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EMERGENCY RESPONSE COMMISSION

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IDAPA 15
TITLE 13
CHAPTER 01

OFFICE OF THE GOVERNOR

EMERGENCY RESPONSE COMMISSION

15.13.01 - RULES OF THE IDAHO EMERGENCY RESPONSE COMMISSION

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the authority of Section 39-7104, Idaho Code.

(12-24-93)

001. TITLE AND SCOPE (RULE 1).

The title of this chapter is the IDAPA 15.13.01, "Rules of Idaho Emergency Response Commission." The scope of this chapter is creation of local emergency response authorities and regional response teams; the location and jurisdiction of regional response teams; liability for regional response team costs; notification to local and state emergency response authorities of a hazardous materials incident; call-out procedure for emergency response teams; and cost recovery and cost reimbursement procedures for emergency response teams.

(12-24-93)

002. WRITTEN INTERPRETATIONS (RULE 2).

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this commission has written statements which pertain to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter. Included in these written statements is the Idaho Hazardous Substance Incident Command and Response Support Plan prepared and implemented by the Idaho Emergency Response Commission and approved by the legislature pursuant to Section 39-7104(2)(i), Idaho Code. Also included in written statements are forms for reimbursement for costs associated with a hazardous substance emergency. These reimbursement forms are found in Appendix 1.

(12-24-93)

003. OFFICE, OFFICE HOURS, MAILING ADDRESS, STREET ADDRESS, TELEPHONE NUMBERS (RULE 3).

The office of the Idaho Emergency Response Commission is located at P.O. Box 83720, 4040 Guard St., Boise, Idaho 83720-3401. Office hours are weekdays, 8 a.m. to 5 p.m., excluding holidays. The Commission's telephone number is (208) 334-3263. The twenty four (24) hour emergency notification number is 800-632-8000. The number for the Commission's facsimile machine is (208) 334-3267.

(3-20-97)

004. CHIEF OF STAFF, COMMUNICATION WITH COMMISSION (RULE 4).

01. Records Custodian. The Commission's Chief of Staff is the custodian of all records and files of the Commission in all formal proceedings under these rules and is responsible for service of all orders and notices of the Commission. Unless otherwise directed by order, the Chief of Staff issues all official notices of the Commission.

(12-24-93)

02. Filing. All written communications and documents that are intended to be part of an official Commission record for a decision in a contested case or a rulemaking must be filed with the Chief of Staff. Unless otherwise provided by statute, these rules, order or notice, documents are considered filed when received by the Chief of Staff, not when mailed.

(12-24-93)

03. Information. Information concerning proceedings before the Commission or the status of any matter of public record before the Commission is available from the Chief of Staff.

(12-24-93)

005. ADOPTION OF ATTORNEY GENERAL'S IDAHO RULES OF PROCEDURE (RULE 5).

IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," are adopted for all contested cases before the Commission and all rulemaking by the Commission.

(12-24-93)

006. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

01. Emergency. An abrupt release which, in the reasonable judgment of the local emergency response authority, threatens immediate and irreparable harm to the environment or the health and safety of any individual and which requires immediate action for the containment or control of a hazardous substance. (12-24-93)

02. Emergency Medical Services (EMS). Idaho Emergency Medical Services. The communications center for state hazardous materials emergency response. (12-24-93)

03. Emergency Responder. Person affiliated with an emergency response agency who is dispatched to the scene upon notification of a hazardous materials incident. Emergency responders may be local, state, federal or industry personnel who have received appropriate hazardous materials training. Defined by OSHA and EPA Regulations. (12-24-93)

04. Hazardous Substance. Any element, compound, or substance that may present a substantial threat to people, animals or the environment if released. Hazardous substances or materials referred to in this plan include products or wastes and may be further classified as chemical, biological, radiological or explosive substances including petroleum products and hazardous wastes. (12-24-93)

05. Idaho Hazardous Substance Incident Command and Response Support Plan. An appendix to Annex Z of the Idaho Emergency Plan, Part II, Natural and Manmade Disasters. This appendix may be activated independently of the Idaho Emergency Plan. The primary purpose of the plan is to provide effective, coordinated emergency response support to local government by state, federal and private agencies for incidents involving the release or potential release of hazardous materials in the state of Idaho. Authority for implementation of the plan is derived from Executive Order 91-19, the Idaho Environmental Protection and Health Act (Section 39-100, Idaho Code), the Hazardous Waste Management Act (Section 39-4000, Idaho Code) and the Disaster Preparedness Act (Title 46, Chapter 10, Idaho Code). (12-24-93)

06. Idaho Regional Response Teams. Teams authorized by the Commission which are fully trained and equipped to respond to hazardous incidents. These special teams are based in local fire departments and respond outside local jurisdictional boundaries as employees of the state. The Idaho Regional Hazardous Substance Response Teams are responsible to the Incident Commander. (3-20-97)

07. Incident. An event that results in the release or potential release of a hazardous material to the environment. This may include either transportation or fixed location spills, leaks or accidents involving hazardous materials. (12-24-93)

a. Level I. An incident involving hazardous materials that can be contained, extinguished, and/or abated utilizing equipment, supplies and resources immediately available to the first responders having jurisdiction. A Level I incident presents little immediate risk to the environment and/or public health with containment and clean-up. (3-20-97)

b. Level II. An incident involving hazardous materials that is beyond the capabilities of the first responders on the scene and may be beyond the capabilities of the first response agency having jurisdiction. Level II incidents may require the services of the Regional Response Team. This level incident may pose immediate and/or long term risk to the environment and/or public health even with expedient containment and clean-up. (3-20-97)

c. Level III. An incident involving hazardous materials that is beyond the controlling capabilities of a single Regional Response Team unit and may require additional assistance from other qualified individuals. These incidents may require resources from state and federal agencies and/or private industry. Level III incidents generally pose extreme, immediate and/or long term risk to the environment and/or public health. (3-20-97)

d. Regulatory Notification: A release of the Reportable Quantity of certain hazardous materials that does not require any emergency response on the part of state or local responders. Notice will be provided to those agencies on the Regulatory Notification call down list by FAX or e-mail the following business day. (3-20-97)

08. Incident Command System. A structure for controlling personnel, facilities, equipment and communications. The Incident Command System can be established and expanded depending upon the changing conditions of an incident. As specifically used in these regulations, it refers to the Idaho Hazardous Substance Incident Command and Response Support Plan. (12-24-93)

09. Incident Commander. The designated emergency response officer or official responding to an incident. This person must be fully trained and knowledgeable in the Incident Command System. Normally, the Incident Commander will be the local fire chief or law enforcement officer. A local jurisdiction, based on its local plan and resource assessment, may request that Idaho State Police assume incident command, particularly for incidents on U.S. Interstates and state-numbered routes, including rights-of-way. The Incident Commander shall be in overall charge of all efforts at the scene. (12-24-93)

10. Level A Hazardous Substance Emergency. Hazardous substance incidents that require the use of level A protection suits while responding to the highest level of toxicity. (12-24-93)

11. Local Emergency Planning Committee (LEPC). A committee consisting of local officials, citizens and industry representatives charged with development and maintenance of a hazardous materials response plan for their jurisdiction. (12-24-93)

12. Local Emergency Response Authority (LERA). Persons designated under Section 39-7105, Idaho Code, by the city, county or SERC to be first responders to hazardous substance incidents. (12-24-93)

13. Regional Response Team. See Idaho Regional Response Teams. (3-20-97)

14. Reimbursable Costs. The total emergency response expense, including team response costs, arising from a hazardous materials incident. Such costs generally include, but are not limited to, all state and local government expenses that result from the assessment and emergency phases of the response activity. Emergency response costs do not include clean-up or disposal costs of hazardous materials, except as may be reasonably necessary and incidental to preventing a release or threat of release of a hazardous material or in stabilizing the emergency response incident. (3-20-97)

15. Responsible Party. The spiller, owner, user, site operator, shipping agent or others having custody of hazardous materials as defined in Section 010 of this rule. This includes property or facility owners where hazardous materials have been spilled or released to the environment and/or where hazardous materials may present a threat to public health or the environment. (12-24-93)

16. SARA. Title III Emergency Planning and Community Right to Know Act of 1986 (Title III of the Superfund Amendments and Reauthorization Act). (12-24-93)

17. SERC. State Emergency Response Commission. (12-24-93)

18. Spiller. See Responsible Party. (12-24-93)

19. Team Costs. Expenses which are expressly allowed under the Hazardous Substance Emergency Response Act, Section 39-7109, Idaho Code or pursuant to contract between the team and the Commission. (12-24-93)

011. -- 099. (RESERVED)

100. REGIONAL RESPONSE TEAMS, DESIGNATION, LOCATION, JURISDICTION, ACTIVATION, LIABILITY (RULE 100).

01. Designation of Regional Response Teams. There shall be a Southeast Idaho Regional Response Team, a Southwest Idaho Regional Response Team and a North Idaho Regional Response Team designated by the Commission. Each regional response team shall be capable of responding to level A hazardous substance emergencies within their jurisdiction as designated by Subsection 100.03 statewide or, when directed by the Commission, in other state regions or in neighboring states. (12-24-93)

02. Location of Regional Response Teams. The Southeast Idaho Regional Response Team shall be headquartered at the Pocatello Fire Department in Pocatello, Idaho. The Southwest Idaho Regional Response Team shall be headquartered at the Boise Fire Department in Boise, Idaho and at the Nampa Fire Department in Nampa, Idaho; the North Idaho Regional Response Team shall be headquartered at the Lewiston Fire Department in Lewiston, Idaho and at the Kootenai County Fire Protective District 1 in Coeur d'Alene, Idaho. (3-20-97)

03. Primary Jurisdiction of Regional Response Teams. Boundaries of Regional Response Team Jurisdictions are shown in Appendix A, at the end of this chapter. (3-20-97)

04. Activation of Regional Response Team. (12-24-93)

a. A regional response team may be activated by the Local Emergency Response Authority (LERA), the on-scene Incident Commander (IC), or by private businesses or individuals having pre-arranged agreements with the Commission or the regional response team for hazardous incidents response. Regional response teams may also be activated by the Commission or its designee. (12-24-93)

b. Regional response teams may be activated by calling Idaho EMS Communications Center at 800-632-8000 and requesting activation of the appropriate regional response team. The party requesting the information should state his name, location, a description of the incident and type of incident. (12-24-93)

05. Liability for Costs to Team -- Hazardous Substances. (12-24-93)

a. Liability for costs associated with a hazardous substance incident or emergency shall be the responsibility of the spiller, shipper, transporter, property owner, owner, occupant or party responsible for the hazardous substance emergency. The party liable may make payment to the Commission, the Attorney General, the regional response team or the Local Emergency Response Authority. If payment is made to the Commission, then it shall reimburse the regional response team as well as other state agencies, municipalities and counties which responded to the incident. (12-24-93)

b. The state of Idaho shall be liable to the regional response team for expenses associated with a hazardous substance emergency in cases where a party described in Subsection 100.05.a. or Section 39-7111, Idaho Code, cannot be found or cannot be collected against. Payment shall be made in accordance with the Commission's contract with the regional response team and Section 39-7110, Idaho Code. (12-24-93)

06. Reimbursable Costs -- Hazardous Substances. Reimbursable costs for costs associated with a hazardous substance incident or emergency may include: (12-24-93)

a. Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the response; (12-24-93)

b. Compensation of employees for the time and efforts devoted specifically to the response that are not otherwise provided for in the applicant's operating budget (e.g., overtime pay for permanent, full-time and other than full-time employees, recalled personnel or responding when out of jurisdiction); (12-24-93)

c. Rental or leasing of equipment used specifically for the response (e.g., protective equipment or clothing, scientific and technical equipment); (12-24-93)

d. Replacement costs for equipment owned by the applicant that is contaminated beyond reuse or repair, if the applicant can demonstrate that the equipment was a total loss and that the loss occurred as a result of the response (e.g., self-contained breathing apparatus irretrievably contaminated during the response); (12-24-93)

e. Pro rata replacement costs for equipment used in the incident or available for use and as a result of its use or availability has a decreased useful life; (12-24-93)

f. Mileage costs attributable to vehicles used in responding to an incident at a reimbursement rate to be established by the Commission; (12-24-93)

- g.** Decontamination of equipment contaminated during the response; (12-24-93)
- h.** Special technical services specifically required for the response (e.g., costs associated with the time and efforts of technical experts/specialists not otherwise provided for by the local government); (12-24-93)
- i.** Medical monitoring or treatment of response personnel; (12-24-93)
- j.** Laboratory costs for purposes of analyzing samples taken during the response; and (12-24-93)
- k.** Disposal costs. Such costs may be reimbursed as provided in Chapter 71, Title 39, Idaho Code. (12-24-93)

07. Liability for Costs to Team -- Non-Hazardous Substances. (12-24-93)

- a.** Liability for team costs for spills of non-hazardous substances shall be the responsibility of the spiller or transporter of such material when the spiller or transporter failed to comply with laws or regulations of the state or federal government which would have facilitated identification of the product as a non-hazardous substance. (12-24-93)
- b.** Liability for team costs for spills of non-hazardous substances shall be the responsibility of the person or entity requesting activation of the regional response team in all other instances. (12-24-93)

08. Call Logs. Each regional response team will maintain a record of the number of calls responded to by call type--Level A, B or C. Each regional response team will maintain a summary of calls by type from January 1 through December 31 of each year. The summaries will be retained for a period of not less than five (5) years. (12-24-93)

101. -- 199. (RESERVED)

200. LOCAL EMERGENCY RESPONSE AUTHORITIES (RULE 200).

01. Responsibility of Local Governments for Establishment of LERA. (12-24-93)

a. A Local Emergency Response Authority (LERA) means those persons designated under Section 39-7105, Idaho Code, by the city, county or the Commission to be the first responders to hazardous substance incidents. (12-24-93)

b. Cities and counties shall designate the LERA for hazardous substance incidents that occur within their respective jurisdictions. Each local governing body shall notify the Commission and Idaho Emergency Medical Services Communications Center (EMS Comm. Center) of its designation in writing. Thereafter, any changes in designation shall be communicated to the Commission and the EMS Comm. Center no later than ten (10) working days before the change becomes effective. (12-24-93)

c. The governing body of each city shall designate by ordinance or resolution a LERA for hazardous substance incidents occurring within the corporate limits of the city. A city may designate the county as its LERA and participate in the county plan for hazardous substance incident response by notifying the county and the Commission of such designation in writing. (12-24-93)

d. The board of county commissioners of each county shall designate by ordinance or resolution a LERA for hazardous substance incidents occurring within the unincorporated areas of the county. (12-24-93)

e. If no LERA having the ability to respond to a hazardous substance incident exists within a city or county or if a political subdivision is unable to obtain the services of a LERA by means of a mutual aid agreement, contract or otherwise, the Commission may be petitioned by the local jurisdiction to designate a LERA. If a hazardous substance incident occurs in an area where no LERA has been designated by the city or county, the Idaho State Police shall be the LERA. (12-24-93)

02. LERA Powers and Duties. (12-24-93)

a. Respond: The LERA will respond to all hazardous materials incidents in their jurisdiction and to any incidents that overlap jurisdictions in a fashion consistent with the Idaho Hazardous Substance Incident Command and Response Support Plan except as provided in a private emergency response plan. (12-24-93)

b. Initiate State Plan: The LERA may request state assistance consistent with the Idaho Hazardous Substance Incident Command and Response Support Plan through the EMS Comm. Center. (12-24-93)

c. Right to Claim Reimbursement: The LERA may claim reimbursement or costs associated with a hazardous substance emergency directly from the spiller, shipper, transporter, property owner, occupant or party responsible for the hazardous substance incident or emergency. The LERA may, in the alternative, submit claims to the Commission within sixty (60) days after the termination of an incident for the reimbursement of documented costs listed in Section 39-7109, Idaho Code, incurred as a result of response to and containment of a hazardous substance incident. Reimbursement claims for those costs may not exceed the duration of the response. The LERA will provide a written incident report and any backup documentation to the county commissioners or the local governing body, the Local Emergency Planning Committee (LEPC) and the Commission containing the following information: date and time of incident; type of incident; level of response required; response action taken; time the incident commander declared the incident ended; follow-up information; and any other pertinent information. (12-24-93)

d. Local Planning: The LERA, as a member of the LEPC, should be an active participant in their jurisdictions hazardous materials emergency planning process. (12-24-93)

e. Primary Contact: The LERA will act as the primary contact for their local jurisdiction during any cost recovery action taken by the state on their claim to reimbursement. As such, they will be available to answer questions, collect information and perform any other relevant actions necessary to precipitate the recovery of costs from the spiller. (12-24-93)

03. Training. LERA personnel responding to a hazardous substance emergency shall be trained, at a minimum, to the Hazardous Substance Operations level. In addition, all LERA personnel must have training in the Incident Command System set forth in the Idaho Hazardous Substance Incident Command and Response Support Plan. (12-24-93)

04. LERA Notification. (12-24-93)

a. Any spiller, shipper, transporter, property owner, occupant or other person with knowledge of a hazardous substance incident shall notify the LERA of any spill or potential spill. Specific incidents may include: Motor vehicle accidents or train derailments involving the release or potential release of a hazardous substance; drug labs or sites of former drug labs; and incidents at fixed sites such as factories, plants or storage facilities. (12-24-93)

b. Notification or activation of the LERA may be through the local dispatch authorities or through EMS Comm. Center at 800-632-8000. EMS Comm. Center shall notify the Local Authority. (12-24-93)

c. The spiller, shipper, transporter, property owner, occupant or other person with knowledge of a hazardous substance incident notifying the LERA and EMS Comm. Center shall provide his name, address and telephone number and an address and telephone number where he can be reached for the duration of the incident. Such person shall remain available to the incident commander throughout the duration of the incident. (12-24-93)

201. -- 299. (RESERVED)

300. COST REIMBURSEMENT (RULE 300).

01. Submission of Claims, Forms. State emergency response teams and local emergency response authorities may submit claims to the Commission for reimbursement of documented and reimbursable costs incurred as a result of their response to and containment of a hazardous substance incident. Reimbursable costs are those set

forth in Section 39-7109, Idaho Code, or which are reimbursable pursuant to contract with the Commission. Claims shall be made using the forms attached as appendix A. (12-24-93)

02. Limitations for Seeking Reimbursement, Acceptance of Claims. Claims for reimbursement shall be submitted to the Commission within sixty (60) days after termination of the hazardous substance incident for the state's determination of payment. Termination of the incident occurs when the incident commander declares the incident terminated. The Commission shall review the costs submitted and notify the team or authority as to which costs qualify for reimbursement within thirty (30) days of receipt. (12-24-93)

03. Claims Against Spiller or Other Responsible Party. Upon receipt and review of claims for reimbursement, the Commission shall bill the spiller or other responsible party for costs associated with the response to the incident. Where payment is not received or suitable arrangements for payment are not made within thirty (30) days of the Commission's second billing to the responsible party, the Commission shall recommend the state's payment of reimbursable costs of the LERA or the regional response team through the Board of Examiners. (12-24-93)

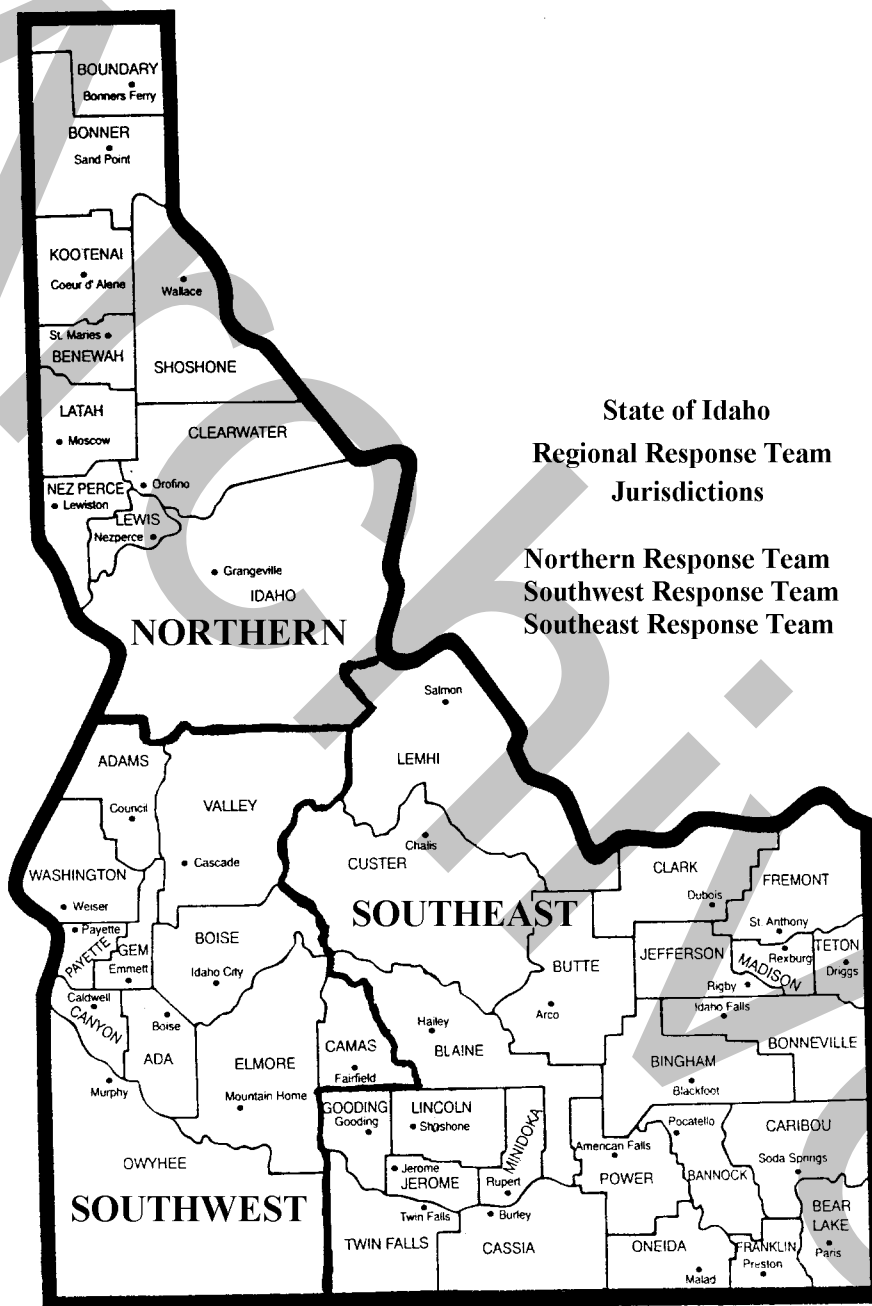
04. Cost Recovery, Deficiency Warrants. The Commission shall be responsible for recovering those costs incurred from the spiller. If a spiller is unknown, cannot be located or refuses to pay upon demand, the Commission will make recommendations as to payment to the Board of Examiners within one hundred twenty (120) days after termination of the hazardous substance incident. The Board of Examiners may authorize the issuance of deficiency warrants for the purpose of reimbursing reasonable and documented costs associated with emergency response actions taken by state response teams or local emergency response authorities. (12-24-93)

05. Civil Actions. It shall be the duty of the Attorney General to commence any civil action brought by the Commission pursuant to nonpayment from a spiller. At the request of a political subdivision of the state or a local governmental entity who has responded to or contained a hazardous substance incident, the Attorney General may commence a civil action on their behalf. (12-24-93)

06. LERA and Regional Teams -- Duty to Cooperate. Local emergency response authorities and regional response teams shall cooperate with the Commission and the Attorney General in collecting and securing payment from the spiller or other responsible party. Such cooperation includes, but shall not be limited to, allowing lawsuits to be filed in the name of the local jurisdiction, LERA or regional response team; providing testimony and assistance in preparing for trial; investigation; the collection of evidence, including securing photographs or videotape of the spill site; and testing and providing relevant test data. (12-24-93)

301. -- 999. (RESERVED)

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