A licensed nurse may fill medi-sets, blister packs, or other Licensing and Survey Agency approved system as provided in Section 39-3326, Idaho Code and Section 157 of these rules. ~~(3-30-06)~~(\_\_\_\_)

- a.** All medications will be kept in a locked area such as a locked box or room; (3-30-06)
- b.** Poisons, toxic chemicals, and cleaning agents will be stored in separate locked areas apart from medications, such as a locked medication cart, locked box or room; (3-30-06)
- c.** Biologicals and other medications requiring cold storage will be refrigerated. A covered container in a home refrigerator will be considered to be satisfactory storage if the temperature is maintained at thirty-eight to forty-five degrees (38-45°F) Fahrenheit. The temperature will be monitored and documented on a daily basis; (3-30-06)
- d.** Assistance with medication must comply with the Board of Nursing requirements; (3-30-06)
- e.** Each **prescription** medication must be given to the resident directly from the medi-set, blister pack or medication container; and ~~(3-30-06)~~(\_\_\_\_)

- f. Each resident must be observed taking the medication. (3-30-06)

**02. Unused Medication.** Unused, discontinued, or outdated medications cannot accumulate at the facility for longer than thirty (30) days. The unused medication must be disposed of in a manner that assures it cannot be retrieved. The facility may enter into agreement with a pharmacy to return unused, unopened medications to the pharmacy for proper disposition and credit. See IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 664 and 665, and IDAPA 27.01.01, "Rules of the Idaho Board of Pharmacy." A written record of all drug disposals must be maintained in the facility and include: (3-30-06)

- a. A description of the drug, including the amount; (3-30-06)
- b. Name of resident for prescription medication; (3-30-06)
- c. The reason for disposal; (3-30-06)
- d. The method of disposal; (3-30-06)
- e. The date of disposal; and (3-30-06)
- f. Signatures of responsible facility personnel and witness. (3-30-06)

**03. Controlled Substances.** The facility must track all controlled substances entering the facility in accordance with Title 37, Chapter 27, Idaho Code, and IDAPA 27.01.01, "Rules of the Idaho Board of Pharmacy," Section 495, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing Rules," Section 490. (3-30-06)

**04. Psychotropic or Behavior Modifying Medication.** (3-30-06)

a. Psychotropic or behavior modifying medication intervention must not be the first resort to address behaviors. The facility must attempt non-drug interventions to assist and redirect the resident's behavior. (3-30-06)

b. Psychotropic or behavior modifying medications must be prescribed by a physician or authorized provider. (3-30-06)

c. The facility will monitor the resident to determine continued need for the medication based on the resident's demonstrated behaviors. (3-30-06)

d. The facility will monitor the resident for any side effects that could impact the resident's health and safety. (3-30-06)

e. The use of psychotropic or behavior modifying medications must be reviewed by the physician or authorized provider at least every six (6) months. The facility must provide behavior updates to the physician or authorized provider to help facilitate an informed decision on the continuing use of the psychotropic or behavior modifying medication. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**335. REQUIREMENTS FOR INFECTION CONTROL.**

The administrator is responsible for assuring that infection control policy and procedure are implemented. (3-30-06)

**01. Implementation of Policies.** Staff must implement facility policy and procedure. (3-30-06)

**02. Staff With Infectious Disease.** Staff with an infectious disease must not work until the infectious stage is corrected or must be reassigned to a work area where contact with others is not expected and likelihood of transmission of infection is absent. (3-30-06)

03. **Universal Standard Precautions.** Universal Standard Precautions must be used in the care of residents to prevent transmission of infectious disease according to the Centers for Disease Control and Prevention (CDC) guidelines. These guidelines may be accessed on the CDC website at <http://www.cdc.gov/hai/>. (3-30-06)( )

04. **Reporting of Individual With Infectious Disease.** The name of any resident or facility personnel with a reportable disease listed in IDAPA 16.02.10, "Idaho Reportable Diseases," will be reported immediately to the local Health District authority and appropriate infection control procedures must be immediately implemented as directed by that local health authority. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**350. REQUIREMENTS FOR HANDLING ACCIDENTS, INCIDENTS, OR COMPLAINTS.** The administrator must assure that the facilities policies and procedures are implemented. (3-30-06)

01. **Notification of Accidents, Incidents, and Complaints.** The administrator or person designated by the administrator must be notified of all accidents, incidents, reportable, or complaints according to the facility's policies and procedures. (3-30-06)

02. **Administrator or Designee Investigation Within Thirty Days.** The administrator or designee must complete an investigation and written report of the finding within thirty (30) calendar days for each accident, incident, complaint, or allegation of abuse, neglect or exploitation. (3-30-06)

03. **Resident Protection.** Any resident involved must be protected during the course of the investigation. (3-30-06)

04. **Written Response to Complaint Within Thirty Days.** The person making the complaint must receive a written response from the facility of the action taken to resolve the matter or reason why no action was taken within thirty (30) days of the complaint. (3-30-06)

05. **Facility Notification to Appropriate Agencies.** The facility must notify the Idaho Commission on Aging or its Area Agencies on Aging, and law enforcement in accordance with Section 39-5303, Idaho Code. (3-30-06)

06. **Corrective Action for Known Allegations.** When an allegation of abuse, neglect or exploitation is known by the facility, corrective action must be immediately taken and monitored to assure the problem does not recur. (3-30-06)

07. **Notification of Licensing and Survey Agency Within Twenty-Four Hours.** When a reportable incident occurs, the administrator or designee must notify the Licensing and Survey Agency within twenty-four (24) hours of the incident. (3-30-06)

08. **Identify and Monitor Patterns.** The administrator or person designated by the administrator must identify and monitor patterns of accidents, incidents, or complaints to assure the facility's policies and procedures protect the safety of the residents. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**600. REQUIREMENTS FOR STAFFING STANDARDS.**

01. **On-Duty Staff During Residents' Sleeping Hours for Facilities of Fifteen Beds or Less.** For facilities licensed for fifteen (15) beds or less, there must be at least one (1), or more qualified and trained staff, up.



~~awake, and~~ immediately available, in the facility during resident sleeping hours. ~~If any resident has been assessed as having night needs or is incapable of calling for assistance staff must be up and awake.~~ (3-30-06)( )

**02. On-Duty Staff Up and Awake During Residents' Sleeping Hours for Facilities Licensed for Sixteen Beds or More.** For facilities licensed for sixteen (16) beds or more, qualified and trained staff must be up and awake and immediately available, in the facility during resident sleeping hours. (3-30-06)

**03. Detached Buildings or Units.** Facilities with residents housed in detached buildings or units, must have at least one (1) staff present, and available in each building or unit when residents are present in the building or unit. The facility must also assure that each building or unit complies with the requirements for on-duty staff during resident sleeping hours to be up, awake, and immediately available in accordance with the facility's licensed bed capacity as provided in Subsections 600.01 and 600.02 of these rules. The Licensing and Survey Agency will consider a variance based on the facility's written submitted plan of operation. (3-30-06)( )

**04. Mental Health Bed Contract Facility.** Facilities that have entered into a Mental Health Bed contract with the Department must be staffed with at least one (1) staff up and awake at night to assure the safety of all residents. (3-30-06)

**05. Supervision.** The administrator must provide supervision for all personnel to include contract personnel. Staff who have not completed the orientation training requirements must work under the supervision of a staff who has completed the orientation training. (3-30-06)

**06. Sufficient Personnel.** The facility will employ and the administrator will schedule sufficient personnel to: (3-30-06)

**a.** Provide care, during all hours, required in each resident's Negotiated Service Agreement, to assure residents' health, safety, comfort, and supervision, and to assure the interior and exterior of the facility is maintained in a safe and clean manner; and (3-30-06)

**b.** To provide for at least one (1) direct care staff with certification in first aid and cardio-pulmonary resuscitation (CPR) in the facility at all times. Facilities with multiple buildings or units will have at least one (1) direct care staff with certification in first aid and CPR in each building or each unit at all times. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**625. ORIENTATION TRAINING REQUIREMENTS.**

**01. Number of Hours of Training.** A minimum of sixteen (16) hours of job-related orientation training must be provided to all new personnel before they are allowed to provide unsupervised personal assistance to residents. The means and methods of training are at the facility's discretion. (3-30-06)

**02. Timeline for Completion of Training.** All orientation training must be completed within ~~one (1)~~ month thirty (30) days of hire. (3-30-06)( )

**03. Content for Training.** Orientation training must include the following: (3-30-06)

**a.** The philosophy of residential care or assisted living and how it guides care giving; (3-30-06)

**b.** Resident Rights; (3-30-06)

**c.** Cultural awareness; (3-30-06)

**d.** Providing assistance with activities of daily living and instrumental activities of daily living; (3-30-06)

- e. How to respond to emergencies; (3-30-06)
- f. Documentation associated with resident care needs and the provision of care to meet those needs; (3-30-06)
- g. Identifying and reporting changes in residents' health and mental condition or both; (3-30-06)
- h. Documenting and reporting adverse outcomes (such as resident falls, elopement, lost items); (3-30-06)
- i. Advance Directives and do not resuscitate (DNR) orders; (3-30-06)
- j. Relevant policies and procedures; (3-30-06)
- k. The role of the Negotiated Service Agreement; and (3-30-06)
- l. All staff employed by the facility, including housekeeping personnel, or contract personnel, or both, who may come into contact with potentially infectious material, must be trained in infection control procedures for universal precautions. (3-30-06)

**626. -- 629. (RESERVED)**

**630. TRAINING REQUIREMENTS FOR FACILITIES ADMITTING RESIDENTS WITH DIAGNOSIS OF DEMENTIA, MENTAL ILLNESS, DEVELOPMENTAL DISABILITY, OR TRAUMATIC BRAIN INJURY.**

A facility admitting and retaining residents with diagnosis of dementia, mental illness, developmental disability, or traumatic brain injury must train staff to meet the specialized needs of these residents. Staff must receive specialized training within thirty (30) days of hire or of admission of a resident with one (1) of these conditions. The means and methods of training are at the facility's discretion. The training should address the following areas: ~~(3-30-06)~~( )

- 01. Dementia:** (3-30-06)
  - a. Overview of dementia; (3-30-06)
  - b. Symptoms and behaviors of people with memory impairment; (3-30-06)
  - c. Communication with people with memory impairment; (3-30-06)
  - d. Resident's adjustment to the new living environment; (3-30-06)
  - e. Behavior management; (3-30-06)
  - f. Activities of daily living; and (3-30-06)
  - g. Stress reduction for facility personnel and resident. (3-30-06)
- 02. Mental Illness:** (3-30-06)
  - a. Overview of mental illnesses; (3-30-06)
  - b. Symptoms and behaviors specific to mental illness; (3-30-06)
  - c. Resident's adjustment to the new living environment; (3-30-06)
  - d. Behavior management; (3-30-06)
  - e. Communication; (3-30-06)

- f. Activities of daily living; (3-30-06)
  - g. Integration with rehabilitation services; and (3-30-06)
  - h. Stress reduction for facility personnel and resident. (3-30-06)
  - 03. Developmental Disability:** (3-30-06)
    - a. Overview of developmental disabilities; (3-30-06)
    - b. Interaction and acceptance; (3-30-06)
    - c. Promotion of independence; (3-30-06)
    - d. Communication; (3-30-06)
    - e. Behavior management; (3-30-06)
    - f. Assistance with adaptive equipment; (3-30-06)
    - g. Integration with rehabilitation services; (3-30-06)
    - h. Activities of daily living; and (3-30-06)
    - i. Community integration. (3-30-06)
  - 04. Traumatic Brain Injury:** (3-30-06)
    - a. Overview of traumatic brain injuries; (3-30-06)
    - b. Symptoms and behaviors specific to traumatic brain injury; (3-30-06)
    - c. Adjustment to the new living environment; (3-30-06)
    - d. Behavior management; (3-30-06)
    - e. Communication; (3-30-06)
    - f. Integration with rehabilitation services; (3-30-06)
    - g. Activities of daily living; (3-30-06)
    - h. Assistance with adaptive equipment; and (3-30-06)
    - i. Stress reduction for facility personnel and resident. (3-30-06)
- 631. -- 639. (RESERVED)**

**640. CONTINUING TRAINING REQUIREMENTS.**

Each employee must receive a minimum of eight (8) hours of job-related continuing training per year.

~~(3-30-06)~~ ( )

~~**01. Staff Not Trained in Appropriate Areas.** When a resident is admitted with a diagnosis of dementia, mental illness, developmental disability, or traumatic brain injury, or a resident acquires one (1) of these diagnoses, if staff have not been trained in the appropriate areas outlined in Section 630 of these rules, staff must be trained within thirty (30) calendar days. In the interim the facility must meet the resident's needs. (3-30-06)~~

~~02641.~~ **ADDITIONAL TRAINING RELATED TO CHANGES.**

When policies or procedures are added, modified, or deleted, staff must receive additional training relating to the changes. ~~(3-30-06)~~( )

~~644.~~ -- 644. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**730. FACILITY ADMINISTRATIVE RECORDS FOR PERSONNEL AND STAFFING.**

The administrator must assure that the facility's personnel and staffing records are maintained as described in Subsections 730.01 through 730.03 of these rules. (3-30-06)

**01. Personnel.** A record for each employee must be maintained and available which includes the following: (3-30-06)

**a.** Name, address, phone number, and date of hire; (3-30-06)

**b.** Job description that includes purpose, responsibilities, duties, and authority; (3-30-06)

**c.** Evidence that on or prior to hire, staff were notified in writing that the facility does not carry professional liability insurance. If the facility cancels the professional liability insurance, all staff must be notified of the change in writing; (3-30-06)

**d.** A copy of a current license for all nursing staff and verification from the Board of Nursing that the license is in good standing or identification of restrictions; (3-30-06)

**e.** Signed evidence of training; (3-30-06)

**f.** CPR, first aid, and assistance with medication certification; (3-30-06)

**g.** Criminal history clearance as required by Section 56-1004A, Idaho Code, and IDAPA 16.05.06, "Criminal History and Background Checks," and Section 009 of these rules; ~~(3-30-06)~~( )

**h.** Documentation by the licensed professional nurse of delegation to unlicensed staff to assist residents with medications and other nursing tasks; (3-30-06)

**i.** A signed document authorizing by position title of, the individual responsible for acting on behalf of the administrator in his absence. (3-30-06)

**02. Work Records.** Work records must be maintained in writing for the previous three (3) years which reflect: (3-30-06)

**a.** Personnel on duty, at any given time; and (3-30-06)

**b.** The first and last names, of each employee, and their position. (3-30-06)

**03. Contract Records.** Copies of contracts with outside service providers and contract staff. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**925. ENFORCEMENT REMEDY OF CIVIL MONETARY PENALTIES.**

**01. Civil Monetary Penalties.** Civil monetary penalties are based upon one (1) or more deficiencies of noncompliance. Nothing will prevent the Department from imposing this remedy for deficiencies which existed prior to the survey or complaint investigation through which they are identified. Actual harm to a resident or residents does not need to be shown. A single act, omission or incident will not give rise to imposition of multiple penalties, even though such act, omission or incident may violate more than one (1) rule. (3-30-06)

**02. Assessment Amount for Civil Monetary Penalty.** When civil monetary penalties are imposed, such penalties are assessed for each day the facility is or was out of compliance. The amounts below are multiplied by the total number of occupied licensed beds according to the records of the Department at the time non-compliance is established. (3-30-06)

a. Initial deficiency is eight dollars (\$8). Example below:

Number of Occupied Beds in Facility	Initial Deficiency	Times Number of Days Out of Compliance	Amount of Penalty
11	\$8.00	45 days	\$3960

(3-30-06)

b. Repeat deficiency is ten dollars (\$10). Example below:

Number of Occupied Beds in Facility	Repeat Deficiency	Times Number of Days Out of Compliance	Amount of Penalty
11	\$10.00	30 days	\$3300

(3-30-06)

c. In any ninety (90) day period, the penalty amounts may not exceed the limits shown in the following table:

Limits on Accruing Civil Monetary Amount.		
Number of Occupied Beds in Facility	Initial Deficiency	Repeat Deficiency
3-4 Beds	\$1440	\$2880
5-50 Beds	\$3200	\$6400
51-100 Beds	\$5400	\$10,800
101-150 Beds	\$8800	\$17,600
151 or More Beds	\$14,600	\$29,200

(3-30-06)

**03. Notice of Civil Monetary Penalties and Appeal Rights.** The Department will give written notice informing the facility of the amount of the penalty, the basis for its assessment and the facility's appeal rights. (3-30-06)

**04. Payment of Penalties.** The facility must pay the full amount of the penalty within thirty (30) calendar days from the date the notice is received, unless the facility requests an administrative review of the decision to assess the penalty. The amount of a civil monetary penalty determined through administrative review must be paid within thirty (30) calendar days of the facility's receipt of the administrative review decision unless the facility requests an administrative hearing. The amount of the civil monetary penalty determined through an administrative

hearing must be paid within thirty (30) calendar days of the facility's receipt of the administrative hearing decision unless the facility files a petition for judicial review. Interest accrues on all unpaid penalties at the legal rate of interest for judgments. Such interest accrual will begin one (1) calendar day after: (3-30-06)

~~a.~~ The date of the initial assessment of the penalty; (3-30-06)( )

~~b.~~ ~~The date of the issuance of the administrative review, administrative hearing or the final judicial review.~~ (3-30-06)

**05. Failure to Pay.** Failure of a facility to pay the entire penalty, together with any interest, is cause for revocation of the license or the amount will be withheld from Medicaid payments to the facility. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**940. ENFORCEMENT REMEDY OF REVOCATION OF FACILITY LICENSE.**

**01. Revocation of Facility's License.** The Department may revoke a license when the facility endangers the health or safety of residents, or when the facility is not in substantial compliance with the provisions of Title 39, Chapter 33, Idaho Code, or this chapter of rules. (3-30-06)

**02. Reasons for Revocation or Denial of a Facility License.** The Department may revoke or deny any facility license for any of the following reasons: (3-30-06)

**a.** The licensee has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining a license; (3-30-06)

**b.** When persuaded by a preponderance of the evidence that such conditions exist which endanger the health or safety of any resident; (3-30-06)

**c.** Any act adversely affecting the welfare of residents is being permitted, aided, performed, or abetted by the person or persons in charge of the facility. Such acts may include, but are not limited to, neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, criminal activity, or exploitation; (3-30-06)

**d.** The licensee has demonstrated or exhibited a lack of sound judgment essential to the operation and management of a facility; (3-30-06)

**e.** The licensee has violated any of the conditions of a provisional license; (3-30-06)

**f.** The facility lacks adequate personnel, as required by these rules or as directed by the Department, to properly care for the number and type of residents residing at the facility; (3-30-06)

**g.** Licensee refuses to allow the Department or the Protection and Advocacy agencies full access to the facility environment, facility records, and the residents as described in Subsections 130.04 through 130.06, and 550.18 through 550.19 of these rules; (3-30-06)

**h.** The licensee has been guilty of fraud, gross negligence, abuse, assault, battery, or exploitation with respect to the operation of a health facility or residential care or assisted living facility or certified family home; (3-30-07)

**i.** The licensee is actively affected in his performance by alcohol or the use of drugs classified as controlled substances; (3-30-07)

**j.** The licensee has been convicted of a criminal offense other than a minor traffic violation within the past five (5) years; (3-30-07)

- k.** The licensee is of poor moral and responsible character or has been convicted of a felony or defrauding the government; (3-30-07)
- l.** The licensee has been denied, or the licensee's wrong doing, has caused the revocation of any license or certificate of any health facility, residential care or assisted living facility, or certified family home; (3-30-07)
- m.** The licensee has ~~been convicted of operating~~ previously operated any health facility or residential care or assisted living facility without a license or certified family home without a certificate; ~~(3-30-07)~~(    )
- n.** The licensee is directly under the control or influence of any person who has been the subject of proceedings as described in Subsection 940.02.m. of these rules; (4-11-06)
- o.** The licensee is directly under the control or influence of any person who is of poor moral and responsible character or has been convicted of a felony or defrauding the government; (4-11-06)
- p.** The licensee is directly under the control or influence of any person who has been convicted of a criminal offense other than a minor traffic violation in the past five (5) years; (4-11-06)
- q.** The licensee fails to pay civil monetary penalties imposed by the Department as described in Section 925 of these rules; (4-11-06)
- r.** The licensee fails to take sufficient corrective action as described in Sections 900, 905 and 910 of these rules; or (4-11-06)
- s.** The number of residents currently in the facility exceeds the number of residents the facility is licensed to serve. (4-11-06)

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.05.01 - USE AND DISCLOSURE OF DEPARTMENT RECORDS

DOCKET NO. 16-0501-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 39-242, 39-5403, 56-221, 56-222, 56-1003, and 56-1004, Idaho Code (Joint rules).

**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:

These rule changes allow the Department to make a “fact of death” verification to other state agencies. For example, if another state agency needs to verify that an individual has passed away so that no further communication is sent to that decedent’s family, the Department will have clear authority in rule to do so. This will also allow companies such as life insurance and pension companies to do this type of verification to facilitate the receipt of benefits by Idaho citizens.

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 September 3, 2014, Idaho Administrative Bulletin, [Vol. 14-9, pages 263 and 264](#).

**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:

There is no anticipated fiscal impact to the state general fund as a result this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact James Aydelotte (208) 334-4969.

DATED this 21st Day of November, 2014.

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

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 39-242, 39-5403, 56-221, 56-222, 56- 1003, and 56-1004, Idaho Code (Joint rules).

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2014.

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:

This rule change will clarify the ability of the Department's Bureau of Vital Statistics to provide state agencies with "fact of death" information to prevent communications needlessly being sent to a decedent's family. Second, the Social Security Administration (SSA) realized that it was disclosing information from death records in violation of federal law (Section 205(r) of the Social Security Act). For example, it was providing "fact of death" information to pension and life insurance companies who use this information to distribute benefits to the proper recipient. Since SSA can no longer provide comprehensive death verification data, the only other source for this information is the states. This rule change will also clarify the Department's ability to provide such verification under very limited circumstances.

Specifically, this rule change will allow the Department to make a "fact of death" verification to other state agencies. For example, if another state agency needs to verify that an individual has passed away so that no further communication is sent to that decedent's family, the Department will have clear authority in rule to do so. This will also allow companies such as life insurance and pension companies to do this type of verification to facilitate the receipt of benefits by Idaho citizens.

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

**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:

There is no anticipated fiscal impact to the state general fund as a result this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. Negotiated rulemaking was deemed not feasible as this rule change is simple in nature.

**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 James Aydelotte (208) 334-4969.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 7th Day of August, 2014.

**LSO RULES ANALYSIS MEMO**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0501-1401

280. VITAL STATISTICS -- VERIFICATION OF DATA.

**01. Verifications.** The Registrar will ~~only~~ confirm or deny the presence and accuracy of data already known to a governmental agency that requests information from a vital record. Such verifications may be conducted by telephone for Idaho state agencies. Other requests for verification require a signed application on forms provided or approved by the Registrar, and a copy of the front and back of signed photo identification or such other information as the Registrar requests. Verifications may also be conducted via Department automated systems approved by the Registrar. (3-20-04)( )

**02. Administrative Fact of Death Verifications.** Upon agreement in writing to such conditions as the Registrar may impose, the Registrar may compare Idaho state agency administrative data to Idaho death data and return an indication of death, also known as fact of death verification, for administrative purposes only. ( )

**03. Verifications to Protect a Person's Property Right.** The State Registrar may approve electronic fact of death verification by entities seeking to determine or protect a person's property right. ( )

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.05.07 - THE INVESTIGATION AND ENFORCEMENT OF FRAUD, ABUSE, AND MISCONDUCT

DOCKET NO. 16-0507-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 Section 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 of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202(b), 56-203(1) & (2), 56-209, 56-209(h), 56-227, 56-227A through D, 56-1001, and 56-1003, 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 adds the current reinstatement process for individuals or entities whose exclusions are over and who would like to be reinstated by the Department. 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 October 1, 2014, Idaho Administrative Bulletin, **Vol. 14-10, pages 267 through 269.**

**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:

There is no anticipated fiscal impact to the state general fund or to any other funds due to this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Lori Stiles at (208) 334-0653.

DATED this 7th Day of November, 2014.

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

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202(b), 56-203(1) & (2), 56-209, 56-209(h), 56-227, 56-227A through D, 56-1001, and 56-1003, 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 October 15, 2014.

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

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

The Department has determined that the current practice concerning reinstatement of an individual or entity who has been excluded from the Medicaid program should be added to these rules for consistency within the Department. These proposed rules are based on the current reinstatement process for individuals or entities whose exclusions are over and who would like to be reinstated by the Department.

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

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

There is no anticipated fiscal impact to the state general fund or to any other funds due to this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted and the Notice of Negotiated Rulemaking was published in the July 2, 2014, Idaho Administrative Bulletin, [Vol. 14-7, Page 80](#).

**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 Lori Stiles at (208) 334-0653.

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 October 22, 2014.

DATED this 18th Day of August, 2014.

### LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0507-1401

**261. REINSTATEMENT AFTER EXCLUSION FROM MEDICAID PROGRAM.**

An individual or entity who has been excluded from the Medicaid Program is not automatically reinstated at the end of the exclusion period. An individual or entity excluded by the Department must submit a written application for reinstatement to the Department. An applicant excluded by the Department must receive written notice of reinstatement from the Department before reinstatement is complete. ( )

**01. Conditions for Reinstatement.** In order to be reinstated, the applicant for reinstatement must meet all criteria in Subsections 261.01.a. through 261.01.i. of this rule. The applicant must be an individual or entity: ( )

a. Who is not currently excluded from the Medicaid program by the federal government or by any state Medicaid agency; ( )

b. Whose Medicaid provider number is not currently terminated by any state Medicaid agency;( )

c. Whose debts to the Department are paid in full; ( )

d. Who is not the subject of any civil, criminal, or state licensing authority investigation; ( )

e. Who has not been convicted of any crime during the exclusion period; ( )

f. Who has all the required, valid licensure and credentials necessary to provide services; ( )

g. Who has met and continues to meet all terms and conditions of any court-ordered probation;( )

h. Who did not work in any capacity as an employee or contractor for any individual or entity receiving Medicaid funds during the applicant's exclusion period; and ( )

i. Who did not submit claims or cause claims to be submitted for Medicaid reimbursement for services or supplies provided, ordered, or prescribed by an excluded individual or entity during the applicant's exclusion period. ( )

**02. Applying for Reinstatement.** An individual or entity may not begin the process of reinstatement earlier than one hundred twenty (120) days before the end of the exclusion period specified in the exclusion notice. The Department will not consider a premature application. An applicant that appears on the federal or any state exclusion list may apply for reinstatement, but consideration of the application will not start until after the excluding agency has reinstated the individual or entity. ( )

**03. Request for Reinstatement.** An excluded individual or entity must request an application form in writing from the Department and specifically request reinstatement. The request for reinstatement must include: ( )

a. The applicant's name, address, and phone number; and ( )

b. Copies of any required license, credentials, and provider number, if they exist. ( )

**04. Complete Application for Reinstatement.** The applicant must complete the reinstatement application form and return the fully executed and notarized form to the Department. ( )

**05. Department Decision.** The Department will issue a written decision to grant or deny a request for reinstatement. ( )

**06. Reinstatement Denied.** When an application for reinstatement is denied, the applicant is ineligible to reapply for one (1) year from the date the decision of denial becomes final. ( )

~~264~~2. -- 264. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. DEPARTMENT OF HEALTH AND HUMAN SERVICES.**

The Department will notify the Office of Inspector General within fifteen (15) days after a final action in which a person has been excluded, ~~or~~ convicted of a criminal offense related to participation in the delivery of health care items or services under the Medicaid program, or reinstated from a prior exclusion. (3-30-07)( )

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.06.01 - CHILD AND FAMILY SERVICES

DOCKET NO. 16-0601-1401

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 Section 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 of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 16-1629, 16-2102, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-204A, 56-803, 56-1003, 56-1004, 56-1004A, and 56-1007, 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:

Subject to conditions being added to the rule as part of this rulemaking, these rule changes will allow eligible children in foster care to attend driver's training, obtain a permit, and obtain a driver's license with written approval from the Department. The rule changes also provide for the Department to cover the costs of driver's training, permit, and license for an eligible foster child, as well reimburse foster parents for the cost of car insurance for the foster child.

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 September 3, 2014, Idaho Administrative Bulletin, [Vol. 14-9, pages 265 and 266](#).

**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:

There is no anticipated fiscal impact to the state general fund. Costs will be paid from the existing Independent Living appropriation. Approximately 100 foster children will be eligible each year in Idaho. The cost for adding a foster child to a foster parent's auto insurance in the minimum statutory amounts is estimated to be \$1320 per child per year, for a total estimated annual cost of \$132,000.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this pending rule, contact Falen LeBlanc at (208) 334-4932.

DATED this 21st Day of November, 2014.

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

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 16-1629, 16-2102, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-204A, 56-803, 56-1003, 56-1004, 56-1004A, and 56-1007, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2014.

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:

These rule changes will allow the Department to cover the costs of driver's training, permit, and license for an eligible foster child, as well as reimburse foster parents for the cost of car insurance for the foster child.

It is anticipated these rule changes will:

1. Improve the Department's chances of recruiting and retaining foster parents
2. Increase the number of placement options for older youth; and
3. Encourage life skills and normalization of eligible children in foster care.

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

**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:

There is no anticipated fiscal impact to the state general fund. Costs will be paid from the existing Independent Living appropriation. Approximately 100 foster children will be eligible each year in Idaho. The cost for adding a foster child to a foster parent's auto insurance in the minimum statutory amounts is estimated to be \$1320 per child per year, for a total estimated annual cost of \$132,000.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule simply confers a benefit, subject to the availability of funding.

**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 Falen LeBlanc at (208) 334-4932.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 7th Day of August, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0601-1401**

**451. DRIVERS' TRAINING, ~~AND~~ DRIVERS' LICENSES, AND PERMITS FOR CHILDREN IN ALTERNATE CARE.**

No Department employee or foster parent is allowed to sign for any foster child's driver's license or permit without written authorization from the Child and Family Services Program Manager. Any Department employee or foster parent signing for a foster child's driver's license or permit without the approval of the Child and Family Services Program Manager assumes full personal responsibility and liability for any driving related damages that may be assessed against the child. Those damages will not be covered by the Department's insurance. (5-8-09)

**01. Payments by Department.** Subject to existing appropriations, ~~The~~ Department may make payments for driver's training, driver's licenses, and permits for a child~~ren~~ in the Department's guardianship legal custody when driver's training or obtaining a driver's license or permit is part of an older teen's the child's Independent Living Plan. In addition, subject to existing appropriations, the Department may reimburse a foster parent, licensed by the Department, for the cost of procuring owner's or operator's insurance listing a child residing in his home as a named insured with respect to the operation of a motor vehicle subject to the limits exclusive of interest and costs with respect to each motor vehicle as provided in Section 49-117, Idaho Code. ~~(3-30-01)~~( )

**02. Payment by Parent(s) or Legal Guardian(s).** The parent(s) or legal guardian(s) of children in foster care may authorize drivers' training, provide payment and sign for drivers' licenses and permits. (5-3-03)



**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)**  
**DOCKET NO. 16-0612-1401**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is acted on 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 56-202, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The ICCP pending rule amending the structure of co-pays is being adopted as originally proposed. The complete text of the proposed rule was published in the May 7, 2014, Idaho Administrative Bulletin, [Vol. 14-5, pages 66-67](#). The rule was published as temporary in the January 1, 2014, Idaho Administrative Bulletin, [Vol. 14-1, pages 116-117](#).

**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:

The fiscal impact to both state and federal funds for this rule change is expected to be cost-neutral.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Ericka Rupp at (208) 334-5641.

DATED this 8th day of October, 2014.

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

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 56-202, 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 May 21, 2014.

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

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

The state's current co-pay structure is based on a percentage of the cost of child care which does not comply with the federal regulations for the child care program. In order to be in compliance with the federal requirements, the state's co-pay structure is being changed to income based. The current ICCP rules reference a percentage based co-pay for non-working students, which must be removed from the rules for compliance with federal regulations. This rule was published as a temporary rule effective November 1, 2013, and was published under this docket number in the January 1, 2014, Idaho Administrative Bulletin, **Vol. 14-1, pages 116 and 117.**

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

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

There is no anticipated fiscal impact to the state general fund or any other funds due to this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule was adopted as a temporary rule align with federal regulations.

**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 Ericka Medalen at (208) 334-5641.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 28, 2014.

DATED this 3rd day of April, 2014.

### LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0612-1401

503. ~~NON WORKING~~ STUDENT CO-PAYMENT REQUIREMENTS.

**01. Post-Secondary Student.** ( )

**a.** A post-secondary student who ~~does not~~ works less than ten (10) hours per week will be required to pay a ~~thirty one percent (31%)~~ co-payment. ( )

**b.** A post-secondary student who works ~~at least~~ ten (10) hours or more per week will have a co-payment based on ~~his total~~ family income. ( )

**02. High School or GED Student.** A student who is finishing in high school, or who is taking English as a second language or GED courses will ~~be excluded from the requirement to pay a thirty one percent (31%) co-payment and will instead~~ have a co-payment based only on his family income. ~~(3-26-08)~~( )

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.07.33 - ADULT MENTAL HEALTH SERVICES

DOCKET NO. 16-0733-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** 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 Section 67-5224 and 67-5291, Idaho Code, or a date specified in this rule. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution or as specified in the rule, unless the rule is rejected. The final effective date of this rule is July 1, 2015.

**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 39-3133, 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:

These rules update and align with the current environment and best practices for adult mental health services through Medicaid and other federal and state laws. 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 October 1, 2014, Idaho Administrative Bulletin, [Vol. 14-10, pages 270 through 280](#).

**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:

There is no anticipated fiscal impact to the state general fund or to any other funds due to this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Treena Clark at (208) 334-6611.

DATED this 7th Day of November, 2014.

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

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 39-3133, Idaho Code.

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

**\*ORIGINATING LOCATION -- LIVE MEETING\***  
Friday, October 17, 2014  
10:00 a.m. (MDT) / 9:00 a.m. (PDT)

**Idaho Department of Health & Welfare, Central Office  
Conference Room 3A (3rd floor)  
450 West State Street  
Boise, ID 83702**

**\*VIDEOCONFERENCE LOCATIONS\***

<b>Region I Office – Coeur d’Alene Main Conference Room 2195 Ironwood Court Coeur d’Alene, ID 83814</b>	<b>Region II Office – Lewiston 1st Floor Conference Rm. 1118 ‘F’ Street Lewiston, ID 83501</b>
<b>Region III Office – Caldwell Owyhee Conference Room (Rm. 226) 3402 Franklin Road Caldwell, ID 83605</b>	<b>Region IV Office – Boise Room 142 1720 Westgate Drive, Suite A Boise, ID 83704</b>
<b>Region V Office – Twin Falls Room 116 823 Harrison Twin Falls, ID 83301</b>	<b>Region VI Office – Pocatello Room 225 421 Memorial Drive Pocatello, ID 83201</b>
<b>Region VII Office – Idaho Falls Room 240 150 Shoup Ave. Idaho Falls, ID 83402</b>	<b>State Hospital South – Blackfoot Administration Bldg., Classroom A09 700 E. Alice Street Blackfoot, ID 83221</b>

**\*VIDEOCONFERENCE LOCATIONS, Continued\***

**State Hospital North  
Administration Conference Room 234  
300 Hospital Drive  
Orofino, ID 83544**

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:

These rule changes update and align this chapter of rules with the current environment and best practices being utilized in the adult mental health field. The current rules do not reflect changes that have been made to adult mental health services through Medicaid and other federal and state laws. In order for eligible participants to have better outcomes and to use best practices in the treatment of adult mental health services, these proposed rules:

1. Amend and add definitions for current terminology
2. Remove obsolete language and sections of rules that are no longer applicable; and
3. Clarify current mental health services available through the Department.

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

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

There is no anticipated fiscal impact to the state general fund or to any other funds due to this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because these rules are being amended based on current policies, best practices, laws, and regulations for adult mental health services the Department provides.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the Department is updating a document incorporated by reference in this chapter to a newer edition. The American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, DSM-5, is incorporated in this chapter.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Treena Clark at (208) 364-6611.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

### LSO RULES ANALYSIS MEMO

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0733-1401**

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules is; IDAPA 16.07.33, "Adult Mental Health Services." (5-8-09)( )

**02. Scope.** (5-8-09)

~~a.~~ This chapter defines the scope of voluntary adult mental health services, administered under the Department's Division of Behavioral Health, and describes the eligibility criteria, application requirements, individualized treatment plan requirements, and appeal process under these rules. This chapter is not intended to, and does not, establish an entitlement for or to receive adult mental health services, nor is it intended to be applicable to individuals ordered by the court to receive mental health services for the provision of adult mental health services administered under the Department's Division of Behavioral Health. (5-8-09)( )

~~b. The priority population for this chapter is adult individuals, voluntarily seeking mental health services, who are residents of Idaho and have a primary diagnosis of serious and persistent mental illness. However, under certain circumstances, in accordance with the waiver provision in Section 400 of these rules, adult mental health services may be available to those who do not have a primary diagnosis of serious and persistent mental illness. (5-8-09)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. INCORPORATION BY REFERENCE.**

American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, ~~Fourth~~ **Fifth** Edition, ~~Text Revision~~ (DSM-~~IV-TR~~**5**) Washington, DC, American Psychiatric Association, 2000**13**, is hereby incorporated by reference under this chapter of rules. Copies of the manual are available from the American Psychiatric Association, ~~1400 K Street, N.W., Washington, DC, 20005~~ **1000 Wilson Boulevard, Suite 1825, Arlington, Va. 22209-3901**. A copy of the manual is also available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83702. ~~(5-8-09)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS - A THROUGH F.**

For the purposes of these rules, the following terms are used as defined below: (5-8-09)

**01. Adult.** An individual eighteen (18) years of age or older. (5-8-09)

**02. Adult Mental Health Services.** Adult mental health services ~~include psychiatric clinical services, case management, individual therapy, group therapy, psychosocial rehabilitation (PSR), assertive community treatment (ACT), patient assistance program (PAP), benefit assistance, co-occurring disorders treatment, and pharmacological education. Mental health services do not include educational or vocational services related to traditional academic subjects or vocational training, experimental procedures, habilitation, or any other services which are primarily recreational or diversional in nature~~ are listed in Section 301 of these rules. These services are provided in response to the mental health needs of adults eligible for services required in Title 39, Chapter 31, Idaho Code, the Regional Behavioral Health Service Act, and under Section 102 of these rules. ~~(5-8-09)~~( )

**03. Applicant.** An adult individual who is seeking mental health services through the Department who has completed, or had completed on his behalf, an application for mental health services. (5-8-09)

**04. Assessment.** The gathering of historical and current clinical information through a clinical interview and from other available resources to identify a client's mental health issues, strengths, and service needs. ( )

**05. Assertive Community Services.** Comprehensive, intensive, and long-term rehabilitative services provided to clients who suffer from serious and persistent mental illness (SPMI) who have not benefited from traditional outpatient programs. ( )

**06. Behavioral Health.** An integrated system for evaluation and treatment of mental health and substance use disorders. ( )

**07. Behavioral Health Center.** State-operated community-based centers located in each of the seven (7) geographical regions of Idaho that provide or arrange for adult mental health services listed under Section 301 of these rules. ( )

**08. Case Management.** A change-oriented service provided to clients that assures and coordinates the provision of an assessment, treatment planning, treatment and other services, protection, advocacy, review and reassessment, documentation, and timely closure of a case. ( )

~~049.~~ **Client.** A person receiving mental health services through the Department. The term “client” is synonymous with the following terms: patient, participant, resident, consumer, or recipient of treatment or services. (5-8-09)

~~0510.~~ **Clinical Judgment.** Refers to observations and perceptions based upon education, experience, and clinical assessment. This may include psychometric, behavioral, and clinical interview assessments that are structured, integrated, and then used to reach decisions, individually or collectively, about an individual's functional, mental, and behavioral attributes and mental health service needs. (5-8-09)

~~0611.~~ **Clinical Necessity.** Adult mental health services are deemed clinically necessary when the Department, in the exercise of clinical judgment, recommends services to an applicant for the purpose of evaluating, diagnosing, or treating a mental illness and that are: (5-8-09)

a. Clinically appropriate, in terms of type, frequency, extent, site, and duration, and considered effective for treating the applicant's mental illness; and (5-8-09)

b. Not primarily for the convenience of the applicant or service provider, not more costly than an alternative service or sequence of services, and at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the applicant's mental illness. (5-8-09)

~~0712.~~ **Clinical Team.** A proposed client's clinical team may include: qualified clinicians, behavioral health professionals, professionals other than behavioral health professionals, behavioral health technicians, and any other individual deemed appropriate and necessary to ensure that the treatment is comprehensive and meets the needs of the proposed client. (5-8-09)

~~13.~~ **Crisis Intervention Services.** A set of planned activities designed to reduce the risk of life-threatening harm to self or another person. Crisis intervention services include evaluation, assessment, intervention, stabilization, and follow-up planning. ( )

~~0814.~~ **Department.** The Idaho Department of Health and Welfare or its designee. The Department is designated as the State Mental Health Authority under Section 39-3124, Idaho Code. (5-8-09)

~~09.~~ **Emergency.** ~~An emergency exists if an adult individual is gravely disabled due to mental illness or there is a substantial risk that physical harm will be inflicted by the proposed client:~~ (5-8-09)

~~a.~~ ~~Upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or~~ (5-8-09)

~~b.~~ ~~Upon another person, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm.~~ (5-8-09)

~~105.~~ **Federal Poverty Guidelines.** Guidelines issued annually by the Federal Department of Health and Human Services establishing the poverty income limits. The federal poverty guidelines for the current year may be found at: <http://aspe.hhs.gov/poverty/>. (5-8-09)

~~146.~~ **Functional Impairment.** Difficulties that substantially impair or limit role functioning with an individual's basic daily living skills, or functioning in social, family, vocational, or educational contexts including psychiatric, health, medical, financial, and community or legal area, or both. (5-8-09)

~~011.~~ **DEFINITIONS - G THROUGH Z.** For the purposes of these rules, the following terms are used as defined below: ( )

~~1201.~~ **Good Cause.** A valid and sufficient reason for not complying with the time frame set for submitting a written request for a waiver by an individual who does not receive a criminal history and background check clearance. (7-1-14)

~~1302.~~ **Gravely Disabled.** An adult who, as a result of mental illness, is in danger of serious physical harm due to the person's inability to provide for any of his basic needs for nourishment, essential medical care, shelter, or safety. (5-8-09)

~~1403.~~ **Individualized Treatment Plan.** A written action plan based on an intake eligibility assessment, that identifies the applicant's clinical needs, the strategy for providing services to meet those needs, treatment goals and objectives, and the criteria for terminating the specified interventions. (5-8-09)

~~15. Intake Eligibility Assessment. The collection of data, analysis, and review that the Department uses to screen and determine whether an applicant is eligible for mental health services available through the Department. (5-8-09)~~

~~04. Medication Management. The in-depth management of medications for psychiatric disorders for relief of a client's signs and symptoms of mental illness, provided by a physician or mid-level practitioner. ( )~~

~~05. Mental Health Crisis. A mental health crisis occurs when a sudden loss of an adult individual's ability to use effective problem-solving and coping skills leads to an imminent risk of harm to self or others, or decompensation to the point of the individual's inability to protect himself or herself. ( )~~

~~06. Outpatient Services. Mental health services provided to a client who is not admitted to a psychiatric hospital or in a residential care setting. ( )~~

~~07. Psychiatric Services. Medically necessary outpatient and inpatient services provided to treat and manage psychiatric disorders. ( )~~

~~08. Rehabilitative and Community-Based Services. Skill-building services that foster rehabilitation and recovery provided to client recovering from a mental illness. ( )~~

~~09. Residential Care. A setting for the treatment of mental health that provides twenty-four (24) hours per day, seven (7) days a week, living accommodations for clients. ( )~~

~~160. Serious Mental Illness (SMI). Means any of the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, *Text Revision* (DSM-IV-TR5), incorporated in Section 004 of these rules: (5-8-09)( )~~

~~a. Schizophrenia spectrum and other psychotic disorders; (5-8-09)( )~~

~~b. Paranoia and other psychotic disorders; (5-8-09)~~

~~eb. Bipolar disorders (mixed, manic and depressive); (5-8-09)~~

~~dc. Major depressive disorders (single episode or recurrent); (5-8-09)~~

~~e. Schizoaffective disorders; and (5-8-09)~~

~~fd. Obsessive-compulsive disorders. (5-8-09)~~

~~171. Serious and Persistent Mental Illness (SPMI). A primary diagnosis under DSM-IV-TR5 of Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Psychotic Disorder Not Otherwise Specified (NOS) for a maximum of one hundred twenty (120) days without a conclusive diagnosis. The psychiatric disorder must be of sufficient severity to cause a substantial disturbance in role performance or coping skills in at least two (2) of the following functional areas in the last six (6) months: (5-8-09)( )~~

~~a. Vocational or educational, or both. (5-8-09)~~

~~b. Financial. (5-8-09)~~



- c. Social relationships or support, or both. (5-8-09)
- d. Family. (5-8-09)
- e. Basic daily living skills. (5-8-09)
- f. Housing. (5-8-09)
- g. Community or legal, or both. (5-8-09)
- h. Health or medical, or both. (5-8-09)

**182. Sliding Fee Scale.** A scale used to determine an individual's financial obligation for services based on Federal Poverty Guidelines and found in IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules." (5-8-09)

**193. Substantial Material Change in Circumstances.** A substantial and material change in circumstances which renders the Department's decision denying mental health services arbitrary and capricious. (5-8-09)

**0142. -- 099. (RESERVED)**

**100. ACCESSING ADULT MENTAL HEALTH SERVICES.**

Adult mental health services may be accessed ~~by eligible applicants~~ either through an application ~~and request for initial intake eligibility assessment~~ for services, or through a court order for services. (5-8-09)( )

**101. ELIGIBILITY SCREENING AND ~~INTAKE ELIGIBILITY~~ MENTAL HEALTH ASSESSMENT.**

**01. Eligibility Screening.** A screening for eligibility for adult mental health services through the Department is based on the eligibility criteria under Section 102 of these rules. If an applicant meets the eligibility criteria, he may be eligible for adult mental health services through the Department. If an applicant does not meet the eligibility criteria, he may be referred to other appropriate services. All applicants are required to complete an Application for Mental Health Services. If an applicant refuses to complete the Application for Mental Health Services, the Department reserves the right to discontinue the screening process for eligibility. The eligibility screening must be directly related to the applicant's mental illness and level of functioning and will include:

(5-8-09)( )

- a. Application for Mental Health Services; ( )
- b. Notice of Privacy Practice; and ( )
- c. Authorization for Disclosure. ( )

**02. ~~Intake Eligibility~~ Mental Health Assessment.** ~~A qualified clinician will complete an intake eligibility assessment on the Department approved form. The intake eligibility assessment and supplemental psychiatric, psychological, or other specialty evaluations and tests must be dated, signed, and retained in the applicant's medical record. The intake eligibility assessment must be directly related to the applicant's mental illness and level of functioning, and will include:~~ Once a signed application or court order has been received for adult mental health services, the Department will schedule and conduct a mental health assessment. Each mental health assessment will be completed by a Department clinician and will be documented using the Department's Idaho Standard Mental Health Assessment Report.

(5-8-09)( )

- ~~a. Application for Mental Health Services, pending document approval;~~ (5-8-09)
- ~~b. Notice of Privacy Practice (HW 0320);~~ (5-8-09)
- ~~c. Mental Health Client Profile;~~ (5-8-09)

- ~~d. Fee Determination Form (HW-0735); (5-8-09)~~
- ~~e. Adult Health History Form (HW-0713); (5-8-09)~~
- ~~f. Family Health History Form (HW-0715); and (5-8-09)~~
- ~~g. Authorization for Disclosure. (5-8-09)~~

102. ELIGIBILITY DETERMINATION.

01. **The Department Determines Eligibility for Mental Health Services.** The total number of adults who are eligible for mental health services through the Department will be established by the Department. The Department may, in its sole discretion, limit or prioritize mental health services, define eligibility criteria, or establish the number of persons eligible based upon such factors as court-ordered services, availability of funding, the degree of financial need, the degree of clinical need, or other factors. (5-8-09)

02. **Eligibility Requirements.** To be eligible for mental health services through a voluntary application to the Department, the applicant must: (5-8-09)

- a. Be an adult; and (5-8-09)
- b. Be a resident of the state of Idaho; and (5-8-09)
- c. Have a primary diagnosis of SMI or SPMI; or (5-8-09)( )
- d. Be determined eligible under the waiver provisions in Section 400 of these rules. (5-8-09)

03. **Court-Ordered Assessment, Treatment, and Services.** The court may order the Department to provide assessment, treatment, and services according to Sections 18-212, 19-2524, and 66-329, Idaho Code. ( )

034. **Ineligible Conditions.** An applicant who has epilepsy, an intellectual disability, dementia, a developmental disability, physical disability, or who is aged or impaired by chronic alcoholism or drug abuse, is not eligible for mental health services, unless, in addition to such condition, he has a primary diagnosis of SMI or SPMI or is determined eligible under the waiver provisions in Section 400 of these rules. (5-8-09)( )

(BREAK IN CONTINUITY OF SECTIONS)

104. **EMERGENCY CRISIS INTERVENTION SERVICES.**

Crisis intervention services are available twenty-four (24) hours per day, seven (7) days per week to adults experiencing a mental health crisis as defined under Section 011 of these rules. Crisis intervention services include evaluation, assessment, intervention, stabilization, and follow-up planning. ( )

01. **Determination of the Need for Emergency Crisis Intervention Services.** ~~At an applicant's first visit, and prior to making a final determination of eligibility;~~ ~~†~~The Department will assess an adult experiencing a mental health crisis to determine whether ~~an applicant needs~~ services are needed to alleviate ~~an emergency as defined under Section 010 of these rules~~ the crisis. (5-8-09)( )

02. **Identification of the Emergency Crisis Intervention Services Needed.** If emergency crisis intervention services are clinically necessary, as determined by the Department, the Department will: ( )

- a. ~~†~~Identify the emergency services ~~that are consistent with the applicant's needs and the preliminary findings of the intake eligibility assessment or subsequent assessments and:~~ needed to stabilize the crisis; (5-8-09)( )

- ~~a~~b. Arrange for the provision of the emergency crisis intervention services; and (5-8-09)( )
- ~~b~~c. Document in the applicant's individual's record the emergency crisis services that are to be provided to the applicant individual. (5-8-09)( )
03. **Immediate Intervention.** If the Department determines that ~~an emergency~~ mental health crisis exists necessitating immediate intervention, ~~emergency or~~ crisis services will be arranged immediately. (5-8-09)( )

105. NOTICE OF DECISION ON ELIGIBILITY.

01. **Notification of Eligibility Determination.** Within ~~ten~~ fourteen (104) business calendar days of ~~a~~ receiving a ~~completed intake eligibility assessment~~ signed application, the Department will notify the applicant or the applicant's designated representative in writing of its eligibility determination. The written notice will include: (5-8-09)( )
- a. The applicant's name and identifying information; (5-8-09)
  - b. A statement of the decision; (5-8-09)
  - c. A concise statement of the reasons for the decision; and (5-8-09)
  - d. The process for pursuing an administrative appeal regarding eligibility determinations. (5-8-09)
02. **Right to Accept or Reject Mental Health Services.** If the Department determines that an applicant is eligible for mental health services through the Department, an individual has the right to accept or reject mental health services offered by the Department, unless imposed by law or court order. (5-8-09)
03. **Reapplication for Mental Health Services.** If the Department determines that an applicant is not eligible for mental health services through the Department, the applicant may reapply after six (6) months or at any time upon a showing of a substantial material change in circumstances. (5-8-09)

106. -- ~~10~~19. (RESERVED)

120. CLIENT'S RIGHTS AND RESPONSIBILITIES.

Each individual client receiving adult mental health services through the Department must be notified of his rights and responsibilities prior to the delivery of adult mental health services. ( )

01. Client to Be Informed of Rights and Responsibilities. The Department must inform each client of his rights and responsibilities. Each client must be given a written statement of client rights and responsibilities, which includes who the client may contact with questions, concerns, or complaints regarding services provided. ( )

02. Content of Client's Rights. The Department must assure and protect the fundamental human, civil, constitutional, and statutory rights of each client. The written client rights statement must, at a minimum, address the following: ( )

a. The right to impartial access to treatment and services, regardless of race, creed, color, religion, gender, national origin, age, or disability; ( )

b. The right to a humane treatment environment that ensures protection from harm, provides privacy to as great a degree as possible with regard to personal needs and promotes respect and dignity for each individual; ( )

c. The right to communication in a language and format understandable to the individual client; ( )

- d. The right to be free from mental, physical, sexual, and verbal abuse, as well as neglect and exploitation; ( )
- e. The right to receive services within the least restrictive environment possible; ( )
- f. The right to an individualized treatment plan, based on assessment of current needs; ( )
- g. The right to actively participate in planning for treatment and recovery support services; ( )
- h. The right to have access to information contained in one's record, unless access to particular identified items of information is specifically restricted for that individual client for clear treatment reasons in the client's treatment plan; ( )
- i. The right to confidentiality of records and the right to be informed of the conditions under which information can be disclosed without the individual client's consent; ( )
- j. The right to refuse to take medication unless a court of law has determined the client lacks capacity to make decisions about medications and is an imminent danger to self or others; ( )
- k. The right to be free from restraint or seclusion unless there is imminent risk of physical harm to self or others; ( )
- l. The right to refuse to participate in any research project without compromising access to program services; ( )
- m. The right to exercise rights without reprisal in any form, including the ability to continue services with uncompromised access; ( )
- n. The right to have the opportunity to consult with independent specialists or legal counsel, at one's own expense; ( )
- o. The right to be informed in advance of the reason(s) for discontinuance of any service provision, and to be involved in planning for the consequences of that event; ( )
- p. The right to receive an explanation of the reasons for denial of service. ( )

**121. -- 199. (RESERVED)**

**200. INDIVIDUALIZED TREATMENT PLAN ~~AND SELECTION OF SERVICE PROVIDERS.~~**

The Department will prepare an individualized treatment plan for every client that addresses the mental health effects on the major life areas and is based on an assessment of the client's mental health needs. (5-8-09)

**01. Individualized Treatment Plan.** Overall responsibility for development and implementation of the plan will be assigned to a qualified ~~professional staff member~~ **clinician**. A detailed individualized treatment plan will be developed within thirty (30) ~~calendar~~ **calendar** days ~~following~~ **from the date of** the Department's **eligibility** determination ~~that an applicant is eligible for mental health services through the Department. The individualized treatment plan will include the following:~~ **or date of any court order for services.** (5-8-09)( )

- ~~a.~~ ~~The services clinically necessary to meet the client's mental health needs;~~ (5-8-09)
- ~~b.~~ ~~Referrals for needed services not provided under these rules;~~ (5-8-09)
- ~~c.~~ ~~Goals that the client is to achieve;~~ (5-8-09)
- ~~d.~~ ~~Specific objectives that relate to the goals, written in measurable terms, with expected achievement dates;~~ (5-8-09)

- ~~e. Frequency of services; (5-8-09)~~
- ~~f. Specific criteria to be met for discharge from treatment; and (5-8-09)~~
- ~~g. A specific plan for including the family or significant others. (5-8-09)~~

~~02. **Selection of Providers.** Within five (5) days of completing the individualized treatment plan, the clinical team will identify and select service providers most appropriate to meet the client's mental health needs. The case manager will promptly contact the identified providers to determine their ability to serve the client. (5-8-09)~~

**02. Individualized Treatment Plan Requirements.** The individualized treatment plan must include the following: ( )

- a.** The services deemed necessary to meet the client's mental health needs; ( )
- b.** A prioritized list of problems and needs; ( )
- c.** Referrals for needed services not provided by the program; ( )
- d.** Goals that are based on the client's unique strengths, preferences, and needs; ( )
- e.** Specific objectives that relate to the goals written in simple, measurable, attainable, realistic terms with expected achievement dates; ( )

**f.** Interventions that describe the kinds of services, frequency of services, activities, supports, and resources the client needs to achieve short-term changes described in the objectives; ( )

**g.** The goals and objectives must be individualized and must reflect the choices of the client; ( )

**h.** Documentation of who participated in the development of the individualized treatment plan; ( )

**i.** The client or legal guardian must sign the treatment plan indicating their agreement with service needs identified and their participation in its development. If these signatures indicating participation in the development of the treatment plan are not obtained, then it must be documented in the client's record the reason the signatures were not obtained, including the reason for the client's refusal to sign. A copy of the treatment plan must be given to the client and legal guardian. ( )

**ii.** The treatment plan must be based on the findings of the assessment process. ( )

**i.** A specific plan for including the family or significant others; and ( )

**j.** Discharge criteria and aftercare plans. ( )

**03. One Hundred Twenty Day Review.** Treatment plans are to be reviewed with the client and updated as needed at least every one hundred twenty (120) days. ( )

**a.** The treatment plan review must assess and process the status, applicability, obstacles, and possible solutions of the client's goals, objectives, interventions, and timeframes of the treatment plan. ( )

**b.** Treatment plans for medication management only clients are not subject to a one hundred twenty (120) day review. ( )

**04. Treatment Plan Renewals.** A new treatment plan will be developed with the client every twelve (12) months. ( )

201. -- 299. (RESERVED)

**300. FINANCIAL RESPONSIBILITY FOR MENTAL HEALTH SERVICES.**

Individuals receiving adult mental health services through the Department are responsible for paying for the services provided. ~~Individuals must complete a "Fee Determination Form" prior to the delivery of adult mental health services they receive.~~ The financial responsibility for each service will be ~~in accordance with~~ based on the individual's ability to pay as determined under ~~Sections 300 and 400 of~~ IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules;" Sections 300 and 400. (5-8-09)(    )

**301. ADULT MENTAL HEALTH SERVICES.**

The Department is the lead agency in establishing and coordinating community supports, services, and treatment for adults eligible for services under Section 102 of these rules. The following services, as defined under Section 010 of these rules are provided by, or arranged for the delivery of by, the behavioral health center in each region: (    )

- 01. Assessment. (    )
- 02. Assertive Community Services. (    )
- 03. Case Management. (    )
- 04. Crisis Intervention. (    )
- 05. Medication Management. (    )
- 06. Psychiatric Services. (    )
- 07. Outpatient Services. (    )
- 08. Rehabilitative and Community-Based Services. (    )
- 09. Residential Care. (    )

~~301~~<sup>2</sup>. -- 399. (RESERVED)

**IDAPA 19 - IDAHO STATE BOARD OF DENTISTRY**  
**19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY**  
**DOCKET NO. 19-0101-1401**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 Section 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.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-912, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The Board of Dentistry's proposed amendments to the sedation rules regarding deletion of the word "cardiac" from the term "Advanced Cardiac Life Support" have been rejected and the previous language will be retained.

Regarding patient monitoring under sedation, the Board has corrected an error in the proposed rules which stated that patients must be monitored on a least a fifteen (15) minute interval. This is being corrected in the pending rule to state that the patient monitoring must be recorded on a five (5) minute interval.

An additional housekeeping change is being made to Subparagraph 061.02.b.i. to remove a rule citation.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 3, 2014 Idaho Administrative Bulletin, [Vol. 14-9, pages 283 through 291](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Susan Miller, Executive Director, at (208) 334-2369 or at [susan.miller@isbd.idaho.gov](mailto:susan.miller@isbd.idaho.gov).

DATED this 7th Day of November, 2014.

Susan Miller, Executive Director  
Board of Dentistry  
350 N. 9th Street, Ste. M-100  
P. O. Box 83720  
Boise, ID 83720-0021  
Phone: (208) 334-2369  
Fax: (208) 334-3247

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 54-912, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2014.

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

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

The purpose of this rulemaking is to clarify the requirements for the administration of sedation to patients. The rule changes revise the minimal, moderate, and general anesthesia and deep sedation rules by inclusion of additional standards currently contained in the American Dental Association, Guidelines for the Use of Sedation and General Anesthesia by Dentists, October 2007. Additionally, rules concerning facility requirements, records, and patient monitoring have been revised for clarification purposes.

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

**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: NA

**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 July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 86](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Susan Miller, Executive Director, at (208) 334-2369 or at [susan.miller@isbd.idaho.gov](mailto:susan.miller@isbd.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 September 24, 2014.

DATED this 6th Day of August, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 19-0101-1401**

**054. DEFINITIONS (RULE 54).**

For the purposes of these anesthesia rules, the following terms will be used, as defined below: (4-11-06)

**01. Methods of Anxiety and Pain Control.** (4-11-06)

**a.** Analgesia shall mean the diminution or elimination of pain. (4-7-11)



**b.** Local anesthesia shall mean the elimination of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug. (4-7-11)

**c.** Minimal sedation shall mean a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilator and cardiovascular functions are unaffected. In accord with this particular definition, the drugs and/or techniques used should carry a margin of safety wide enough never to render unintended loss of consciousness. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of minimal sedation. (4-7-11)

**d.** Moderate sedation shall mean a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. (4-7-11)

**e.** Deep sedation shall mean a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilator function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. (4-7-11)

**f.** General anesthesia shall mean a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired. (4-7-11)

**02. Sedation Terms.** (4-11-06)

**a.** Advanced Cardiac Life Support (ACLS) shall mean an advanced cardiac life support course or a pediatric advanced life support course offered by a recognized accrediting organization. ~~(4-11-06)~~ ( )

**b.** Monitor or monitoring shall mean the direct clinical observation of a patient during the administration of anesthesia by a person trained to observe the physical condition of the patient and capable of assisting with emergency or other procedures. (4-11-06)

**c.** Operator shall mean the supervising dentist or another person who is authorized by these rules ~~or holds a permit~~ to induce and administer the proper level of anesthesia/sedation. ~~(4-11-06)~~ ( )

**d.** Titration shall mean the administration of incremental doses of a drug until a desired effect is reached. Knowledge of each drug's time of onset, peak response and duration of action is essential to avoid over sedation. Although the concept of titration of a drug to effect is critical for patient safety, when the intent is moderate sedation one must know whether the previous dose has taken full effect before administering an additional drug increment. (4-7-11)

**e.** Maximum recommended dose (MRD) shall mean maximum FDA-recommended dose of a drug, as printed in FDA-approved labeling for unmonitored home use. (3-20-14)

**f.** Incremental dosing shall mean administration of multiple doses of a drug until a desired effect is reached, but not to exceed the maximum recommended dose (MRD). (4-7-11)

**g.** Supplemental dosing during minimal sedation shall mean a single additional dose of the initial drug that may be necessary for prolonged procedures. The supplemental dose should not exceed one-half of the initial dose and should not be administered until the dentist has determined the clinical half-life of the initial dosing has passed. The total aggregate dose must not exceed one and one-half times (1.5x) MRD on the day of treatment. (4-7-11)

- 03. Routes of Administration.** (4-11-06)
- a.** Enteral. Any technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (i.e., oral, rectal, sublingual). (4-11-06)
  - b.** Inhalation. A technique of administration in which a gaseous or volatile agent is introduced into the lungs and whose primary effect is due to absorption through the gas/blood interface. (4-7-11)
  - c.** Parenteral. A technique of administration in which the drug bypasses the gastrointestinal (GI) tract [i.e., intramuscular (IM), intravenous (IV), intranasal (IN), submucosal (SM), subcutaneous (SC), intraosseous (IO)]. (4-7-11)
  - d.** Transdermal. A technique of administration in which the drug is administered by patch or iontophoresis through skin. (4-7-11)
  - e.** Transmucosal. A technique of administration in which the drug is administered across mucosa such as intranasal, sublingual, or rectal. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**060. MODERATE SEDATION (RULE 60).**

Dentists licensed in the state of Idaho cannot administer moderate sedation in the practice of dentistry unless they have obtained the proper moderate sedation permit from the Idaho State Board of Dentistry. A moderate sedation permit may be either enteral or parenteral. A moderate enteral sedation permit authorizes dentists to administer moderate sedation by either enteral or combination inhalation-enteral routes of administration. A moderate parenteral sedation permit authorizes a dentist to administer moderate sedation by any route of administration. A dentist shall not administer moderate sedation to children under sixteen (16) years of age and one hundred (100) pounds unless they have qualified for and been issued a moderate parenteral sedation permit. (3-29-12)

**01. Requirements for a Moderate Enteral Sedation Permit.** To qualify for a moderate enteral sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate sedation to a level consistent with that prescribed in the American Dental Association's "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students," as incorporated in Section 004 in these rules. The five (5) year requirement regarding the required training for a moderate enteral sedation permit shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the application date. To obtain a moderate enteral sedation permit, a dentist must provide ~~certification~~ verification of the following: (4-7-11)(    )

**a.** Completion of an American Dental Association accredited or Board of Dentistry approved post-doctoral training program within five (5) years of the date of application for a moderate enteral sedation permit that included documented training of a minimum of twenty-four (24) hours of instruction plus management of at least ten (10) adult case experiences by the enteral and/or enteral-nitrous oxide/oxygen route. These ten (10) cases must include at least three live clinical dental experiences managed by participants in groups no larger than five (5). The remaining cases may include simulations and/or video presentations, but must include one experience in returning a patient from deep to moderate sedation; and (4-7-11)

**b.** ~~Proof of e~~Current certification ~~of in~~ Advanced Cardiac Life Support ~~or its equivalent.~~ (4-7-11)(    )

**02. Requirements for a Moderate Parenteral Sedation Permit.** To qualify for a moderate parenteral sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate parenteral sedation as prescribed in the American Dental Association's "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students," as incorporated in Section 004 of these rules within the five (5) year period immediately prior to the date of application for a moderate parenteral sedation permit. The five (5) year requirement shall not be applicable to applicants who hold an equivalent permit in another state

which has been in effect for the twelve (12) month period immediately prior to the date of application. The training program shall: (4-7-11)

a. Be sponsored by or affiliated with a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or a teaching hospital or facility approved by the Board of Dentistry; and (4-5-00)

b. Consist of a minimum of sixty (60) hours of instruction, plus management of at least twenty (20) patients by the intravenous route; and (4-7-11)

c. Include the issuance of a certificate of successful completion that indicates the type, number of hours, and length of training received. (3-18-99)

d. In addition, the dentist must maintain current certification in Advanced Cardiac Life Support ~~or its equivalent.~~ (4-7-11)(    )

**03. General Requirements for Moderate Enteral and Moderate Parenteral Sedation Permits.** (4-7-11)

~~a. Facility Requirements. The dentist must have a properly equipped facility for the administration of moderate sedation.~~ The qualified dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of moderate sedation and providing the equipment, drugs and protocol for patient rescue. Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the anesthesia team. The Board adopts the standards incorporated by reference in Section 004.01.c. and Section 004.01.d. of these rules as set forth by the American Dental Association. (4-7-11)(    )

a. Facility, Equipment and Drug Requirements. The following facilities, equipment and drugs shall be available for immediate use during the sedation and recovery phase: (    )

i. An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two (2) individuals to freely move about the patient; (    )

ii. An operating table or chair that permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support; (    )

iii. A lighting system that permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure; (    )

iv. Suction equipment that permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure; (    )

v. An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system; (    )

vi. A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room; (    )

vii. A sphygmomanometer, pulse oximeter, oral and nasopharyngeal airways, supraglottic airway devices, and automated external defibrillator (AED); and (    )

viii. Emergency drugs including, but not limited to, pharmacologic antagonists appropriate to the drugs used, bronchodilators, and antihistamines. (    )

ix. Additional emergency equipment and drugs required for moderate parenteral sedation permits include precordial/pretracheal stethoscope, intravenous fluid administration equipment, vasopressors, and anticonvulsants. ( )

**b.** Personnel. For moderate sedation, the minimum number of personnel shall be two (2) including: (4-7-11)

i. The operator; and (10-1-87)

ii. An assistant currently certified in Basic Life Support for Healthcare Providers. (4-7-11)

iii. Auxiliary personnel must have documented training in basic life support for healthcare providers, shall have specific assignments, and shall have current knowledge of the emergency cart inventory. The practitioner dentist and all office personnel must participate in documented periodic reviews of office emergency protocol, including simulated exercises, to assure proper equipment function and staff interaction. (4-7-11)( )

**c.** Pre-sedation Requirements. Before inducing moderate sedation, a dentist shall: ( )

i. Evaluate the patient's medical history and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for moderate sedation; ( )

ii. Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; ( )

iii. Obtain written informed consent from the patient or patient's guardian for the sedation; and ( )

iv. Maintain an anesthesia record, and enter the individual patient's sedation into a case/drug log. ( )

**d.** Patient Monitoring. Patients shall be monitored as follows: ( )

i. Patients must have continuous monitoring using pulse oximetry. The patient's blood pressure, heart rate, and respiration shall be recorded every five (5) minutes during the sedation and then continued every fifteen (15) minutes until the patient meets the requirements for discharge. These recordings shall be documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. If this information cannot be obtained, the reasons shall be documented in the patient's record. A patient under moderate sedation shall be continuously monitored; ( )

ii. During the recovery phase, the patient must be monitored by an individual trained to monitor patients recovering from moderate sedation; ( )

iii. A dentist shall not release a patient who has undergone moderate sedation except to the care of a responsible third party; ( )

iv. The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met: vital signs are stable, patient is alert and oriented, and the patient can ambulate with minimal assistance; and ( )

v. A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged. ( )

**e.** Sedation of Other Patients. The permit holder shall not initiate sedation on another patient until the previous patient is in a stable monitored condition and in the recovery phase following discontinuation of their

sedation. ( )

**ef.** Permit Renewal. Renewal of the permit will be required every five (5) years. Proof of a minimum of twenty-five (25) credit hours continuing education in moderate sedation which may include training in medical/office emergencies will be required to renew a permit. A fee shall be assessed to cover administrative costs. In addition to the continuing education hours, a dentist must: (3-20-14)

i. For a moderate enteral sedation permit, maintain current certification in basic life support for healthcare providers or advanced cardiac life support; ~~or~~ ~~(3-20-14)~~ ( )

ii. For a moderate parenteral sedation permit, maintain current certification in advanced cardiac life support. (3-20-14)

**dg.** Reinstatement. A dentist may make application for the reinstatement of an expired or surrendered permit issued by the Board under this rule within five (5) years of the date of the permit's expiration or surrender. Applicants for reinstatement of a permit shall satisfy the facility and personnel requirements of this rule and shall be required to verify that they have obtained an average of five (5) credit hours of continuing education in moderate sedation for each year subsequent to the date upon which the permit expired or was surrendered. A fee for reinstatement shall be assessed to cover administrative costs. (4-7-11)

**061. GENERAL ANESTHESIA AND DEEP SEDATION (RULE 61).**

Dentists licensed in the state of Idaho cannot use general anesthesia or deep sedation in the practice of dentistry unless they have obtained the proper permit from the Idaho State Board of Dentistry by conforming with the following conditions: (4-7-11)

**01. General Requirements for a General Anesthesia and Deep Sedation Permit.** A dentist applying for a permit to administer general anesthesia or deep sedation shall provide proof that the dentist: ~~(4-7-11)~~ ( )

**a.** Has completed an advanced education program accredited by the ADA Commission on Dental Accreditation that affords comprehensive and appropriate training necessary to administer and manage deep sedation or general anesthesia, commensurate with Part IV.C of the American Dental Association's "Guidelines for the Use of Sedation and General Anesthesia by Dentists" within the five (5) year period immediately prior to the date of application for a permit. The five (5) year requirement shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the date of application; and (4-7-11)

**b.** Current Certification in Advanced Cardiac Life Support ~~or its equivalent~~; and ~~(4-7-11)~~ ( )

**c.** Has an established protocol or admission to a recognized hospital. (3-18-99)

**02. Facility General Requirements for General Anesthesia and Deep Sedation Permits.** ~~The dentist must have a properly equipped facility for the administration of general anesthesia or deep sedation.~~ The qualified dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of general anesthesia or deep sedation and providing the equipment, drugs and protocol for patient rescue. Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the anesthesia team. The Board adopts the standards incorporated by reference in Section 004 of these rules, as set forth by the American Association of Oral and Maxillofacial Surgeons in their office anesthesia evaluation manual. ~~(4-7-11)~~ ( )

**a. Facility, Equipment and Drug Requirements.** The following facilities, equipment and drugs shall be available for immediate use during the sedation and recovery phase: ( )

**i. An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two (2) individuals to freely move about the patient;** ( )

**ii. An operating table or chair that permits the patient to be positioned so the operating team can**

maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support; ( )

iii. A lighting system that permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure; ( )

iv. Suction equipment that permits aspiration of the oral and pharyngeal cavities and a backup suction device that will function in the event of a general power failure; ( )

v. An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system; ( )

vi. A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room; ( )

vii. A sphygmomanometer, precordial/pretracheal stethoscope, end-tidal carbon dioxide monitor, pulse oximeter, oral and nasopharyngeal airways, supraglottic airway devices, intravenous fluid administration equipment, and automated external defibrillator (AED); and ( )

viii. Emergency drugs including, but not limited to, pharmacologic antagonists appropriate to the drugs used, vasopressors, bronchodilators, antihistamines, and anticonvulsants. ( )

~~03~~b. Personnel. For general anesthesia or deep sedation, the minimum number of personnel shall be three (3) including: (4-7-11)

a.i. A qualified operator to direct the sedation ~~as specified in Section 061 of this rule;~~ and (4-7-11) ( )

b.ii. Two (2) additional individuals who have current certification in Basic Life Support for the Healthcare Provider. (4-7-11)

e.iii. When the same individual administering the deep sedation or general anesthesia is performing the dental procedure, one (1) of the additional appropriately trained team members must be designated for patient monitoring. (4-7-11)

c. Pre-sedation Requirements. Before inducing general anesthesia or deep sedation, a dentist shall: ( )

i. Evaluate the patient's medical history and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for deep sedation; ( )

ii. Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; ( )

iii. Obtain written informed consent from the patient or patient's guardian for the sedation; and ( )

iv. Maintain an anesthesia record, and enter the individual patient's sedation into a case/drug log. ( )

d. Patient Monitoring. Patients shall be monitored as follows: ( )

i. Patients must have continuous monitoring using pulse oximetry and end-tidal carbon dioxide monitors. The patient's blood pressure, heart rate, and respiration shall be recorded every five (5) minutes during the sedation, and then continued every fifteen (15) minutes until the patient meets the requirements for discharge. These

recordings shall be documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. If this information cannot be obtained, the reasons shall be documented in the patient's record. A patient under deep sedation or general anesthesia shall be continuously monitored; ( )

vi. During the recovery phase, the patient must be monitored by an individual trained to monitor patients recovering from general anesthesia and deep sedation; ( )

vii. A dentist shall not release a patient who has undergone general anesthesia, deep sedation or moderate sedation except to the care of a responsible third party; ( )

viii. The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met: vital signs are stable, patient is alert and oriented, and the patient can ambulate with minimal assistance; and ( )

ix. A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged. ( )

e. Sedation of Other Patients. The permit holder shall not initiate sedation on another patient until the previous patient is in a stable monitored condition and in the recovery phase following discontinuation of their sedation. ( )

**043. Moderate Sedation.** A dentist holding a permit to administer general anesthesia or deep sedation under this rule may also administer moderate sedation. (4-7-11)

**054. Permit Renewal.** Renewal of the permit will be required every five (5) years. Proof of a minimum of twenty-five (25) credit hours of continuing education in general anesthesia or deep sedation and proof of current certification in Advanced *Cardiac* Life Support will be required to renew a permit. A fee shall be assessed to cover administrative costs. (4-7-11)( )

**065. Reinstatement.** A dentist may make application for the reinstatement of an expired or surrendered permit issued by the Board under this rule within five (5) years of the date of the permit's expiration or surrender. Applicants for reinstatement of a permit shall satisfy the facility and personnel requirements of this rule and shall be required to verify that they have obtained an average of five (5) credit hours of continuing education in general anesthesia or deep sedation for each year subsequent to the date upon which the permit expired or was surrendered. A fee for reinstatement shall be assessed to cover administrative costs. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**065. DETERMINATION OF DEGREE OF SEDATION BY THE BOARD (RULE 65).**

In any matter under review or in any proceeding being conducted in which the Board must determine the degree of sedation or level of consciousness of a patient central nervous system depression, the Board may base its findings or conclusions on, among other matters, the following: (4-11-06)

01- Medication and Dosage. The type, and dosages, and of medication(s) that was administered to the patient as well as the routes of administration of the medication(s); and drugs administered to the patient and what result can reasonably be expected from those drugs in those dosages and routes administered in a patient of that physical and psychological status. (4-11-06)( )

02- Expected Results. The result that can reasonably be expected from the medication(s) administered when considering the physical and psychological status of the patient. (4-11-06)

**066. -- 999. (RESERVED)**

## IDAPA 23 - BOARD OF NURSING

### 23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

#### DOCKET NO. 23-0101-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 54-1404, 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:

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 September 3, 2014 Idaho Administrative Bulletin, [Vol. 14-9, pages 339 through 342](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sandra Evans, M.A. Ed., R.N., Executive Director, (208) 334-3110 ext. 2476.

DATED this 25th day of September, 2014.

Sandra Evans, M.A. Ed., R.N.  
Executive Director  
Board of Nursing  
280 N. 8th St. (8th & Bannock), Ste. 210  
P. O. Box 83720  
Boise, ID 83720-0061  
Phone: (208) 334-3110 ext. 2476  
Fax: (208) 334-3262

#### THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 54-1404, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2014.

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



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

The 2014 Legislature amended the Board of Nursing's disciplinary statute to provide that sexual conduct or sexual exploitation by a nurse of a current or, in certain situations, a former patient constitutes grounds for discipline. The rulemaking is intended to define the terms sexual conduct and sexual exploitation, clarify the prohibited conduct, and otherwise implement the statutory amendment.

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

**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: NA

**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 4, 2014 Idaho Administrative Bulletin, **Vol. 14-6, page 69**.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sandra Evans, M.A. Ed., R.N., Executive Director, (208) 334-3110 ext. 2476.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 7th day of August, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 23-0101-1401**

**101. STANDARDS OF CONDUCT.**

**01. Violations.** Any violation of these Standards of Conduct shall be grounds for disciplinary action in accordance with Section 54-1413(1), Idaho Code, of the Idaho Nursing Practice Act and Section 090 or 100 of these rules. (3-30-07)

**02. Classification.** For purposes of convenience only, the standards of conduct are grouped generally into one (1) of three (3) categories: license, practice, and professional responsibility. The fact that any particular standard is so classified in any particular category will not be relevant for any purpose other than ease of use. (3-15-02)

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

**a. Period of Practice.** The nurse shall practice registered or practical nursing in Idaho only with a current Idaho license or during the period of valid temporary licensure or as otherwise allowed by law. (3-15-02)

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

**c.** Reporting Grossly Negligent or Reckless Practice. The nurse shall report to the Board any licensed nurse who is grossly negligent or reckless in performing nursing functions or who otherwise violates the Nursing Practice Act or the Board rules. (7-1-93)

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

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

**04. Practice.** (3-15-02)

**a.** Perform Acts. The nurse shall have knowledge of the statutes and rules governing nursing and shall function within the defined legal scope of nursing practice. The nurse shall not assume any duty or responsibility within the practice of nursing without adequate training or where competency has not been maintained. (3-15-02)

**b.** Delegating Activities to Others. The nurse shall delegate activities only to persons who are competent and qualified to undertake and perform the delegated activities and shall not delegate to non-licensed persons functions that are to be performed only by licensed nurses. (4-4-13)

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

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

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

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

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

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

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

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

**k.** Universal Standards. The nurse shall adhere to universal standards and carry out principles of asepsis and infection control and shall not place the patient, the patient's family or the nurse's coworkers at risk for the transmission of infectious diseases. (3-15-02)

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

**a.** Disclosing Contents of Licensing Examination. The nurse shall not disclose contents of any

licensing examination, or solicit, accept, or compile information regarding the contents of any examination before, during, or after its administration. (11-28-84)

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

**c.** Responsibility and Accountability Assumed. The nurse shall be responsible and accountable for his nursing judgments, actions and competence. (7-1-93)

**d.** Witnessing Wastage of Controlled Substances Medication. Controlled substances may not be wasted without witnesses. The nurse shall not sign any record as a witness attesting to the wastage of controlled substance medications unless the wastage was personally witnessed. The nurse shall not solicit the signatures on any record of a person as a witness to the wastage of a controlled substance when that person did not witness the wastage. The nurse shall solicit signatures of individuals who witnessed the wastage in a timely manner. (3-30-07)

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

**f.** Diverting or Soliciting. The nurse shall respect the property of the patient and employer and shall not take or divert equipment, materials, property, or drugs without prior consent or authorization, nor shall the nurse solicit or borrow money, materials or property from patients. (3-15-02)

**g.** Exploit, Solicit, or Receive Fees. The nurse shall not exploit the patient or the patient's family for personal or financial gain or offer, give, solicit, or receive any fee or other consideration for the referral of a patient or client. (3-15-02)

**h.** Professionalism. The nurse must not abuse the patient's trust. The nurse shall respect the dignity of the profession and maintain appropriate professional boundaries with respect to patients, the patients' families, and the nurse's coworkers. The nurse will not engage in sexual misconduct or violent, threatening or abusive behavior towards patients, patients' families or the nurse's coworkers. The nurse must be aware of the potential imbalance of power in professional relationships with patients, based on their need for care, assistance, guidance, and support, and ensure that all aspects of that relationship focus exclusively upon the needs of the patient. ~~(3-15-02)~~( )

**i.** For purposes of this rule and Section 54-1413, Idaho Code, sexual misconduct violations include, but are not limited to: ( )

**(1)** Engaging in or soliciting any type of sexual conduct with a patient; ( )

**(2)** Using the nurse-patient relationship, trust and confidence of the patient derived from the nurse-patient relationship, or any information obtained as a result of the nurse-patient relationship, to solicit, suggest or discuss dating or a romantic or sexual relationship with a patient; ( )

**(3)** Using confidential information obtained during the course of the nurse-patient relationship to solicit, suggest or discuss dating or a romantic relationship, or engaged in sexual conduct with a patient, former patient, colleague, or member of the public; and ( )

**(4)** Engaging in or attempting to engage in sexual exploitation or criminal sexual misconduct directed at patients, former patients, colleagues, or members of the public, whether within or outside the workplace. ( )

**ii.** For purposes of this rule: ( )

**(1)** Consent of a patient shall not be a defense. In the case of sexual exploitation or criminal sexual misconduct, consent of the victim shall not be a defense. ( )

(2) A patient ceases to be a patient thirty (30) days after receiving the final nursing services, or final reasonably anticipated nursing services from a nurse, unless the patient is determined by the Board to be particularly vulnerable by his minority; known mental, emotional, or physical disability; known alcohol or drug dependency; or other circumstance. A patient that is deemed particularly vulnerable ceases to be a patient one (1) year after receiving the final nursing services, or final reasonably anticipated nursing services from a nurse. ( )

(3) It is not a violation of this rule for a nurse to continue a sexual relationship with a spouse or individual of majority if a consensual sexual relationship existed prior to the establishment of the nurse-patient relationship. ( )

iii. The following definitions apply to this rule: ( )

(1) "Sexual conduct" means any behavior that might reasonably be interpreted as being designed or intended to arouse or gratify the sexual desires of an individual. This includes, but is not limited to, physical touching of breasts, buttocks or sexual organs, creation or use of pornographic images, discussion about sexual topics unrelated to the patient's care, intentional exposure of genitals, and not allowing a patient privacy, except as may be medically necessary. ( )

(2) "Sexual exploitation" means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual conduct of another, or withholding or threatening to withhold care, medication, food or other services to coerce sexual conduct. ( )

(3) "Criminal sexual misconduct" means any sexual conduct that, if proven, would constitute a felony or misdemeanor under state or federal law. ( )

## IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

### 24.10.01 - RULES OF THE STATE BOARD OF OPTOMETRY

#### DOCKET NO. 24-1001-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 Section 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 54-1509, 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:

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 August 6th, 2014 Idaho Administrative Bulletin, [Vol. 14-8, pages 77 through 79](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 10th day of October, 2014.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720-0063  
Tel: (208) 334-3233  
Fax: (208) 334-3945

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**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 54-1509, 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 20, 2014.

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:

Effective January 1, 2017, the timeframe for obtaining continuing education will change from a licensee's birthday to a calendar year. This change will lessen the confusion regarding when continuing education must be earned for license renewal.

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

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because The Board of Optometry is amending its continuing education rules to confer a benefit to its licensees. The benefit is establishing a clear deadline for obtaining continuing education for license renewal.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 27, 2014.

DATED this 3rd day of July, 2014.

### LSO RULES ANALYSIS MEMO

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1001-1401**

**300. CONTINUING EDUCATION IN OPTOMETRY (RULE 300).**

**01. Hours Required, Advance Approval. ( )**

**a.** Until January 1, 2017, ~~Each~~ optometrist licensed by the state of Idaho shall attend, in each twelve-month (12) period preceding the renewal of ~~a his~~ license ~~to practice optometry in Idaho~~, a minimum of twelve (12) full hours of ~~post-graduate optometric education courses or meetings approved in advance by the Board of Optometry or post-graduate study sessions or seminars at an accredited school or college of optometry~~ approved optometric continuing education courses or meetings. ( )

**b.** Effective January 1, 2017, each optometrist licensed by the state of Idaho shall attend, in each calendar year prior to license renewal, a minimum of twelve (12) full hours of approved optometric continuing education courses or meetings. ( )

**c.** Approved optometric continuing education courses or meetings shall be those post-graduate optometric education courses or meetings approved in advance by the Board of Optometry or post-graduate study sessions or seminars at an accredited school or college of optometry. In addition, all Council on Optometric Practitioners Education (COPE) approved courses are approved for continuing education credit. If an optometrist attends or plans to attend a course of study or seminar which has not been approved in advance, he may petition the

Board for approval of that educational course of study, setting forth a description of the course. The Board may, in its discretion, approve the course upon review of the material submitted either in advance or after completion of the course. (4-4-13)( )

**02. Additional Hours Required to Use Therapeutic Pharmaceutical Agents. ( )**

**a.** Until January 1, 2017, Each optometrist licensed by the state of Idaho to use therapeutic pharmaceutical agents shall attend, in each twelve (12) month period preceding the renewal of ~~his~~ license to practice optometry in Idaho, a minimum of six (6) additional full hours of ~~post graduate approved~~ optometric courses or meetings approved in advance by the Board of Optometry or post graduate study sessions or seminars at an accredited school or college of optometry. ( )

**b.** Effective January 1, 2017, each optometrist licensed by the state of Idaho to use therapeutic pharmaceutical agents shall attend, in each calendar year prior to license renewal, a minimum of six (6) additional full hours of approved optometric courses or meetings. ( )

**c.** This six (6) hours of continuing education must be in courses involving ocular pharmacology and/or advanced ocular disease and are in addition to the twelve (12) hours of continuing education required under Subsection 300.01. (7-1-93)( )

**03. Correspondence/Home Study Courses/Observation.** The Board allows credit for correspondence courses, individual home study and observation that is germane to the practice of optometry. No more than six (6) hours of continuing education shall be permitted each year in correspondence courses or other continuing education obtained from “home study” courses or observation. (3-30-07)

**04. Waiver of Requirements.** The Board of Optometry shall waive the continuing education requirement for the first license renewal after initial licensure. The Board of Optometry may, upon application, waive the requirements of this rule in cases involving illness, unusual circumstances interfering with the optometrist’s ability to practice or inability to conform to the rules due to military duty. (3-15-02)

**05. Renewal Application Form.** Each licensed Idaho optometrist will be furnished a license renewal application form by the State Board of Optometry on which each optometrist shall attest on their annual license renewal application that they have satisfied the continuing education requirements. False attestation of satisfaction of the continuing education requirements on a renewal application shall subject the licensee to disciplinary action. (3-20-04)

**06. Audit.** The Board may conduct audits to confirm that the continuing education requirements have been met. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the license will not be renewed. (3-20-04)

**07. Documentation of Attendance.** It shall be necessary for each licensed Idaho optometrist to provide documentation verifying attendance or completion of continuing education by securing authorized signatures, documentation, or electronic verification from the course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. This documentation must be maintained by the licensee and provided upon request by the Board or its agent. (4-4-13)

**08. Excess Hours.** ~~Continuing education hours, not to exceed six (6) hours, accumulated during the twelve (12) months immediately preceding a license renewal may be applied toward meeting the continuing education requirement for the following license renewal. A licensee may carryover a maximum of six (6) hours of continuing education to meet the next year’s continuing education requirement.~~ Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) year. (3-30-07)( )

## IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

### 24.15.01 - RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

DOCKET NO. 24-1501-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 Section 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 of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-3404, 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:

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 October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 321 - 322](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 6th Day of November, 2014.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720-0063  
Tel: (208) 334-3233  
Fax (208) 334-3945

#### THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 54-3404, 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 October 15, 2014.

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



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

The American Counseling Association (ACA) Code of Ethics was amended effective 2014 and the Board is adopting the updated version and incorporating the code of ethics in its rules by reference.

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

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the American Counseling Association (ACA) Code of Ethics has been updated for 2014 and the Board would like to adopt the updated version. The rule change was discussed during a noticed, open meeting of the Board.

**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 American Counseling Association (ACA) Code of Ethics was amended effective 2014 and the Board is adopting the updated version and incorporating the code of ethics in its rules by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 October 22, 2014.

DATED this 28th day of August, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1501-1401**

**004. INCORPORATION BY REFERENCE (RULE 4).**

**01. ACA Code of Ethics.** “ACA Code of Ethics,” as published by the American Counseling Association (ACA), effective 20~~05~~14, is herein incorporated by reference and is available from the Board’s office and on the Board web site. (4-4-13)(    )

**02. AAMFT Code of Ethics.** The document titled “AAMFT Code of Ethics,” as published by the American Association for Marriage and Family Therapy (AAMFT), effective July 1, 2012 and referenced in Subsections 350, and 450.01, is herein incorporated by reference and is available from the Board’s office and on the Board web site. (4-4-13)

**03. Guidelines.** The document titled “Approved Supervision Designation Handbook” that provides supervision guidelines for supervisors, as published by the American Association for Marriage and Family Therapy (AAMFT), dated October 2007 referenced in Subsection 239.03.a. of these rules, is herein incorporated by reference and is available from the Board’s office and on the Board web site at <http://www.ibol.idaho.gov>. (4-4-13)

## IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

### 24.23.01 - RULES OF THE SPEECH AND HEARING SERVICES LICENSURE BOARD

DOCKET NO. 24-2301-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective July 17, 2014, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 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 54-2909, 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:

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 September 3rd, 2014 Idaho Administrative Bulletin, [Vol. 14-9, pages 352-353](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 10th day of October, 2014.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720-0063  
Tel: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING NOTICE WAS PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 17, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2909, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2014.

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 rules of the Board need to be updated to conform with House Bill 357, which passed in the 2014 Legislative Session. Rule 100 is being updated to define a quorum of the Board.

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

House Bill 357 passed by the 2014 Legislature amends the Board's definition of a quorum. The change provides that a quorum can be established if at least one member of the relevant profession is present when taking action that affects the profession, its applicants or licensees. The change to the rules is necessary to conform with statute.

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

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rules of the Speech and Hearing Services Licensure Board need to be updated to conform with House Bill 357, which passed in the 2014 Legislative Session.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 28th day of July, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-2301-1401**

#### **100. ORGANIZATION (RULE 100).**

**01. Meetings.** The Board shall meet not less than twice annually and at other such times and places as designated by the Board or the Chairman of the Board. Special meetings may be held at the call of the Chairman, and all members shall be notified. (3-30-06)

**a.** All meetings shall be held in accordance with the Idaho Open Meeting Law, Sections 67-2340 through 67-2347, Idaho Code. (3-30-06)

**b.** Four (4) members of the Board shall constitute a quorum, provided at least one (1) ~~audiologist, one (1) speech language pathologist, the hearing aid dealer and fitter member and the public board~~ member are of the relevant profession is present when any board action is taken that affects the profession, its licensees, or applicants. The Board may act by virtue of a majority vote of members present in which a quorum is present. The Chairman may vote only in the event of a tie vote. ~~(3-30-06)~~( )

**02. Organization of the Board.** At the first meeting of each fiscal year, the Board shall elect from its members a Chairman, who shall assume the duty of the office immediately upon such selection. (3-30-06)

**a.** The Chairman shall when present, preside at all meetings, appoint with the consent of the Board, all committees, and shall otherwise perform all duties pertaining to the office of Chairman. The Chairman shall be an ex-officio member of all committees. (3-30-06)

**b.** The Chief of the Bureau shall act as an agent of the Board and shall be the official keeper of all records of the Board. The Bureau shall provide such services as may be authorized by Chapter 26, Title 67, Idaho Code, and as defined under contract between the Bureau and the Board. (3-30-06)

## IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

### 24.26.01 - RULES OF THE IDAHO BOARD OF MIDWIFERY

DOCKET NO. 24-2601-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2014, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 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 54-5504, 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:

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 July 2nd, 2014 Idaho Administrative Bulletin, [Vol. 14-7, pages 92 through 100](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 10th day October, 2014.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720-0063  
Tel: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING NOTICE WAS PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-5504, 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 July 16, 2014.

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:

House Bill 438 passed by the 2014 Legislature, clarified and made changes to the Midwifery Practice Act that will benefit those families who choose to use midwifery services in Idaho. The rules of the Board need to be updated to conform with changes in statute.

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

House Bill 438 passed by the 2014 Legislature, clarified and made changes to the Midwifery Practice Act that will benefit those families who choose to use midwifery services in Idaho.

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

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rules of the Idaho Board of Midwifery need to be updated to conform with House Bill 438, which passed in the 2014 legislative session.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 23, 2014.

DATED this 6th day of June, 2014.

### LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-2601-1401

**010. DEFINITIONS (RULE 10).**

- 01. Board.** The Idaho Board of Midwifery as created in Section 54-5503, Idaho Code. (3-29-10)
- 02. Bureau.** The Idaho Bureau of Occupational Licenses as prescribed in Section 67-2602, Idaho Code. (3-29-10)
- 03. Client.** A woman under the care of a licensed midwife, as well as the woman's fetus and newborn

child. (3-29-10)

**04. CPM.** A certified professional midwife; in other words, a person who is certified by NARM or any successor organization. (3-29-10)

**05. Estimated Due Date.** The estimated date of delivery with a known date of conception, known date of last menstrual period, or first trimester ultrasound. ( )

**06. Licensed Health Care Provider.** A physician or physician assistant or an advanced practice registered nurse. ( )

**057. Licensed Midwife.** A person who holds a current license issued by the Board, who shall be designated "L.M." (3-29-10)

**068. MEAC.** The Midwifery education accreditation council, the organization established in 1991 and recognized by the U.S. department of education as an accrediting agency for midwifery education programs and institutions. (3-29-10)

**079. NARM.** The North American Registry of Midwives, the international certification agency that establishes and administers certification for the CPM credential. (3-29-10)

**0810. NACPM.** The National Association of Certified Professional Midwives, the national organization for certified professional midwives. (3-29-10)

**0911. Practice of Midwifery.** Providing maternity care for women and their newborns during the antepartum, intrapartum and postpartum periods. The postpartum period for both maternal and newborn care may not exceed six (6) weeks from the date of delivery. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**350. FORMULARY (RULE 350).**

**01. Midwifery Formulary.** A licensed midwife may obtain and administer, during the practice of midwifery, the following: (3-29-10)

- a. Oxygen; (3-29-10)
- b. Oxytocin and cytotec as ~~or~~ postpartum antihemorrhagic agents; (~~3-29-10~~)( )
- c. Injectable local anesthetic for the repair of lacerations that are no more extensive than second degree; (3-29-10)
- d. Antibiotics to the mother for group b streptococcus prophylaxis consistent with the guidelines set forth in Prevention of Perinatal Group B Streptococcal Disease, published by the Centers for Disease Control and Prevention; (~~3-29-10~~)( )
- e. Epinephrine to the mother administered via a metered dose auto-injector; (~~3-29-10~~)( )
- f. Intravenous fluids for stabilization of the woman; (3-29-10)
- g. Rho (d) immune globulin; (3-29-10)
- h. Vitamin K1; and (3-29-10)
- i. Eye prophylactics to the baby. (3-29-10)

**02. Other Legend Drugs.** During the practice of midwifery a licensed midwife may not obtain or administer legend drugs that are not listed in the midwifery formulary. Drugs of a similar nature and character may be used if determined by the Board to be consistent with the practice of midwifery and provided that at least one hundred twenty (120) days' advance notice of the proposal to allow the use of such drugs is given to the Board of Pharmacy and the Board of Medicine and neither Board objects to the addition of such drugs to the midwifery formulary.  
 (3-29-10)

**351. USE OF FORMULARY DRUGS (RULE 351).**

A licensed midwife may use the drugs described in the midwifery formulary according to the following protocol describing the indication for use, dosage, route of administration and duration of treatment:

<b>Drug</b>	<b>Indication</b>	<b>Dose</b>	<b>Route of Administration</b>	<b>Duration of Treatment</b>
Oxygen	Maternal/Fetal Distress	10-12 L/min. 10 L/min.	Bag and mask Mask	Until maternal/fetal stabilization is achieved or transfer to hospital is complete
	Neonatal Resuscitation	10-12 L/min. 10 L/min.	Bag and mask Mask	Until stabilization is achieved or transfer to a hospital is complete
Oxytocin (Pitocin)	Postpartum hemorrhage only	10 Units/ml	Intramuscularly only	1-2 doses Transport to hospital required if more than two doses are administered
Lidocaine HCl 2%	Local anesthetic for use during postpartum repair of lacerations or episiotomy	Maximum 50 ml	Percutaneous infiltration only	Completion of repair
Penicillin G (Recommended)	Group B Strep Prophylaxis	5 million units initial dose, then 2.5 million units every 4 hours until birth	IV in $\geq$ 100 ml LR, NS or D <sub>5</sub> LR	Birth of baby
Ampicillin Sodium (Alternative)	Group B Strep Prophylaxis	2 grams initial dose, then 1 gram every 4 hours until birth	IV in $\geq$ 100 ml NS or LR	Birth of baby
Cefazolin Sodium (drug of choice for penicillin allergy with low risk for anaphylaxis)	Group B Strep Prophylaxis	2 grams initial dose, then 1 gram every 8 hours	IV in $\geq$ 100 ml LR, NS or D <sub>5</sub> LR	Birth of baby



Drug	Indication	Dose	Route of Administration	Duration of Treatment
Clindamycin Phosphate  (drug of choice for penicillin allergy with high risk for anaphylaxis)	Group B Strep Prophylaxis	900 mg every 8 hours	IV in $\geq 100$ ml NS (not LR)	Birth of baby
Epinephrine HCl 1:1000  (EpiPen)	Treatment or post-exposure prevention of severe allergic reactions	0.3 ml pre-metered dose	Subcutaneously or intramuscularly	Every 20 minutes or until emergency medical services arrive  Administer first dose then immediately request emergency services
Lactated Ringer's (LR)  5% Dextrose in Lactated Ringer's solution (D <sub>5</sub> LR)  0.9% Sodium Chloride (NS)  Sterile Water	To achieve maternal stabilization    Reconstitution of antibiotic powder	I - 2 liter bags  First liter run in at a wide-open rate, the second liter titrated to client's condition  As directed	Intravenously with $\geq 18$ gauge catheter    As directed	Until maternal stabilization is achieved or transfer to a hospital is complete    Birth of Baby
<u>Cytotec (Misoprostol)</u>	<u>Postpartum hemorrhage only</u>	<u>800 mcg</u>	<u>Rectally is the preferred method. Orally is allowed</u>	<u>1-2 doses</u> <u>Transport to hospital required if more than one dose is administered</u>
Rho(d) Immune Globulin	Prevention of Rho (d) sensitization in Rho (d) negative women	300 mcg	Intramuscularly	Single dose at any gestation for Rho (d) negative, antibody negative women within 72 hours of spontaneous bleeding or abdominal trauma.  Single dose at 26-28 weeks gestation for Rho (d) negative, antibody negative women  Single dose for Rho (d) negative, antibody negative women within 72 hours of delivery of Rho (d) positive infant, or infant with unknown blood type

Drug	Indication	Dose	Route of Administration	Duration of Treatment
Vitamin K <sub>1</sub>	Prophylaxis for Vitamin K Deficiency Bleeding	1 mg	Intramuscularly	1 dose
0.5% Erythromycin Ophthalmic Ointment	Prophylaxis of Neonatal Ophthalmia	1 cm ribbon in each eye	Topical	1 dose

~~(3-29-10)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**356. SCOPE AND PRACTICE STANDARDS.**

A licensed midwife must adhere to the following scope and practice standards when providing antepartum, intrapartum, postpartum, and newborn care. (3-29-10)

**01. NACPM Scope and Practice Standards.** The Board adopts the Essential Documents of the National Association of Certified Professional Midwives as scope and practice standards for licensed midwives. All licensed midwives must adhere to these scope and practice standards during the practice of midwifery to the extent such scope and practice standards are consistent with the Board's enabling law, Chapter 55, Title 54, Idaho Code. (3-29-10)

**02. Conditions for Which a Licensed Midwife May Not Provide Care.** A licensed midwife may not provide care for a client with: (3-29-10)

- a. A current history of any of the following disorders, diagnoses, conditions, or symptoms: (3-29-10)
  - i. Placental abnormality; (3-29-10)
  - ii. Multiple gestation, except that midwives may provide antepartum care that is supplementary to the medical care of the physician overseeing the pregnancy, so long as it does not interfere with the physician's recommended schedule of care; ~~(3-29-10)~~( )
  - iii. Noncephalic presentation at the onset of labor or rupture of membranes, whichever occurs first; (3-29-10)
  - iv. Birth under thirty-seven and zero-sevenths (37 0/7) weeks and ~~after~~ beyond forty-two and zero-sevenths (42 0/7) ~~completed~~ weeks'-gestational age; or ~~(3-29-10)~~( )
  - v. A body mass index of forty (40.0) or higher at the time of conception; (3-29-10)
- b. A past history of any of the following disorders, diagnoses, conditions, or symptoms: (3-29-10)
  - i. More than one (1) cesarean section, a cesarean section within eighteen (18) months of the ~~current delivery~~ estimated due date or any cesarean section that was surgically closed with a classical or vertical uterine incision; ~~(3-29-10)~~( )
  - ii. ~~Rh or other blood group or p~~Platelet sensitization, hematological or coagulation disorders; ~~(3-29-10)~~( )
  - iii. Prior chemotherapy or radiation treatment for a malignancy; (3-29-10)

- iv. Previous pre-eclampsia resulting in premature delivery; (3-29-10)
- v. Cervical insufficiency; ~~or~~ ~~(3-29-10)~~( )
- vi. HIV positive status; or ~~(3-29-10)~~( )
- vii. Opiate use that places the infant at risk of neonatal abstinence syndrome. ( )

**03. Conditions for Which a Licensed Midwife May Not Provide Care Without Physician Health Care Provider Involvement.** A licensed midwife may not provide care for a client with a history of the disorders, diagnoses, conditions, or symptoms listed here in Subsection 356.03 unless such disorders, diagnoses, conditions or symptoms are being treated, monitored or managed by a ~~physician licensed under Chapter 18, Title 54, Idaho Code~~ licensed health care provider. Before providing care to such a client, the licensed midwife must notify the client in writing that the client must obtain the described physician care as a condition to the client's eligibility to obtain maternity care from the licensed midwife. The licensed midwife must, additionally, obtain the client's signed acknowledgement that the client has received the written notice. The disorders, diagnoses, conditions, and symptoms are: ~~(3-29-10)~~( )

- a. Diabetes; (3-29-10)
- b. Thyroid disease; (3-29-10)
- c. Epilepsy; (3-29-10)
- d. Hypertension; (3-29-10)
- e. Cardiac disease; (3-29-10)
- f. Pulmonary disease; (3-29-10)
- g. Renal disease; (3-29-10)
- h. Gastrointestinal disorders; (3-29-10)
- i. Previous major surgery of the pulmonary system, cardiovascular system, urinary tract or gastrointestinal tract; (3-29-10)
- j. Current abnormal cervical cytology; (3-29-10)
- k. Sleep apnea; (3-29-10)
- l. Previous bariatric surgery; (3-29-10)
- m. Hepatitis; ~~or~~ ~~(3-29-10)~~( )
- n. History of illegal drug use or excessive prescription drug use. For purposes of this Paragraph, "history" means a "current history," and "illegal drug use" means "illegal drug abuse or addiction-"; or ~~(3-29-10)~~( )
- o. Rh or other blood group disorders and a physician determines the pregnancy can safely be attended by a midwife. ( )

**04. Conditions for Which a Licensed Midwife Must Recommend Physician Involvement.** Before providing care for a client with a history of any of the disorders, diagnoses, conditions or symptoms listed in this Subsection 356.04, a licensed midwife must provide written notice to the client that the client is advised to see a physician licensed under Chapter 18, Title 54, Idaho Code, or under an equivalent provision of the law of a state

bordering Idaho, during the client's pregnancy. Additionally, the licensed midwife must obtain the client's signed acknowledgement that the client has received the written notice. The disorders, diagnoses, conditions, and symptoms are: ~~(3-29-10)~~( )

- a. Previous complicated pregnancy; (3-29-10)
- b. Previous cesarean section; (3-29-10)
- c. Previous pregnancy loss in second or third trimester; (3-29-10)
- d. Previous spontaneous premature labor; (3-29-10)
- e. Previous pre-term rupture of membranes; (3-29-10)
- f. Previous pre-eclampsia; (3-29-10)
- g. Previous hypertensive disease of pregnancy; (3-29-10)
- h. Parvo; (3-29-10)
- i. Toxo; (3-29-10)
- j. CMV; (3-29-10)
- k. HSV; (3-29-10)
- l. Previous maternal/newborn group b streptococcus infection; (3-29-10)
- m. A body mass index of at least thirty-five (35.0) but less than forty (40.0) at the time of conception; (3-29-10)
- n. Underlying family genetic disorders with potential for transmission; or (3-29-10)
- o. Psychosocial situations that may complicate pregnancy. (3-29-10)
- 05. Conditions for which a Licensed Midwife must Facilitate Hospital Transfer. (3-29-10)**
  - a. Conditions. A licensed midwife must facilitate the immediate transfer of a client to a hospital for emergency care if the client has any of the following disorders, diagnoses, conditions or symptoms: (3-29-10)
    - i. Maternal fever in labor of more than 100.64 degrees Fahrenheit, in the absence of environmental factors; ~~(3-29-10)~~( )
    - ii. Suggestion of fetal jeopardy, such as frank bleeding before delivery, any abnormal bleeding (with or without abdominal pain), evidence of placental abruption, meconium with non-reassuring fetal heart tone patterns where birth is not imminent, or abnormal fetal heart tones with non-reassuring patterns where birth is not imminent; (3-29-10)
    - iii. Noncephalic presentation at the onset of labor or rupture of membranes, whichever occurs first, unless imminent delivery is safer than transfer; ~~(3-29-10)~~( )
    - iv. Second stage labor after two (2) hours of initiation of pushing when the mother has had a previous cesarean section; (3-29-10)
    - v. Current spontaneous premature labor; (3-29-10)
    - vi. Current pre-term premature rupture of membranes; (3-29-10)

- vii. Current pre-eclampsia; (3-29-10)
  - viii. Current hypertensive disease of pregnancy; (3-29-10)
  - ix. Continuous uncontrolled bleeding; (3-29-10)
  - x. Bleeding that necessitates the administration of more than two (2) doses of oxytocin or other antihemorrhagic agent; (3-29-10)
  - xi. Delivery injuries to the bladder or bowel; (3-29-10)
  - xii. Grand mal seizure; (3-29-10)
  - xiii. Uncontrolled vomiting; (3-29-10)
  - xiv. Coughing or vomiting of blood; (3-29-10)
  - xv. Severe chest pain; or (3-29-10)
  - xvi. Sudden onset of shortness of breath and associated labored breathing. (3-29-10)
- b.** Plan for Emergency Transfer and Transport. When facilitating a transfer under Subsection 356.05, the licensed midwife must notify the hospital when the transfer is initiated, accompany the client to the hospital, if feasible, or communicate by telephone with the hospital if the licensed midwife is unable to be present personally. The licensed midwife must also ensure that the transfer of care is accompanied by the client's medical record, which must include: (3-29-10)
- i. The client's name, address, and next of kin contact information; (3-29-10)
  - ii. A list of diagnosed medical conditions; (3-29-10)
  - iii. A list of prescription or over the counter medications regularly taken; (3-29-10)
  - iv. A history of previous allergic reactions to medications; and (3-29-10)
  - v. If feasible, the licensed midwife's assessment of the client's current medical condition and description of the care provided by the licensed midwife before transfer. (3-29-10)
- c.** Transfer or Termination of Care. A midwife who deems it necessary to transfer or terminate care pursuant to the laws and rules of the Board, or for any other reason, shall transfer or terminate care and shall not be regarded as having abandoned care or wrongfully terminated services. Before nonemergent discontinuing of services, the midwife shall notify the client in writing, provide the client with names of licensed physicians and contact information for the nearest hospital emergency room and offer to provide copies of medical records regardless of whether copying costs have been paid by the client. ( )

## IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

### 24.26.01 - RULES OF THE IDAHO BOARD OF MIDWIFERY

DOCKET NO. 24-2601-1402

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 Section 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 of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-5504, 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:

Due to comments received regarding the proposed rule there were clarifications made on when newborn transfer of care or consultation is required. Clarification was made in the subparagraphs pertaining to respiratory distress, postpartum evaluation, presence of emesis, and temperature instability.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 1, 2014, Idaho Administrative Bulletin, [Vol. 14-10, pages 323 - 324](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Cherie Simpson at (208) 577-2584.

DATED this 6th Day of November, 2014.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W. State St.  
P O Box 83720  
Boise, ID 83720-0063  
Tel: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 54-5505, 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 October 15, 2014.

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

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

The Board of Midwifery is adding a section to its rules to clarify when newborns must be transferred and when newborn consultation is required. The need for this rule was brought to the Board by interested parties during the 2014 Legislative Session when the Act was being reauthorized. The addition will further protect the public.

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

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the State Board of Midwifery is updating its rules to add a section regarding conditions that require newborn transfer of care or consultation. This rule change was discussed during a noticed open meeting of the Board.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 October 22, 2014.

DATED this 28th Day of August, 2014.

### LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-2601-1402

357. -- ~~44359~~. (RESERVED)

**360. NEWBORN TRANSFER OF CARE OR CONSULTATION (RULE 360).**

**01. Newborn Transfer of Care. Conditions for which a licensed midwife must facilitate the immediate transfer of a newborn to a hospital for emergency care: ( )**

**a. Respiratory distress defined as respiratory rate greater than eighty (80) or grunting, flaring, or retracting for more than one (1) hour. ( )**

**b. Any respiratory distress following delivery with moderate to thick meconium stained fluid. ( )**

**c. Central cyanosis or pallor for more than ten (10) minutes. ( )**

- d. Apgar score of six (6) or less at five (5) minutes of age. ( )
  - e. Abnormal bleeding. ( )
  - f. Any condition requiring more than six (6) hours of continuous, immediate postpartum evaluation. ( )
  - g. Any vesicular skin lesions. ( )
  - h. Seizure-like activity. ( )
  - i. Any bright green emesis. ( )
  - j. Poor feeding effort due to lethargy or disinterest in nursing for more than two (2) hours immediately following birth. ( )
- 02. Newborn Consultation Required.** Conditions for which a licensed midwife must consult a Pediatric Provider (Neonatologist, Pediatrician, Family Practice Physician, Advanced Practice Registered Nurse, or Physician Assistant): ( )
- a. Temperature instability, defined as a rectal temperature less than ninety-six point eight (96.8) degrees Fahrenheit or greater than one hundred point four (100.4) degrees Fahrenheit documented two (2) times more than fifteen (15) minutes apart. ( )
  - b. Murmur lasting more than twenty-four (24) hours immediately following birth. ( )
  - c. Cardiac arrhythmia. ( )
  - d. Congenital anomalies. ( )
  - e. Birth injury. ( )
  - f. Clinical evidence of prematurity including, but not limited to, low birth weight of less than two thousand five hundred (2,500) grams, smooth soles of feet, or immature genitalia. ( )
  - g. Any jaundice in the first twenty-four (24) hours after birth or significant jaundice at any time. ( )
  - h. No stool for more than twenty-four (24) hours immediately following birth. ( )
  - i. No urine output for more than twenty-four (24) hours. ( )
  - j. Development of persistent poor feeding effort at any time. ( )
- 361. -- 449. (RESERVED)**



## IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

### 24.27.01 - RULES OF THE IDAHO STATE BOARD OF MASSAGE THERAPY

#### DOCKET NO. 24-2701-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 Section 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 54-4007, 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:

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 August 6th, 2014 Idaho Administrative Bulletin, [Vol. 14-8, pages 82-83](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 10th day of October, 2014.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720-0063  
Tel: (208) 334-3233  
Fax: (208) 334-3945

#### THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 54-4007, 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 20, 2014.

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 change removes “light” as a continuing education content area as it is inconsistent with Idaho Code. A new section is being added that will clarify the supervision required for clinical work and fieldwork.

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

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the continuing education rules of the Board are being updated to remove light as approved continuing education content because it is not included in the defined practice of massage therapy. The Board is also clarifying the nature of supervision for massage students involved in school based clinical work and fieldwork for internships.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 27, 2014.

DATED this 9th day of July, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-2701-1401**

**503. CONTENT OF CONTINUING EDUCATION.**

The content of continuing education activities and course content must be germane to the practice of massage therapy as defined in Section 54-4002, Idaho Code, and courses in ethics must also be specific to legal issues, law, standards of practice, or ethics. (3-27-13)

**01. Continuing Education.** Content germane to the practice of massage therapy includes, but is not limited to: (3-27-13)

**a.** Applications of massage and bodywork therapy for specific needs, conditions, or client populations. (3-27-13)

**b.** Client assessment protocols, skills for client record keeping, strategies for interfacing with other health care providers. (3-27-13)

**c.** Use of external agents such as water, ~~light~~, sound, heat, cold, or topical applications of plant or mineral-based substances. (~~3-27-13~~)( )

- d.** Body-centered or somatic psychology, psychophysiology, or interpersonal skills which may include communication skills, boundary functions, dual relationships, transference, counter-transference, and projection. (3-27-13)
- e.** Standards of practice, professional ethics, or state laws. (3-27-13)
- f.** Strategies for the marketing of massage and bodywork therapy practices. (3-27-13)
- g.** Theory or practice of ergonomics as applied to therapists or clients. (3-27-13)
- h.** Hygiene, methods of infectious disease control, organization and management of the treatment environment. (3-27-13)
- i.** Body sciences, which may include anatomy, physiology, kinesiology or pathology, as they apply to massage therapy. (3-27-13)
- j.** Certified CPR or first aid training. (3-27-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**601. SUPERVISION.**

**01. Supervision of Clinical Work.** The supervising massage therapist must consult with the student, evaluate student performance and be physically present and available to render direction in person and on the premises where massage therapy is being provided. ( )

**02. Supervision of Fieldwork.** The supervising massage therapist must be available to render direction either in person or by means of telecommunications but is not required to be physically present on the premises where massage therapy is being provided. ( )

**601.2. -- 699. (RESERVED)**

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1717, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This pending rule is necessary to allow for substitution of biological products with interchangeable biosimilars as allowed by the FDA. Changes in this pending language from the proposed language incorporate the recently released Purple Book by the FDA.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 325 through 329](#).

**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:

There is no fiscal impact of this rulemaking to the Board of Pharmacy; however, the state of Idaho will save money when biosimilars are dispensed to Health and Welfare recipients and state employees.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Mark Johnston, Executive Director, (208) 334-2356.

DATED this 28th Day of November, 2014.

Mark Johnston, R.Ph.  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Tel: (208) 334-2356  
Fax: (208) 334-3536

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 54-1717, Idaho Code.

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

**Wednesday, October 22, 2014, 1:00 p.m.**

**Idaho Capitol Building**  
**700 W. Jefferson St., Room WW53**  
**Boise, Idaho 83702**

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:

Federal law has created a new drug category, biosimilars, which are federally allowed to be substituted for a prescribed biological product. Idaho law is currently more restrictive than federal law, so such substitution is not permissible without this rule promulgation. This proposed rule allows a biosimilar product to be substituted for a prescribed biological product, upon the determination by the FDA that the biosimilar product is interchangeable.

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

**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 of this proposed rule to the Board of Pharmacy; however, the State of Idaho will save money when biosimilars are dispensed to Health and Welfare recipients and state employees.

**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 July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 125](#), and in the August 6, 2014 Idaho Administrative Bulletin, [Vol. 14-8, page 84](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, Executive Director, (208) 334-2356.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

**LSO RULES ANALYSIS MEMO**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-1401

**010. DEFINITIONS AND ABBREVIATIONS (A -- I).**

**01. Accredited School or College of Pharmacy.** A school or college that meets the minimum standards of the ACPE and appears on its list of accredited schools or colleges of pharmacy. (3-21-12)

**02. ACPE.** Accreditation Council for Pharmacy Education. (3-21-12)

**03. Acute Care Hospital.** A facility in which concentrated medical and nursing care is provided by, or under the supervision of, physicians on a twenty-four (24) hour basis to inpatients experiencing acute illnesses. (3-21-12)

**04. ADS -- Automated Dispensing and Storage.** A mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, dispensing, or distribution of drugs and that collects, controls, and maintains transaction information. (3-21-12)

**05. Biological Product.** A virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein (except any chemically synthesized polypeptide), or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), that is applicable to the prevention, treatment, or cure of a disease or condition of human beings and licensed under Section 351(k) of the Public Health Service Act 42, U.S.C. Section 262(i). ( )

**06. Biosimilar.** A biological product highly similar to a specific reference biological product that is licensed by the FDA pursuant to 42 U.S.C. Section 262(k) and published in the Purple Book. ( )

~~057.~~ **CDC.** United States Department of Health and Human Services, Centers for Disease Control and Prevention. (3-21-12)

~~068.~~ **Central Drug Outlet.** A resident or nonresident pharmacy, drug outlet or business entity employing or contracting pharmacists to perform centralized pharmacy services. (7-1-13)

~~079.~~ **Central Pharmacist.** A pharmacist performing centralized pharmacy services. (7-1-13)

~~0810.~~ **Central Pharmacy.** A pharmacy performing centralized pharmacy services. (7-1-13)

~~0911.~~ **Centralized Pharmacy Services.** The processing by a central drug outlet or central pharmacist of a request from another pharmacy to fill, refill, or dispense a prescription drug order, perform processing functions, or provide cognitive or pharmaceutical care services. Each function may be performed by the same or different persons and at the same or different locations. (7-1-13)

~~102.~~ **Change of Ownership.** A change of majority ownership or controlling interest of a drug outlet licensed or registered by the Board. (3-21-12)

~~113.~~ **Charitable Clinic or Center -- Authorized Personnel.** A person designated in writing and authorized by the qualifying charitable clinic or center's medical director or consultant pharmacist to perform specified duties within the charitable clinic or center under the supervision of a pharmacist, physician, dentist, optometrist, physician assistant, or an advanced practice professional nurse with prescriptive authority. (3-21-12)

~~124.~~ **Chart Order.** A lawful drug order for a drug or device entered on the chart or a medical record of an inpatient or resident of an institutional facility. (3-21-12)

- ~~135~~. **CME.** Continuing medical education. (3-21-12)
- ~~146~~. **COE -- Central Order Entry.** A pharmacy that processes information related to the practice of pharmacy, engages solely in centralized prescription processing but from which drugs are not dispensed, is physically located outside the institutional pharmacy of a hospital, and is part of a hospital system. (3-21-12)
- ~~157~~. **Collaborative Pharmacy Practice.** A pharmacy practice whereby one (1) or more pharmacists jointly agree to work under a protocol authorized by one (1) or more prescribers to provide patient care and DTM services not otherwise permitted to be performed by a pharmacist under specified conditions or limitations. (3-21-12)
- ~~168~~. **Collaborative Pharmacy Practice Agreement.** A written agreement between one (1) or more pharmacists and one (1) or more prescribers that provides for collaborative pharmacy practice. (3-21-12)
- ~~179~~. **Continuous Quality Improvement Program.** A system of standards and procedures to identify and evaluate quality-related events and to constantly enhance the efficiency and effectiveness of the structures and processes of a pharmacy system. (3-21-12)
- ~~1820~~. **Correctional Facility.** Any place used for the confinement of persons charged with or convicted of an offense or otherwise confined under a court order. (4-4-13)
- ~~1921~~. **CPE.** Continuing pharmacy education. (3-21-12)
- ~~202~~. **DEA.** United States Drug Enforcement Administration. (3-21-12)
- ~~213~~. **Distributor.** A supplier of drugs manufactured, produced, or prepared by others to persons other than the ultimate consumer. (3-21-12)
- ~~224~~. **DME.** Durable medical equipment. (3-21-12)
- ~~235~~. **Drug Order.** A prescription drug order issued in the unique form and manner permitted for a patient or resident of an institutional facility or as permitted for other purposes by these rules. Unless specifically differentiated, rules applicable to a prescription drug order are also applicable to a drug order. (3-21-12)
- ~~246~~. **Drug Product Selection.** The act of selecting either a brand name drug product or its therapeutically equivalent generic. (3-21-12)
- ~~257~~. **Drug Product Substitution.** Dispensing a drug product other than prescribed. (4-4-13)
- ~~268~~. **DTM -- Drug Therapy Management.** Selecting, initiating, or modifying drug treatment pursuant to a collaborative practice agreement. (3-21-12)
- ~~279~~. **Emergency Drugs.** Drugs required to meet the immediate therapeutic needs of one (1) or more patients that are not available from any other authorized source in sufficient time to avoid risk of harm due to the delay that would result from obtaining the drugs from another source. (3-21-12)
- ~~2830~~. **Executive Director.** The Idaho State Board of Pharmacy executive director created by Sections 54-1713 and 54-1714, Idaho Code. (3-21-12)
- ~~2931~~. **FDA.** United States Food and Drug Administration. (3-21-12)
- ~~302~~. **Flavoring Agent.** An additive used in food or drugs when the additive is used in accordance with the principles of good pharmacy practices and in the minimum quantity required to produce its intended effect. (3-21-12)
- ~~313~~. **Floor Stock.** Drugs or devices not labeled for a specific patient that are maintained at a nursing station or other department of an institutional facility, excluding the pharmacy, for the purpose of administering to patients of the facility. (3-21-12)

- 324.** FPGEC. Foreign Pharmacy Graduate Examination Committee. (4-4-13)
- 335.** HIPAA. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191). (3-21-12)
- 346.** **Hospital System.** A hospital or hospitals and at least one (1) on-site institutional pharmacy under common ownership. A hospital system may also include one (1) or more COE pharmacies under common ownership. (3-21-12)
- 357.** **Idaho State Board of Pharmacy or Idaho Board of Pharmacy.** The terms Idaho State Board of Pharmacy, Idaho Board of Pharmacy, State Board of Pharmacy, and Board of Pharmacy are deemed synonymous and are used interchangeably to describe the entity created under the authority of Title 54, Chapter 17, Idaho Code. Unless specifically differentiated, “the Board” or “Board” also means the Idaho State Board of Pharmacy. (3-21-12)
- 368.** **Individually Identifiable Health Information.** Information that is a subset of health information, including demographic information, collected from an individual and that: (3-21-12)
- and
- a.** Is created or received by a health care provider, health plan, employer, or health care clearinghouse; (3-21-12)
- b.** Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual that: (3-21-12)
- i.** Identifies the individual; or (3-21-12)
- ii.** With respect to which there is a reasonable basis to believe the information can be used to identify the individual. (3-21-12)
- 379.** **Institutional Pharmacy.** A pharmacy located in an institutional facility. (3-21-12)
- 40.** **Interchangeable Biosimilar.** A licensed biosimilar product determined by the FDA to be therapeutically equivalent to the reference biological product and published in the Purple Book. ( )

**011. DEFINITIONS AND ABBREVIATIONS (J -- R).**

- 01. LTCF -- Long-Term Care Facility.** An institutional facility that provides extended health care to resident patients. (3-21-12)
- 02. Mail Service Pharmacy.** A nonresident pharmacy that ships, mails, or delivers by any lawful means a dispensed legend drug to residents in this state pursuant to a legally issued prescription drug order and ensures the provision of corresponding related pharmaceutical care services required by law. (7-1-13)
- 03. MPJE.** Multistate Pharmacy Jurisprudence Exam. (3-21-12)
- 04. MTM -- Medication Therapy Management.** A distinct service or group of services that optimize therapeutic outcomes for individual patients. MTM services are independent of, but can occur in conjunction with, the provision or administration of a drug or a device and encompass a broad range of activities and responsibilities. The MTM service model in pharmacy practice includes the following five core elements: (3-21-12)
- a.** Medication therapy review; (3-21-12)
- b.** Personal medication record; (3-21-12)
- c.** Medication-related action plan; (3-21-12)
- d.** Intervention or referral, or both; (3-21-12)



- e. Documentation and follow-up. (3-21-12)
- 05. **NABP.** National Association of Boards of Pharmacy. (3-21-12)
- 06. **NAPLEX.** North American Pharmacists Licensure Examination. (3-21-12)
- 07. **NDC.** National Drug Code. (3-21-12)
- 08. **Non-Institutional Pharmacy.** A pharmacy located in a drug outlet that is not an institutional facility. (3-21-12)
- 09. **Parenteral Admixture.** The preparation and labeling of sterile products intended for administration by injection. (3-21-12)
- 10. **Pharmaceutical Care Services.** A broad range of pharmacist-provided cognitive services, activities and responsibilities intended to optimize drug-related therapeutic outcomes for patients. Pharmaceutical care services may be performed independent of, or concurrently with, the dispensing or administration of a drug or device and encompasses services provided by way of DTM under a collaborative practice agreement, pharmacotherapy, clinical pharmacy practice, pharmacist independent practice, and MTM. Except as permitted pursuant to a collaborative practice agreement, nothing in these rules allows a pharmacist, beyond what is statutorily allowed, to engage in the unlicensed practice of medicine or to diagnose, prescribe, or conduct physical examinations. Pharmaceutical care services are not limited to, but may include one (1) or more of the following, according to the individual needs of the patient: (4-4-13)
  - a. Performing or obtaining necessary assessments of the patient's health status, including the performance of health screening activities that may include, but are not limited to, obtaining finger-stick blood samples; (3-21-12)
  - b. Reviewing, analyzing, evaluating, formulating or providing a drug utilization plan; (3-21-12)
  - c. Monitoring and evaluating the patient's response to drug therapy, including safety and effectiveness; (3-21-12)
  - d. Performing a comprehensive drug review to identify, resolve, and prevent drug-related problems, including adverse drug events; (3-21-12)
  - e. Documenting the care delivered; (3-21-12)
  - f. Communicating essential information or referring the patient when necessary or appropriate; (3-21-12)
  - g. Providing counseling education, information, support services, and resources applicable to a drug, disease state, or a related condition or designed to enhance patient compliance with therapeutic regimens; (3-21-12)
  - h. Conducting a drug therapy review consultation with the patient or caregiver; (3-21-12)
  - i. Preparing or providing information as part of a personal health record; (3-21-12)
  - j. Identifying processes to improve continuity of care and patient outcomes; (3-21-12)
  - k. Providing consultative drug-related intervention and referral services; (3-21-12)
  - l. Coordinating and integrating pharmaceutical care services within the broader health care management services being provided to the patient; and (3-21-12)
  - m. Other services as allowed by law. (3-21-12)

**11. Pharmacist Extern.** A person enrolled in an accredited school or college of pharmacy who is pursuing a professional degree in pharmacy. (4-4-13)

**12. Pharmacist Intern.** A person who has successfully completed a course of study at an accredited school or college of pharmacy, has received a professional degree in pharmacy, and is obtaining practical experience under the supervision of a pharmacist. (3-21-12)

**13. Pharmacy Operations.** Activities related to and including the preparation, compounding, distributing, or dispensing of drugs or devices from a pharmacy. (3-21-12)

**14. PHI -- Protected Health Information.** Individually identifiable health information that is: (3-21-12)

**a.** Transmitted by electronic media (as defined by the HIPAA Privacy Rule at 45 CFR 160.103); (3-21-12)

**b.** Maintained in electronic media; and (3-21-12)

**c.** Transmitted or maintained in any other form or medium. (3-21-12)

**d.** PHI excludes individually identifiable health information in: (3-21-12)

**i.** Education records covered by the Family Education Right and Privacy Act, as amended (20 U.S.C. Section 1232g); (3-21-12)

**ii.** Records described at 20 U.S.C. Section 1232g(a)(4)(B)(iv); and (3-21-12)

**iii.** Employment records held by a covered entity (as defined by the HIPAA Privacy Rule at 45 CFR 160.103) in its role as an employer. (3-21-12)

**15. PIC.** Pharmacist-in-charge. (3-21-12)

**16. PMP.** Prescription Monitoring Program. (3-21-12)

**17. Prepackaging.** The act of transferring a drug, manually or using an automated system, from a manufacturer's original container to another container prior to receiving a prescription drug order. (3-21-12)

**18. Prescriber.** An individual currently licensed, registered, or otherwise authorized to prescribe and administer drugs in the course of professional practice. (3-21-12)

**19. Prescriber Drug Outlet.** A drug outlet in which prescription drugs or devices are dispensed directly to patients under the supervision of a prescriber, except where delivery is accomplished only through on-site administration or the provision of drug samples. (3-21-12)

**20. Purple Book.** *The list of licensed biological products with reference product exclusivity and biosimilarity or interchangeability evaluations published by the FDA under the Public Health Service Act.* ( )

**201.** **Readily Retrievable.** Records are considered readily retrievable if they are able to be completely and legibly produced upon request within seventy-two (72) hours. (3-21-12)

**212.** **Relative Contraindication.** A condition that renders a particular treatment or procedure inadvisable, but not prohibitive. (3-21-12)

**223.** **Remote Dispensing Site.** A licensed pharmacy staffed by one or more certified technicians at which telepharmacy services are provided through a supervising pharmacy. (3-21-12)

**234. Remote Office Location.** A secured area that is restricted to authorized personnel, adequately protects private health information, and shares a secure common electronic file or a private, encrypted connection with a pharmacy, from which a pharmacist who is contracted or employed by a central drug outlet performs centralized pharmacy services. (7-1-13)

**245. Retail Non-Pharmacy Drug Outlet.** A retail outlet that sells non-prescription drugs or devices that is not a pharmacy. (3-21-12)

**256. Retail Pharmacy.** A community or other pharmacy that sells prescription drugs at retail and is open to the public for business. (3-21-12)

**267. R.N.** Registered nurse. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**130. DRUG PRODUCT: SUBSTITUTION.**

Drug product substitutions are allowed only as follows: (4-4-13)

**01. Hospital.** Pursuant to a formulary or drug list prepared by the pharmacy and therapeutics committee of a hospital; (4-4-13)

**02. Skilled Nursing Facility.** At the direction of the quality assessment and assurance committee of a skilled nursing facility consisting of the director of nursing services, a physician designated by the facility, a consultant pharmacist, and at least two (2) other members of the facility's staff; or (4-4-13)

**03. Drug Shortage.** Upon a drug shortage, a pharmacist, using his best professional judgment, without contacting the prescriber, may substitute an alternative dose of a prescribed drug, so long as the prescriber's directions are also modified, to equate to an equivalent amount of drug dispensed as is prescribed. (4-4-13)

**04. Biosimilars.** A pharmacist may substitute an interchangeable biosimilar product for a prescribed biological product if: ( )

a. The biosimilar has been determined by the FDA to be interchangeable and published in the Purple Book; ( )

b. The prescriber does not indicate by any means that the prescribed biological product must be dispensed; and ( )

c. The name of the drug and the manufacturer or the NDC number is documented in the patient medical record. ( )

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

#### DOCKET NO. 27-0101-1403

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1717, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

These pending rules are necessary to appropriately regulate the practice of compounding. Changes in this pending language from the proposed language separate certain labeling requirements for a pharmacy and an outsourcing facility, change certain use of the term “bulk drug substance” to “active pharmaceutical ingredient,” remove a record keeping requirement, provide an exception, and remove proposed Rule 242, the provisions of which have been incorporated into new Section 615, which is being promulgated under Docket No. 27-0101-1405 and published in this volume of the Administrative Bulletin.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 338 through 346](#).

**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:

The Board received fourteen thousand dollars (\$14,000) in appropriation for FY2015 to train its inspectors.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Mark Johnston, Executive Director, (208) 334-2356.

DATED this 28th Day of November, 2014.

Mark Johnston, R.Ph.  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Tel: (208) 334-2356  
Fax: (208) 334-3536

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 54-1717, Idaho Code.

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

**Wednesday, October 22, 2014, 1:00 p.m.**

**Idaho Capitol Building**  
**700 W. Jefferson St., Room WW53**  
**Boise, Idaho 83702**

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:

Note, the overwhelming majority of this docket contains pending language from 2014 that the Board asked the Legislature to reject via concurrent resolution, while the Board studied the new federal Compounding Quality Act. Such study is complete and edits have been made. In addition to such 2014 pending compounding rules, this docket of rules contains an additional hazardous drug compounding rule pursuant to the recently released draft United State Pharmacopeia Chapter 800. This docket is necessary to protect public safety post New England Compounding Center tragedy whereby over seventy (70) Americans have died so far from tainted, injectable, compounded drug product. This docket creates a labeling rule for distributed compounded drug product, establishes general compounding standards, limits pharmacy distribution of non-sterile compounded drug product, and expands a sterile compounding rule and a hazardous drug sub-rule.

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

**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:

The Board received fourteen thousand dollars (\$14,000) in appropriation for FY2015 to train its inspectors.

**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 under Docket No. 27-0101-1401 in the July 2, 2014 Idaho Administrative Bulletin, **Vol. 14-7, page 125**, and in the August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, page 84**.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, Executive Director, (208) 334-2356.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

**LSO RULES ANALYSIS MEMO**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-1403

144. ~~(RESERVED)~~ **LABELING OF DISTRIBUTED COMPOUNDED DRUG PRODUCT.**

Compounded and sterile prepackaged drug product distributed in the absence of a patient specific prescription drug order, solely as permitted for outsourcing facilities and pharmacies herein, must be labeled with the following information: ( )

- 01. Drug Name.** The name of each drug included. ( )
- 02. Strength or Concentration.** The strength or concentration of each drug included. ( )
- 03. Base or Diluents.** If a sterile compounded drug product, the name and concentration of the base or diluents. ( )
- 04. Administration.** If applicable, the dosage form or route of administration. ( )
- 05. Quantity.** The total quantity of the drug product. ( )
- 06. Date.** The expiration or beyond use date. ( )
- 07. Compounder Identifier.** The initials or unique identifier of the compounder responsible for the accuracy of the drug product. ( )
- 08. Resale. If:** ( )
- a.** A pharmacy that is distributing, the statement: “not for further dispensing or distribution;” and ( )
- b.** An outsourcing facility, the statement: “not for resale.” ( )
- 09. Instructions, Cautions, and Warnings.** Handling, storage or drug specific instructions, cautionary information, and warnings as required or deemed appropriate for proper use and patient safety. ( )

(BREAK IN CONTINUITY OF SECTIONS)

231. -- ~~239~~. (RESERVED)

**239. COMPOUNDING DRUG PRODUCTS.**

Any compounding that is not permitted herein is considered manufacturing. ( )

**01. Application.** This rule applies to any person, including any business entity, authorized to engage in the practice of non-sterile compounding, sterile compounding, and sterile prepackaging of drug products in or into Idaho, except these rules do not apply to: ( )

- a.** Compound positron emission tomography drugs; ( )
- b.** Radiopharmaceuticals; ( )
- c.** The reconstitution of a non-sterile drug or a sterile drug for immediate administration; and ( )
- d.** The addition of a flavoring agent to a drug product. ( )

**02. General Compounding Standards.** ( )

**a. Active Pharmaceutical Ingredients.** All active pharmaceutical ingredients must be obtained from an FDA registered manufacturer. FDA registration as a foreign manufacturer satisfies this requirement. ( )

**b. Certificate of Analysis.** Unless the active pharmaceutical ingredient complies with the standards of an applicable USP-NF monograph, a CO must be obtained for all active pharmaceutical ingredients procured for compounding and retained for a period of not less than three (3) years from the date the container is emptied, expired, returned, or disposed of. The following minimum information is required on the COA: ( )

**i. Product name;** ( )

**ii. Lot number;** ( )

**iii. Expiration date; and** ( )

**iv. Assay.** ( )

**c. Equipment.** Equipment and utensils must be of suitable design and composition and cleaned, sanitized, or sterilized as appropriate prior to use. ( )

**d. Disposal of Compromised Drugs.** When the correct identity, purity, strength, and sterility of ingredients and components cannot be confirmed (in cases of, for example, unlabeled syringes, opened ampoules, punctured stoppers of vials and bags, and containers of ingredients with incomplete labeling) or when the ingredients and components do not possess the expected appearance, aroma, and texture, they must be removed from stock and isolated for return, reclamation, or destruction. ( )

**03. Prohibited Compounding.** Compounding any drug product for human use that the FDA has identified as presenting demonstrable difficulties in compounding or has withdrawn or removed from the market for safety or efficacy reasons is prohibited. ( )

**04. Limited Compounding.** ( )

**a. Triad Relationship.** A pharmacist may compound a drug product in the usual course of professional practice for an individual patient pursuant to an established prescriber/patient/pharmacist relationship and a valid prescription drug order. ( )

**b. Commercially Available Products.** A drug product that is commercially available may only be compounded if not compounded regularly or in inordinate amounts and if: ( )

**i. It is medically warranted to provide an alternate ingredient, dosage form, or strength of significance; or** ( )

**ii. The commercial product is not reasonably available in the market in time to meet the patient's needs.** ( )

**c. Anticipatory Compounding.** Limited quantities of a drug product may be compounded or sterile prepackaged prior to receiving a valid prescription drug order based on a history of receiving valid prescription drug orders for the compounded or sterile prepackaged drug product. ( )

**05. Drug Compounding Controls.** ( )

**a. Policies and Procedures.** In consideration of the applicable provisions of USP 795 concerning pharmacy compounding of non-sterile preparations, USP 797 concerning sterile preparations, Chapter 1075 of the USP-NF concerning good compounding practices, and Chapter 1160 of the USP-NF concerning pharmaceutical calculations, policies and procedures for the compounding or sterile prepackaging of drug products must ensure the

safety, identity, strength, quality, and purity of the finished product, and must include any of the following that are applicable to the scope of practice compounding being performed: ( )

- i. Appropriate packaging, handling, transport, and storage requirements: ( )
- ii. Accuracy and precision of calculations, measurements, and weighing: ( )
- iii. Determining ingredient identity, quality, and purity: ( )
- iv. Labeling accuracy and completeness: ( )
- v. Beyond use dating: ( )
- vi. Auditing for deficiencies, including routine environmental sampling, quality and accuracy testing, and maintaining inspection and testing records: ( )
- vii. Maintaining environmental quality control; and ( )
- viii. Safe limits and ranges for strength of ingredients, pH, bacterial endotoxins, and particulate matter. ( )

b. Accuracy. Components including, but not limited to, bulk drug substances, used in the compounding or sterile prepackaging of drug products must be accurately weighed, measured, or subdivided, as appropriate. The amount of each active ingredient contained within a compounded drug product must not vary from the labeled potency by more than the drug product's acceptable potency range listed in the USP-NF monograph for that product. If USP-NF does not publish a range for a particular drug product, the active ingredients must not contain less than ninety percent (90%) and not more than one hundred ten percent (110%) of the potency stated on the label. ( )

c. Non-Patient Specific Records. Except for drug products that are being compounded or sterile prepackaged for direct administration, a production record of drug products compounded or sterile prepackaged in anticipation of receiving prescription drug orders or distributed in the absence of a patient specific prescription drug order ("office use") solely as permitted in these rules, must be prepared and kept for each drug product prepared, including: ( )

- i. Production date: ( )
- ii. Beyond use date: ( )
- iii. List and quantity of each ingredient: ( )
- iv. Internal control or serial number; and ( )
- v. Initials or unique identifier of all persons involved in the process or the compounder responsible for the accuracy of these processes. ( )

**240. STERILE PRODUCT PREPARATION.**

01. Application. In addition to all other applicable rules in this chapter, including the rules governing Compounding Drug Products, these rules apply to all persons, including any business entity, engaged in the practice of sterile compounding and sterile prepackaging in or into Idaho. ( )

02. Dosage Forms Requiring Sterility. The sterility of compounded biologics, diagnostics, drugs, nutrients, and radiopharmaceuticals must be maintained or the compounded drug product must be sterilized when prepared in the following dosage forms: ( )

- a. Aqueous bronchial and nasal inhalations, except sprays intended to treat bronchial mucosa only;



- ( )
- b.** Baths and soaks for live organs and tissues; ( )
  - c.** Injections (for example, colloidal dispersions, emulsions, solutions, suspensions); ( )
  - c.** Irrigations for wounds and body cavities; ( )
  - d.** Ophthalmic drops and ointments; and ( )
  - e.** Tissue implants. ( )
- 03. Compounder Responsibilities.** Compounders and sterile prepackagers are responsible for ensuring that sterile products are accurately identified, measured, diluted, and mixed and are correctly purified, sterilized, packaged, sealed, labeled, stored, dispensed, and distributed, as well as prepared in a manner that maintains sterility and minimizes the introduction of particulate matter; ( )
- a.** Unless following manufacturer’s guidelines or another reliable literature source, opened or partially used packages of ingredients for subsequent use must be properly stored as follows; ( )

    - i.** Opened or entered (such as needle-punctured) single-dose containers, such as bags, bottles, syringes, and vials of sterile products and compounded sterile products shall be used within one (1) hour if opened in non-sterile conditions, and any remaining contents must be discarded; ( )
    - ii.** Single-dose vials needle-punctured in a sterile environment may be used up to six (6) hours after initial needle puncture; ( )
    - iii.** Opened single-dose ampules shall not be stored for any time period; and ( )
    - iv.** Multiple-dose containers (for example, vials) that are formulated for removal of portions on multiple occasions because they contain antimicrobial preservatives, may be used for up to twenty-eight (28) days after initial opening or entering, unless otherwise specified by the manufacturer; ( )
  - b.** Water-containing compounded sterile products that are non-sterile during any phase of the compounding procedure must be sterilized within six (6) hours after completing the preparation in order to minimize the generation of bacterial endotoxins; ( )
  - c.** Food, drinks, and materials exposed in patient care and treatment areas shall not enter ante-areas, buffer areas, or segregated areas where components and ingredients of sterile products are prepared. ( )
- 04. Environmental Controls.** Except when prepared for immediate administration, the environment for the preparation of sterile products in a drug outlet must be in an isolated area, designed to avoid unnecessary traffic and airflow disturbances, and equipped to accommodate aseptic techniques and conditions. (3-21-12)
- a.** Hoods and aseptic environmental control devices must be certified for operational efficiency as often as recommended by the manufacturer or at least every ~~twelve~~ ~~six~~ ~~(126)~~ months or if relocated. ~~(3-21-12)~~( )
  - b.** ~~Pre~~Filters must be inspected and replaced in accordance with the manufacturer’s ~~(3-21-12)~~( ) recommendations.
- 025. Sterile Product Preparation Equipment.** A drug outlet in which sterile products are prepared must be equipped with at least the following: (3-21-12)
- a.** Protective apparel including ~~non-vinyl gloves,~~ gowns, ~~and~~ masks, and sterile (or the ability to sterilize) non-vinyl gloves, unless the PIC or director can provide aseptic isolator manufacturer’s written documentation that any component of garbing is not required; ~~(3-21-12)~~( )

- b. A sink with hot and cold water in close proximity to the hood; (3-21-12)
- c. A refrigerator for proper storage of additives and finished sterile products prior to delivery when necessary; ~~and~~ (3-21-12)(    )
- d. An appropriate laminar airflow hood or other aseptic environmental control device such as a laminar flow biological safety cabinet; ~~;~~ (3-21-12)(    )
- ~~e. A separate vertical flow biohazard safety hood, if hazardous materials are prepared; and (3-21-12)~~
- ~~f. Supplies necessary for handling both hazardous and biohazardous spills and disposal of wastes must be available and maintained in the area at all times. (3-21-12)~~
- 03. Cytotoxic Drugs.** A drug outlet in which cytotoxic drugs are prepared must also: (3-21-12)
- ~~a. Be equipped with and prepare the drugs in a vented class II biological safety cabinet or a barrier isolator of appropriate design to meet the personnel exposure limits described in product material safety data sheets; (3-21-12)~~
- ~~b. Require appropriate containment techniques; (3-21-12)~~
- ~~c. Clearly identify prepared doses of cytotoxic drugs, label them with proper precautions, and dispense them in a manner to minimize risk of cytotoxic spills; (3-21-12)~~
- ~~d. Comply with applicable local, state, and federal laws in the disposal of cytotoxic waste; and (3-21-12)~~
- ~~e. Include procedures for handling cytotoxic spills in the policies and procedures manual. (3-21-12)~~
- 046. Documentation Requirements.** The following documentation must also be maintained by a drug outlet in which sterile products are prepared: (3-21-12)
- a. Justification of ~~expiration beyond use~~ dates ~~chosen~~ assigned, pursuant to direct testing or extrapolation from reliable literature sources; (3-21-12)(    )
- b. ~~Employee~~ Training records, evidencing that personnel are trained on a routine basis and are adequately skilled, educated, and instructed; (3-21-12)(    )
- c. ~~Technique a~~ Audits; and appropriate for the risk of contamination for the particular sterile product including; (3-21-12)(    )
- i. Visual inspection to ensure the absence of particulate matter in solutions, the absence of leakage from bags and vials, and the accuracy of labeling with each dispensing; (    )
- ii. Periodic hand hygiene and garbing competency; (    )
- iii. Media-fill test procedures (or equivalent), aseptic technique, and practice related competency evaluation at least annually by each compounder or sterile prepackager; (    )
- iv. Environmental sampling testing at least upon registration of a new drug outlet, following the servicing or re-certification of facilities and equipment, or in response to identified problems with end products, staff techniques or patient-related infections, or every six (6) months, including; (    )
- (1) Total particle counts; (    )
- (2) Viable air sampling; (    )

- (3) Gloved fingertip sampling: ( )
- (4) Surface sampling: ( )
- v. Sterility testing of high risk batches of more than twenty-five (25) identical packages (ampules, bags, vials, etc.) before dispensing or distributing: ( )
- d. Temperature, logged daily: ( )
- e. Beyond use date and accuracy testing, when appropriate; and ( )
- ~~d~~f. Measuring, mixing, sterilizing, and purification ~~E~~equipment inspection, monitoring, cleaning, and maintenance to ensure accuracy and effectiveness for their intended use. ~~(3-21-12)~~( )

**057. Policies and Procedures.** Policies and procedures appropriate to the practice setting must be adopted by a drug outlet ~~compounding~~ preparing sterile pharmaceutical products and must- ~~(3-21-12)~~

~~a.~~ ~~Be designed and sufficiently detailed to protect the health and safety of persons preparing or receiving sterile products; and~~ ~~(3-21-12)~~

~~b.~~ ~~I~~include a continuous quality improvement program for monitoring personnel qualifications and training in sterile technique, ~~product storage, stability standards, and infection control.~~ including: ~~(3-21-12)~~( )

- a. Antiseptic hand cleansing: ( )
- b. Disinfection of non-sterile compounding surfaces: ( )
- c. Selecting and appropriately donning protective garb: ( )
- d. Maintaining or achieving sterility of sterile products while maintaining the labeled strength of active ingredients: ( )
- e. Manipulating sterile products aseptically, including mixing, diluting, purifying, and sterilizing in the proper sequence: ( )
- f. Choosing the sterilization method, pursuant to the risk of a contamination of particular compounded sterile product; and ( )
- g. Inspecting for quality standards before dispensing or distributing. ( )

**241. HAZARDOUS DRUGS PREPARATION.**

In addition to all other applicable rules in this chapter, including the rules governing Compounding Drug Products and Sterile Product Preparation, these rules apply to all persons, including any business entity, engaged in the practice of compounding or sterile repackaging with hazardous drugs. Such persons must: ( )

**01. Ventilation.** Ensure the storage and compounding areas have sufficient general exhaust ventilation to dilute and remove any airborne contaminants. ( )

**02. Ventilated Cabinet.** Utilize a ventilated cabinet designed to reduce worker exposures while preparing hazardous drugs. ( )

a. Sterile hazardous drugs must be prepared in a dedicated Class II biological safety cabinet or a barrier isolator of appropriate design to meet the personnel exposure limits described in product material safety data sheets; ( )

b. When asepsis is not required, a Class I BSC, powder containment hood or an isolator intended for containment applications may be sufficient. ( )

c. A ventilated cabinet that re-circulates air inside the cabinet or exhausts air back into the room environment is prohibited, unless; ( )

i. The hazardous drugs in use will not volatilize while they are being handled; or ( )

ii. The PIC or Director can provide manufacturer written documentation attesting to the safety of such ventilation. ( )

**03. Clear Identification.** Clearly identify storage areas, compounding areas, containers, and prepared doses of hazardous drugs. ( )

**04. Labeling.** Label hazardous drugs with proper precautions, and dispense them in a manner to minimize risk of hazardous spills. ( )

**05. Protective Equipment and Supplies.** Provide and maintain appropriate personal protective equipment and supplies necessary for handling hazardous drugs, spills and disposal. ( )

**06. Contamination Prevention.** Unpack, store, prepackage, and compound hazardous drugs separately from other inventory in a restricted area in a manner to prevent contamination and personnel exposure until hazardous drugs exist in their final unit dose or unit-of-use packaging. ( )

**07. Compliance With Laws.** Comply with applicable local, state, and federal laws including for the disposal of hazardous waste. ( )

**08. Training.** Ensure that personnel working with hazardous drugs are trained in: ( )

**a.** Hygiene; ( )

**b.** Garbing; ( )

**c.** Receipt; ( )

**d.** Storage; ( )

**e.** Handling; ( )

**f.** Transporting; ( )

**g.** Compounding; ( )

**h.** Spill control; ( )

**i.** Clean up; ( )

**j.** Disposal; ( )

**k.** Dispensing; ( )

**l.** Medical surveillance; and ( )

**m.** Environmental quality and control. ( )

**09. Policy and Procedures Manual.** Maintain a policy and procedures manual to ensure compliance with this rule. ( )

~~247~~ -- 259. (RESERVED)

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1404

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1717, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This pending rule is necessary to harmonize labeling requirements with 2014 statutory changes. Changes from proposed to pending language create an exception for veterinarians.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 347 through 360](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Mark Johnston, Executive Director, (208) 334-2356.

DATED this 28th Day of November, 2014.

Mark Johnston, R.Ph.  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Tel: (208) 334-2356  
Fax: (208) 334-3536

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 54-1717, Idaho Code.

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

**Wednesday, October 22, 2014, 1:00 p.m.**

**Idaho Capitol Building**  
**700 W. Jefferson St., Room WW53**  
**Boise, Idaho 83702**

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:

This docket of rules provides various forms of clarification, and harmony with 2014 statute changes. This docket also addresses the situation whereby a patient cannot use their dispensed drugs when being admitted to an institutional facility because the drugs are not unit dosed packaged. This docket of rules clarifies that a pharmacist foreign graduate is required to obtain 1,500 student pharmacist hours; clarifies that a technician-in-training may only renew two times; harmonizes the standard drug labeling rule with 2014 statutory changes; creates a new limited pharmacy repackaging rule; clarifies when a controlled substance inventory is to be taken; allows pharmacist immunizers to utilize all forms of injectible epinephrine; clarifies that statutory requirements of nonresident registered pharmacists also pertain to nonresident licensed pharmacists; clarifies pharmacy security requirements; combines various pharmacy authorized entry rules into one rule; and updates remote dispensing site security and training requirements, also requiring a continuous quality improvement program.

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

**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: NA

**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 under Docket No. 27-0101-1401 in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 125](#), and in the August 6, 2014 Idaho Administrative Bulletin, [Vol. 14-8, page 84](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, Executive Director, (208) 334-2356.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-1404**

**031. PHARMACIST LICENSURE BY EXAMINATION: FOREIGN PHARMACY GRADUATES.**

**01. Licensure Submission Requirements.** To be considered for licensure, a graduate of a school or college of pharmacy located outside of the United States must submit an application for licensure by examination, ~~certification by the FPGEC, and~~ certification of completion of a minimum of fifteen hundred (1500) experiential hours. ~~and;~~ (4-4-13)( )

**a.** Certification by the FPGEC; or ( )

**b.** Certification of graduation from a doctorate of pharmacy program from an accredited school or college of pharmacy within the United States. ( )

**02. Affidavit.** An Idaho State Board of Pharmacy Employer's Affidavit certifying the experiential hours of a foreign pharmacy graduate must be signed by a pharmacist licensed and practicing in the United States and submitted to the Board. The Board may also request verifiable business records to document the hours. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**041. TECHNICIAN-IN-TRAINING REGISTRATION.**

A person who has not obtained or maintained technician certification may apply for registration as a technician-in-training if the person satisfies all other requirements for registration as a technician and obtains and maintains employment as a technician-in-training. (4-4-13)

**01. Duties.** Upon registration, a technician-in-training may perform any of the duties allowed by statute or rule to be delegated to a registered technician under the supervision of a pharmacist. (3-21-12)

**02. Renewal.** The registration of a technician-in-training must be renewed by June 30 ~~annually, but is~~ however a technician-in-training may only renew ~~able two (2) times~~ a technician-in-training registration twice. (4-4-13)( )

**03. Registration Expiration.** Upon the final expiration of a technician-in-training registration, a person must satisfy the technician certification and registration requirements of these rules to be lawfully employed as, or otherwise perform the duties of, a technician. (3-21-12)

**04. Cancellation of Registration.** Failure to maintain employment will result in the cancellation of the registration. (4-4-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**140. STANDARD PRESCRIPTION DRUG LABELING.**

Unless otherwise directed by these rules, a prescription drug must be dispensed in an appropriate container that bears the following information: (3-21-12)

**01. Dispenser Information.** The name, address, and telephone number of the dispenser (person or business). (3-21-12)

**02. Serial Number.** The serial number. (4-4-13)

**03. Date.** The date the prescription is filled. (3-21-12)

**04. Prescriber.** The name of the prescriber. (3-21-12)

05. **Patient Name.** ~~The name of the patient, and if the patient is an animal, the species;~~ (3-21-12)(    )
- a.** If a person, the name of the patient; (    )
- b.** If an animal, the name and species of the patient; or (    )
- c.** If a school for epinephrine auto-injectors pursuant to Section 33-520A, Idaho Code, the name of the school. (    )
06. **Drug Name and Strength.** Unless otherwise directed by the prescriber, the name and strength of the drug (the generic name and its manufacturer's name or the brand name). (3-21-12)
07. **Quantity.** The quantity of item dispensed. (3-21-12)
08. **Directions.** The directions for use. (3-21-12)
09. **Cautionary Information.** Cautionary information as required or deemed appropriate for proper use and patient safety. (3-21-12)
10. **Expiration.** An expiration date that is the lesser of: (3-21-12)
- a.** One (1) year from the date of dispensing; (3-21-12)
- b.** The manufacturer's original expiration date; (3-21-12)
- c.** The appropriate expiration date for a reconstituted suspension or beyond use date for a compounded product; or (3-21-12)
- d.** A shorter period if warranted. (3-21-12)
11. **Refills.** The number of refills remaining, if any, or the last date through which the prescription is refillable; ~~and~~ (3-21-12)(    )
12. **Warning.** The warning: "Caution: State or federal law, or both, prohibits the transfer of this drug to any person other than the patient for whom it was prescribed;" except when dispensing to an animal, when a warning sufficient to convey "for veterinary use only" may be utilized. (3-21-12)(    )
13. **Pharmacist Identification.** The initials or other unique identifier of the dispensing pharmacist ~~or dispensing prescriber.~~ (4-4-13)(    )

(BREAK IN CONTINUITY OF SECTIONS)

**146. REPACKAGING.**

A pharmacy may repackage a drug previously dispensed to a patient, pursuant to the patient or the patient's agent's request, if: (    )

- 01. Unit Dose.** The drugs are repackaged into unit dose packaging. (    )
- 02. Pharmacist Verification.** The repackaging pharmacist verifies: (    )
- a.** The identity of the previously dispensed drugs as matching the label on the container that the drugs were initially dispensed within; and (    )
- b.** The validity and accuracy of the original prescription drug order. (    )



**03. Adulterated Drugs.** In the repackaging pharmacist's best professional judgment, the drug has not been adulterated. ( )

**04. Intermingled Drugs.** The drugs are never intermingled with the repackaging pharmacy's regular stock. ( )

**05. Time for Repackaging.** The pharmacy repackages the entire amount that was delivered to it for repackaging no later than three (3) days after receipt. ( )

**06. Date of Repackaging.** The date of repackaging is less than one (1) year from the original date of dispensing and the original expiration date is also used on the repackaged drug's label. ( )

**07. Labeling.** The repackaging pharmacy affixes to the container of the repackaged drug a label that complies with the standard labeling rule and includes: ( )

**a. The original dispensed prescription's serial number;** ( )

**b. The name, address, and phone number of the original dispensing pharmacy; and** ( )

**c. A statement that indicates that the drug has been repackaged, such as the words "repackaged by" followed by the name of the repackaging pharmacy.** ( )

**08. Record.** The repackaging pharmacy makes a record of: ( )

**a. All required components of the standard prescription drug labeling rule;** ( )

**b. The original dispensing pharmacy's name, address, and phone number;** ( )

**c. The original dispensed prescription's serial number; and** ( )

**d. The name of the pharmacist responsible for compliance with this rule.** ( )

**09. Policy and Procedures.** The repackaging pharmacy develops policy and procedures to ensure compliance with this rule. ( )

~~146~~7. -- 199. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**206. CONTROLLED SUBSTANCES: INVENTORIES.**

**01. Annual Inventory of Stocks of Controlled Substances.** Each registrant must conduct an inventory of controlled substances on hand annually ~~within~~ no later than seven (7) days ~~of~~ after the date of the prior year's inventory in a form and manner that satisfies the inventory requirements of federal law. ~~(4-4-13)~~( )

**02. Separate Inventories for Each Location.** A separate controlled substances inventory must be taken and retained at each registered location. (3-21-12)

**03. Inventory on PIC or Director Change.** A complete controlled substance inventory must be conducted in the event of a change of PIC or director on or by the first day of employment of the incoming PIC or director. (4-4-13)

**04. Inventory After Discovery of Theft or Loss.** A complete controlled substance inventory must be conducted within forty-eight (48) hours of the discovery of a theft or reportable loss of a controlled substance.

(3-21-12)

**05. Inventory on Addition to Schedule of Controlled Substances.** On the effective date of an addition of a substance to a schedule of controlled substances, each registrant that possesses that substance must take an inventory of the substance on hand, and thereafter, include the substance in each inventory. (3-21-12)

**06. Annual Inventory Compliance.** Complete inventories ~~otherwise~~ conducted ~~as otherwise required by these rules~~ may also be considered in complying with the annual inventory requirement. ~~(3-21-12)~~ ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

~~**304. PHARMACIST: AUTHORIZED PHARMACY ENTRANCE.**~~

~~A pharmacist must not permit a person other than a pharmacist, student pharmacist, or technician to enter or work in the secured pharmacy, except that a pharmacist may authorize other persons to be present temporarily in the pharmacy for legitimate business purposes if under the direct supervision of a pharmacist at all times. (3-21-12)~~

~~305~~4. -- 309. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**330. PHARMACIST: ADMINISTERED IMMUNIZATIONS.**

**01. Patient Eligibility.** A pharmacist may administer an immunization to a healthy patient without immunization contraindications pursuant to the latest recommendations by the CDC or other qualified government authority or to any patient pursuant to a prescription drug order issued by another prescriber. (3-21-12)

**02. Pharmacist Qualifications.** To qualify to administer immunizations, a pharmacist must first: (3-21-12)

**a.** Successfully complete an ACPE-accredited or comparable course that meets the standards for pediatric, adolescent, and adult immunization practices recommended and approved by the CDC's Advisory Committee on Immunization Practices and includes at least the following: (3-21-12)

- i. Basic immunology, vaccine, and immunization protection; (3-21-12)
- ii. Diseases that may be prevented by vaccination or immunization; (3-21-12)
- iii. Current recommended immunization schedules; (3-21-12)
- iv. Vaccine and immunization storage and management; (3-21-12)
- v. Informed consent; (3-21-12)
- vi. Physiology and techniques for administration of immunizations; (3-21-12)
- vii. Pre-immunization and post-immunization assessment and counseling; (3-21-12)
- viii. Immunization reporting and records management; and (3-21-12)
- ix. Identification response, documentation, and reporting of adverse events. (3-21-12)

**b.** Hold a current certification in basic life support for healthcare providers offered by the American Heart Association or a comparable Board-recognized certification program that includes cardiopulmonary

resuscitation (CPR) and automated electronic defibrillator (AED) training and requires a hands-on skills assessment by an authorized instructor. (3-21-12)

**03. Maintaining Qualification.** To maintain qualification to administer immunizations, a pharmacist must annually complete a minimum of one (1) CPE hour of ACPE-approved CPE related to vaccines, immunizations, or their administration, which may also be applied to the general CPE requirements of these rules. (4-4-13)

**04. Student Pharmacist Administration.** A pharmacist may not delegate authority to administer immunizations; however, a student pharmacist who has satisfied the qualifications may administer immunizations under the direct supervision of a qualified immunizing pharmacist. (3-21-12)

**05. Waste Disposal.** An immunizing pharmacist must properly dispose of used or contaminated supplies. (3-21-12)

**06. Required Reports.** An immunizing pharmacist must report: (3-21-12)

**a.** Adverse events to the healthcare provider identified by the patient, if any, and to the Vaccine Adverse Event Reporting System (VAERS); and (3-21-12)

**b.** Administration of immunizations to the Idaho Immunization Reminder Information System (IRIS), as required. (3-21-12)

**07. Required Resources.** A pharmacist must have a current copy of, or on-site access to, the CDC's Epidemiology and Prevention of Vaccine-Preventable Diseases. (3-21-12)

**08. Vaccine Information Statements.** A corresponding, current CDC-issued VIS must be provided to the patient or the patient's representative for each administered immunization. (3-21-12)

**09. Recordkeeping.** For each administered immunization, the following information must be collected and maintained in the patient profile: (3-21-12)

**a.** The patient's name, address, date of birth, and known allergies; (3-21-12)

**b.** The date of administration; (3-21-12)

**c.** The product name, manufacturer, dose, lot number, and expiration date of the vaccine; (3-21-12)

**d.** Documentation identifying the VIS provided; (3-21-12)

**e.** The site and route of administration and, if applicable, the dose in a series (e.g. one (1) of three (3)); (3-21-12)

**f.** The name of the patient's healthcare provider, if any; (3-21-12)

**g.** The name of the immunizing pharmacist and of the student pharmacist, if any; (3-21-12)

**h.** Adverse events observed or reported, if any, and documentation including at least the dates of any subsequent required reporting; and (3-21-12)

**i.** Completed informed consent forms. (3-21-12)

**10. Emergencies.** (3-21-12)

**a.** An immunizing pharmacist must maintain an immediately retrievable emergency kit sufficiently stocked to manage an acute allergic reaction to an immunization. At a minimum, the kit must include: (3-21-12)( )

- i. Intramuscular diphenhydramine: ( )
- ii. Oral diphenhydramine: ( )
- iii. Appropriate needles and syringes for injection: ( )
- iv. Alcohol; and ( )
- v. At least one (1) of the following: ( )
  - (1) Auto-inject epinephrine: ( )
  - (2) A vial of epinephrine with a dosing chart based on average body mass by age for patients under the age of fourteen (14); or ( )
  - (3) An ampule of epinephrine with a dosing chart based on average body mass by age for patients under the age of fourteen (14) and filter needles. ( )
- b. An immunizing pharmacist may initiate and administer auto-inject epinephrine, intramuscular diphenhydramine, or oral diphenhydramine to treat an acute allergic reaction to an immunization pursuant to guidelines issued by the American Pharmacy Association. (3-21-12)( )

**331. -- 3539. (RESERVED)**

**340. NONRESIDENT PHARMACIST PRACTICE STANDARDS.**

An Idaho licensed or registered nonresident pharmacist practicing pharmacy into Idaho must comply with the Board's rules and laws of this state unless compliance would violate the laws or rules in the state in which the registrant is located, except as follows: ( )

- 01. Pharmacy Technician.** A pharmacist must not allow a technician to exceed the practice limitations for a technician in Idaho. ( )
- 02. Drug Product Substitution.** A pharmacist must only substitute drug products in accordance with Idaho law. ( )
- 03. Drug Product Selection.** A pharmacist must only select drug products in accordance with Idaho law. ( )
- 04. Staffing Ratio.** A pharmacist must not exceed the pharmacy staffing ratio, as defined in rule. ( )

**341. -- 359. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**604. PHARMACY PRODUCT STORAGE AND REMOVAL.**

Prescription drugs, devices, and other products restricted to sale or dispensing by, or under the supervision of, a pharmacist must be stored in the pharmacy and must not be sold, delivered, or otherwise removed from a pharmacy unless a pharmacist is present, except: (3-20-14)

- 01. Emergency Drug Access and Pharmacist Absence.** As allowed by these rules for emergency access to an institutional pharmacy; (3-20-14)
- 02. Institutional Facility Alternative Storage.** In an institutional facility these restricted products may also be stored in an alternative designated area that is appropriately equipped to ensure compliance with drug product

storage requirements, to provide adequate security and protection from diversion, and that otherwise complies with applicable requirements of these rules; (3-20-14)

**03. Storage for Delivery.** Filled prescriptions may be picked up for delivery from a pharmacy when the pharmacy is closed for business if: (3-20-14)

**a.** The prescriptions are placed in a secured delivery area equipped with adequate security, including an alarm or comparable monitoring system, to prevent unauthorized entry, theft and diversion; (3-20-14)

**b.** The secured delivery area has walls that extend to the roof and solid core or metal doors, and all doors and other access points must be equipped with locking devices and be constructed in a manner so that the hinge hardware is ~~accessible only from inside the secured delivery area~~ **tamper-proof when closed;** (3-20-14)( )

**c.** The secured delivery area appropriately safeguards product integrity in accordance with USP-NF requirements; (3-20-14)

**d.** The secured delivery area is attached or located adjacent to the pharmacy that filled the prescriptions; (3-20-14)

**e.** The PIC, or a pharmacist designated by the PIC, and the approved transport agent solely have access to the secure delivery area. Two (2) factor credentialing is required for entry, which must include two (2) of the following: (3-20-14)

i. Something ~~you know~~ **n** (a knowledge factor); (3-20-14)( )

and ii. Something ~~you have~~ **possessed** (a hard token stored separately from the computer being accessed); (3-20-14)( )

iii. Something ~~you are~~ **biometric** (~~biometric information~~ **fingerprint, retinal scan, etc.**);(3-20-14)( )

**f.** The pharmacy has a means of recording the time of entry and the identity of all persons who access the secured delivery area; (3-20-14)

**g.** The pharmacy maintains immediately retrievable records of all persons who have accessed the secured delivery area and each prescription stored and removed for delivery; (3-20-14)

**h.** The pharmacy maintains written policies and procedures for secured delivery area storage and removal of prescriptions; and (3-20-14)

**i.** The PIC of a pharmacy that ships drugs by common carrier must require the common carrier to conduct criminal background checks on its employees who have access to the secured delivery area. (3-20-14)

**04. Qualified Returns to the Secured Delivery Area.** A pharmacist or a pharmacy, by means of its agent, may accept the return of the following drugs or devices to the secured delivery area: (3-20-14)

**a.** Emergency kits; (3-20-14)

**b.** Prescriptions that were unsuccessfully delivered by the pharmacy, a pharmacist, or its agent; and (3-20-14)

**c.** Those deemed qualified for return pursuant to the Restricted Return of Drugs or Devices rule. (3-20-14)

**605. PHARMACY SECURITY.**

~~**01. Basic Security Standards.** A pharmacy must be constructed and equipped with adequate security, and at least while closed, utilize an alarm or other comparable monitoring system~~ to protect its equipment, records,

and supply of drugs, devices, and other restricted sale items from unauthorized access, acquisition, or use. ~~Pharmacies without an alarm or other monitoring system as of the effective date of this rule must comply with this rule upon completion of a structural remodel.~~ New construction or a remodeled pharmacy must meet the following minimum security requirements: (3-21-12)( )

~~021. Non-Institutional Pharmacy Security During Pharmacist Absence Alarm.~~ A non-institutional pharmacy must be At least while closed for business and secured during all times a pharmacist is not present except: an alarm or other comparable monitoring system is required. (4-4-13)( )

~~a- If a technician or student pharmacist is on to duty, to allow brief pharmacist absences within the business establishment; or~~ (4-4-13)

~~b- To perform professional services in the peripheral areas immediately outside of the pharmacy.~~ (4-4-13)

~~032. Structural Security Requirements Walls.~~ If a pharmacy is located within an establishment that is open to the public for business at times when a pharmacist is not present, the pharmacy must be totally enclosed in a manner sufficient to provide adequate security for the pharmacy, as required by this rule and approved by the Board. All pharmacies must meet the following security requirements: (3-20-14)

~~a- Pharmacy walls must extend to the roof or the pharmacy must be similarly secured from unauthorized entry.~~ (3-21-12)( )

~~b03. Doors.~~ Solid core or metal doors are required for new or remodeled pharmacies after the effective date of this rule. (4-4-13)( )

~~e04. Hinges and Locks.~~ Doors and other access points must be constructed in a manner that the hinge hardware is accessible only from inside of the pharmacy and must be equipped with locking devices tamper-proof when closed. (3-21-12)( )

05. Differential Hours. When closed for business, a pharmacy must be: ( )

a. Completely enclosed in a manner sufficient to provide adequate security; or ( )

b. Located within a larger business establishment that is also closed. In such cases, the establishment must meet these minimum security requirements, and no person is allowed entry to the establishment unless a pharmacist is present. ( )

~~06. Drop Box.~~ If used, a “drop box” or “mail slot” allowing delivery of prescription drug orders to the pharmacy during hours closed must be appropriately secured against theft, and the pharmacy hours must be prominently visible to the person depositing the prescription drug order. Prescriptions must not be accepted for delivery to the pharmacy or for depositing in the drop box by non-pharmacy employees of a retail establishment. (3-21-12)( )

~~04. Restricted Access to the Pharmacy.~~ No one must be allowed entrance to the closed and secured pharmacy unless under the direct supervision of a pharmacist or except as permitted by these rules for an institutional pharmacy. (3-21-12)

(BREAK IN CONTINUITY OF SECTIONS)

611. PHARMACY AUTHORIZED ENTRY.

01. Open Pharmacy. A person other than a pharmacist, student pharmacist, or technician must not enter or work in the secured pharmacy, except that a pharmacist may authorize other persons to be present temporarily in the pharmacy for legitimate business purposes if under the direct supervision of a pharmacist at all

times. ( )

**02. Closed Pharmacy.** No one must be allowed entrance to the closed and secured pharmacy unless under the direct supervision of a pharmacist. ( )

**03. Non-Institutional Temporary Pharmacist Absence.** A non-institutional pharmacy must be closed for business and secured during all times a pharmacist is not present except: ( )

**a.** If a technician or student pharmacist is on duty to allow brief pharmacist absences within the business establishment; or ( )

**b.** When a pharmacist performs professional services in the peripheral areas immediately outside of the pharmacy. ( )

**04. Institutional Pharmacy Temporary Pharmacist Absence.** To accommodate periods of temporary absence of a pharmacist from the institutional pharmacy, pharmacy students and technicians may remain within the pharmacy under the following conditions: ( )

**a.** No other person may be allowed access or entrance to the pharmacy; ( )

**b.** Drugs or devices may not leave the pharmacy except if requested by, and immediately delivered to, the pharmacist; and ( )

**c.** Neither student pharmacists nor technicians may remain in the pharmacy during periods of pharmacist absence from the institutional facility. ( )

**6142. -- 619. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**631. INSTITUTIONAL FACILITY: EMERGENCY DRUG ACCESS ~~AND PHARMACIST ABSENCE.~~**

The director must make advance arrangements necessary to facilitate continuity of patient care and for the provision of drugs to the medical staff and other authorized personnel of the institutional facility in emergencies and during the absences of a pharmacist in compliance with this rule. (3-21-12)( )

**01. Emergency Pharmacy Access.** If a drug is unavailable from any other authorized emergency source in sufficient time to prevent risk of harm to a patient that would result from a delay in obtaining the drug and in the absence of a pharmacist from the premises of the institutional facility, it may be retrieved from an institutional pharmacy by an R.N. as follows: (3-21-12)

**a.** One (1) R.N. may be designated per shift for emergency access to the pharmacy; (3-21-12)

**b.** Access may only occur if controlled substances are secured in a locked cabinet or other appropriate means to prevent unauthorized access; and (3-21-12)

**c.** Only a non-controlled substance may be removed and only in an amount necessary to treat a patient's immediate need until the pharmacy is again attended by a pharmacist. (3-21-12)

**02. Emergency Cabinets.** A cabinet or similar enclosure located outside an institutional pharmacy may be used for emergency access of drugs by an R.N. as follows: (3-21-12)

**a.** The emergency cabinet must be accessible only by key, combination, or otherwise sufficiently secured to deny access to unauthorized persons; and (3-21-12)

**b.** Drugs stocked in the emergency cabinet must be approved, prepared, stored, and handled as

specified by these rules for emergency drug supplies. (3-21-12)

**03. Emergency Drug Access ~~Conditions and Documentation~~.** Emergency access by an R.N. to an institutional pharmacy or an emergency cabinet or similar enclosure must be documented as follows: ~~(3-21-12)~~ ( )

- a. Removal of a drug must be pursuant to a valid drug order; (3-21-12)
- b. Removal of a drug must be documented in a record that includes at least: (3-21-12)
  - i. The patient's name and location; (3-21-12)
  - ii. The name and strength of the drug; (3-21-12)
  - iii. The amount; (3-21-12)
  - iv. The date and time; and (3-21-12)
  - v. The initials or other unique identifier of the designated nurse. (4-4-13)
- c. The removal record and a copy of the drug order must be left conspicuously in the pharmacy, emergency cabinet, or alternative location to facilitate prompt accuracy verification and initialing by a pharmacist. (3-21-12)

~~**04. Temporary Pharmacist Absence.** To accommodate periods of temporary absence of a pharmacist from the institutional pharmacy, pharmacy students and technicians may remain within the pharmacy under the following conditions: (3-21-12)~~

- ~~a. No other person may be allowed access or entrance to the pharmacy; (3-21-12)~~
- ~~b. Drugs or devices may not leave the pharmacy except if requested by, and immediately delivered to, the pharmacist; and (3-21-12)~~
- ~~c. Neither student pharmacists nor technicians may remain in the pharmacy during periods of pharmacist absence from the institutional facility. (3-21-12)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**710. RETAIL TELEPHARMACY WITH REMOTE DISPENSING SITES.**

Pharmacies and pharmacists commencing retail telepharmacy operations with a remote dispensing site after August 23, 2011, must comply with the following requirements: (3-21-12)

- 01. Telepharmacy Practice Sites and Settings.** Prior to engaging in the practice of telepharmacy with a remote dispensing site, the supervising pharmacy must demonstrate that there is limited access to pharmacy services in the community in which the remote site is located. (3-21-12)
  - a. Information justifying the need for the remote dispensing site must be submitted with the initial registration application. (3-21-12)
  - b. The Board will consider the availability of pharmacists in the community, the population of the community to be served by the remote dispensing site, and the need for the service. (3-21-12)
  - c. The remote dispensing site must be located in a medical care facility operating in areas otherwise unable to obtain pharmaceutical care services on a timely basis. (3-21-12)
  - d. The Board will not approve a remote dispensing site if a retail pharmacy that dispenses



prescriptions to outpatients is located within the same community as the proposed remote dispensing site. (3-21-12)

**02. Independent Entity Contract.** Unless jointly owned, a supervising pharmacy and a remote dispensing site must enter into a written contract that outlines the services to be provided and the responsibilities and accountability of each party in fulfilling the terms of the contract. (3-21-12)

**a.** A copy of the contract must be submitted to the Board with the initial registration application and at any time there is a substantial change in a contract term. (3-21-12)

**b.** The contract must be retained by the supervising pharmacy. (3-21-12)

**03. PIC Responsibility.** Unless an alternative PIC from the supervising pharmacy is specifically designated in writing, the PIC of the supervising pharmacy is also considered the responsible PIC for the remote dispensing site. (3-21-12)

**04. Remote Dispensing Site Limitations.** The Board may limit the number of remote dispensing sites under the supervision and management of a single pharmacy. (3-21-12)

**05. Technician Staffing.** Unless staffed by a pharmacist, a remote dispensing site must be staffed by at least one (1) ~~or more~~ certified technicians with two thousand (2,000) hours pharmacy technician experience in Idaho and under the supervision of a pharmacist at the supervising pharmacy at all times that the remote site is open. Supervision does not require the pharmacist to be physically present at the remote dispensing site, but the pharmacist must supervise telepharmacy operations electronically from the supervising pharmacy. (~~3-21-12~~)(    )

**06. Common Electronic Recordkeeping System.** The remote dispensing site and the supervising pharmacy must utilize a common electronic recordkeeping system that must be capable of the following: (3-21-12)

**a.** Electronic records must be available to, and accessible from, both the supervising pharmacy and the remote dispensing site; and (3-21-12)

**b.** Prescriptions dispensed at the remote dispensing site must be distinguishable from those dispensed from the supervising pharmacy. (3-21-12)

**07. Records Maintenance.** Controlled substance records must be maintained at the registered location unless specific approval is granted for central storage as permitted by, and in compliance with, federal law. (3-21-12)

**08. Video and Audio Communication Systems.** A supervising pharmacy of an ADS system used in a remote dispensing site must maintain a video and audio communication system that provides for effective communication between the supervising pharmacy and the remote dispensing site personnel and consumers. The system must provide an adequate number of views of the entire site, facilitate adequate pharmacist supervision and allow the appropriate exchanges of visual, verbal, and written communications for patient counseling and other matters involved in the lawful transaction or delivery of drugs. The remote dispensing site must retain a recording of such video and audio surveillance for a minimum of ninety (90) days. (~~3-21-12~~)(    )

**a.** Adequate supervision by the pharmacist in this setting is maintaining constant visual supervision and auditory communication with the site and full supervisory control of the automated system that must not be delegated to another person or entity. (3-21-12)

**b.** Video monitors used for the proper identification and communication with persons receiving prescription drugs must be a minimum of twelve inches (12") wide and provided at both the pharmacy and the remote location for direct visual contact between the pharmacist and the patient or the patient's agent. (3-21-12)

**c.** Each component of the communication system must be in good working order. Unless a pharmacist is present onsite, the remote dispensing site must be, or remain, closed if any component of the communication system is malfunctioning until system corrections or repairs are completed. (3-21-12)

**09. Access and Operating Limitations.** Unless a pharmacist is present, a remote dispensing site must

not be open or its employees allowed access to it during times the supervising pharmacy is closed. The security system must allow for tracking of entries into the remote dispensing site, and the PIC must periodically review the record of entries. (3-21-12)

**10. Delivery and Storage of Drugs.** If controlled substances are maintained or dispensed from the remote dispensing site, transfers of controlled substances from the supervising pharmacy to the remote dispensing site must comply with applicable state and federal requirements. (3-21-12)

**a.** Drugs must only be delivered to the remote dispensing site in a sealed container with a list identifying the drugs, drug strength, and quantities included in the container. Drugs must not be delivered to the remote dispensing site unless a technician or pharmacist is present to accept delivery and verify that the drugs sent were actually received. The technician or pharmacist who receives and checks the order must verify receipt by signing and dating the list of drugs delivered. (3-21-12)

**b.** If performed by a technician, a pharmacist at the supervising pharmacy must ensure, through use of the electronic audio and video communications systems or bar code technology, that a technician has accurately and correctly restocked drugs into the ADS system or cabinet. (3-21-12)

**c.** Drugs at the remote dispensing site must be stored in a manner to protect their identity, safety, security, and integrity and comply with the drug product storage requirements of these rules. (3-21-12)

**d.** Drugs, including previously filled prescriptions, not contained within an ADS system must be stored in a locked cabinet within a secured area of a remote dispensing site and access must be limited to pharmacists from the supervising pharmacy and the technicians authorized in writing by the PIC. (3-21-12)

**11. Wasting or Discarding of Drugs Prohibited.** Wasting or discarding of drugs resulting from the use of an ADS system in a remote dispensing site is prohibited. (3-21-12)

**12. Returns Prohibited.** The technician at a remote dispensing site must not accept drugs returned by a patient or patient's agent. (3-21-12)

**13. Security.** A remote dispensing site must be equipped with adequate security. ( )

**a.** At least while closed, a remote dispensing site must utilize an alarm or other comparable monitoring system to protect its equipment, records, and supply of drugs, devices, and other restricted sale items from unauthorized access, acquisition, or use. The site must have a means of recording the time of entry and the identity of all persons who access the site, which must be retained for ninety (90) days. Two (2) factoring credentialing is required for entry, which must include two (2) of the following: ( )

**i.** Something known (a knowledge factor); ( )

**ii.** Something possessed (a hard token stored separately from the computer being accessed); and ( )

**iii.** Something biometric (finger print, retinal scan, etc.); ( )

**b.** A remote dispensing site must be totally enclosed in a manner sufficient to provide adequate security for the pharmacy, as required by this rule and approved by the Board. All remote dispensing sites must meet the following security requirements: ( )

**i.** Walls must extend to the roof or the pharmacy must be similarly secured from unauthorized entry. ( )

**ii.** Solid core or metal doors are required. ( )

**iii.** Doors and other access points must be constructed in a manner that the hinge hardware is tamper-proof when closed. ( )

c. Access to the area of the remote dispensing site where prescription drugs are prepared, distributed, dispensed or stored must be limited to technicians and pharmacists. Any other persons requiring access to the remote dispensing site for legitimate business reasons may only be present in the secured area with the permission and under the supervision of a pharmacist, which may be satisfied via audio/video communication. ( )

d. A remote dispensing site must be closed for business and secured during all times a pharmacist or technician is not present. ( )

**134. Patient Counseling.** A remote dispensing site must include an appropriate area for patient counseling. (3-21-12)

**a.** The area must be readily accessible to patients and must be designed to maintain the confidentiality and privacy of a patient's conversation with the pharmacist. (3-21-12)

**b.** Unless onsite, a pharmacist must use the video and audio communication system to counsel each patient or the patient's caregiver on new medications. (3-21-12)

**145. Remote Dispensing Site Sign.** A remote dispensing site must display a sign, easily visible to the public, that informs patients that: (3-21-12)

**a.** The location is a remote dispensing site providing telepharmacy services supervised by a pharmacist located in another pharmacy; (3-21-12)

**b.** Identifies the city or township where the supervising pharmacy is located; and (3-21-12)

**c.** Informs patients that a pharmacist is required to speak with the patient using audio and video communication systems each time a new medication is delivered or if counseling is accepted at a remote dispensing site. (3-21-12)

**156. Pharmacist Inspection of Remote Dispensing Site.** A pharmacist must complete and document a monthly in-person inspection of a remote dispensing site and inspection reports must be retained. (3-21-12)

17. Continuous Quality Improvement Program. The PIC of the remote dispensing site must develop and implement a continuous quality improvement program. ( )

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

#### DOCKET NO. 27-0101-1405

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1717, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This pending rule is necessary to consistently regulate the distribution of drugs by wholesalers, manufacturers, outsourcing facilities and pharmacies. Changes from proposed to pending language include the deleting codified Rule 270 in full, which only addressed dispensers, and the drafting of new Rule 615, which incorporates much of this rule and the proposed language regarding compounded drug product distribution and office use. Additional changes from proposed to pending language include completing the list of statutorily allowed pharmacy distribution, including certain federal Drug Quality and Security Act requirements, adding an exemption, and adding prohibited acts.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 361 through 363](#).

**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:

This rulemaking is expected to increase the number of Board registrants slightly, at one hundred thirty dollars (\$130) per.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Mark Johnston, Executive Director, (208) 334-2356.

DATED this 28th Day of November, 2014.

Mark Johnston, R.Ph.  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Tel: (208) 334-2356 / Fax: (208) 334-3536

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 54-1717, Idaho Code.

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

**Wednesday, October 22, 2014, 1:00 p.m.**

**Idaho Capitol Building**  
**700 W. Jefferson St., Room WW53**  
**Boise, Idaho 83702**

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:

Congress passed the Drug Quality and Security Act in November of 2013, which mandates that states regulate wholesale distribution consistently with this new federal law. This docket of rules will fulfill our federal responsibility by striking the affected, existing rules promulgated for the Idaho Wholesale Drug Distribution Act and inserting language consistent with this new federal requirement.

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

**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:

This docket of rules is expected to increase the number of Board registrants slightly, at one hundred thirty dollars (\$130) per.

**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 under Docket No. 27-0101-1401 in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 125](#), and in the August 6, 2014 Idaho Administrative Bulletin, [Vol. 14-8, page 84](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, Executive Director, (208) 334-2356.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-1405**

266. -- ~~269~~70. (RESERVED)

~~270. **EMERGENCY DRUG DISTRIBUTION BY A DISPENSER.**~~

~~For an emergency medical reason, pursuant to Section 54-1752(16), Idaho Code, a dispenser may distribute (without obtaining a wholesale distribution registration) a drug to another dispenser, as follows: (3-21-12)~~

~~**01. Emergency.** For purposes of this rule, an emergency medical reason is a situation where a quantity of a drug is needed by a dispenser without an alternative source for the drug reasonably available and the drug is unavailable through a normal distribution channel in sufficient time to prevent risk of harm to a patient that would result from a delay in obtaining the drug. (3-21-12)~~

~~**02. Allowable Amount.** The amount of drug distributed must not reasonably exceed the amount required for immediate dispensing. (3-21-12)~~

~~**03. Controlled Substance Distribution.** For controlled substances, each dispenser must retain a signed receipt of the distribution that includes at least: (3-21-12)~~

- ~~a. The date of the transaction; (3-21-12)~~
- ~~b. The name, address, and DEA registration number of the distributing dispenser; (3-21-12)~~
- ~~c. The name, address, and DEA registration number of the receiving dispenser; (3-21-12)~~
- ~~d. The drug name, strength, and quantity for each product distributed; and (3-21-12)~~
- ~~e. The signature of the person receiving the drugs. (3-21-12)~~

(BREAK IN CONTINUITY OF SECTIONS)

611. -- ~~619~~4. (RESERVED)

615. **DRUG DISTRIBUTION.**

**01. Authorized Distributors.** The following drug outlets may distribute legend drugs in or into Idaho, in compliance with these rules, pursuant to the following restrictions: ( )

**a.** A licensed or registered wholesale distributor and a registered manufacturer in compliance with the Idaho Wholesale Distribution Act and the Idaho Pharmacy Act; ( )

**b.** An FDA and Idaho registered outsourcing facility in compliance with 21 U.S.C. Section 353b of the Food, Drug and Cosmetic Act; ( )

**c.** A dispenser without being licensed or registered as a wholesale distributor according to the following restrictions: ( )

**i.** A dispenser may distribute to authorized recipients for an emergency medical purpose in which an alternative source for a drug is not reasonably available in sufficient time to prevent risk of harm to a patient that would result from a delay in obtaining a drug. The amount of the drug distributed in an emergency must not reasonably exceed the amount required for immediate use; ( )

**ii.** A dispenser may distribute intracompany to any division, subsidiary, parent, affiliated or related company under common ownership and control of a corporate entity; ( )

iii. A pharmacy may distribute to another pharmacy pursuant to a sale, transfer, merger or consolidation of all or a part of a pharmacy, whether accomplished as a sale of stock or business assets; ( )

iv. A pharmacy may distribute compound positron emission tomography drugs or radiopharmaceuticals, if in compliance with applicable federal law; and ( )

v. A pharmacy may distribute minimal quantities of prescription drugs to a prescriber for in-office administration, including the distribution of compounded drug product in the absence of a patient specific prescription drug order if: ( )

(1) The compounded drug product is not sterile and not intended to be sterile; ( )

(2) The compounded drug product is not further dispensed or distributed by the practitioner; and ( )

(3) The quantity of compounded drug product distributed is limited to five percent (5%) of the total number of compounded drug products dispensed and distributed on an annual basis by the pharmacy, which may include a drug compounded for the purpose of, or incident to, research, teaching or chemical analysis. ( )

02. Distribution. An authorized distributor must furnish: ( )

a. Drug product only to a person licensed by the appropriate state licensing agency to dispense, conduct research with or independently administer such drugs; ( )

b. Scheduled controlled substances only to a person who has been issued a valid controlled substance registration by the DEA and the Board, unless exempt by state or federal law; ( )

c. Federally required transaction documentation, including transaction information, transaction history, and transaction statements with each distribution; and ( )

d. Drug product only to the premises listed on the authorized receiving person's license or registration. Delivery to a hospital pharmacy receiving area satisfies this requirement, provided that authorized receiving personnel sign for receipt at the time of delivery. ( )

03. Controlled Substance Distribution Invoice. Distributions must be pursuant to an invoice and not a prescription drug order. For controlled substances, each dispenser must retain a signed receipt of the distribution that includes at least: ( )

a. The date of the transaction; ( )

b. The name, address, and DEA registration number of the distributing dispenser; ( )

c. The name, address, and DEA registration number of the receiving dispenser; ( )

d. The drug name, strength, and quantity for each product distributed; and ( )

e. The signature of the person receiving the drugs. ( )

04. Monitoring Purchase Activity. An authorized distributor must have adequate processes in place for monitoring purchase activity of customers and identifying suspicious ordering patterns that identify potential diversion or criminal activity related to controlled substances such as orders of unusual size, orders deviating

substantially from a normal pattern, orders for drugs that are outside of the prescriber's scope of practice, and orders of unusual frequency. ( )

05. **Reporting.** An authorized distributor must report specified data on controlled substances distributed at least monthly to the Board in a form and manner prescribed by the Board, except when distributing intracompany. ( )

06. **Prohibited Acts.** The following acts are prohibited: ( )

a. **Distribution of any drug product that is adulterated, misbranded, counterfeit, expired, damaged, recalled, stolen, or obtained by fraud or deceit; and** ( )

b. **Failing to obtain a license or registration when one is required to distribute in or into Idaho.** ( )

616. – 619. **(RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**809. ~~PRESCRIPTION DRUG PEDIGREES.~~**

~~Each person, including repackagers but excluding the original manufacturer of the finished form of the prescription drug, engaged in wholesale distribution of prescription drugs that leave or have left the normal distribution channel must tender a pedigree to the person receiving the drug upon delivery. A retail pharmacy or chain pharmacy warehouse must comply with these pedigree requirements only if engaging in wholesale distribution.~~ (3-21-12)

~~01- **Pedigree Contents.** A pedigree for each prescription drug must contain the following information:~~ (3-21-12)

~~a- The proprietary and established name of the drug;~~ (3-21-12)

~~b- The container size;~~ (3-21-12)

~~c- The number of containers;~~ (3-21-12)

~~d- The dosage form;~~ (3-21-12)

~~e- The dosage strength;~~ (3-21-12)

~~f- The lot number with expiration dates and the NDC;~~ (3-21-12)

~~g- The name of the manufacturer and repackager, if applicable, of the finished product;~~ (3-21-12)

~~h- The name, address, telephone number, and, if available, the e-mail address, of each owner and each wholesale distributor of the drug;~~ (3-21-12)

~~i- The name and address of each location from which the drug was shipped, if different from the owner's;~~ (3-21-12)

~~j- The dates of each transaction;~~ (3-21-12)

~~k- A certification that each recipient has authenticated the pedigree; and~~ (3-21-12)

~~l- The name and address of each recipient.~~ (3-21-12)

~~02- **Authentication.** Each person engaged in wholesale distribution who is provided a pedigree must~~



~~affirmatively verify each listed transaction before further wholesale distribution may occur. (3-21-12)~~

~~03. **Availability of Records for Inspection.** Pedigrees must be retained and made available to the Board upon request. (3-21-12)~~

~~840. -- 849. (RESERVED)~~

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

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

**DOCKET NO. 58-0101-1401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-third Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105 and 39-107, Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 3, 2014, [Vol. 14-9, pages 379 through 381](#). After consideration of public comments, the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov/58-0101-1401](http://www.deq.idaho.gov/58-0101-1401) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This 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: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Tiffany Floyd at [tiffany.floyd@deq.idaho.gov](mailto:tiffany.floyd@deq.idaho.gov) or (208) 373-0440.

Dated this 19th Day of November, 2014.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
Tel: (208) 373-0418  
Fax: (208) 373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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.

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

**Tuesday, October 7, 2014, 3:00 p.m.**

**Department of Environmental Quality**  
**Conference Room C**  
**1410 N. Hilton, Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to clarify the application of fugitive dust rules to agricultural activities.

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 2014 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2015 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: NA

**NEGOTIATED RULEMAKING:** The text of the proposed rule has been 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 April 2014 Idaho Administrative Bulletin, **Vol. 14-4, pages 17 and 18**, and a preliminary draft rule was made available for public review. Meetings were held on May 14, June 20, and July 16, 2014. Several members of the public participated in the negotiated rulemaking process by attending the meetings and by submitting written comments. A record of the negotiated rule drafts, written comments received, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary is available at [www.deq.idaho.gov/58-0101-1401](http://www.deq.idaho.gov/58-0101-1401).

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions that resulted in drafting the proposed rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final rule draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Tiffany Floyd at [tiffany.floyd@deq.idaho.gov](mailto:tiffany.floyd@deq.idaho.gov) or (208) 373-0440.

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 October 7, 2014.

DATED this 8th day of August, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-1401

**650. RULES FOR CONTROL OF FUGITIVE DUST.**

The purpose of Sections 650 through 654 is to require that all reasonable precautions be taken to prevent the generation of fugitive dust. (5-1-94)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**652. AGRICULTURAL ACTIVITIES.**

For agricultural activity purposes, operating in conformance with generally recognized agricultural practices constitutes reasonable control of fugitive dust. For the purpose of Section 652: ( )

**01. Agricultural Activity.** An “agricultural activity” means any activity that is exempt from the requirement to obtain a permit to construct under Subsection 222.02.f., wherein “agricultural activities and services” is defined in Section 007, that occurs in connection with the production of agricultural products for food, fiber, fuel, feed and other lawful purposes, and including, but not limited to: ( )

**a.** Preparing land for agricultural production; ( )

**b.** Applying or handling pesticides herbicides, or other chemicals, compounds or substances labeled for insects, pests, crops, weeds, water or soil; ( )

**c.** Planting, irrigating, growing, fertilizing, harvesting or producing agricultural, horticultural, floricultural and viticulture crops, fruits and vegetable products, field grains, seeds, hay, sod and nursery stock, and other plant products, plant by-products, plant waste and animal compost; ( )

**d.** Breeding, hatching, raising, producing, feeding and keeping livestock, dairy animals, swine, fur-bearing animals, poultry, eggs, fish and other aquatic species, and other animals, animal products and animal by-products, animal waste, animal compost, and bees, bee products and bee by-products; ( )

**e.** Transporting agricultural products to or from an agricultural facility; ( )

**f.** Grinding, chopping, cubing, or any other means of preparing or converting a commodity for animal feed; and ( )

**g.** Piling, stacking or other means of storing commodities outdoors. ( )

**02. Generally Recognized Agricultural Practices.** “Generally recognized agricultural practices” means economically feasible practices that are customary among or appropriate to farms and ranches of a similar nature in the local area. In determining whether an agricultural activity is consistent with generally recognized agricultural practices, the Idaho Department of Environmental Quality shall consult with the Idaho Department of Agriculture. ( )

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

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

DOCKET NO. 58-0101-1402

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-third Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105 and 39-107, Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 3, 2014, [Vol. 14-9, pages 382 through 408](#). DEQ received no public comments; however, the date listed in Subsection 579.01.a.iii has been changed from October 10, 2010 to October 20, 2010 for consistency with the date listed in the CFR. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov/58-0101-1402](http://www.deq.idaho.gov/58-0101-1402) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This 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: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Tiffany Floyd at [tiffany.floyd@deq.idaho.gov](mailto:tiffany.floyd@deq.idaho.gov) or (208) 373-0440.

Dated this 19th Day of November, 2014.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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.

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

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**Tuesday, October 7, 2014, 3:00 p.m.**

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**Department of Environmental Quality**  
**Conference Room C**  
**1410 N. Hilton, Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

**DESCRIPTIVE SUMMARY:** This rulemaking contains three main objectives. The first objective is to acknowledge feedback received from the U.S. Environmental Protection Agency regarding necessary changes to the Rules for the Control of Air Pollution in Idaho (Idaho's rules) for inclusion into Idaho's State Implementation Plan (SIP). Including Idaho's rules in the SIP will provide certainty to the regulated community that their permits fulfill all state and federal requirements. These changes include minor clarifications to the following rules: Facility Emission Cap, Sulfur Content in Fuels Alternative, and Nonmetallic Mineral Processing Plants.

Facility emission cap (FEC) rule: Two changes have to be made: 1) Language will be added to strengthen the prohibition against new major facilities from using the FEC rule and thus circumventing PSD/NSR review. 2) Language is being added to ensure that the air quality modeling parameters will be consistent throughout the 5 year term of the FEC permit. These changes are consistent with the original intent of the rule and will not change how it is currently being implemented.

Sulfur in fuels: The original rule provides an option for facilities to use higher sulfur content fuel as long as there is no increase in air emissions. The rule does not explicitly state how DEQ will implement this option. The added language states that it will be implemented through an air permitting action from DEQ. This change is consistent with the original intent of this rule.

Nonmetallic mineral processing: Clarifying language that the Permit by Rule option is only available to non-major sources is being added. This change should have no effect on how the industry is using this rule and is consistent with the original intent of this rule.

The second objective is to add references to PM<sub>2.5</sub> in order to capture updated federal requirements. Idaho DEQ is currently treating PM<sub>2.5</sub> as a criteria pollutant but has not yet updated all references to PM<sub>2.5</sub> in the rules. These changes are needed for clarification and consistency.

The third objective is to update a source test reporting deadline to more realistically reflect existing practices. Currently there is a deadline that facilities submit a source test to Idaho DEQ within 30 days in certain situations. This deadline has proven impractical and DEQ is proposing to increase the deadline to 60 days.

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 2014 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2015 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: Not applicable.

**NEGOTIATED RULEMAKING:** The text of the proposed rule has been 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 June 2014 Idaho Administrative Bulletin, [Vol. 14-6, pages](#)

**104 and 105**, and a preliminary draft rule was made available for public review. A meeting was held on June 26, 2014. Several members of the public participated in the negotiated rulemaking process by attending the meeting and by submitting written comments. A record of the negotiated rule drafts, written comments received, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary is available at [www.deq.idaho.gov/58-0101-1402](http://www.deq.idaho.gov/58-0101-1402).

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions that resulted in drafting the proposed rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final rule draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule.

**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 Tiffany Floyd at [tiffany.floyd@deq.idaho.gov](mailto:tiffany.floyd@deq.idaho.gov) or (208) 373-0440.

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 October 7, 2014.

DATED this 8th Day of August, 2014.

### LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-1402

#### 006. GENERAL DEFINITIONS.

**01. Accountable.** Any SIP emission trading program must account for the aggregate effect of the emissions trades in the demonstration of reasonable further progress, attainment, or maintenance. (4-5-00)

**02. Act.** The Environmental Protection and Health Act of 1972 as amended (Sections 39-101 through 39-130, Idaho Code). (5-1-94)

**03. Actual Emissions.** The actual rate of emissions of a pollutant from an emissions unit as determined in accordance with the following: (4-5-00)

**a.** In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. (4-5-00)

**b.** The Department may presume that the source-specific allowable emissions for the unit are equivalent to actual emissions of the unit. (4-5-00)

c. For any emissions unit (other than an electric utility steam generating unit as specified below) which has not yet begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date. (4-5-00)

d. For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the Department, on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years may be required by the Department if it determines such a period to be more representative of normal source post-change operations. (4-5-00)

**04. Adverse Impact on Visibility.** Visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I Area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with: (3-30-07)

a. Times of visitor use of the Federal Class I Area; and (3-30-07)

b. The frequency and timing of natural conditions that reduce visibility. (3-30-07)

c. This term does not include affects on integral vistas when applied to 40 CFR 51.307. (3-30-07)

**05. Air Pollutant/Air Contaminant.** Any substance, including but not limited to, dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon or particulate matter or any combination thereof. (4-5-00)

**06. Air Pollution.** The presence in the outdoor atmosphere of any air pollutant or combination thereof in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property. (4-5-00)

**07. Air Quality.** The specific measurement in the ambient air of a particular air pollutant at any given time. (5-1-94)

**08. Air Quality Criterion.** The information used as guidelines for decisions when establishing air quality goals and air quality standards. (5-1-94)

**09. Allowable Emissions.** The allowable emissions rate of a stationary source or facility calculated using the maximum rated capacity of the source or facility (unless the source or facility is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following: (4-5-00)

a. The applicable standards set forth in 40 CFR part 60 and 61; (4-5-00)

b. Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or (4-5-00)

c. The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date. (4-5-00)

**10. Ambient Air.** That portion of the atmosphere, external to buildings, to which the general public has access. (5-1-94)

**11. Ambient Air Quality Violation.** Any ambient concentration that causes or contributes to an exceedance of a national ambient air quality standard as determined by 40 CFR Part 50. (4-11-06)



**12. Atmospheric Stagnation Advisory.** An air pollution alert declared by the Department when air pollutant impacts have been observed and/or meteorological conditions are conducive to additional air pollutant buildup. (4-11-06)

**13. Attainment Area.** Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as having ambient concentrations equal to or less than national primary or secondary ambient air quality standards for a particular air pollutant or air pollutants. (4-11-06)

**14. BART-Eligible Source.** Any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit two hundred fifty (250) tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted. (3-30-07)

- a.** Fossil-fuel fired steam electric plants of more than two hundred fifty (250) million BTU's per hour heat input; (3-30-07)
- b.** Coal cleaning plants (thermal dryers); (3-30-07)
- c.** Kraft pulp mills; (3-30-07)
- d.** Portland cement plants; (3-30-07)
- e.** Primary zinc smelters; (3-30-07)
- f.** Iron and steel mill plants; (3-30-07)
- g.** Primary aluminum ore reduction plants; (3-30-07)
- h.** Primary copper smelters; (3-30-07)
- i.** Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day; (3-30-07)
- j.** Hydrofluoric, sulfuric, and nitric acid plants; (3-30-07)
- k.** Petroleum refineries; (3-30-07)
- l.** Lime plants; (3-30-07)
- m.** Phosphate rock processing plants; (3-30-07)
- n.** Coke oven batteries; (3-30-07)
- o.** Sulfur recovery plants; (3-30-07)
- p.** Carbon black plants (furnace process); (3-30-07)
- q.** Primary lead smelters; (3-30-07)
- r.** Fuel conversion plants; (3-30-07)
- s.** Sintering plants; (3-30-07)
- t.** Secondary metal production facilities; (3-30-07)
- u.** Chemical process plants; (3-30-07)

- v. Fossil-fuel boilers of more than two hundred fifty (250) million BTU's per hour heat input; (3-30-07)
- w. Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand (300,000) barrels; (3-30-07)
- x. Taconite ore processing facilities; (3-30-07)
- y. Glass fiber processing plants; and (3-30-07)
- z. Charcoal production facilities. (3-30-07)
15. **Baseline (Area, Concentration, Date).** See Section 579. (5-1-94)
16. **Best Available Retrofit Technology (BART).** Means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. (3-30-07)
17. **Board.** Idaho Board of Environmental Quality. (5-1-94)
18. **Breakdown.** An unplanned failure of any equipment or emissions unit which may cause excess emissions. (4-5-00)
19. **BTU.** British thermal unit. (5-1-94)
20. **Clean Air Act.** The federal Clean Air Act, 42 U.S.C. Sections 7401 through 7671q. (5-1-94)
21. **Collection Efficiency.** The overall performance of the air cleaning device in terms of ratio of materials collected to total input to the collector unless specific size fractions of the contaminant are stated or required. (5-1-94)
22. **Commence Construction or Modification.** In general, this means initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change. (4-5-00)
23. **Complete.** A determination made by the Department that all information needed to process a permit application has been submitted for review. (5-1-94)
24. **Construction.** Fabrication, erection, installation, or modification of a stationary source or facility. (5-1-94)
25. **Control Equipment.** Any method, process or equipment which removes, reduces or renders less noxious, air pollutants discharged into the atmosphere. (5-1-94)
26. **Controlled Emission.** An emission which has been treated by control equipment to remove all or part of an air pollutant before release to the atmosphere. (5-1-94)
27. **Criteria Air Pollutant.** Any of the following: PM<sub>10</sub>; ~~PM<sub>2.5</sub>~~; sulfur oxides; ozone, nitrogen dioxide; carbon monoxide; lead. (4-5-00)( )
28. **Deciview.** A measurement of visibility impairment. A deciview is a haze index derived from

calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements): Deciview Haze Index =  $10 \ln_e (b_{\text{ext}}/10\text{Mm}^{-1})$  where  $b_{\text{ext}}$  = the atmospheric light extinction coefficient, expressed in inverse megameters ( $\text{Mm}^{-1}$ ). (3-30-07)

- 29. Department.** The Department of Environmental Quality. (5-1-94)
- 30. Designated Facility.** Any of the following facilities: (5-1-94)
- a.** Fossil-fuel fired steam electric plants of more than two hundred fifty (250) million BTU's per hour heat input; (5-1-94)
- b.** Coal cleaning plants (thermal dryers); (5-1-94)
- c.** Kraft pulp mills; (5-1-94)
- d.** Portland cement plants; (5-1-94)
- e.** Primary zinc smelters; (5-1-94)
- f.** Iron and steel mill plants; (5-1-94)
- g.** Primary aluminum ore reduction plants; (5-1-94)
- h.** Primary copper smelters; (5-1-94)
- i.** Municipal incinerators capable of charging more than two hundred and fifty (250) tons of refuse per day; (5-1-94)
- j.** Hydrofluoric, sulfuric, and nitric acid plants; (5-1-94)
- k.** Petroleum refineries; (5-1-94)
- l.** Lime plants; (5-1-94)
- m.** Phosphate rock processing plants; (5-1-94)
- n.** Coke oven batteries; (5-1-94)
- o.** Sulfur recovery plants; (5-1-94)
- p.** Carbon black plants (furnace process); (5-1-94)
- q.** Primary lead smelters; (5-1-94)
- r.** Fuel conversion plants; (5-1-94)
- s.** Sintering plants; (5-1-94)
- t.** Secondary metal production facilities; (5-1-94)
- u.** Chemical process plants; (5-1-94)
- v.** Fossil-fuel boilers (or combination thereof) of more than two hundred and fifty (250) million BTU's per hour heat input; (5-1-94)

- w. Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand (300,000) barrels; (5-1-94)
- x. Taconite ore processing facilities; (5-1-94)
- y. Glass fiber processing plants; and (5-1-94)
- z. Charcoal production facilities. (5-1-94)
31. **Director.** The Director of the Department of Environmental Quality or his designee. (5-1-94)
32. **Effective Dose Equivalent.** The sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man. The unit of the effective dose equivalent is the rem. It is generally calculated as an annual dose. (5-1-94)
33. **Emission.** Any controlled or uncontrolled release or discharge into the outdoor atmosphere of any air pollutants or combination thereof. Emission also includes any release or discharge of any air pollutant from a stack, vent, or other means into the outdoor atmosphere that originates from an emission unit. (5-1-94)
34. **Emission Standard.** A permit or regulatory requirement established by the Department or EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction. (4-5-00)
35. **Emissions Unit.** An identifiable piece of process equipment or other part of a facility which emits or may emit any air pollutant. This definition does not alter or affect the term “unit” for the purposes of 42 U.S.C. Sections 7651 through 7651o. (5-1-94)
36. **EPA.** The United States Environmental Protection Agency and its Administrator or designee. (5-1-94)
37. **Environmental Remediation Source.** A stationary source that functions to remediate or recover any release, spill, leak, discharge or disposal of any petroleum product or petroleum substance, any hazardous waste or hazardous substance from any soil, ground water or surface water, and shall have an operational life no greater than five (5) years from the inception of any operations to the cessation of actual operations. Nothing in this definition shall be construed so as to actually limit remediation projects to five (5) years or less of total operation. (5-1-95)
38. **Excess Emissions.** Emissions that exceed an applicable emissions standard established for any facility, source or emissions unit by statute, regulation, rule, permit, or order. (4-11-06)
39. **Existing Stationary Source or Facility.** Any stationary source or facility that exists, is installed, or is under construction on the original effective date of any applicable provision of this chapter. (5-1-94)
40. **Facility.** All of the pollutant-emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual. The fugitive emissions shall not be considered in determining whether a permit is required unless required by federal law. (4-11-06)
41. **Federal Class I Area.** Any federal land that is classified or reclassified “Class I.” (3-30-07)
42. **Federal Land Manager.** The Secretary of the department with authority over the Federal Class I Area (or the Secretary’s designee). (3-30-07)

- 43. Federally Enforceable.** All limitations and conditions which are enforceable by EPA and the Department under the Clean Air Act, including those requirements developed pursuant to 40 CFR Parts 60 and 61 requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Parts 51, 52, 60, or 63. (3-30-07)
- 44. Fire Hazard.** The presence or accumulation of combustible material of such nature and in sufficient quantity that its continued existence constitutes an imminent and substantial danger to life, property, public welfare or adjacent lands. (5-1-94)
- 45. Fuel-Burning Equipment.** Any furnace, boiler, apparatus, stack and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer. (5-1-94)
- 46. Fugitive Dust.** Fugitive emissions composed of particulate matter. (5-1-94)
- 47. Fugitive Emissions.** Those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. (5-1-94)
- 48. Garbage.** Any waste consisting of putrescible animal and vegetable materials resulting from the handling, preparation, cooking and consumption of food including, but not limited to, waste materials from households, markets, storage facilities, handling and sale of produce and other food products. (5-1-94)
- 49. Gasoline.** Any mixture of volatile hydrocarbons suitable as a fuel for the propulsion of motor vehicles or motor boats. Gasoline also means aircraft engine fuels when used for the operation or propulsion of motor vehicles or motor boats and includes gasohol, but does not include special fuels. (3-29-10)
- 50. Gasoline Cargo Tank.** Any tank or trailer used for the transport of gasoline from sources of supply to underground gasoline storage tanks. (3-29-10)
- 51. Gasoline Dispensing Facility (GDF).** Any facility with underground gasoline storage tanks used for dispensing gasoline. (3-29-10)
- 52. Grain Elevator.** Any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded. (5-1-94)
- 53. Grain Storage Elevator.** Any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean extraction plant which has a permanent grain storage capacity of thirty five thousand two hundred (35,200) cubic meters (ca. 1 million bushels). (5-1-94)
- 54. Grain Terminal Elevator.** Any grain elevator which has a permanent storage capacity of more than eighty-eight thousand one hundred (88,100) cubic meters (ca. 2.5 million bushels), except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots. (5-1-94)
- 55. Hazardous Air Pollutant (HAP).** Any air pollutant listed pursuant to Section 112(b) of the Clean Air Act. Hazardous Air Pollutants are regulated air pollutants. (4-11-06)
- 56. Hazardous Waste.** Any waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological) may:
- a.** Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible, or incapacitating reversible illnesses; or (5-1-94)
  - b.** Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties; provided that such wastes do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation

return flows or industrial discharges which are allowed under a national pollution discharge elimination system permit, or source, special nuclear, or by-product material as defined by 42 U.S.C. Sections 2014(e),(z) or (aa). (5-1-94)

**57. Hot-Mix Asphalt Plant.** Those facilities conveying proportioned quantities or batch loading of cold aggregate to a drier, and heating, drying, screening, classifying, measuring and mixing the aggregate and asphalt for the purpose of paving, construction, industrial, residential or commercial use. (5-1-94)

**58. Incinerator.** Any source consisting of a furnace and all appurtenances thereto designed for the destruction of refuse by burning. "Open Burning" is not considered incineration. For purposes of these rules, the destruction of any combustible liquid or gaseous material by burning in a flare stack shall be considered incineration. (5-1-94)

**59. Indian Governing Body.** The governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government. (5-1-94)

**60. Integral Vista.** A view perceived from within the mandatory Class I Federal Area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal Area. (3-30-07)

**61. Kraft Pulping.** Any pulping process which uses, for a cooking liquor, an alkaline sulfide solution containing sodium hydroxide and sodium sulfide. (5-1-94)

**62. Least Impaired Days.** The average visibility impairment (measured in deciviews) for the twenty percent (20%) of monitored days in a calendar year with the lowest amount of visibility impairment. (3-30-07)

**63. Lowest Achievable Emission Rate (LAER).** For any source, the more stringent rate of emissions based on the following: (4-5-00)

**a.** The most stringent emissions limitation which is contained in any State Implementation Plan for such class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or (4-5-00)

**b.** The most stringent emissions limitation which is achieved in practice by such class or category of facilities. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the facility. In no event shall the application of the term permit a proposed new or modified facility to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance. (4-5-00)

**64. Mandatory Class I Federal Area.** Any area identified in 40 CFR 81.400 through 81.437. (3-30-07)

**65. Member of the Public.** For purposes of Subsection 006.103.a.xvi., a person located at any off-site point where there is a residence, school, business or office. (3-30-07)

**66. Mercury.** Total mercury including elemental mercury and mercury compounds. (4-7-11)

**67. Mercury Best Available Control Technology (MBACT).** An emission standard for mercury based on the maximum degree of reduction practically achievable as specified by the Department on an individual case-by-case basis taking into account energy, economic and environmental impacts, and other relevant impacts specific to the source. A Department approved MBACT shall be valid until the source subject to the MBACT is modified. If the proposed modification to the source subject to MBACT occurs within ten (10) years of the MBACT determination, a new MBACT review shall not be triggered as long as the source can meet the existing MBACT requirements. If the proposed modification occurs more than ten (10) years after the MBACT determination, then the proposed modification shall be subject to a new MBACT review. (4-7-11)

**68. Modification.** (4-11-06)

**a.** Any physical change in, or change in the method of operation of, a stationary source or facility which results in an emission increase as defined in Section 007 or which results in the emission of any regulated air pollutant not previously emitted. (4-11-06)

**b.** Any physical change in, or change in the method of operation of, a stationary source or facility which results in an increase in the emissions rate of any state only toxic air pollutant, or emissions of any state only toxic air pollutant not previously emitted. (4-11-06)

**c.** Fugitive emissions shall not be considered in determining whether a permit is required for a modification unless required by federal law. (4-11-06)

**d.** For purposes of this definition of modification, routine maintenance, repair and replacement shall not be considered physical changes and the following shall not be considered a change in the method of operation: (3-30-07)

i. An increase in the production rate if such increase does not exceed the operating design capacity of the affected stationary source, and if a more restrictive production rate is not specified in a permit; (5-1-94)

ii. An increase in hours of operation if more restrictive hours of operation are not specified in a permit; and (5-1-94)

iii. Use of an alternative fuel or raw material if the stationary source is specifically designed to accommodate such fuel or raw material before January 6, 1975 and use of such fuel or raw material is not specifically prohibited in a permit. (4-4-13)

**69. Monitoring.** Sampling and analysis, in a continuous or noncontinuous sequence, using techniques which will adequately measure emission levels and/or ambient air concentrations of air pollutants. (5-1-94)

**70. Most Impaired Days.** The average visibility impairment (measured in deciviews) for the twenty percent (20%) of monitored days in a calendar year with the highest amount of visibility impairment. (3-30-07)

**71. Multiple Chamber Incinerator.** Any article, machine, equipment, contrivance, structure or part of a structure used to dispose of combustible refuse by burning, consisting of three (3) or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned. (5-1-94)

**72. Natural Conditions.** Includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration. (3-30-07)

**73. New Stationary Source or Facility.** (5-1-94)

**a.** Any stationary source or facility, the construction or modification of which is commenced after the original effective date of any applicable provision of this chapter; or (5-1-94)

**b.** The restart of a nonoperating facility shall be considered a new stationary source or facility if: (5-1-94)

i. The restart involves a modification to the facility; or (5-1-94)

ii. After the facility has been in a nonoperating status for a period of two (2) years, and the Department receives an application for a Permit to Construct in the area affected by the existing nonoperating facility, the Department will, within five (5) working days of receipt of the application notify the nonoperating facility of receipt of the application for a Permit to Construct. Upon receipt of this Departmental notification, the nonoperating facility will comply with the following restart schedule or be considered a new stationary source or facility when it does restart: Within thirty (30) working days after receipt of the Department's notification of the application for a Permit to Construct, the nonoperating facility shall provide the Department with a schedule detailing the restart of the

facility. The restart must begin within sixty (60) days of the date the Department receives the restart schedule. (5-1-94)

**74. Nonattainment Area.** Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as not meeting (or contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant. (5-1-94)

**75. Noncondensibles.** Gases and vapors from processes that are not condensed at standard temperature and pressure unless otherwise specified. (5-1-94)

**76. Odor.** The sensation resulting from stimulation of the human sense of smell. (5-1-94)

**77. Opacity.** A state which renders material partially or wholly impervious to rays of light and causes obstruction of an observer's view, expressed as percent. (5-1-94)

**78. Open Burning.** The burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through a stack, duct or chimney. (5-1-94)

**79. Operating Permit.** A permit issued by the Director pursuant to Sections 300 through 386 and/or 400 through 461. (4-5-00)

**80. Particulate Matter.** Any material, except water in uncombined form, that exists as a liquid or a solid at standard conditions. (5-1-94)

**81. Particulate Matter Emissions.** All particulate matter emitted to the ambient air as measured by an applicable reference method, or any equivalent or alternative method in accordance with Section 157. (4-5-00)

**82. Permit to Construct.** A permit issued by the Director pursuant to Sections 200 through 228. (7-1-02)

**83. Person.** Any individual, association, corporation, firm, partnership or any federal, state or local governmental entity. (5-1-94)

**84. PM<sub>10</sub>.** All particulate matter in the ambient air with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53. (5-1-94)

**85. PM<sub>10</sub> Emissions.** All particulate matter, including condensible particulates, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method in accordance with Section 157. (4-5-00)

**86. PM<sub>2.5</sub>.** All particulate matter in the ambient air with an aerodynamic diameter less than or equal to a nominal two point five (2.5) micrometers measured by a reference method based on Appendix L of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53. ( )

**87. PM<sub>2.5</sub> Emissions.** All particulate matter, including condensible particulates, with an aerodynamic diameter less than or equal to a nominal two point five (2.5) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method in accordance with Section 157. ( )

**868. Potential to Emit/Potential Emissions.** The maximum capacity of a facility or stationary source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the facility or source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state or federally enforceable. Secondary emissions do not



count in determining the potential to emit of a facility or stationary source. (3-30-07)

**879. Portable Equipment.** Equipment which is designed to be dismantled and transported from one (1) job site to another job site. (5-1-94)

**8890. PPM (parts per million).** Parts of a gaseous contaminant per million parts of gas by volume. (5-1-94)

**891. Prescribed Fire Management Burning.** The controlled application of fire to wildland fuels in either their natural or modified state under such conditions of weather, fuel moisture, soil moisture, etc., as will allow the fire to be confined to a predetermined area and at the same time produce the intensity of heat and rate of spread required to accomplish planned objectives, including: (5-1-94)

- a. Fire hazard reduction; (5-1-94)
- b. The control of pests, insects, or diseases; (5-1-94)
- c. The promotion of range forage improvements; (5-1-94)
- d. The perpetuation of natural ecosystems; (5-1-94)
- e. The disposal of woody debris resulting from a logging operation, the clearing of rights of way, a land clearing operation, or a driftwood collection system; (5-1-94)
- f. The preparation of planting and seeding sites for forest regeneration; and (5-1-94)
- g. Other accepted natural resource management purposes. (5-1-94)

**902. Primary Ambient Air Quality Standard.** That ambient air quality which, allowing an adequate margin of safety, is requisite to protect the public health. (5-1-94)

**913. Process or Process Equipment.** Any equipment, device or contrivance for changing any materials whatever or for storage or handling of any materials, and all appurtenances thereto, including ducts, stack, etc., the use of which may cause any discharge of an air pollutant into the ambient air but not including that equipment specifically defined as fuel-burning equipment or refuse-burning equipment. (5-1-94)

**924. Process Weight.** The total weight of all materials introduced into any source operation which may cause any emissions of particulate matter. Process weight includes solid fuels charged, but does not include liquid and gaseous fuels charged or combustion air. Water which occurs naturally in the feed material shall be considered part of the process weight. (5-1-94)

**935. Process Weight Rate.** The rate established as follows: (5-1-94)

a. For continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof; (4-5-00)

b. For cyclical or batch source operations, the total process weight for a period that covers a complete cycle of operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply. (4-5-00)

**946. Quantifiable.** The Department must be able to determine the emissions impact of any SIP trading programs requirement(s) or emission limit(s). (4-5-00)

- 957. Radionuclide.** A type of atom which spontaneously undergoes radioactive decay. (5-1-94)
- 968. Regional Haze.** Visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographic area. Such sources include, but are not limited to, major and minor stationary sources, mobile sources, and area sources. (3-30-07)
- 979. Regulated Air Pollutant.** (4-11-06)
- a.** For purposes of determining applicability of major source permit to operate requirements, issuing, and modifying permits pursuant to Sections 300 through 397, and in accordance with Title V of the federal Clean Air Act amendments of 1990, 42 U.S.C. Section 7661 et seq., “regulated air pollutant” shall have the same meaning as in Title V of the federal Clean Air Act amendments of 1990, and any applicable federal regulations promulgated pursuant to Title V of the federal Clean Air Act amendments of 1990, 40 CFR Part 70; (4-11-06)
- b.** For purposes of determining applicability of any other operating permit requirements, issuing, and modifying permits pursuant to Sections 400 through 410, the federal definition of “regulated air pollutant” as defined in Subsection 006.94.a. shall also apply; (3-30-07)
- c.** For purposes of determining applicability of permit to construct requirements, issuing, and modifying permits pursuant to Sections 200 through 228, except Section 214, and in accordance with Part D of Subchapter I of the federal Clean Air Act, 42 U.S.C. Section 7501 et seq., “regulated air pollutant” shall mean those air contaminants that are regulated in non-attainment areas pursuant to Part D of Subchapter I of the federal Clean Air Act and applicable federal regulations promulgated pursuant to Part D of Subchapter I of the federal Clean Air Act, 40 CFR 51.165; and (4-11-06)
- d.** For purposes of determining applicability of any other major or minor permit to construct requirements, issuing, and modifying permits pursuant to 200 through 228, except Section 214, “regulated air pollutant” shall mean those air contaminants that are regulated in attainment and unclassifiable areas pursuant to Part C of Subchapter I of the federal Clean Air Act, 40 CFR 52.21, and any applicable federal regulations promulgated pursuant to Part C of Subchapter I of the federal Clean Air Act, 42 U.S.C. Section 7470 et seq. (4-11-06)
- 98100. Replicable.** Any SIP procedures for applying emission trading shall be structured so that two (2) independent entities would obtain the same result when determining compliance with the emission trading provisions. (4-5-00)
- 99101. Responsible Official.** One (1) of the following: (5-1-94)
- a.** For a corporation: 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 a duly authorized representative of such person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either: (5-1-94)
- i.** The facilities employ more than two hundred fifty (250) persons or have gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars); or (4-5-00)
- ii.** The delegation of authority to such representative is approved in advance by the Department. (5-1-94)
- b.** For a partnership or sole proprietorship: a general partner or the proprietor, respectively. (5-1-94)
- c.** For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of Section 123, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA). (4-5-00)
- d.** For Phase II sources: (5-1-94)

i. The designated representative in so far as actions, standards, requirements, or prohibitions under 42 U.S.C. Sections 7651 through 7651o or the regulations promulgated thereunder are concerned; and (5-1-94)

ii. The designated representative for any other purposes under 40 CFR Part 70. (5-1-94)

**1042. Safety Measure.** Any shutdown (and related startup) or bypass of equipment or processes undertaken to prevent imminent injury or death or severe damage to equipment or property which may cause excess emissions. (4-5-00)

**1043. Salvage Operation.** Any source consisting of any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers, or drums, and specifically including automobile graveyards and junkyards. (5-1-94)

**1044. Scheduled Maintenance.** Planned upkeep, repair activities and preventative maintenance on any air pollution control equipment or emissions unit, including process equipment, and including shutdown and startup of such equipment. (3-20-97)

**1045. Secondary Ambient Air Quality Standard.** That ambient air quality which is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of air pollutants in the ambient air. (5-1-94)

**1046. Secondary Emissions.** Emissions which would occur as a result of the construction, modification, or operation of a stationary source or facility, but do not come from the stationary source or facility itself. Secondary emissions must be specific, well defined, quantifiable, and affect the same general area as the stationary source, facility, or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the primary stationary source, facility or modification. Secondary emissions do not include any emissions which come directly from a mobile source regulated under 42 U.S.C. Sections 7521 through 7590. (3-30-07)

**1047. Shutdown.** The normal and customary time period required to cease operations of air pollution control equipment or an emissions unit beginning with the initiation of procedures to terminate normal operation and continuing until the termination is completed. (5-1-94)

**1048. Significant.** In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following: (4-11-06)

- a. Pollutant and emissions rate: (4-11-06)
  - i. Carbon monoxide, one hundred (100) tons per year; (5-1-94)
  - ii. Nitrogen oxides, forty (40) tons per year; (5-1-94)
  - iii. Sulfur dioxide, forty (40) tons per year; (5-1-94)
  - iv. Particulate matter: (4-4-13)
    - (1) Twenty-five (25) tons per year of particulate matter emissions; (4-4-13)
    - (2) Fifteen (15) tons per year of PM<sub>10</sub> emissions; or (4-4-13)
    - (3) Ten (10) tons per year of direct PM<sub>2.5</sub> emissions; or forty (40) tons per year of sulfur dioxide emissions; or forty (40) tons per year of nitrogen oxide emissions; (4-4-13)
  - v. Ozone, forty (40) tons per year of volatile organic compounds; (4-11-06)

- vi. Lead, six-tenths (0.6) of a ton per year; (5-1-94)
  - vii. Fluorides, three (3) tons per year; (5-1-94)
  - viii. Sulfuric acid mist, seven (7) tons per year; (5-1-94)
  - ix. Hydrogen sulfide (H<sub>2</sub>S), ten (10) tons per year; (5-1-94)
  - x. Total reduced sulfur (including H<sub>2</sub>S), ten (10) tons per year; (5-1-94)
  - xi. Reduced sulfur compounds (including H<sub>2</sub>S), ten (10) tons per year; (5-1-94)
  - xii. Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans), thirty-five ten-millionths (0.0000035) tons per year; (5-1-94)
  - xiii. Municipal waste combustor metals (measured as particulate matter), fifteen (15) tons per year; (5-1-94)
  - xiv. Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride), forty (40) tons per year; (5-1-94)
  - xv. Municipal solid waste landfill emissions (measured as nonmethane organic compounds), fifty (50) tons per year; or (4-11-06)
  - xvi. Radionuclides, a quantity of emissions, from source categories regulated by 40 CFR Part 61, Subpart H, that have been determined in accordance with 40 CFR Part 61, Appendix D and by Department approved methods, that would cause any member of the public to receive an annual effective dose equivalent of at least one tenth (0.1) mrem per year, if total facility-wide emissions contribute an effective dose equivalent of less than three (3) mrem per year; or any radionuclide emission rate, if total facility-wide radionuclide emissions contribute an effective dose equivalent of greater than or equal to three (3) mrem per year. (5-1-95)
- b.** In reference to a net emissions increase or the potential of a source or facility to emit a regulated air pollutant not listed in Subsection 006.103.a. above and not a toxic air pollutant, any emission rate; or (3-30-07)
- c.** For a major facility or major modification which would be constructed within ten (10) kilometers of a Class I area, the emissions rate which would increase the ambient concentration of an emitted regulated air pollutant in the Class I area by one (1) microgram per cubic meter, twenty-four (24) hour average, or more. (4-5-00)
- 1079. Significant Contribution.** Any increase in ambient concentrations which would exceed the following: (5-1-94)
- a.** Sulfur dioxide: (5-1-94)
    - i. One (1.0) microgram per cubic meter, annual average; (5-1-94)
    - ii. Five (5) micrograms per cubic meter, twenty-four (24) hour average; (5-1-94)
    - iii. Twenty-five (25) micrograms per cubic meter, three (3) hour average; (5-1-94)
  - b.** Nitrogen dioxide, one (1.0) microgram per cubic meter, annual average; (5-1-94)
  - c.** Carbon monoxide: (5-1-94)
    - i. One-half (0.5) milligrams per cubic meter, eight (8) hour average; (5-1-94)
    - ii. Two (2) milligrams per cubic meter, one (1) hour average; (5-1-94)

- d. PM<sub>10</sub>: (5-1-94)
- i. One (1.0) microgram per cubic meter, annual average; (5-1-94)
- ii. Five (5.0) micrograms per cubic meter, twenty-four (24) hour average; (4-4-13)
- e. PM<sub>2.5</sub>: (4-4-13)
- i. Three-tenths (0.3) microgram per cubic meter, annual average; (4-4-13)
- ii. One point two (1.2) micrograms per cubic meter, twenty-four (24) hour average. (4-4-13)
- 1108. Small Fire.** A fire in which the material to be burned is not more than four (4) feet in diameter nor more than three (3) feet high. (5-1-94)
- 10911. Smoke.** Small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon and other combustible material. (5-1-94)
- 1102. Smoke Management Plan.** A document issued by the Director to implement Sections 606 through 616, Categories of Allowable Burning. (5-1-94)
- 1143. Smoke Management Program.** A program whereby meteorological information, fuel conditions, fire behavior, smoke movement and atmospheric dispersal conditions are used as a basis for scheduling the location, amount and timing of open burning operations so as to minimize the impact of such burning on identified smoke sensitive areas. (5-1-94)
- 1124. Source.** A stationary source. (5-1-94)
- 1135. Source Operation.** The last operation preceding the emission of air pollutants, when this operation: (5-1-94)
- a. Results in the separation of the air pollutants from the process materials or in the conversion of the process materials into air pollutants, as in the case of fuel combustion; and (5-1-94)
- b. Is not an air cleaning device. (5-1-94)
- 1146. Special Fuels.** All fuel suitable as fuel for diesel engines; a compressed or liquefied gas obtained as a by-product in petroleum refining or natural gasoline manufacture, such as butane, isobutane, propane, propylene, butylenes, and their mixtures; and natural gas, either liquid or gas, and hydrogen, used for the generation of power for the operation or propulsion of motor vehicles. (3-29-10)
- 1157. Stack.** Any point in a source arranged to conduct emissions to the ambient air, including a chimney, flue, conduit, or duct but not including flares. (5-1-94)
- 1168. Stage 1 Vapor Collection.** Used during the refueling of underground gasoline storage tanks to reduce hydrocarbon emissions. Vapors in the tank, which are displaced by the incoming gasoline, are routed through a hose into the gasoline cargo tank and returned to the terminal for processing. Two (2) types of Stage 1 systems exist: coaxial and dual point. (3-29-10)
- a. Coaxial System. A Stage 1 vapor collection system that requires only one (1) tank opening. The tank opening is usually four (4) inches in diameter with a three (3) inch diameter product fill tube inserted into the opening. Fuel flows through the inner tube while vapors are displaced through the annular space between the inner and outer tubes. (3-29-10)
- b. Dual Point System. A Stage 1 vapor collection system that consists of two (2) separate tank openings, one (1) for delivery of the product and the other for the recovery of vapors. (3-29-10)

**1179. Standard Conditions.** Except as specified in Subsection 576.02 for ambient air quality standards, a dry gas temperature of twenty degrees Celsius (20C) sixty-eight degrees Fahrenheit (68F) and a gas pressure of seven hundred sixty (760) millimeters of mercury (14.7 pounds per square inch) absolute. (4-5-00)

**11820. Startup.** The normal and customary time period required to bring air pollution control equipment or an emissions unit, including process equipment, from a nonoperational status into normal operation. (5-1-94)

**11921. Stationary Source.** Any building, structure, facility, emissions unit, or installation which emits or may emit any air pollutant. The fugitive emissions shall not be considered in determining whether a permit is required unless required by federal law. (4-11-06)

**1202. Tier I Source.** Any of the following: (5-1-94)

a. Any source located at any major facility as defined in Section 008; (4-5-00)

b. Any source, including an area source, subject to a standard, limitation, or other requirement under 42 U.S.C. Section 7411 or 40 CFR Part 60, and required by EPA to obtain a Part 70 permit; (4-11-06)

c. Any source, including an area source, subject to a standard or other requirement under 42 U.S.C. Section 7412, 40 CFR Part 61 or 40 CFR Part 63, and required by EPA to obtain a Part 70 permit, except that a source is not required to obtain a permit solely because it is subject to requirements under 42 U.S.C. Section 7412(r); (4-11-06)

d. Any Phase II source; and (5-1-94)

e. Any source in a source category designated by the Department. (5-1-94)

**1213. Total Suspended Particulates.** Particulate matter as measured by the method described in 40 CFR 50 Appendix B. (4-5-00)

**1224. Toxic Air Pollutant.** An air pollutant that has been determined by the Department to be by its nature, toxic to human or animal life or vegetation and listed in Section 585 or 586. (5-1-94)

**1235. Toxic Air Pollutant Carcinogenic Increments.** Those ambient air quality increments based on the probability of developing excess cancers over a seventy (70) year lifetime exposure to one (1) microgram per cubic meter (1 ug/m3) of a given carcinogen and expressed in terms of a screening emission level or an acceptable ambient concentration for a carcinogenic toxic air pollutant. They are listed in Section 586. (5-1-94)

**1246. Toxic Air Pollutant Non-carcinogenic Increments.** Those ambient air quality increments based on occupational exposure limits for airborne toxic chemicals expressed in terms of a screening emission level or an acceptable ambient concentration for a non-carcinogenic toxic air pollutant. They are listed in Section 585. (5-1-94)

**1257. Toxic Substance.** Any air pollutant that is determined by the Department to be by its nature, toxic to human or animal life or vegetation. (5-1-94)

**1268. Trade Waste.** Any solid, liquid or gaseous material resulting from the construction or demolition of any structure, or the operation of any business, trade or industry including, but not limited to, wood product industry waste such as sawdust, bark, peelings, chips, shavings and cull wood. (5-1-94)

**1279. TRS (Total Reduced Sulfur).** Hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide and any other organic sulfide present. (5-1-94)

**12830. Unclassifiable Area.** An area which, because of a lack of adequate data, is unable to be classified pursuant to 42 U.S.C. Section 7407(d) as either an attainment or a nonattainment area. (5-1-94)

**12931. Uncontrolled Emission.** An emission which has not been treated by control equipment. (5-1-94)

**1302.** **Upset.** An unplanned disruption in the normal operations of any equipment or emissions unit which may cause excess emissions. (4-5-00)

**1343.** **Visibility Impairment.** Any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions. (3-30-07)

**1324.** **Visibility in Any Mandatory Class I Federal Area.** Includes any integral vista associated with that area. (3-30-07)

**1335.** **Wigwam Burner.** Wood waste burning devices commonly called teepee burners, silos, truncated cones, and other such burners commonly used by the wood product industry for the disposal by burning of wood wastes. (5-1-94)

**1346.** **Wood Stove Curtailment Advisory.** An air pollution alert issued through local authorities and/or the Department to limit wood stove emissions during air pollution episodes. (5-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**157. TEST METHODS AND PROCEDURES.**

The purpose of this Section is to establish procedures and requirements for test methods and results. Unless otherwise specified in these rules, permit, order, consent decree, or prior written approval by the Department: (4-5-00)

**01. General Requirements.** If a source test is performed to satisfy a performance test requirement or a compliance test requirement imposed by state or federal regulation, rule, permit, order or consent decree, then the test methods and procedures shall be conducted in accordance with the requirements of Section 157. (4-5-00)

**a.** Prior to conducting any emission test, owners or operators are strongly encouraged to submit to the Department in writing, at least thirty (30) days in advance, the following for approval: (4-5-00)

i. The type of method to be used; (4-5-00)

ii. Any extenuating or unusual circumstances regarding the proposed test; and (4-5-00)

iii. The proposed schedule for conducting and reporting the test. (4-5-00)

**b.** Without prior Department approval, any alternative testing is conducted solely at the owner's or operator's risk. If the owner or operator fails to obtain prior written approval by the Department for any testing deviations, the Department may determine the test does not satisfy the testing requirements. (4-5-00)

**02. Test Requirements.** Tests shall be conducted in accordance with the following requirements. (4-5-00)

**a.** The test must be conducted under operational conditions specified in the applicable state or federal regulation, rule, permit, order, consent decree or by Department approval. If the operational requirements are not specified, the source should test at worst-case normal operating conditions. Worst-case normal conditions are those conditions of fuel type, and moisture, process material makeup and moisture and process procedures which are changeable or which could reasonably be expected to be encountered during the operation of the facility and which would result in the highest pollutant emissions from the facility. (4-5-00)

**b.** The Department may impose operational limitations or require additional testing in a permit, order or consent decree if the test is conducted under conditions other than worst-case normal. (4-5-00)

**c.** The Department will accept the methods approved for the applicable pollutants, source type and operating conditions found in 40 CFR Parts 51, 60, 61, and 63 in determining the appropriate test method for an emission limit where one is not otherwise specified. (4-5-00)

**d.** The following requirements apply to owners or operators requesting minor changes in the test method. As stated in Subsection 157.01 above, without prior Department approval, other changes may result in rejection of the test results by the Department. (4-5-00)

**i.** For federal emission standards codified at 40 CFR Parts 60, 61, and 63, the Department will accept those minor changes which have received written approval of the U.S. EPA Administrator so long as the Department determines they are appropriate for the specific application. (4-5-00)

**ii.** For all other emission standards in these rules or for permit requirements, the Department will accept those minor changes that the Department determines are appropriate for the specific application. (4-5-00)

**e.** An owner or operator proposing to use an alternative test method not considered a minor change in Subsection 157.02.d. above, must: (4-5-00)

**i.** Demonstrate to the Department by comparative testing or sufficient analysis, that the alternative method is comparable and equivalent to the designated test method. (4-5-00)

**ii.** Submit the request for approval to use an alternative test method to the Department at least thirty (30) days in advance of a scheduled test. (4-5-00)

**iii.** Obtain, and submit to the Department, EPA approval for use of the alternative test method for emission standards in these rules (except for state only toxic air pollutant standards) or for federal emission standards codified at 40 CFR Parts 60, 61, and 63. (4-5-00)

**iv.** Obtain verification that any prior approval of an alternative test method by the Department continues to be acceptable. Alternative methods may cease to be acceptable if new or different information indicates that the alternative test method is less accurate, less reliable, or not comparable with any current state or federal regulation, rule order, permit, or consent decree. (4-5-00)

**f.** Prior approval by the Department may not constitute Department approval for subsequent tests if new or different information indicates that a previously Department approved test method is less accurate, less reliable or not comparable with any current state or federal regulation, rule, order, permit or consent decree. (4-5-00)

**03. Observation of Tests by Department Staff.** The owner or operator shall provide notice of intent to test to the Department at least fifteen (15) days prior to the scheduled test, or shorter time period as provided in a permit, order, consent decree or by Department approval. The Department may, at its option, have an observer present at any emissions tests conducted on a source. (4-5-00)

**04. Reporting Requirements.** If the source test is performed to satisfy a performance test requirement imposed by state or federal regulation, rule, permit, order, or consent decree, a written report shall be submitted to the Department within ~~thirty (30)~~ sixty (60) days of the completion of the test. The written report shall: ~~(4-5-00)( )~~

**a.** Meet the format and content requirements specified by the Department in any applicable rule, regulation, guidance, permit, order, or consent decree. Any deviations from the format and contents specified require prior written approval from the Department. Failure to obtain such approval may result in the rejection of the test results. (4-5-00)

**b.** Include all data required to be noted or recorded in any referenced test method. (4-5-00)

**05. Test Results Review Criteria.** The Department will make every effort to review test results within a reasonable time. The Department may reject tests as invalid for: (4-5-00)

**a.** Failure to adhere to the approved/required method; (4-5-00)

**b.** Using a method inappropriate for the source type or operating conditions; (4-5-00)



- c. An incomplete written report; (4-5-00)
- d. Computational or data entry errors; (4-5-00)
- e. Clearly unreasonable results; (4-5-00)
- f. Failure to comply with the certification requirements of Section 123 of these rules; or (4-5-00)
- g. Failure of the source to conform to operational requirements in orders, permits, or consent decrees at the time of the test. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**176. FACILITY EMISSIONS CAP.**

**01. Optional Facility Emissions Cap.** An owner or operator of a facility may request a FEC to establish an enforceable facility-wide emission limitation. (4-11-06)

**02. Applicability.** (4-11-06)

**a.** The owner or operator of any facility, which is not a major facility as defined in Sections 204 or 205, may apply to the Department for a permit to establish a FEC. (4-11-06)

**b.** FECs are available ~~to~~ for new ~~sources~~, and existing facilities that are not major as defined in Section 204 or 205 or existing ~~sources~~ facilities undergoing a modification, ~~and existing sources that request a FEC that does not make the facility a major facility as defined in Section 204 or 205.~~ (4-11-06)(    )

**c.** Facilities that become major facilities as defined in Section 204 or 205 are no longer eligible for a FEC under Section 176. (    )

**03. Definitions.** For the purposes of Sections 175 through 181, the following terms shall be defined as below. (4-11-06)

**a.** Baseline actual emissions. As defined in Section 007. (4-11-06)

**b.** Design concentration. The ambient concentration used in establishing the FEC. (4-11-06)

**c.** Facility emissions cap (FEC). A facility-wide emission limitation expressed in tons per year, for any criteria pollutant or hazardous air pollutant established in accordance with Sections 176 through 181. A FEC is calculated using baseline actual emissions plus an operational variability component and a growth component. A FEC, which is defined in tons per year on a twelve (12) month rolling basis, must be set below major facility thresholds as defined in Sections 204 and 205. (4-11-06)(    )

**d.** FEC pollutant. The pollutant for which a FEC is established. (4-11-06)

**e.** Growth component. The level of emissions requested by the applicant and approved by the Department to allow for potential future business growth or facility changes that may increase emissions above baseline actual emissions plus the operational variability component. (4-11-06)

**f.** Operational variability component. The level of emissions up to the significant emission rate (SER) minus one (1) ton per year but no more than the facility's potential to emit (PTE). If the proposed FEC pollutant does not have a SER listed in Section 006 or has a SER less than or equal to ten (10) tons per year, the operational variability component is the level of emissions requested by the applicant and approved by the Department. The operational variability component cannot be more than the facility's PTE. (4-11-06)(    )

**177. APPLICATION PROCEDURES.**

In addition to the information required pursuant to Sections 202 or 402, whichever is applicable, applications requesting a FEC must include the information required under Sections 176 through 181 and Subsections 177.01 through 177.03. (4-11-06)

**01. Estimates of Emissions.** A proposed FEC for each pollutant requested by the facility, including the basis for calculating the FEC. (4-11-06)

**02. Estimates of Ambient Concentrations.** (4-11-06)

**a.** Estimates of ambient concentrations will be ~~based on the most recent applicable and technically appropriate methods and most representative data available to the Department unless otherwise approved by the Department~~ **determined as described in Subsection 202.02.** (4-11-06)( )

**b.** Estimates of ambient concentrations may include projections of alternative future changes within the proposed FEC. (4-11-06)

**c.** For a new, existing, or modified facility, a demonstration that for each FEC pollutant, the FEC will not cause or significantly contribute to a violation of any ambient air quality standard. (4-11-06)

**d.** For renewal of terms and conditions establishing a FEC, it is presumed that the previous permitting analysis is satisfactory, unless the Department determines otherwise. (4-11-06)

**03. Monitoring and Recordkeeping.** The application must include proposed means for the facility to determine facility emissions on a rolling twelve (12) month consecutive basis. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**181. NOTICE AND RECORD-KEEPING OF ESTIMATES OF AMBIENT CONCENTRATIONS.**

Section 181 authorizes facility changes that comply with the terms and conditions establishing the FEC, but that are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC. No permit revision shall be required for facility changes implemented in accordance with Section 181. (4-11-06)

**01. Notice.** For facility changes that comply with the terms and conditions establishing the FEC, but are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee shall review the estimate of ambient concentration analysis. (4-11-06)

**a.** In the event that the facility change would result in a significant contribution above the design concentration determined by the estimate of ambient concentration analysis approved for the permit establishing the FEC, but does not cause or significantly contribute to a violation to any ambient air quality standard, the permittee shall provide notice to the Department in accordance with Subsection 181.01.b. (4-11-06)

**b.** Notice procedures. The permittee may make a facility change under Section 181 if the permittee provides written notification to the Department so that the notification is received at least seven (7) days in advance of the proposed change or, in the event of an emergency, the permittee provides the notification so that it is received at least twenty-four (24) hours in advance of the proposed change. For each such change, the written notification shall: (4-11-06)

i. Describe the proposed change; (4-11-06)

ii. Describe and quantify expected emissions; and (4-11-06)

iii. Provide the estimated ambient concentration analysis. (4-11-06)

**02. Recordkeeping.** For facility changes that comply with the terms and conditions establishing the FEC, but are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee shall review the estimate of ambient concentration analysis. In the event the facility change would

not result in a significant contribution above the design concentration determined by the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee shall record and maintain documentation on-site of the review. (4-11-06)

**03. Estimates of Ambient Concentrations.** Estimates of ambient concentrations shall be *consistent determined during the term of this permit using the same model and model parameters as used* with the estimate of ambient concentration analysis approved for the permit establishing the FEC *unless the Department determines that other technical methods are appropriate*. The permittee shall include any changes to the facility that are not included in the originally approved estimate of ambient concentration analysis. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**202. APPLICATION PROCEDURES.**

Application for a permit to construct must be made using forms furnished by the Department, or by other means prescribed by the Department. The application shall be certified by the responsible official in accordance with Section 123 and shall be accompanied by all information necessary to perform any analysis or make any determination required under Sections 200 through 228. (7-1-02)

**01. Required Information.** Depending upon the proposed size and location of the new or modified stationary source or facility, the application for a permit to construct shall include all of the information required by one or more of the following provisions: (5-1-94)

**a.** For any new or modified stationary source or facility: (5-1-94)

i. Site information, plans, descriptions, specifications, and drawings showing the design of the stationary source, facility, or modification, the nature and amount of emissions (including secondary emissions), and the manner in which it will be operated and controlled. (5-1-94)

ii. A schedule for construction of the stationary source, facility, or modification. (5-1-94)

**b.** For any new major facility or major modification in a nonattainment area which would be major for the nonattainment regulated air pollutant(s): (4-5-00)

i. A description of the system of continuous emission control proposed for the new major facility or major modification, emission estimates, and other information as necessary to determine that the lowest achievable emission rate would be applied. (5-1-94)

ii. A description of the emission offsets proposed for the new major facility or major modification, including information on the stationary sources, mobile sources, or facilities providing the offsets, emission estimates, and other information necessary to determine that a net air quality benefit would result. (4-5-00)

iii. Certification that all other facilities in Idaho, owned or operated by (or under common ownership of) the proposed new major facility or major modification, are in compliance with all local, state or federal requirements or are on a schedule for compliance with such. (5-1-94)

iv. An analysis of alternative sites, sizes, production processes, and environmental control techniques which demonstrates that the benefits of the proposed major facility or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. (5-1-94)

v. An analysis of the impairment to visibility of any federal Class I area, Class I area designated by the Department, or integral vista of any mandatory federal Class I area that the new major facility or major modification would impact (including the monitoring of visibility in any Class I area near the new major facility or major modification, if requested by the Department). (4-6-05)

**c.** For any new major facility or major modification in an attainment or unclassifiable area for any regulated air pollutant. (4-6-05)

- i. A description of the system of continuous emission control proposed for the new major facility or major modification, emission estimates, and other information as necessary to determine that the best available control technology would be applied. (5-1-94)
- ii. An analysis of the effect on air quality by the new major facility or major modification, including meteorological and topographical data necessary to estimate such effects. (5-1-94)
- iii. An analysis of the effect on air quality projected for the area as a result of general commercial, residential, industrial, and other growth associated with the new major facility or major modification. (5-1-94)
- iv. A description of the nature, extent, and air quality effects of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the new major facility or major modification would affect. (5-1-94)
- v. An analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the new major facility or major modification and general commercial, residential, industrial, and other growth associated with establishment of the new major facility or major modification. The owner or operator need not provide an analysis of the impact on vegetation or soils having no significant commercial or recreational value. (5-1-94)
- vi. An analysis of the impairment to visibility of any federal Class I area, Class I area designated by the Department, or integral vista of any mandatory federal Class I area that the new major facility or major modification would affect. (5-1-94)
- vii. An analysis of the existing ambient air quality in the area that the new major facility or major modification would affect for each regulated air pollutant that a new major facility would emit in significant amounts or for which a major modification would result in a significant net emissions increase. (4-5-00)
- viii. Ambient analyses as specified in Subsections 202.01c.vii., 202.01c.ix., 202.01c.x., and 202.01c.xii., may not be required if the projected increases in ambient concentrations or existing ambient concentrations of a particular regulated air pollutant in any area that the new major facility or major modification would affect are less than the following amounts listed under 40 CFR 52.21(i)(5)(i), or the regulated air pollutant is not listed therein: ~~carbon monoxide—five hundred and seventy-five (575) micrograms per cubic meter, eight (8) hour average; nitrogen dioxide—fourteen (14) micrograms per cubic meter, annual average; PM-10—ten (10) micrograms per cubic meter, twenty-four (24) hour average; sulfur dioxide—thirteen (13) micrograms per cubic meter, twenty-four (24) hour average; ozone—any net increase of one hundred (100) tons per year or more of volatile organic compounds, as a measure of ozone; lead—one-tenth (0.1) of a microgram per cubic meter, calendar quarterly average; mercury—twenty-five hundredths (0.25) of a microgram per cubic meter, twenty-four (24) hour average; beryllium—one thousandth (0.001) of a microgram per cubic meter, twenty-four (24) hour average; fluorides—twenty-five hundredths (0.25) of a microgram per cubic meter, twenty-four (24) hour average; vinyl chloride—fifteen (15) micrograms per cubic meter, twenty-four (24) hour average; hydrogen sulfide—two tenths (0.2) of a microgram per cubic meter, one (1) hour average.~~ (4-5-00)(      )
- ix. For any regulated air pollutant which has an ambient air quality standard, the analysis shall include continuous air monitoring data, gathered over the year preceding the submittal of the application, unless the Department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year, but not less than four (4) months, which is adequate for determining whether the emissions of that regulated air pollutant would cause or contribute to a violation of the ambient air quality standard or any prevention of significant deterioration (PSD) increment. (4-5-00)
- x. For any regulated air pollutant which does not have an ambient air quality standard, the analysis shall contain such air quality monitoring data that the Department determines is necessary to assess ambient air quality for that air pollutant in any area that the emissions of that air pollutant would affect. (4-5-00)
- xi. If requested by the Department, monitoring of visibility in any Class I area the proposed new major facility or major modification would affect. (5-1-94)

xii. Operation of monitoring stations shall meet the requirements of Appendix B to 40 CFR Part 58 or such other requirements as extensive as those set forth in Appendix B as may be approved by the Department. (5-1-94)

**02. Estimates of Ambient Concentrations.** All estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR 51, Appendix W (Guideline on Air Quality Models). (4-5-00)

a. Where an air quality model specified in the "Guideline on Air Quality Models," is inappropriate, the model may be modified or another model substituted, subject to written approval of the Administrator of the U.S. Environmental Protection Agency and public comment pursuant to Subsection 209.01.c.; provided that modifications and substitutions of models used for toxic air pollutants will be reviewed by the Department. (4-5-00)

b. Methods like those outlined in the U.S. Environmental Protection Agency's "Interim Procedures for Evaluating Air Quality Models (Revised)" (September 1984) should be used to determine the comparability of air quality models. (5-1-94)

**03. Additional Information.** Any additional information, plans, specifications, evidence or documents that the Department may require to make the determinations required under Sections 200 through 225 shall be furnished upon request. (5-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**579. BASELINES FOR PREVENTION OF SIGNIFICANT DETERIORATION.**

**01. Baseline Date(s).** (5-1-94)

a. Major Source Baseline Date. ~~January 6, 1975 in the case of particulate matter and sulfur dioxide; February 8, 1988 in the case of nitrogen dioxide.~~ (5-1-94)( )

i. In the case of PM<sub>10</sub> and sulfur dioxide, January 6, 1975; ( )

ii. In the case of nitrogen dioxide, February 8, 1988, and ( )

iii. In the case of PM<sub>2.5</sub>, October 20, 2010. ( )

b. Minor Source Baseline Date. The earliest date after the trigger date on which a major stationary source or a major modification subject to prevention of significant deterioration (PSD) submits a complete application. The trigger date is: (4-5-00)

i. In the case of ~~particulate matter~~ PM<sub>10</sub> and sulfur dioxide, August 7, 1977; and (4-5-00)( )

ii. In the case of nitrogen dioxide, February 8, 1988. (4-5-00)

iii. In the case of PM<sub>2.5</sub>, October 20, 2011. ( )

c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if: (4-5-00)

i. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d) of the Clean Air Act for the pollutant on the date of its complete prevention of significant deterioration (PSD) application; and (4-5-00)

ii. In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant. (4-5-00)

d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that the Department may rescind any such minor source baseline date where it can be shown, to the satisfaction of the Department, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM<sub>10</sub> emissions. (4-5-00)

02. **Baseline Area.** Any intrastate area designated as attainment or unclassifiable under 42 U.S.C. Section 7407(d), in which the major facility or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: Equal to or greater than 1 µg/m<sup>3</sup> (annual average) for SO<sub>2</sub>, NO<sub>2</sub>, or PM<sub>10</sub>; or equal to or greater than 0.3 µg/m<sup>3</sup> (annual average) for PM<sub>2.5</sub>-equal to or greater than a one (1) microgram per cubic meter (annual average) of the regulated air pollutant for which the minor source baseline date is established. (4-5-00)(\_\_\_\_)

03. **Baseline Concentration.** The ambient concentration for a particular regulated air pollutant which exists in the applicable baseline area on the applicable minor source baseline date. (4-5-00)

a. The baseline concentration shall represent: (5-1-94)

i. The actual emissions from sources in existence on the applicable minor source baseline date; and (5-1-94)

ii. The allowable emissions of major facilities and major modifications which commenced construction before the applicable major source baseline date, but were not in operation by the applicable minor source baseline date. (5-1-94)

b. The baseline concentration shall not include the actual emissions of new major facilities and major modifications which commenced construction on or after the applicable major source baseline date. (5-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**725. RULES FOR SULFUR CONTENT OF FUELS.**

This section applies to fuel burning sources in Idaho. Its purpose is to prevent excessive ground level concentrations of sulfur dioxide. The reference test method for measuring fuel sulfur content shall be ASTM method, D129-95 Standard Test for Sulfur in Petroleum Products (General Bomb Method) or such comparable and equivalent method approved in accordance with Subsection 157.02.d. Test methods and procedures shall comply with Section 157. (5-8-09)

01. **Definitions.** (5-8-09)

a. **ASTM.** American Society for Testing and Materials. (5-1-94)

b. **Distillate Fuel Oil.** Any oil meeting the specifications of ASTM Grade 1 or Grade 2 fuel oils. (5-1-94)

c. **Residual Fuel Oil.** Any oil meeting the specifications of ASTM Grade 4, Grade 5 and Grade 6 fuel oils. (5-1-94)

02. **Residual Fuel Oils.** No person shall sell, distribute, use or make available for use, any residual fuel oil containing more than one and three-fourths percent (1.75%) sulfur by weight. (5-8-09)

03. **Distillate Fuel Oil.** No person shall sell, distribute, use or make available for use, any distillate fuel oil containing more than the following percentages of sulfur: (5-8-09)

a. **ASTM Grade 1.** ASTM Grade 1 fuel oil - zero point three percent (0.3%) by weight. (5-8-09)

b. **ASTM Grade 2.** ASTM Grade 2 fuel oil - zero point five percent (0.5%) by weight. (5-8-09)

**04. Coal.** No person shall sell, distribute, use or make available for use, any coal containing greater than one percent (1.0%) sulfur by weight. (5-8-09)

**05. Exemptions Alternative.** The Department may approve in a permit issued in accordance with these rules an exemption alternative fuel sulfur content from the requirements of Subsections 725.01 through 725.04 if the applicant demonstrates that, through control measures or other means, sulfur dioxide emissions (based on a one (1) hour averaging period) are equal to or less than those resulting from the combustion of fuels complying with the limitations of Subsections 725.01 through 725.04. ~~(3-29-10)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**794. PERMIT REQUIREMENTS.**

No owner or operator may commence construction, reconstruction, modification or operation of any nonmetallic mineral processing plant regardless of whether or not the source is an affected facility pursuant to 40 CFR 60.670(e) without first obtaining a permit or complying with Sections 795 through 799. The owner or operator shall comply with the permitting requirements of Subsection 794.0~~4~~2 or Subsection 794.0~~2~~3 and the applicable portions of Subsection 794.0~~3~~4 and/or Subsection 794.0~~4~~5. ~~(4-4-13)~~( )

**01. Permit By Rule Eligibility.** New major facilities or major modifications subject to Sections 204 and 205 are not eligible for a Permit by Rule. ( )

**0~~2~~.** **Permit by Rule.** Owners and operators of nonmetallic mineral processing plants that meet all of the applicable requirements set forth in Sections 795 through 799 shall be deemed to have a permit by rule (PBR) and shall not be required to obtain a permit to construct under Sections 200 through 228. (3-15-02)

**0~~2~~.** **Permit to Construct.** Owners and operators of nonmetallic mineral processing plants that do not meet all of the requirements set forth in Sections 795 through 799, or that operate or intend to operate a nonmetallic mineral processing plant at a single site of operations for more than twelve (12) consecutive months, or that choose to construct and operate under specific permit requirements rather than the provisions of the permit by rule shall obtain a permit to construct pursuant to Sections 200 through 228. An existing permit to construct shall be considered valid until the permit is modified, incorporated into a Tier II operating permit, or terminated by the Department. Existing permits to construct may be terminated by the Department by registering the source under the permit by rule provisions in accordance with Section 797 after June 15, 2001. (3-15-02)

**0~~3~~.** **Tier I Operating Permits.** Owners and operators of nonmetallic mineral processing plants that are affected facilities subject to a requirement of the New Source Performance Standards (NSPS) in 40 CFR 60 are Tier I sources as defined in Section 006. Tier I sources must comply with the applicable permitting requirements of Sections 300 through 399. (4-11-06)

**0~~4~~.** **Tier II Operating Permits.** Owners and operators of nonmetallic mineral processing plants that are required by the Department or choose to obtain a Tier II operating permit pursuant to Sections 400 through 410 shall operate in accordance with the specific provisions of the Tier II operating permit until such time as the operating permit is terminated in writing by the Department. The Department may require owners and operators of nonmetallic mineral processing plants to obtain a Tier II operating permit whenever the Department determines that: (3-15-02)

**a.** Emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increment; or (3-15-02)

**b.** Specific emissions standards, or requirements on operation or maintenance are necessary to ensure compliance with any applicable emission standard or rule. (3-15-02)

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

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

DOCKET NO. 58-0101-1403

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-third Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state'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.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 6, 2014, [Vol. 14-8, pages 152 through 154](#). DEQ received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov/58-0101-1403](http://www.deq.idaho.gov/58-0101-1403) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This 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: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Tiffany Floyd at [tiffany.floyd@deq.idaho.gov](mailto:tiffany.floyd@deq.idaho.gov) or (208) 373-0440.

Dated this 19th Day of November, 2014.

Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
Tel: (208) 373-0418  
Fax: (208) 373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state'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:

**Tuesday, September 9, 2014, 3:00 p.m.**

**Department of Environmental Quality**  
**Conference Room A**  
**1410 N. Hilton, Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208)373-0418.

**DESCRIPTIVE SUMMARY:** This rulemaking is necessary to ensure that the Rules for the Control of Air Pollution in Idaho are consistent with federal regulations. This proposed rule updates citations to federal regulations incorporated by reference at Section 107 to include those revised as of July 1, 2014.

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 2014 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2015 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:

Incorporation by reference is necessary to ensure that the state rules are consistent with federal regulations. Information for obtaining a copy of the federal regulations is included in the rule.

**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 the federal regulations that are necessary for EPA approval of Idaho's Title V Operating Permit Program. 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 Tiffany Floyd at [tiffany.floyd@deq.idaho.gov](mailto:tiffany.floyd@deq.idaho.gov) or (208) 373-0440.

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 9, 2014.

DATED this 1st day of July, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-1403

**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)

- a. All federal publications: U.S. Government Printing Office at [www.gpoaccess.gov/ecfr](http://www.gpoaccess.gov/ecfr); (3-20-14)
- 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)
  - i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (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, 201~~3~~<sup>4</sup>. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: ~~(3-20-14)~~(      )
  - 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, 201~~3~~<sup>4</sup>. ~~(3-20-14)~~(      )
- 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, 201~~3~~<sup>4</sup>. ~~(3-20-14)~~(      )
- d. Ambient Air Monitoring Reference and Equivalent Methods, [40 CFR Part 53](#), revised as of July 1, 201~~3~~<sup>4</sup>. ~~(3-20-14)~~(      )

- e. Ambient Air Quality Surveillance, [40 CFR Part 58](#), revised as of July 1, 201~~3~~4. ~~(3-20-14)~~( )
- f. Standards of Performance for New Stationary Sources, [40 CFR Part 60](#), revised as of July 1, 201~~3~~4. ~~(3-20-14)~~( )
- g. National Emission Standards for Hazardous Air Pollutants, [40 CFR Part 61](#), revised as of July 1, 201~~3~~4. ~~(3-20-14)~~( )
- 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, 201~~3~~4. ~~(3-20-14)~~( )
- i. National Emission Standards for Hazardous Air Pollutants for Source Categories, [40 CFR Part 63](#), revised as of July 1, 201~~3~~4. ~~(3-20-14)~~( )
- j. Compliance Assurance Monitoring, [40 CFR Part 64](#), revised as of July 1, 201~~3~~4. ~~(3-20-14)~~( )
- k. State Operating Permit Programs, [40 CFR Part 70](#), revised as of July 1, 201~~3~~4. ~~(3-20-14)~~( )
- l. Permits, [40 CFR Part 72](#), revised as of July 1, 201~~3~~4. ~~(3-20-14)~~( )
- m. Sulfur Dioxide Allowance System, [40 CFR Part 73](#), revised as of July 1, 201~~3~~4. ~~(3-20-14)~~( )
- n. Protection of Stratospheric Ozone, [40 CFR Part 82](#), revised as of July 1, 201~~3~~4. ~~(3-20-14)~~( )
- 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)
- q. Determining Conformity of Federal Actions to State or Federal Implementation Plans: Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, [40 CFR Part 93, Subpart A](#), Sections 93.100 through 93.129, revised as of July 1, 2013, except that Sections 93.102(c), 93.104(d), 93.104(e)(2), 93.105, 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b) are expressly omitted from the incorporation by reference. (3-20-14)

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 58-0105-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-third Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This 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.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 6, 2014, [Vol. 14-8, pages 155 through 161](#). DEQ received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov/58-0105-1401](http://www.deq.idaho.gov/58-0105-1401) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This 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: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact John Brueck at [john.brueck@deq.idaho.gov](mailto:john.brueck@deq.idaho.gov) or (208) 373-0458.

Dated this 19th Day of November, 2014.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
Tel: (208) 373-0418  
Fax: (208) 373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 20, 2014. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** Idaho's Rules and Standards for Hazardous Waste are updated annually to maintain consistency with the U.S. Environmental Protection Agency's (EPA's) federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). This proposed rule updates the federal regulations incorporated by reference to include those revised as of July 1, 2014, and makes technical corrections as recommended in the most recent EPA Incorporation By Reference Guidance.

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 2014 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2015 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:

Idaho has historically adopted both required and optional federal regulations so that Idaho's hazardous waste rules are the same as federal requirements. Optional federal regulations usually allow more flexibility to the regulated community; required federal regulations are necessary to maintain program primacy. Adoption by reference allows DEQ to keep its rules up to date with federal regulation changes and minimizes the EPA Region 10 effort needed to keep Idaho's authorization current. Adoption by reference also simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rule.

**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: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact John Brueck at [john.brueck@deq.idaho.gov](mailto:john.brueck@deq.idaho.gov) or (208)373-0458.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before September 3, 2014.

Dated this 1st day of July, 2014.

**LSO RULES ANALYSIS MEMO**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0105-1401

**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, 2012~~4~~, including any notes and appendices therein, unless expressly provided otherwise in these rules. ~~(4-4-13)~~( )

**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.gpoaccess.gov/ecfr/index.html>; and (4-7-11)
- 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, 2012~~4~~. 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. ~~(4-4-13)~~( )

**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, 2012~~4~~. 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 261.41(a), Regional Administrator shall be defined as U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification required under this section should also be sent to the Director. For purposes of 40 CFR 261.4(b)(11)(ii), 40 CFR 261.39(a)(5), and 40 CFR 261 Appendix IX, "EPA" shall be defined as the U.S. Environmental Protection Agency. ~~(4-4-13)~~( )

**01. 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 005.01.b. and 005.01.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. (3-16-96)

- b. Initial Verification Testing. (3-16-96)
- i. For purposes of Subsections 005.01.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 005.01.d. (3-16-96)
- 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 005.01.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.01.d. (3-16-96)
- iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.01.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.01.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. (3-16-96)
- 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 005.01.d.; and (3-16-96)
- (2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.01.b.iv. (3-16-96)
- vi. For purposes of Subsections 005.01.b. and 005.01.c., “batch” shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. (3-16-96)
- c. Subsequent Verification Testing. (3-16-96)
- i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.01.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. (3-16-96)
- 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 005.01.d. (3-16-96)
- 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 005.01.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.01.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. (3-16-96)
- v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.01.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: (3-16-96)

- (1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.01.d.; or (3-16-96)
- (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 005.01.d. (3-16-96)

**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, 2012<sup>4</sup>. For purposes of 40 CFR ~~262.53, 262.55, and 262.56, and 262.57(b)~~, "Administrator EPA" shall be defined as the U.S. Environmental Protection Agency ~~Administrator~~. 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 262.21, 262.51, 262.53, 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. (~~4-4-13~~)( )

**02. Generator Emergency Notification.** In addition to the emergency notification required by 40 CFR 265.56(d)(2), 262.34(d)(5)(iv)(C), (see 40 CFR 262.34(a)(4)), 263.30(c)(1), and 264.56(d)(2), the emergency coordinator must also immediately notify the State Communications Center 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, 2012<sup>4</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. (~~4-4-13~~)( )

#### **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(i), 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, 2012<sup>4</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(a)(3) and 264.1082(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency. (~~4-4-13~~)( )

**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))~~and~~, 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, 2012~~4~~. 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(a)(3) and 265.1083(c)(4)(ii), “EPA” shall be defined as the U.S. Environmental Protection Agency. ~~(4-4-13)~~( )

**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, 2012~~4~~. ~~(4-4-13)~~( )

**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, 2012~~4~~, 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.)~~(4-4-13)~~( )

**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, 2012~~4~~. 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. ~~(4-4-13)~~( )

**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, 2012~~4~~, except that ~~the last sentence of 40 CFR 124.10(b)(1)~~, 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. ~~(4-4-13)~~( )

**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, 2012~~4~~. 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. ~~(4-4-13)~~( )

**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, 2012~~4~~. For purposes of 40 CFR 273.32(a)(3), "EPA" shall be defined as the U.S. Environmental Protection Agency. (~~4-4-13~~)(    )

**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, 2012~~4~~. (~~4-4-13~~)(    )

**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, 2012~~4~~. (~~4-4-13~~)(    )