IDAHO ADMINISTRATIVE BULLETIN

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Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a monthly compilation of all administrative rule-making documents in Idaho. The Bulletin publishes the official rulemaking notices and administrative rule text of state agency rulemakings and other official documents as necessary.

State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of rulemaking activity through the Idaho Administrative Bulletin and the Legal Notice published monthly in local newspapers. The Legal Notice provides reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time and manner specified in the Rulemaking Notice published in the Bulletin. After the comment period closes, the agency considers fully all information submitted in regard to the rule. Comment periods are not provided in temporary or final rule-making activities.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

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

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

*The **Idaho Administrative Code** is published once a year and is a compilation or supplemental compilation of all final and enforceable administrative rules in effect in Idaho. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in the Administrative Code. Temporary rules and final rules that have been approved by the legislature during the legislative session, and published in the monthly Idaho Administrative Bulletin, supplement the Administrative Code. Negotiated, proposed, and pending rules are **not** printed in the Administrative Code and are published only in the Bulletin.*

*To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Index of Administrative RuleMaking**, printed in each Bulletin.*

TYPES OF RULEMAKINGS PUBLISHED IN THE ADMINISTRATIVE BULLETIN

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

NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested parties and the agency seek consensus on the content of a rule. Agencies are encouraged, and in some cases required, to engage in this rulemaking activity whenever it is

feasible to do so. Publication of a "Notice of Intent to Promulgate" a rule in the Administrative Bulletin by the agency is optional. This process should result in the formulation of a proposed and/or temporary rule.

PROPOSED RULEMAKING

A proposed rulemaking is an action by an agency wherein the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a "Notice of Proposed Rulemaking" in the Bulletin. This notice must include:

a) the specific statutory authority (from Idaho Code) for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;

b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;

c) the text of the proposed rule prepared in legislative format;

d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;

e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;

f) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and

g) the deadline for public (written) comments on the proposed rule.

As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date unless published in conjunction with a temporary rule. An agency may vacate a proposed rulemaking if it decides not to proceed further with the promulgation process.

TEMPORARY RULEMAKING

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

a) protection of the public health, safety, or welfare; or

b) compliance with deadlines in amendments to governing law or federal programs; or

c) conferring a benefit;

If a rulemaking meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule. However, a temporary rule that imposes a fee or charge may be adopted only if the Governor finds that the fee or charge is necessary to avoid an immediate danger which justifies the imposition of the fee or charge.

A temporary rule expires at the conclusion of the next succeeding regular legislative session unless the rule is approved, amended, or modified by concurrent resolution or when the rule has been replaced by a final rule.

State law required that the text of both a proposed rule and a temporary rule be published in the Administrative Bulletin. In cases where the text of the temporary rule is the same as the proposed rule, the rulemaking can be done concurrently as a proposed/temporary rule. Combining the rulemaking allows for a single publication of the text.

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

PENDING RULEMAKING

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

When a pending rule is published in the Bulletin, the agency is required to include certain information in the "Notice of Pending Rulemaking". This includes:

a) a statement giving the reasons for adopting the rule;

b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;

c) the date the pending rule will become final and effective;

d) an identification of any portion of the rule imposing or increasing a fee or charge.

Agencies are required to republish the text of the rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule change is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the Section(s) that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the "Notice of Pending Rulemaking" is published.

FINAL RULEMAKING

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

No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that an agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution may be adopted to reject the rulemaking or any part thereof. A "Notice of Final Rule" must be published in the Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule that has been reviewed by the legislature and has not been rejected, amended or modified will become final with no further legislative action. No rule shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule that is final and effective may be applied retroactively, as provided in the rule.

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

The Idaho Administrative Code and all monthly Bulletins are available for viewing and use by the public in all 44 county law libraries, state university and college and community college libraries, the state law library, the state library, the Public Libraries in Boise, Pocatello, Idaho Falls, Twin Falls, Lewiston and East Bonner County Library.

SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-00306, telephone (208) 332-1820.

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

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

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

Internet Access *- The Administrative Code and Administrative Bulletin are available on the Internet at the following address:*

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

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

Rulemaking documents produced by state agencies and published in the ***Idaho Administrative Bulletin*** *are organized by a numbering system. Each state agency has a two-digit identification code number known as the* ***"IDAPA"*** *number. (The "IDAPA" Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit "TITLE" number is assigned. There are "CHAPTER" numbers assigned within the Title and the rule text is divided among major sections with a number of subsections. An example IDAPA number is as follows:*

IDAPA 38.07.01.200.02.c.ii.

"IDAPA" *refers to Administrative Rules in general that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin.*

"IDAPA 38" *refers to the Idaho Department of Administration*

"05." *refers to Title* ***05****, which is the Department of Administrations's Division of Purchasing*

"01." *refers to Chapter* ***01*** *of Title 05, "Rules of the Division of Purchasing"*

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

"02." *refers to Subsection 200.****02****.*

*"****c.****" refers to Subsection 200.02.****c****.*

"ii." *refers to Subsection 200.02.c.****ii****.*

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER." The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0401). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket:

"DOCKET NO. 38-0501-0401"

"38-" *denotes the agency's* ***IDAPA*** *number; in this case the Department of Administration.*

"0501-" *refers to the* ***TITLE AND CHAPTER*** *numbers of the agency rule being promulgated; in this case the Division of Purchasing (TITLE* ***05****), Rules of the Division of Purchasing (Chapter* ***01****).*

"0401" *denotes the year and sequential order of the docket received during the year; in this case the first rule-making action in calendar year 2004.*

Within each Docket, only the affected sections of chapters are printed. (see ***Sections Affected Index*** *in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section "200" appears before Section "345" and so on). Whenever the sequence of the numbering is broken the following statement will appear:*

"(BREAK IN CONTINUITY OF SECTIONS)"

INTERNAL AND EXTERNAL CITATIONS TO ADMINISTRATIVE RULES IN THE CODE AND BULLETIN

When making a citation to another Section or Subsection of a rule that is part of the same rule, a typical internal citation may appear as follows:

*"****...as found in Section 201 of this rule."*** *OR* ***"...in accordance with Subsection 201.06.c. of this rule."***

The citation may also include the IDAPA, Title, or Chapter number, as follows"

"...in accordance with IDAPA 38.05.01.201..."

"38" *denotes the IDAPA number of the agency.*

"05" *denotes the TITLE number of the rule.*

"01" *denotes the Chapter number of the rule.*

: ***"201"*** *references the main Section number of the rule that the citation refers to.*

Citations made within a rule to a different rule chapter (external citation) should also include the name of the Department and the name of the rule chapter being referenced, as well as the IDAPA, Title, and Chapter numbers. The following is a typical example of an external citation to another rule chapter:

"...as outlined in the Rules of the Department of Administration, IDAPA 38.04.041, "Rules Governing Capitol Mall Parking."

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2004

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
04-1	January, 2004	***November 19, 2003**	January 7, 2004	January 28, 2004
04-2	February, 2004	January 7, 2004	February 4, 2004	February 25, 2004
04-3	March, 2004	February 4, 2004	March 3, 2004	March 24, 2004
04-4	April, 2004	March 3, 2004	April 7, 2004	April 25, 2004
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04-10	October, 2004	****August 25, 2004**	October 6, 2004	October 27, 2004
04-11	November, 2004	October 6, 2004	November 3, 2004	November 24, 2004
04-12	December, 2004	November 3, 2004	December 1, 2004	December 22, 2004

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2005

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
05-1	January, 2005	***November 17, 2004**	January 5, 2005	January 26, 2005
05-2	February, 2005	December 31, 2004	February 2, 2005	February 23, 2005
05-3	March, 2005	February 4, 2005	March 2, 2005	March 23, 2005
05-4	April, 2005	March 4, 2005	April 6, 2005	April 27, 2005
05-5	May, 2005	April 1, 2005	May 4, 2005	May 25, 2005
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05-7	July, 2005	June 3, 2005	July 6, 2005	July 27, 2005
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05-10	October, 2005	****August 24, 2005**	October 5, 2005	October 26, 2005
05-11	November, 2005	September 30, 2005	November 2, 2005	November 23, 2005
05-12	December, 2005	October 28, 2005	December 7, 2005	December 28, 2004

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

***** Last day to submit proposed rule in order to complete rulemaking for review by legislature.***

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IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.03.01 - RULES GOVERNING PESTICIDE MANAGEMENT PLANS FOR GROUND WATER PROTECTION

DOCKET NO. 02-0301-0401 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 22-3418 and 22-3419, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Date: **September 8, 2004 Time: 7:00 p.m.**
Location: **Silver Lake Motel, 6160 Sunshine St., Coeur d'Alene, Idaho**

Date: **September 9, 2004 Time: 7:00 p.m.**
Location: **Red Lion Hotel, 621 21st Street, Lewiston, Idaho**

Date: **September 13, 2004 Time: 7:00 p.m.**
Location: **Nampa Civic Center, 311 3rd Street South, Nampa, Idaho**

Date: **September 14, 2004 Time: 7:00 p.m.**
Location: **Shilo Inn, 1586 Blue Lakes Blvd. N, Twin Falls, Idaho**

Date: **September 15, 2004 Time: 7:00 p.m.**
Location: **Best Western Cottontree Inn, 1415 Bench Road, Pocatello, 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 nontechnical explanation of the substance and purpose of the proposed rulemaking: This chapter establishes a process for responding to pesticide detections in ground water.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, informal negotiated rulemaking was conducted with the assistance of an advisory committee composed of industry representatives and other interested parties, and a technical committee composed of industry representatives. These rules were developed by consensus of both committees in numerous meetings.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Gary Bahr, Agricultural Bureau Chief at 208-332-8597.

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 22, 2004.

DATED this 28th day of July, 2004.

Michael E. Cooper
Acting Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: 208-332-8503
Fax: 208-334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0301-0401

IDAPA 02
TITLE 03
CHAPTER 01

RULES GOVERNING PESTICIDE MANAGEMENT PLANS FOR GROUND WATER PROTECTION

000. LEGAL AUTHORITY.
This chapter is adopted under the legal authority of Sections 22-3418 and 22-3419, Idaho Code. ( )

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.03.01, "Rules Governing Pesticide Management Plans for Ground Water Protection." ( )

02. Scope. This chapter establishes a process for responding to pesticide detections in ground water. ( )

002. WRITTEN INTERPRETATIONS.
There are no written interpretations of these rules. ( )

003. ADMINISTRATIVE APPEALS.
There is no provision for administrative appeal before the Idaho Department of Agriculture under this chapter. Hearing and appeal rights are pursuant to Title 67, Chapter 52, Idaho Code. ( )

004. INCORPORATION BY REFERENCE.
The following documents are incorporated by reference into this chapter: ( )

01. IDAPA 58.01.11, "Ground Water Quality Rule," Subsection 200.01.a. of the Department of Environmental Quality. Copies can be obtained from the Office of Administrative Rules, 650 W. State St., PO Box 83720, Boise ID, 83720-0306 or electronically accessed at www2.state.id.us/adm/adminrules/rules/idapa58/0111.pdf. ( )

02. Idaho Agricultural Pollution Abatement Plan. The March 2003 edition published by the Idaho Soil Conservation Commission. Copies may be accessed electronically at www.scc.state.id.us/PDF/AgPlan.pdf. ( )

03. The 2004 Publication by the United States Department of Agriculture, Natural Resources Conservation Service, Conservation Practice Standard, Pesticide Management Code 595. Copies of this document may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. ( )

04. The 2004 Publication by the United States Department of Agriculture, Natural Resources Conservation Service, Conservation Practice Standard, Agrichemical Mixing Facility Code 702. Copies of this document may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. ( )

05. The 2004 Publication by the United States Environmental Protection Agency, Office of Water, 2004 Edition of the Drinking Water Standards and Health Advisories, EPA 822-R-04-005. Copies can be

accessed electronically at www.epa.gov/waterscience/drinking/standards/dwstandards.pdf. ( )

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

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

02. **Mailing Address**. The mailing address for the central office is Idaho Department of Agriculture, P.0. Box 790, Boise, Idaho 83701. ( )

03. **Street Address**. The central office of the Idaho Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. ( )

006. PUBLIC RECORDS ACT COMPLIANCE.
These rules are public records available for inspection and copying at the Department. ( )

007. -- 009. (RESERVED).

010. DEFINITIONS.
The Idaho Department of Agriculture adopts the definitions set forth in Section 22-3401, Idaho Code, and the following definitions: ( )

01. **Aquifer**. A geological unit of permeable saturated material capable of yielding economically significant quantities of water to wells and springs. ( )

02. **Beneficial Uses**. Current or future uses of ground water supplies including, but not limited to domestic, industrial, agricultural, aquacultural, and mining. ( )

03. **Best Management Practice**. A practice or combination of practices determined to be the most effective and practical means of preventing or reducing pesticide contamination to ground water and interconnected surface water from nonpoint and point sources to achieve water quality goals and protect the beneficial uses of the water. ( )

04. **Constituent**. Any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance occurring in ground water. ( )

05. **Contaminant**. Any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance which does not occur naturally in ground water or which naturally occurs at a lower concentration. ( )

06. **Contamination**. The direct or indirect introduction into ground water of any contaminant caused in whole or in part by human activities. ( )

07. **Ground Water**. Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. ( )

08. **Health Advisory Level**. Guidance for the maximum allowable or acceptable daily concentration of a pesticide in drinking water in the absence of or prior to a MCL being set. ( )

09. **Maximum Contaminant Level**. Maximum allowable or acceptable daily concentration of a pesticide in drinking water that may be consumed over a lifetime. ( )

10. **Pesticide Management Standard**. The United States Department of Agriculture Natural Resource Conservation Service Conservation Practice Standard, Idaho Pesticide Management Code 595, or the Idaho Agricultural Pollution Abatement Plan -- Pesticide Management Standard Component Practice. ( )

11. **Pesticide Use**. The mixing, application, handling, transport, storage, display, distribution, and

disposal of pesticides and their containers. ( )

12. Projected Future Beneficial Uses. Various uses of ground water, such as drinking water, aquaculture, industrial, mining or agriculture, that are practical and achievable in the future based on hydrogeologic conditions, water quality, future land use activities and social/economic considerations. ( )

13. Reference Dose. Allowable or acceptable dose of a pesticide in terms of mg pesticide/kg body weight that can be ingested in one day (acute reference dose) or on a daily basis over a lifetime (chronic reference dose). ( )

14. Reference Point. Numerical indicators of the toxicity of a substance based on test data and other reliable health effects information. ( )

15. Susceptibility. A method of describing the flow of water to, and through, the ground water resource based on physical factors such as hydraulic conductivity, porosity, hydraulic gradients, recharge, interactions with surface water, and transport through the unsaturated zone without considering specific natural or anthropogenic sources of contamination. ( )

16. Vulnerability. Ground water characterized by a potential for contaminants to enter and be transported within the flow system. Determinations of ground water vulnerability will include consideration of land use practices and aquifer characteristics. ( )

011. ABBREVIATIONS.

01. APAP. Agricultural Pollution Abatement Plan. ( )

02. BMP. Best Management Practice. ( )

03. DEQ. Department of Environmental Quality. ( )

04. EPA. Environmental Protection Agency. ( )

05. HAL. Health Advisory Level. ( )

06. MCL. Maximum Contaminant Level. ( )

07. NRCS. Natural Resources Conservation Service. ( )

08. PMP. Pesticide Management Plan. ( )

09. QAPP. Quality Assurance Project Plan. ( )

10. QMP. Quality Management Plan. ( )

11. RfD. Reference Dose. ( )

12. SCC. Soil Conservation Commission. ( )

13. USDA. United States Department of Agriculture. ( )

012. -- 049. (RESERVED).

050. CHEMICAL SPECIFIC PMPS.

01. Creating PMPs. The Director shall develop and implement chemical specific PMPs (Section 200) for certain pesticides in geographical areas as determined in Section 400 when: ( )

a. The level of a pesticide found in ground water is equal to or greater than fifty percent (50%) of the reference point and is scientifically validated; ( )

b. EPA restricts the sale or use of a pesticide in the state, or otherwise initiates action against a pesticide because of ground water concerns for a pesticide, unless such PMP is not deemed necessary by the Director; ( )

c. EPA's action, restriction, or prohibition will be implemented unless the state develops an adequate PMP; or ( )

d. A pesticide is conditionally registered by EPA because of ground water concerns. ( )

02. PMP Compliance. No person shall use a pesticide in a manner inconsistent with the chemical specific PMP within a designated geographical area. ( )

051. -- 099. (RESERVED).

100. CONTENTS OF A CHEMICAL SPECIFIC PMP.

01. Required Elements of a PMP. ( )

a. Actions to prevent pesticide contamination that are based on beneficial uses and vulnerability that address applicable aspects of the pesticide use; and ( )

b. Actions to prevent or minimize further presence of the pesticide in ground water and to provide protection for the present and projected future beneficial use of the ground water. ( )

02. Elements That May be Included in a PMP. A PMP may include but is not limited to the following elements: ( )

a. Identification of geographical areas where a pesticide may be used; ( )

b. Pesticide, soil, hydrogeological, and meteorological characteristics; ( )

c. BMPs; ( )

d. Identification of ground water areas with pesticide detection(s); ( )

e. Certification, licensing, training, and education requirements for persons using the pesticide;( )

f. Identification and establishment of an area of pesticide restriction requiring preventative measures; ( )

g. Pesticide application rates and timing and related use criteria; ( )

h. Integrated pest management information; ( )

i. Other requirements for pesticides, as set forth in the Idaho Pesticide and Chemigation Law (Title 22, Chapter 34, Idaho Code), and IDAPA 02.03.03, “Rules Governing Pesticide and Chemigation Use and Application”; or ( )

j. Other requirements as listed by the EPA in rule or guidance. ( )

101. MANAGEMENT PLANS ADOPTED BY RULEMAKING AND REVIEW.

01. Adoption Through Rulemaking. The Director shall adopt chemical specific PMPs through rulemaking. ( )

02. PMP Review. The Director shall review chemical specific PMPs every two (2) years to determine if the requirements contained in the plans need to be modified based on new scientific data and information. ( )

102. -- 149. (RESERVED).

150. GROUND WATER QUALITY REFERENCE POINTS.

01. Reference Points. The Director will use reference points for pesticides in ground water, based on the following order of availability: ( )

a. Idaho rules of DEQ, IDAPA 58.01.11, "Ground Water Quality," Subsection 200.01.a. specific to pesticide primary constituent standards which were adopted from EPA MCLs; or ( )

b. EPA Health Advisory Levels (HALs) identified in the 2004 Edition of the EPA Drinking Water Standards and Health Advisories, EPA 822-R-04-005; or ( )

c. EPA Reference Dose (RfD) identified in the 2004 Edition of the EPA Drinking Water Standards and Health Advisories, EPA 822-R-04-005; or ( )

d. A reference point based on: ( )

i. Best scientific information currently available on adverse effects of the contaminant(s); and ( )

ii. Protection of a beneficial use(s); and ( )

iii. Practical quantitation levels for the pesticides, if they exceed the levels identified in IDAPA 58.01.11, "Ground Water Quality Rule," Subsection 200.01.a. ( )

02. HAL and RfD Guide. The Director shall use the EPA's HAL and RfD number associated with the effects on a person weighing seventy (70) kilograms and drinking two (2) liters of water per day over a lifetime. ( )

151. -- 199. (RESERVED).

200. RESPONSE TO A PESTICIDE DETECTION.
This section describes the four (4) response levels for responding to pesticide detections in ground water. ( )

01. Level One Response. When a pesticide or its metabolite(s) is detected at or above the detection limit yet below twenty percent (20%) of the reference point, the Director: ( )

a. Shall notify well users or well owners of pesticide(s) detection; ( )

b. Shall continue ground water monitoring; ( )

c. May provide additional information to pesticide applicators within vulnerable areas; ( )

d. May review use practices, soils, hydrogeology, and vulnerability within the area of pesticide detection(s); ( )

e. May review state records for previous point source or potential violations in accordance with the Idaho Pesticide and Chemigation Law (Title 22, Chapter 34, Idaho Code); ( )

f. May review existing monitoring data within area to check for previous detections; ( )

g. May conduct outreach in local area applicable to relevant data and information; and ( )

h. May encourage voluntary BMPs consistent with the APAP. ( )

02. Level Two Response. When a pesticide or its metabolite(s) is detected at twenty percent (20%) to less than fifty percent (50%) of the reference point, the Director: ( )

a. Shall implement actions in Subsection 200.01 in the area of pesticide detection; ( )

b. Shall establish area of pesticide concern, in accordance with Section 400, within area of pesticide detection; ( )

c. Shall develop a monitoring plan and monitor to determine trends and fluctuations in pesticide concentrations; ( )

d. Shall determine likely source(s) while notifying and working with the appropriate parties including but not limited to: pesticide registrant(s), dealer(s), applicator(s) and producer(s) to determine likely source(s);( )

e. Shall determine if pesticide detection(s) is from point or nonpoint source; ( )

f. Shall promote voluntary BMPs or other measures; evaluate BMP effectiveness, and change BMPs if needed; ( )

g. Shall require the utilization of the Idaho NRCS Conservation Practice Standard, Pesticide Management Code 595. ( )

h. May develop a chemical specific PMP per pesticide, unless already mandated through EPA Rule to do so; ( )

i. May monitor additional domestic wells in the hydrogeological up gradient and down gradient area; and ( )

j. May conduct site specific pesticide use inspections within the area of detection(s). ( )

03. Level Three Response. When a pesticide or its metabolite(s) is detected at fifty percent (50%) to less than one hundred percent (100%) of the reference point, the Director shall: ( )

a. Implement actions in Subsections 200.02.a. through 200.02.e., and 200.02.g. through 200.02.j. in the area of pesticide detection; ( )

b. Establish an area of pesticide restriction, in accordance with Section 400 and Section 22-3419, Idaho Code, when the Director determines ground water contamination resulted from the application of a pesticide in accordance with the label; ( )

c. Restrict the use of the pesticide according to Section 22-3418, Idaho Code; ( )

d. Install monitoring wells as soon as possible, if the Director determines installation to be necessary based on severity of risk, to evaluate ground water quality, flow direction, and the effectiveness of preventative measures; ( )

e. Assist well users or well owners within the area of pesticide restriction with health information and alternative water source information; and ( )

f. Inspect the pesticide applicator records within the restricted area. ( )

04. Level Four Response. When a pesticide or its metabolite(s) is detected at or above one hundred percent (100%) of the reference point, the Director shall: ( )

a. Implement actions in Subsection 200.03 in the area of pesticide detection; ( )

b. Establish an area of pesticide prohibition, in accordance with Section 400 and Section 22-3418, Idaho Code, when the Director has determined ground water contamination resulted from the application of a pesticide in accordance with the label; ( )

c. Implement use prohibition area(s); ( )

d. Assist persons within the use prohibition area with health and alternative water source information; ( )

e. Determine effectiveness of regulatory actions. ( )

05. Mixing and Loading Prohibited. No person shall mix or load the prohibited pesticide product in an identified pesticide prohibition area unless the mixing and loading is conducted over a spill containment surface which complies with the Idaho NRCS Conservation Practice Standard, Agrichemical Mixing Facility Code 702. ( )

06. Prohibition Areas. No person shall apply a prohibited pesticide within the corresponding pesticide area boundaries of the area of pesticide prohibition as identified in Section 400. ( )

201. -- 299. (RESERVED).

300. GROUND WATER MONITORING PROGRAMS.

01. Monitoring Programs. The Director shall conduct monitoring programs to: ( )

a. Determine whether residues of pesticides are present in ground water; ( )

b. Refine vulnerability mapping products or other assessment tools; ( )

c. Determine the effectiveness of BMPs; and ( )

d. Determine the effectiveness of regulatory approaches. ( )

02. Conduct Monitoring Programs. The Director shall conduct monitoring programs in compliance with the Department's EPA approved QMP and applicable QAPPs. ( )

03. Evaluation. The Director shall evaluate ground water pesticide(s) data from sources other than the Department for use in implementing this rule. ( )

301. -- 399. (RESERVED).

400. DETERMINING PESTICIDE AREA BOUNDARIES.
Section 400 describes the methods for determining the pesticide area boundaries for the response levels in Section 200. ( )

01. Pesticide Area Boundary Factors. In determining the area of pesticide concern, restricted area, or prohibition area the Director shall implement Section 200 and may consider but not be limited to the following factors: ( )

a. Pesticide detections from reliable ground water test samples; ( )

b. Number and frequency of detections; ( )

c. Statistical trends of detections; ( )

d. Location of detections; ( )

e. Hydrogeology of the aquifer; ( )

f. Well depth and construction; ( )

g. Aquifer vulnerability and susceptibility; ( )

h. Pesticide physical and chemical characteristics; ( )

i. Pesticide use; or ( )

j. Other scientifically defensible information. ( )

02. Determining Boundaries. An area of pesticide concern, restricted area, or a prohibition area may encompass land areas which, in the Director's judgment, are susceptible to pesticide contamination of ground water based on the factors identified in Subsection 400.01. The boundaries of an area of pesticide concern, restricted area, or a prohibition area shall be sufficient to meet Section 200 requirements. The boundaries may include any of the following: ( )

a. Mapped boundaries between soil types or other hydrogeologic features; ( )

b. Ground water or surface water divides such as watershed boundaries; ( )

c. Legal land description boundaries; ( )

d. Public roads; or ( )

e. Other recognizable boundaries. ( )

401. -- 409. (RESERVED).

410. REPEALING SPECIFIC PESTICIDE AREAS.

01. Repealing an Area of Pesticide Concern. The Director may repeal or reduce the size of an area of pesticide concern in response to pesticide contamination in ground water if all the conditions in Subsection 410.01 are met: ( )

a. Tests on at least three (3) consecutive ground water samples, drawn from each well site in the area of pesticide concern at which the concentration of a pesticide and its metabolites previously were found at twenty percent (20%) to fifty percent (50%) of the reference point, show that the concentration at the well sites has fallen to and remains less than twenty percent (20%) of the reference point. The three (3) consecutive samples shall be collected at each well site at intervals of at least six (6) months, with the first sample being collected at least six (6) months after the effective date of the area of pesticide concern designation. A monitoring well approved by the Director may be substituted for any well site which is no longer available for testing. ( )

b. Tests conducted at other well sites in the area of pesticide concern during the same retesting period, if any, reveal no other concentrations of the pesticide or its metabolites that exceed twenty percent (20%) of the reference point; and ( )

c. The Director determines, based on credible scientific evidence, that use of a pesticide product in the area of pesticide concern is not likely to cause a renewed detection between twenty percent (20%) to fifty percent (50%) of the reference point. ( )

02. Repealing an Area of Pesticide Restriction. The Director may repeal or reduce the size of an area of pesticide restriction in response to ground water pesticide contamination if all the conditions in Subsection 410.02 are met: ( )

a. Tests on at least three (3) consecutive ground water samples, drawn from each well site in the area of pesticide restriction at which the concentration of a pesticide and its metabolites previously were found at fifty percent (50%) to less than one hundred percent (100%) of the reference point, show that the concentration at the well sites has fallen to and remains less than fifty percent (50%) of the reference point. The three (3) consecutive samples shall be collected at each well site at intervals of at least six (6) months, with the first sample being collected at least six (6) months after the effective date of the area of the pesticide restriction designation. A monitoring well approved by the Director may be substituted for any well site which is no longer available for testing. As areas of pesticide restriction are repealed, the area automatically becomes an area of pesticide concern; ( )

b. Tests conducted at other well sites in the area of pesticide restriction during the same retesting period, if any, reveal no other concentrations of the pesticide or its metabolites that exceed fifty percent (50%) of the reference point; and ( )

c. The Director determines, based on credible scientific evidence, that use of a pesticide product in the area of pesticide restriction is not likely to cause a renewed exceedance of fifty percent (50%) of the reference point. ( )

03. Repealing an Area of Pesticide Use Prohibition. The Director may repeal or reduce the size of an area of pesticide use prohibition in response to ground water pesticide contamination if all the conditions in Subsection 410.03 are met: ( )

a. Tests on at least three (3) consecutive ground water samples, drawn from each well site in the prohibition area at which the concentration of a pesticide and its metabolites previously attained or exceeded the reference point, show that the concentration at that well site has fallen to and remains less than fifty percent (50%) of the reference point. The three (3) consecutive samples shall be collected at each well site at intervals of at least six (6) months, with the first sample being collected at least six (6) months after the effective date of the pesticide use prohibition designation. A monitoring well approved by the Director may be substituted for any well site which is no longer available for testing. As areas of pesticide prohibition are repealed, the area automatically becomes an area of pesticide concern; ( )

b. Tests conducted at other well sites in the area of pesticide prohibition during the same retesting period, if any, reveal no other concentrations of the pesticide and its metabolites that exceed fifty percent (50%) of the reference point; and ( )

c. The Director determines, based on credible scientific evidence, that renewed use of a pesticide product in the area of pesticide prohibition is not likely to cause a renewed violation of the reference point. ( )

411. -- 419. (RESERVED).

420. ADVISORY COMMITTEE.
When pesticide management practices are needed under Section 200, the Director's advisory committee, as established pursuant to Section 22-103, Idaho Code, shall provide appropriate guidance on this rule. This advisory committee shall include but is not limited to: applicators from the area of pesticide detection; pesticide, water user, and commodity groups; University of Idaho Extension staff and specialists; and staff from the USDA, NRCS, SCC, DEQ, and the Department. The duties of the advisory committee include but are not limited to the following: ( )

01. Review Existing Information. Review the existing information related to the area of pesticide detection and develop pesticide management practices options; ( )

02. Recommendations. Make recommendations to the Director for approval of pesticide management practices prior to implementation at the voluntary and regulatory levels; ( )

03. Research. Evaluate the potential for gaining government or private research or cost share funding; and ( )

04. Evaluate Effectiveness. Review information related to pesticide management practices effectiveness and make recommendations for changing and improving pesticide management practices. ( )

421. PESTICIDE USE AND RECORD KEEPING REQUIREMENTS.
Pursuant to Title 22, Chapter 34, Idaho Code, and IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application," the Director shall inspect pesticide records to meet the need as described in Section 200. ( )

422. -- 449. (RESERVED).

450. RESEARCH.
The Director shall authorize cooperative pesticide and ground water quality protection research programs with state agencies, university systems and associated agricultural experiment stations, federal agencies, and other appropriate organizations and persons. ( )

451. -- 459. (RESERVED).

460. EDUCATIONAL PROGRAMS.
The Department, in cooperation with the University of Idaho Extension Service, shall develop and conduct appropriate educational programs. ( )

461. -- 469. (RESERVED).

470. EXEMPTIONS.
Notwithstanding any provision of this chapter, the Director may authorize the use of a pesticide for bona fide research purposes. A person seeking a research exemption shall apply to the Director in writing. The application shall describe the proposed research, and the amounts and locations of proposed pesticide applications. The Director may require an applicant to file other information which the Director considers necessary for review of the application. ( )

471. -- 479. (RESERVED).

480. PENALTIES.
Any person who violates or fails to comply with any provision of these rules shall be subject to penalties listed under Section 22-3423, Idaho Code. ( )

481. -- 999. (RESERVED).

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.03 - RULES GOVERNING ANIMAL INDUSTRY

DOCKET NO. 02-0403-0401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 22-101 and 25-207, 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 15, 2004.

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 updates and clarifies the rules regulating the disease Trichomoniasis, and makes technical corrections.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted. However the Department's Trichomoniasis Taskforce provided input and reviewed the proposed rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact John Chatburn, Deputy Administrator, (208) 332-8540.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2004.

DATED this 19th day of July 2004.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701-0790
(208) 332-8500, Fax (208) 334-4062

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0403-0401

220. TRICHOMONIASIS CONTROL AND ERADICATION PROGRAM.
The Trichomoniasis testing season shall begin on September 1 of each year and continue until August 31 of the succeeding year. All bulls within the state of Idaho shall be tested for Trichomoniasis by ~~*March 31*~~ April 15 of each

Trichomoniasis testing season, except: ~~*(5-3-03)*~~(9-1-04)T

01. Bulls in Public Grazing Allotments. Bulls that are to be turned out on public grazing allotments shall be tested for Trichomoniasis by ~~*March 31*~~ April 15 of each Trichomoniasis testing season or forty-five (45) days prior to turnout on a public grazing allotment, which ever occurs first. ~~*(5-3-03)*~~(9-1-04)T

02. Virgin Bulls. All bulls, twenty-four (24) months of age or less, which have never serviced a cow shall be exempt from the Trichomoniasis testing requirements. (5-3-03)

a. Such bulls shall be identified by a registered veterinarian with an official Trichomoniasis bangle tag of the correct color for the current testing season and the identification recorded on a Trichomoniasis Test and Report Form. (5-3-03)

b. If sold, such bulls shall be accompanied by a certificate signed by the owner or his representative attesting that the animals are virgin bulls. (5-3-03)

03. Dairy Bulls. All dairy bulls in dry lot operations shall be exempt from the Trichomoniasis testing requirements. Dairy bulls that are pastured or grazed must meet the Trichomoniasis testing requirements. (5-3-03)

04. Bulls Consigned to Slaughter or to an Approved Feedlot. Bulls consigned directly to slaughter at an approved slaughter establishment or to an approved feedlot for finish feeding for slaughter are exempt from testing requirements. (5-3-03)

05. Bulls in Northern Idaho. Bulls located in the area of Idaho north of the Salmon River are exempt from the annual testing requirement~~.~~, except: ~~*This exemption does not apply to the sale and purchase of non-virgin breeding bulls, nor does it apply to bulls imported into the state for breeding purposes.*~~ ~~*(5-3-03)*~~(9-1-04)T

a. Non-virgin breeding bulls that are purchased or sold shall be Trichomoniasis tested. (9-1-04)T

b. Non-virgin breeding bulls that are imported into Northern Idaho shall meet the importation requirements of Section 223. (9-1-04)T

c. Bulls in Northern Idaho that cross into the area of Idaho south of the Salmon River shall be tested negative to a Trichomoniasis culture test within thirty (30) days prior to entering Southern Idaho and shall have had no contact with female cattle from the time of test to the time that they enter Southern Idaho, unless consigned directly to slaughter at an approved slaughter establishment or to an approved feedlot for finish feeding for slaughter. (9-1-04)T

06. Extension of Testing Deadline. The Administrator may grant an extension of time beyond April 15 to accomplish Trichomoniasis testing after the owner submits a written request for extension of time to the Division of Animal Industries. (9-1-04)T

a. The written request shall outline the reasons for the extension request and the length of extended time being requested. (9-1-04)T

b. The herd of bulls shall be put under Hold Order until the owner furnishes documentation that the bulls have been tested. (9-1-04)T

(BREAK IN CONTINUITY OF SECTIONS)

223. IMPORTED BULLS.

01. Non-Virgin Bulls. ~~*Bulls imported into the state of Idaho shall be negative to a Trichomoniasis culture test within thirty (30) days prior to import and shall have had no contact with female cattle from the time of test to the time of import.*~~ Non-virgin breeding bulls may be imported into the state of Idaho provided they meet the

following requirements: ~~*(5-3-03)*~~(9-1-04)T

a. ~~*The certificate of veterinary inspection upon which the bulls are imported shall contain a statement that "Trichomoniasis has not been diagnosed in the herd of origin."*~~ If the bull originates from a herd of bulls wherein all bulls have tested negative for Trichomoniasis since being removed from cows, the bull shall have been tested negative to a Trichomoniasis culture test within thirty (30) days prior to import and shall have had no contact with female cattle from the time of test to the time of import; or ~~*(5-3-03)*~~(9-1-04)T

b. If the bull originates from a herd where one (1) or more bulls or cows have been found infected with Trichomoniasis, the bull shall have three (3) consecutive negative Trichomoniasis culture tests. The samples for each test shall be collected at least seven (7) days apart and cultured for Trichomoniasis, the last test being within thirty (30) days prior to import into Idaho; or (9-1-04)T

c. If the bull is a single bull with no prior herd test history or originates from a herd of bulls that is still with cows or that has not been tested for Trichomoniasis since being removed from cows, the bull shall have three (3) consecutive negative Trichomoniasis culture tests. The samples for each test shall be collected at least seven (7) days apart and cultured for Trichomoniasis, the last test being within thirty (30) days prior to import into Idaho. (9-1-04)T

~~**b**~~**d.** Upon arrival at their destination in Idaho, all imported bulls shall be identified with an official Trichomoniasis bangle tag of the correct color for the current testing season, except imported dairy bulls that will be in a dry lot operation are not required to be identified with an official Trichomoniasis tag upon arrival at their destination. (5-3-03)

02. Virgin Bulls. Bulls twenty-four (24) months of age or less that have never serviced a cow are not required to be Trichomoniasis tested prior to import into Idaho, provided that: (5-3-03)

a. Such bulls shall be accompanied by a certificate signed by the owner or the owner's representative attesting that the animals are virgin bulls and have never serviced a cow; and (5-3-03)

b. Upon arrival at their destination in Idaho, such bulls shall be identified with an official Trichomoniasis bangle tag of the correct color for the current testing season. (5-3-03)

03. Bulls for Grazing. Bulls that are entering Idaho for grazing purposes shall meet the Trichomoniasis test requirements of Section 220. A copy of the certificate of negative Trichomoniasis test shall accompany the grazing permit application. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

234. INFECTIONS WITH OTHER TYPES OF TRICHOMONADS.
Bulls that have had a positive culture result for trichomoniasis testing may be further evaluated to determine if the organism is *Tritrichomonas foetus* or another species of trichomonad. Bulls having ~~*initially*~~ positive trichomoniasis culture results on the initial test will not be considered positive for trichomoniasis under the provisions of this rule if they meet the following criteria: ~~*(3-20-04)*~~(9-1-04)T

~~***01. Bona Fide Virgin Bull**. The bull is a virgin bull under twenty-four (24) months of age and has never serviced a cow; and* *(3-20-04)*~~

0~~2~~1. Trichomonad Organisms Identified. The culture media containing the organisms that have been collected from the bull is forwarded to a laboratory, approved by the Administrator, that has the ability to identify the different species of trichomonad organisms and the laboratory is able to identify and report the species of trichomonad organisms present in the culture; and ~~*(3-20-04)*~~(9-1-04)T

0~~3~~2. *Tritrichomonas foetus* Not Present. None of the trichomonad organisms in the submitted culture are identified as *Tritrichomonas foetus*. (3-20-04)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.15 - RULES GOVERNING BEEF CATTLE ANIMAL FEEDING OPERATIONS

DOCKET NO. 02-0415-0401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 22-101 and 22-4903, 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 15, 2004.

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 implements the provisions of HB 682 regarding nutrient management plans, updates referenced materials, and makes technical corrections.

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

To protect the public health, safety or welfare, and to comply with deadlines and amendments to governing law or federal programs.

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

NEGOTIATED RULEMAKING: Pursuant to Section 04.11.01.811, negotiated rulemaking was not conducted because changes were mandated by changes in statute.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact John Chatburn, Deputy Administrator, (208) 332-8540.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2004.

DATED this 19th day of July, 2004.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701-0790
(208) 332-8500
Fax (208) 334-4062

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0415-0401

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001. TITLE AND SCOPE.

01. Title. The title of this chapter is "Rules ~~*of the Department of Agriculture*~~ Governing Beef Cattle Animal Feeding Operations". ~~*(3-16-01)*~~(8-1-04)T

02. Scope. These rules shall govern the design, function, and management practices of waste systems on beef cattle animal feeding operations. The official citation of this chapter is IDAPA 02.04.15.000 et seq. For example this section's citation is IDAPA 02.04.15.001. (3-16-01)

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.
Copies of these documents may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.04.15 incorporates by reference: (3-16-01)

01. The 200~~0~~4 Code of Federal Regulations (CFR) Title 40 Part 122 Section 122.23 ~~*and Part 122 Appendix B*~~ (b)(1), (b)(2), (b)(4), (b)(6), or (b)(9). ~~*(3-16-01)*~~(8-1-04)T

02. The 1997 United States Department of Agriculture Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10 D. (3-16-01)

03. The 2000 American Society of Agricultural Engineers Standard EP393.3. (3-16-01)

04. The 1999 Publication by the United States Department of Agriculture, Natural Resource Conservation Service, Conservation Practice Standard, Nutrient Management Code 590. (3-16-01)

(BREAK IN CONTINUITY OF SECTIONS)

007. -- 009. (RESERVED).

0~~07~~10. DEFINITIONS.
The following definitions shall apply in the interpretation and enforcement of this chapter. (3-16-01)

01. Administrator. The administrator of the Idaho State Department of Agriculture, Division of Animal Industries or his designee. (8-1-04)T

0~~1~~2. Animal. Bovidae, ovidae, suidae, equidae, captive cervidae, captive antilocapridae, camelidae, and ratitidae. (3-16-01)

0~~2~~3. Animal Feeding Operation. A lot or facility where slaughter ~~*or*~~ and feeder cattle or dairy heifers are confined and fed for a total of forty-five (45) days or more during any twelve (12) month period and crops, vegetation forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility. ~~*(3-16-01)*~~(8-1-04)T

0~~3~~4. Beef Cattle Animal Feeding Operation. An animal feeding operation, as defined in 40 CFR Sections 122.23 ~~*and 40 CFR part 122, appendix B*~~ (b)(1), (b)(2), (b)(4), (b)(6) or (b)(9), which confines slaughter ~~*or*~~ and feeder cattle or dairy heifers. ~~*(3-16-01)*~~(8-1-04)T

0~~4~~5. **Best Management Practices**. Practices as defined in Title 22, Chapter 49, Idaho Code or other practices, techniques, or measures that are determined to be a cost-effective and practicable means of preventing or reducing pollutants from point or non-point sources to a level compatible with state environmental goals. (3-16-01)

0~~5~~6. **Compost**. A biologically stable material derived from the biological decomposition of organic matter. (3-16-01)

0~~6~~7. **Director**. The Director of the Idaho State Department of Agriculture or his designee. ~~(3-16-01)~~(8-1-04)T

0~~7~~8. **Discharge**. Release of process wastewater or manure from a beef cattle animal feeding operation to waters of the state. (3-16-01)

0~~8~~9. **Land Application**. The spreading on, or incorporation of manure or process wastewater into the soil. (3-16-01)

~~09~~10. **Manure**. Animal excrement generated on a beef cattle animal feeding operation that may also contain bedding, spilled feed, water, or soil. (3-15-02)

1~~0~~1. **Modified**. Structural changes and alterations to the wastewater storage containment facility, which would require increased storage or containment capacity or such changes, which would alter the function of the wastewater storage or containment facility. (3-16-01)

1~~1~~2. **Non-Compliance**. A practice or condition that causes an unauthorized discharge or a practice or condition that if left uncorrected will cause an unauthorized discharge. (3-16-01)

1~~2~~3. **Nutrient Management Plan**. A plan prepared in conformance with the nutrient management standard, provisions required by 40 CFR 122.42(e)(1), or other equally protective standard for managing the amount, source, placement, form, and timing of the land application of nutrients or soil amendments. ~~(3-16-01)~~(8-1-04)T

1~~3~~4. **Nutrient Management Standard**. The 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service, Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. (3-16-01)

1~~4~~5. **Operate**. Confining and feeding slaughter ~~or~~ and feeder cattle in the state of Idaho. ~~(3-16-01)~~(8-1-04)T

1~~5~~6. **Operator**. The person who has power or authority to manage, or direct, or has financial control of a beef cattle animal feeding operation. (3-16-01)

1~~6~~7. **Person**. Any individual association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state, or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties. (3-16-01)

1~~7~~8. **Process Wastewater**. ~~*Any water generated on a beef cattle animal feeding operation that comes into contact with manure, compost, bedding, or feed, and runoff.*~~ Liquid containing beef cattle manure, process generated wastewater and any precipitation which comes into direct contact with livestock manure and facility products or by-products. ~~(3-15-02)~~(8-1-04)T

1~~8~~9. **Runoff**. Any precipitation that comes into contact with manure, compost, bedding, or feed on a beef cattle animal feeding operation. (3-15-02)

~~19~~20. **Slaughter ~~or~~ and Feeder Cattle**. All cattle except those cattle located on a dairy farm permitted by the Idaho State Department of Agriculture pursuant to IDAPA 02.04.14, "Rules of the Department of Agriculture Governing Dairy Waste." ~~(3-16-01)~~(8-1-04)T

2~~0~~1. **Unauthorized Discharge**. A discharge of process wastewater or manure from a beef cattle animal

feeding operation to surface waters of the state that is not authorized by a National Pollutant Discharge Elimination System permit issued by the United States Environmental Protection Agency, or the release of process wastewater or manure from a beef cattle animal feeding operation, to waters of the state, that does not meet the requirements of the act or water quality standards. (3-16-01)

2~~1~~2. Wastewater Storage and Containment Facility. That portion of a beef cattle animal feeding operation where manure or process wastewater is stored or collected. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds. (3-16-01)

2~~2~~3. Waters of the State. All surface and ground water located within the boundaries of the state or boundary streams, rivers and lakes except for private waters as defined in Title 42, Chapter 2, Idaho Code. (3-16-01)

~~008. -- 009. (RESERVED).~~

011. ABBREVIATIONS.

01. NMP. Nutrient Management Plan. (8-1-04)T

02. NPDES. National Pollutant Discharge Elimination System. (8-1-04)T

03. NRCS. United States Department of Agriculture, Natural Resources Conservation Service. (8-1-04)T

01~~0~~2. ~~*UNAUTHORIZED*~~ PROHIBITED DISCHARGES.
Unauthorized discharges of manure or process wastewater from beef cattle animal feeding operations or land application sites owned or controlled by a beef cattle animal feeding operation are prohibited. ~~*(3-16-01)*~~(8-1-04)T

01~~1~~3. NOTIFICATION OF DISCHARGE.

01. Notification Within Twenty-Four Hours of Discharge. Within twenty-four (24) hours of learning of a discharge, the operator of a beef cattle animal feeding operation shall verbally notify the Director of such a discharge. (3-16-01)

02. Written Notification Within Five Days. If the Idaho Department of Agriculture has not begun a discharge investigation within five (5) days of the verbal notification to the Director, the operator shall submit a written report to the Director which includes: (3-16-01)

a. A description of the discharge, a description of the flow path to the receiving water body; (3-16-01)

b. An estimation of the flow rate and volume discharged; (3-16-01)

c. The period of discharge, including dates and times, and if not already corrected, the anticipated time the discharge is expected to continue; and (3-16-01)

d. Steps taken to reduce, eliminate and prevent recurrence of the discharge. (3-16-01)

01~~2~~4. -- 019. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

030. NUTRIENT MANAGEMENT.
Each beef cattle animal feeding operation shall submit a nutrient management plan for land owned or controlled by the operator, which conforms to the nutrient management standard and addresses odors generated in excess of odors

normally associated with raising beef cattle in Idaho, to the Director for approval. Following department review and approval, the plan, and all copies of the plan, shall be returned to the operation and maintained on site. ~~(3-15-02)~~(8-1-04)T

01. Existing Beef Cattle Animal Feeding Operations. Beef cattle animal feeding operations that are operating on or before July 1, 2000 shall submit a ~~*nutrient management plan*~~ NMP to the director for approval no later than January 1, 2005. The Director shall respond to or approve such plan in writing within forty-five (45) days of submission. ~~(3-15-02)~~(8-1-04)T

02. New Beef Cattle Animal Feeding Operations. Any new beef cattle animal feeding operation commencing operations after July 1, 2000 shall not operate prior to the Director's approval of a ~~*nutrient management plan*~~ NMP. The Director shall respond to or approve such plan within forty-five (45) days of submission. ~~(3-15-02)~~(8-1-04)T

03. Implementation of a Nutrient Management Plan. Failure to implement an approved ~~*nutrient management plan*~~ NMP is a violation of these rules. ~~(3-15-02)~~(8-1-04)T

031. NUTRIENT MANAGEMENT PLAN RETENTION.
All approved NMPs shall be maintained on site at the beef cattle animal feeding operation and available to the Administrator upon request. (8-1-04)T

032. NUTRIENT MANAGEMENT RECORDS.
The operators of beef cattle animal feeding operations shall keep complete and accurate records of: (8-1-04)T

01. Land Application. The dates and amounts of any manure or process wastewater applied on land owned or controlled by the operator. (8-1-04)T

02. Manure Transferred to Another Person. The name and address of any third party that receives manure or process wastewater from the operation, including the dates of the transfer and the amount of manure or process wastewater transferred. (8-1-04)T

03. Records Retention. All records shall be maintained for a period of five (5) years and presented to the Administrator upon request. (8-1-04)T

03~~1~~3. -- 039. (RESERVED).

040. DESIGNATION OF BEEF CATTLE ANIMAL FEEDING OPERATIONS.

01. Designation of Animal Feeding Operations. The Director, on a case by case basis, may designate any animal feeding operation that confines slaughter ~~*or*~~ and feeder cattle as a beef cattle animal feeding operation if, after an inspection, the Director determines that the animal feeding operation is a significant contributor of pollution to waters of the state. The designation shall be provided to the operator of the animal feeding operation in writing setting forth the basis for the Director's decision. When designated, these operations shall be considered existing beef cattle animal feeding operations. The Director shall consider the following factors when making such designation: ~~(3-15-02)~~(8-1-04)T

a. Size of the animal feeding operation and the amount of manure, process wastewater, and runoff reaching waters of the state; (3-15-02)

b. Location of the animal feeding operation relative to waters of the state; (3-15-02)

c. Means of conveyance of manure, process wastewater, and runoff into waters of the state; and (3-15-02)

d. Slope, vegetation, precipitation, and other factors affecting the likelihood or frequency of discharge of manure, process wastewater, or runoff into waters of the state. (3-15-02)

02. Redesignation of a Beef Cattle Animal Feeding Operation. Upon request by the operator, the Director shall redesignate a facility previously designated under Section 040, if the facility is no longer a significant contributor of pollution to waters of the state. Such redesignation shall be provided to the operator in writing. (3-15-02)

041. -- 049. (RESERVED).

050. AUTHORITY TO INSPECT.
The Director ~~*or his designee*~~ is authorized to inspect any animal feeding operation that confines slaughter or feeder cattle in accordance with Title 22, Chapter 49, Idaho Code, to ensure compliance with these rules. The Director shall comply with the operation's biosecurity protocol so long as the protocol does not inhibit reasonable access to: ~~*(3-16-01)*~~(8-1-04)T

01. **Entry**. Enter and inspect at reasonable times ~~*upon*~~ the premises or land application site(s) of a~~*n*~~ beef cattle animal feeding operation ~~*or where records are kept*~~. ~~*(3-16-01)*~~(8-1-04)T

02. Access to Records. ~~*Have access to and*~~ Review or copy any records that must be kept in accordance with these rules. ~~*(3-16-01)*~~(8-1-04)T

03. Sample or Monitor. Sample ~~*substances*~~ or monitor at reasonable times, substances or parameters directly related to compliance with these rules or an NPDES permit. ~~*(3-16-01)*~~(8-1-04)T

~~***04. Inspections**. Inspect any facility or land application site owned or controlled by the operator.*~~ ~~*(3-15-02)*~~

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.26 - RULES GOVERNING LIVESTOCK MARKETING

DOCKET NO. 02-0426-0401 (NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 25-207, 25-305, 25-601, 25-1723, and 25-3520 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 15, 2004.

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 it supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule details the requirements for Public Livestock Markets. It is modification of a rule that was rejected by the 2004 Legislature. The rule has been modified to reflect the recommendations of the germane legislative committees.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To protect the public health, safety and welfare.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule is a rewrite of a rule that was rejected by the 2004 Legislature. This rule incorporates the recommendations of the germane legislative committees.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact John Chatburn, Deputy Administrator, (208) 332-8540.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2004.

DATED this 19th day of July, 2004.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701-0790
(208) 332-8500
Fax (208) 334-4062

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0426-0401

IDAPA 02
TITLE 04
CHAPTER 26

02.04.26 - RULES GOVERNING LIVESTOCK MARKETING

000. LEGAL AUTHORITY.
This chapter is adopted under the legal authority of Title 25, Chapters 2, 3, 6, 17, and 35, Idaho Code. (8-1-04)T

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.04.26, "Rules Governing Livestock Marketing". (8-1-04)T

02. Scope. These rules shall govern the facilities, record keeping, identification, quarantine facilities, and movement of livestock through public livestock markets. The official citation of this chapter is IDAPA 02.04.26.000 et seq. For example, this section's citation is IDAPA 02.04.26.001. (8-1-04)T

002. WRITTEN INTERPRETATIONS.
There are no written interpretations of these rules. (8-1-04)T

003. ADMINISTRATIVE APPEAL.
Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (8-1-04)T

004. INCORPORATION BY REFERENCE.

01. Incorporated Documents. The following documents are incorporated by reference: Code of Federal Regulations, Title 9, Parts 71, 75, 77, 78, 85, and 161, CFR, January 1, 2003. (8-1-04)T

02. Availability of Documents. Copies of these documents may be obtained from the Idaho State Department of Agriculture central office. (8-1-04)T

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

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-0790. (8-1-04)T

02. Office Hours. Office hours are 8 a.m. to 5 p.m. Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (8-1-04)T

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P. O. Box 790, Boise, Idaho 83701. (8-1-04)T

04. Telephone Number. The telephone number for the Division of Animal Industries at the central office is (208) 332-8540. (8-1-04)T

05. Fax Number. The fax number for the Division of Animal Industries at the central office is (208) 334-4062. (8-1-04)T

006. IDAHO PUBLIC RECORDS ACT.
These rules are public records available for inspection and copying at the central office of the Idaho State Department of Agriculture. (8-1-04)T

007. -- 009. (RESERVED).

010. DEFINITIONS.
The following definitions shall apply in the interpretation and enforcement of this chapter. (8-1-04)T

01. Accredited Veterinarian. A veterinarian approved by the Administrator and the USDA/APHIS/VS, in accordance with the provisions of Tile 9, Part 161, Code of Federal Regulations, to perform functions of State-Federal animal disease control programs. (8-1-04)T

02. Administrator. The administrator of the Division of Animal Industries, Idaho State Department of Agriculture or his designee. (8-1-04)T

05. Approved Slaughter Establishment. A USDA inspected slaughter establishment where ante-mortem and post-mortem inspections are conducted by USDA inspectors. (8-1-04)T

06. Brucellosis. An infectious disease of animals and humans caused by bacteria of the genus *Brucella*. (8-1-04)T

07. Cattle. All domestic bovidae, including domestic bison. (8-1-04)T

08. Department. The Idaho State Department of Agriculture. (8-1-04)T

09. Director. The director of the Idaho State Department of Agriculture, or his designee. (8-1-04)T

10. Division. Idaho State Department of Agriculture, Division of Animal Industries. (8-1-04)T

11. Domestic Bison. All animals in the genus *Bison*, which are owned by a person. (8-1-04)T

12. Domestic Cervidae. Elk, fallow deer, and reindeer owned by a person. (8-1-04)T

13. Epithelioma of the Eye. Carcinoma of the eye of cattle commonly known as cancer eye.(8-1-04)T

14. Federal Animal Health Official. An employee of USDA/APHIS/VS who is authorized to perform animal health activities. (8-1-04)T

15. Herd. Any group of livestock maintained on common ground, or two (2) or more groups of livestock under common ownership or supervision that are geographically separated from other groups but can have an interchange or movement without regard to health status. (8-1-04)T

16. Interstate Movement. Movements of livestock from Idaho into any other state, territory or the District of Columbia or from any other state, territory or the District of Columbia into Idaho. (8-1-04)T

17. Livestock. Cattle, domestic bison, swine, horses, mules, asses, domestic cervidae, sheep, goats, camelids, and ratites. (8-1-04)T

19. Lump Jaw. A condition known as actinomycosis or actinobacillosis in cattle. (8-1-04)T

20. Official Ear Tag. An APHIS approved identification ear tag conforming to an alphanumeric national uniform ear tagging system, which provides unique identification for each animal. (8-1-04)T

21. **Official Individual Identification**. Official USDA approved ear tag, USDA back tag, registration tattoo, or identification approved by the Administrator. (8-1-04)T

22. **Official Vaccination Ear Tag**. An APHIS approved identification ear tag conforming to the alphanumeric national uniform ear tagging system, which provides unique identification for each animal. (8-1-04)T

23. **Operator**. The person who has authority to manage or direct a public livestock market. (8-1-04)T

24. **Owner**. The person who owns or has financial control of a public livestock market. (8-1-04)T

25. **Person**. Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (8-1-04)T

26. **Public Livestock Market**. Any place, establishment, or facility owned or operated by a person in which livestock is received, held, sold or kept for sale or shipment, which is conducted or operated for compensation or profit as a public market for livestock. (8-1-04)T

27. **Restraint**. The confinement of livestock in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. (8-1-04)T

28. **State Animal Health Official**. The Administrator, or his designee, responsible for disease control and eradication activities. (8-1-04)T

29. **Tuberculosis**. An infectious disease of humans and animals caused by *Mycobacterium bovis*. (8-1-04)T

30. **USDA Back Tag**. A back tag issued by APHIS that conforms to the eight (8) character alphanumeric National Back Tagging System and that provides unique identification for each animal. (8-1-04)T

011. ABBREVIATIONS.

01. **APHIS**. Animal Plant Health and Inspection Service. (8-1-04)T

02. **CFR**. Code of Federal Regulations. (8-1-04)T

03. **USDA**. United States Department of Agriculture. (8-1-04)T

04. **VS**. Veterinary Services. (8-1-04)T

012. -- 019. (RESERVED).

020. APPLICABILITY.
These rules apply to chartered public livestock markets operating in Idaho. (8-1-04)T

021. -- 029. (RESERVED).

030. INSPECTIONS.
To prevent the introduction and dissemination, or to control and eradicate diseases, state and federal animal health officials are authorized to inspect livestock records, premises, facilities, and livestock to ensure compliance with the provisions of this chapter and other state or federal laws or rules applicable to public livestock markets. (8-1-04)T

01. **Entering Premises**. In order to conduct activities authorized by this chapter, state or federal animal health officials are authorized to enter public livestock market premises during normal business hours. (8-1-04)T

02. **Inspecting Records**. To ensure compliance with the provisions of this chapter, state or federal animal health officials are authorized, during normal business hours, to have access to, inspect, review, and copy any

livestock records deemed necessary. (8-1-04)T

031. -- 039. (RESERVED).

040. LIVESTOCK TREATMENT.
Each public livestock market shall humanely treat all livestock. All non-ambulatory livestock shall be: (8-1-04)T

01. Returned. Returned to the owner; or (8-1-04)T

02. Feed and Water. Provided adequate feed and clean water; or (8-1-04)T

03. Euthanized. Humanely euthanized, and disposed of in accordance with IDAPA 02.04.17 "Rules Governing Dead Animal Movement and Disposal". (8-1-04)T

041. -- 049. (RESERVED).

050. DEAD ANIMAL DISPOSAL.
The movement and disposal of all dead animals shall be pursuant to the provisions of IDAPA 02.04.17 "Rules Governing Dead Animal Movement and Disposal". (8-1-04)T

051. -- 059. (RESERVED).

060. ENVIRONMENTAL REQUIREMENTS.
All public livestock markets shall meet the provisions of IDAPA 02.04.15 "Rules Governing Beef Cattle Animal Feeding Operations". (8-1-04)T

061. -- 099. (RESERVED).

100. PUBLIC LIVESTOCK MARKET CHARTER.
No person shall conduct or operate a public livestock market without first securing a charter from the Department. Charters shall expire on April 30 of each year. It shall be the responsibility of the public livestock market operator to apply each year for charter renewal. (8-1-04)T

101. PUBLIC LIVESTOCK MARKET MINIMUM SALE REQUIREMENT.
Each chartered public livestock market shall conduct a minimum of one (1) sale during each calendar year. (8-1-04)T

102. -- 109. (RESERVED).

110. MARKET RELEASE.
Prior to any livestock being released from a public livestock market, the following conditions shall be fulfilled: (8-1-04)T

01. **Veterinary Inspection**. A visual inspection, of each animal, shall be made by an accredited veterinarian authorized to provide veterinary services to the market. (8-1-04)T

02. Affected Animals. Any animals determined to be affected by any infectious or contagious disease shall be immediately isolated in quarantine pens and are subject to the market's bio-security protocol. (8-1-04)T

03. Removal of Animals. No animals shall be removed from the livestock market until all animals determined to be affected with a contagious or infectious disease have been examined by an accredited veterinarian authorized to provide veterinary services to the market. (8-1-04)T

04. **Saleyard Release Form**. An accurate and legible "Saleyard Release" form, certificate of veterinary inspection, or other market release mechanism, approved by the Administrator, shall be completed certifying that the animals meet the health requirements for movement to the point of destination. (8-1-04)T

111. -- 114. (RESERVED).

115. BIO-SECURITY PLAN.
All public livestock markets shall submit a bio-security plan to the Administrator for approval. All approved bio-security plans shall be implemented by the public livestock market. Each bio-security plan shall include, but not be limited to, the following elements: (8-1-04)T

01. Identification. Procedures for identifying animals that are affected by any contagious or infectious disease. (8-1-04)T

02. Diagnosis. Procedures for examination and diagnosis, by an accredited veterinarian, of any animals affected by any contagious or infectious disease. (8-1-04)T

03. Disposition. Procedures for the disposition of any livestock diagnosed as affected by any contagious or infectious disease. (8-1-04)T

04. Records. Complete and accurate records shall be kept on site at the livestock market, showing that the market's bio-security plan is being implemented. (8-1-04)T

116. -- 119. (RESERVED).

120. IDENTIFICATION.
All livestock entering a public livestock market shall be individually identified to the herd of origin. (8-1-04)T

121. APPROVED FORMS OF IDENTIFICATION.
The following are approved methods of identification. (8-1-04)T

01. Back Tag. USDA approved back tag; or (8-1-04)T

02. Ear Tag. Official USDA ear tag; or (8-1-04)T

03. Registration Tattoo; or (8-1-04)T

04. Brand Inspection. Statement of ownership such as a brand inspection certificate. (8-1-04)T

05. Administrator Approval. The Administrator may approve other forms of identification on a case by case basis. (8-1-04)T

06. Removal of Identification. No animal identification shall be intentionally removed, tampered with, or otherwise altered, except as approved by the Administrator. (8-1-04)T

122. -- 129. (RESERVED).

130. QUARANTINE PENS.
A quarantine pen or pens shall be provided at all public livestock markets and such pens shall only be used to hold animals that have reacted to the brucellosis or tuberculosis test or animals affected with, or suspected of being affected with a contagious or infectious disease, epithelioma of the eye, or lump jaw. The pens shall comply with the following requirements: (8-1-04)T

01. Hard Surface. Hard surfaced with concrete or similar impervious material in good repair; and (8-1-04)T

02. Feed and Water. Adequate feed and clean water facilities which are completely separate from all other livestock; and (8-1-04)T

03. Signage. Identified with the word "QUARANTINE" in red letters, not less than four (4) inches high, on a white background on the pen gate; and (8-1-04)T

04. Cleaning and Disinfection. Cleaned and disinfected no later than the day following date of sale; and (8-1-04)T

05. Fence Construction. The fence shall be solid, constructed by boards or other material approved by the Administrator, and shall be a minimum of five and one-half (5 ½) feet high; and (8-1-04)T

06. Drainage. Drainage shall not be onto adjoining pens, restraint facilities or alleys. (8-1-04)T

131. -- 149. (RESERVED).

150. RESTRAINT FACILITIES.
Each public livestock market shall have a restraint system, approved by the Administrator, for humanely, efficiently, and effectively restraining livestock for the purpose of inspecting, identifying, treating, or testing of animals by state or federal animal health officials. (8-1-04)T

151. -- 159. (RESERVED).

160. SANITARY CONDITIONS.
All pens, alleys, troughs, restraint facilities, and runways shall be kept in a sanitary condition. Operators of public livestock markets shall clean and disinfect livestock market facilities, under the supervision of a state or federal animal health official, upon request by the Administrator. (8-1-04)T

161. -- 169. (RESERVED).

170. RECORDS.
Each public livestock market shall keep sufficient records of animals presented for sale to enable state or federal animal health officials to trace such animals satisfactorily to their herd of origin, and such records shall be maintained for a minimum of five (5) years. (8-1-04)T

171. -- 989. (RESERVED).

990. PENALTIES.
Any person who violates any of the provisions of this chapter may be subject to the criminal and civil penalties provided in Title 25, Chapters 2, 6, 17, and 35, Idaho Code. (8-1-04)T

991. -- 998. (RESERVED).

999. MINOR VIOLATIONS.
Nothing in this chapter shall be construed as requiring the Administrator to report minor violations when the Administrator believes that the public interest will be best served by suitable warnings or other administrative action. (8-1-04)T

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.01 - RULES GOVERNING THE PURE SEED LAW

DOCKET NO. 02-0601-0401 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-418, 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 15, 2004.

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

To change Subsection 02.06.01.500.03 to add an administrative fee of $2.00 per test to cover the costs associated with installing and maintaining a new computer program that will allow companies to view and obtain official test results over the Internet.

To add a new Subsection to Section 02.06.01.600.03 to allow for an exemption from an Idaho Seed Dealer's License for a seed dealer who sells, offers for sale, exposes for sale or delivers seed only in packages of less than eight (8) ounces.

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

The change will allow an administrative fee of $2.00 per test to cover the costs associated with installing and running the new software changes. Once the these initial costs of the system have been recovered the fee will be reduced to a maintenance level.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted due to the nature of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper, Acting Administrator at (208) 332-8620; Dick Lawson, Lab Manager at (208) 332-8630 or George Robinson, Bureau Chief at (208) 332-8593.

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 22, 2004.

DATED this 28th day of July, 2004.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0601-0401

500. SERVICE TESTING FEES.

01. Table 1. Purity, Germination and Tetrazolium Fees.

Purity, Germination and Tetrazolium Fees			
Kind of Seeds:	**Purity* $/Unit**	**Germination** $/Unit**	**Tetrazolium $/Unit**
Alfalfa	16.00	14.00	24.50
Alkali grass	19.00	12.50	24.50
Asparagus	15.50	14.00	24.50
Beans:			
Field and Garden	13.00	14.00	22.00
Lima	12.50	19.00	22.00
Beardgrass (Bluestem)	42.00	22.00	27.50
Beets	19.50	22.00	30.00
Bentgrass and Red top	34.50	16.50	26.50
Bermuda grass	22.50	15.50	24.50
Blue Gama	26.00	19.00	24.50
Bluegrass	24.50	16.50	24.50
Brassica (Except Radish)	33.00	16.50	26.50
Brittlebrush	84.00	20.00	24.50
Bromegrass	25.50	14.00	24.50
Canary grass	19.00	13.00	24.50
Cane Bluestem	42.00	22.00	27.50
Canola/Rapeseed	36.00	16.50	26.50
Cantaloupe	15.00	13.50	24.50
Carrot	15.50	14.50	24.50
Celery	17.50	14.00	24.50
Cereals (Except Oats)	19.50	14.00	24.50
Clovers:			
Red Clover	16.50	14.00	24.50
Other Clovers	16.00	14.50	24.50
Corn	15.50	14.00	20.00
Creosotebush	70.00	20.00	27.50
Cucumbers	15.00	13.50	24.50
Eggplant	15.00	13.50	24.50
Endive	15.00	14.00	24.50

Purity, Germination and Tetrazolium Fees			
Kind of Seeds:	**Purity* $/Unit**	**Germination** $/Unit**	**Tetrazolium $/Unit**
Fescue	24.00	14.00	24.50
Flax	22.50	15.50	24.50
Green Needlegrass	19.50	18.00	24.50
Indian Ricegrass	19.00	18.00	24.50
Kochia	24.50	14.00	24.50
Leek	19.00	16.50	24.50
Lentil	15.00	14.00	24.50
Lettuce	15.50	14.00	24.50
Little/Small Burnet	16.50	15.50	24.50
Meadow Foxtail	31.50	15.00	24.50
New Zealand Spinach	15.00	23.50	30.00
Oats	21.00	14.00	24.50
Oatgrass	19.00	12.50	27.50
Okra	28.00	15.50	24.50
Onion	15.50	14.00	24.50
Orchardgrass	27.50	15.50	24.50
Parsley	16.00	14.00	24.50
Parsnip	16.00	14.00	24.50
Peas: Field and Garden	15.00	14.50	22.00
Chickpeas / Garbanzo	13.00	18.50	22.00
Pepper	15.50	14.50	24.50
Pumpkin	15.00	14.00	24.50
Radish	16.00	14.00	24.50
Rubber Rabbitbush	84.00	24.00	24.50
Ryegrass	24.00	13.50 26.50***	24.50
Sagebrush	84.00	17.50	27.50
Sainfoin	16.00	14.50	24.50
Saltbush	53.50	16.00	27.50
Senna	54.00	20.00	27.50
Squash	15.00	14.00	24.50
Sudangrass/Sorghum	18.50	15.50	24.50

Purity, Germination and Tetrazolium Fees			
Kind of Seeds:	**Purity* $/Unit**	**Germination** $/Unit**	**Tetrazolium $/Unit**
Sunflower	23.50	14.00	24.50
Swiss Chard	19.50	22.00	30.00
Timothy	18.50	13.50	24.50
Tomato	15.50	13.50	24.50
Trefoil	16.00	14.50	24.50
Vetches	16.50	14.00	24.50
Watermelon	15.00	14.00	24.50
Wheatgrasses	36.50	16.50	24.50
Wheatgrass, fairway crested	41.00	16.50	24.50
Wild rye	25.50	13.50	24.50
Winterfat	96.00	19.50	24.50

* All samples submitted for purity should contain a minimum of three thousand (3,000) seeds.
** All samples submitted for germination should contain a minimum of eight hundred (800) seeds.
*** With Fluorescence.

(4-2-03)

02. Table 2. Special Testing Fees.

Table 2. Special Testing Fees	
Test Procedures:	**Fees $/Unit**
All States Noxious	12.00
Ammonia Test	33.00
Canada: Purity Germination	 13.00 Added to purity fee 2.50 Added to germination fee
Cold Test	23.50
Crop & Weed Check	24.50
Cut Test	22.00
Dormancy Percentage	5.50 or Dormant % found x germination fee
E.C. Norms	20.00
Foreign Material	12.00
Grading (beans)	18.00
Hay Pellet Germination	18.00
Identification	3.50

Table 2. Special Testing Fees	
Test Procedures:	**Fees $/Unit**
Inventory Germinations (For Carryover Seed Only, when requested)	20% Discount of listed germination fee; Available only for the months of March through July.
ISTA:	
Purity	13.00 Added to purity fee
Germination	2.50 Added to germination fee
Mixtures:	
Purity	12.50 Added per kind exceeding 5%
Germination	12.50 Added per kind exceeding 5%
Tetrazolium	18.00 Added per kind exceeding 5%
Moisture Test	14.00
1,000 Seed Count	13.50
Pest, Disease, Soil & Ergot Check	13.50
Quarantine (Poa annua & Poa trivialis)	29.50
Sod Quality:	
Bentgrass	66.00
Bermudagrass	64.00
Bluegrass	64.00
Soil Germination	23.50
Species Test	24.50
Sprout Check	12.00
Undesirable Grass Species	25.50

(4-2-03)

03. Table 3. Miscellaneous Fees.

Table 3. Miscellaneous Fees	
Type of Service:	**Fees $/Unit**
Administrative Charge per Test for Internet Access and Data Processing.	Not to exceed $2.00 per test
FAX	$ 3.00 per sheet
Hourly Charge for Analysis	$ 38.50
Preparation Time	$ 38.50/Hour: When necessary on germination and tetrazolium samples.
Reports:	
Copies	$ 1.50
Merge Records	$ 4.00
Retyped	$ 4.50

Table 3. Miscellaneous Fees	
Type of Service:	**Fees $/Unit**
Revised	$ 7.00
Rush Service	$ 20.00

~~*(4-2-03)*~~(____)

501. – 599. (RESERVED).

600. SEED DEALER'S LICENSE FEES.
Seed dealers shall obtain a seed dealer's license for each location in Idaho before they can sell, offer for sale, expose for sale or deliver agricultural seeds in packages of eight (8) ounces or more or bulk under contract within the state of Idaho. Seed dealers shall pay only for the service or services they render according to the following fee schedule: (3-18-99)

01. In-State Seed Dealer's License Fees: (4-2-03)

a. License to condition or clean agricultural seeds in Idaho - one-hundred dollars ($100). (4-2-03)

b. License to label container or bulk agricultural seeds for sale in Idaho - fifty dollars ($50). (4-2-03)

c. License to sell, offer for sale, expose for sale, or deliver agricultural seeds in packages of eight (8) ounces or more or in bulk under a contract in Idaho: (4-2-03)

i. For annual gross sales of five hundred dollars ($500) or more, but less than one thousand dollars ($1,000) - fifty dollars ($50). (4-2-03)

ii. For annual gross sales of one thousand dollars ($1,000) or more - one hundred dollars ($100). (4-2-03)

02. Out-of-State Seed Dealer's License Fee. Two hundred fifty dollars ($250). (4-2-03)

03. Exemptions. (____)

a. Any person selling seed who has total annual gross seed sales not exceeding five hundred dollars ($500) is exempt from Section 600. ~~*(4-2-03)*~~(____)

b. An in-state dealer or out-of-state dealer who sells, offers for sale, exposes for sale or delivers seed only in packages of less than eight (8) ounces is exempt from Section 600. (____)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.12 - RULES PERTAINING TO THE IDAHO FERTILIZER LAW

DOCKET NO. 02-0612-0401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 28, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 22-604, 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 15, 2004.

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:

Changes to Title 22, Chapter 6, Idaho Code (HB548), now authorize a civil penalty assessment for specialty fertilizers deficient in nutrients as authorized by rule. Specific guidance is needed for assessing penalties as authorized in the revised law. Additionally, the overall index value currently set at 98% has been proven to be too strict and will be decreased to 97%. Some technical corrections are also being made.

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: Changes to the governing law Title 22, Chapter 6, Idaho Code under HB548 necessitate that the rule be adopted as temporary rule in order that the regulatory activities including the assessment of penalties may continue unimpeded.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, informal negotiated rulemaking was conducted through the Idaho State Department of Agriculture Fertilizer and Soil and Plant Amendment Advisory Committee.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Michael E. Cooper, Acting Administrator or Ann Brueck, Program Specialist at (208) 332-8620.

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 22, 2004.

DATED this 27th day of July, 2004.

Michael E. Cooper, Acting Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0612-0401

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.12, "~~*Idaho State Department of Agriculture*~~ Rules Pertaining to the Idaho Fertilizer Law". ~~*(3-30-01)*~~(7-28-04)T

02. Scope. These rules specify general label requirements and label requirements for major and minor element guarantees for fertilizers, minimum percentages allowed for registration, the necessity for warning or caution statements, and set forth investigational allowances from which a product guarantee may deviate without being in violation of the law. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORAT~~*ED*~~ION BY REFERENCE.
Copies of these documents may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.12 incorporates by reference: (3-30-01)

~~***01. The Idaho Fertilizer Act of 2000, Title 22, Chapter 6, Idaho Code, Sections 22-601 Through 22-624;***~~ ~~*(3-30-01)*~~

0~~*2*~~1. ~~*Terms and Definitions of*~~ The Association of American Plant Food Control Officials (AAPFCO) ~~*"2000*~~ Official Publication~~*"*~~. The Terms, Ingredient Definitions, and Policies, ~~*A*~~as published in the "200~~*0*~~4 Official Publication" of ~~*the Association of American Plant Food Control Officials (*~~AAPFCO~~*)*~~ where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder; or ~~*(3-30-01)*~~(7-28-04)T

0~~*3*~~2. The "~~*1996*~~ Merck Index~~*, 12th Edition*~~,". The "2001 Merck Index," 13th Edition as published by Merck Research Laboratories Division of Merck & Co., Incorporated. ~~*(3-30-01)*~~(7-28-04)T

(BREAK IN CONTINUITY OF SECTIONS)

050. INVESTIGATIONAL ALLOWANCES.

01. Use of Investigational Allowances. Investigational Allowances shall be used in determining whether a fertilizer is deficient. Fertilizers which are deemed deficient are subject to penalty. Penalties for deficient fertilizers are found in Section 22-611, Idaho Code. (3-30-01)

02. Deeming a Fertilizer Deficient. A fertilizer shall be deemed deficient if the analysis of any nutrient is below the guarantee by an amount exceeding the values in the following schedules, or if the overall index value of the fertilizer is below ninety-~~*eight*~~seven percent (9~~*8*~~7%). Note: For these investigational allowances to be applicable, the recommended AOAC International procedures for obtaining samples, preparation and analysis must be used. These are described in Official Methods of Analysis of the Association of Official Analytical Chemists, 13th Edition, 1980, and in succeeding issues of the Journal of the Association of Official Analytical Chemists. In evaluating replicate data, Table 19, page 935, Journal of the Association of Official Analytical Chemists, Volume 49, No. 5, October, 1966, should be followed. ~~*(3-30-01)*~~(7-28-04)T

03. Investigational Allowances for Nitrogen, Phosphate and Potash. For guaranteed percentages

not listed in the following table, calculate the appropriate investigational allowance by interpolation.

Guaranteed Percent	Nitrogen Percent	Available Phosphate Percent	Potash Percent
04 or less	0.49	0.67	0.41
05	0.51	0.67	0.43
06	0.52	0.67	0.47
07	0.54	0.68	0.53
08	0.55	0.68	0.60
09	0.57	0.68	0.65
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08
22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more (*)	0.88	0.76	1.44

(*For DAP and MAP, the Investigational Allowance for Available Phosphate shall be zero point seventy (0.70); for TSP, the Investigational Allowance shall be: one point fifty-two (1.52)). For dry custom mix fertilizers, an additional five percent (5%) of the guaranteed percentage shall be granted in addition to the allowances made in Subsection 050.03. ~~*(3-30-01)*~~(7-28-04)T

04. Investigational Allowance for Other Nutrients. Secondary and minor elements shall be deemed deficient if any element is below the guarantee by an amount exceeding the values in the following schedule:

Element		Investigational Allowance
Calcium	)	0.2 unit + 5% of guarantee
Magnesium	)	0.2 unit + 5% of guarantee
Sulfur	)	0.2 unit + 5% of guarantee
Boron	)	0.003 unit + 15% of guarantee
Cobalt	)	0.0001 unit + 30% of guarantee
Chlorine	)	0.005 unit + 10% of guarantee
Copper	)	0.005 unit + 10% of guarantee

Element		Investigational Allowance
Iron	)	0.005 unit + 10% of guarantee
Manganese	)	0.005 unit + 10% of guarantee
Molybdenum	)	0.0001 unit + 30% of guarantee
Sodium	)	0.005 unit + 10% of guarantee
Zinc	)	0.005 unit + 10% of guarantee

The maximum allowance when calculated as specified shall be one (1) unit (one percent (1%)). For dry custom mix fertilizers, an additional five percent (5%) of the guarantee shall be granted in addition to the allowances made above in this section. (3-30-01)

05. Overall Index Value. The overall index value is calculated by comparing the commercial dollar value guaranteed with the commercial dollar value found (Commercial Dollar Value found / Commercial dollar value guaranteed) x 100). Unit dollar values of the nutrients used shall be those referred to in Section 22-612, Idaho Code. The Department will conduct periodic surveys of the industry to determine unit dollar values. ~~(3-30-01)~~(7-28-04)T

06. Examples. ~~*Overall index value - Example of calculation for a 10-10-10 grade found to contain 10.1% Total Nitrogen (N), 10.2% Available Phosphate (P_2O_5) and 10.1% Soluble Potash (K_2O). Nutrient unit values are assumed to be three dollars ($3.00) per unit N, two dollars ($2.00) per unit P2O5, and one dollar ($1.00) per unit K_2O.*~~ The following are examples of calculations for a custom mixed fertilizer of a 12-16-14 grade. For the purpose of these examples, the nutrient unit dollar values for all of the examples are assumed to be twenty-three cents ($.23) per pound of nitrogen, twenty-seven cents ($.27) per pound of available phosphate (P_2O_5), and eighteen cents ($.18) per pound of potash (K_2O).

~~*10.0 units N*~~	~~*x 3 = 30.0*~~
~~*10.0 units P2O5*~~	~~*x 2 = 20.0*~~
~~*10.0 units K2O*~~	~~*x 1 = 10.0*~~
~~*Commercial Value Guaranteed*~~	~~*= 60.0*~~
~~*10.1 units N*~~	~~*x 3 = 30.3*~~
~~*10.2 units P2O5*~~	~~*x 2 = 20.4*~~
~~*10.1 units K2O*~~	~~*x 1 = 10.1*~~
~~*Commercial Value Found*~~	~~*= 60.8*~~
~~*Overall Index Value*~~	~~*= 100 (60.8/60.00) = 101.3%*~~

Example 1. A ten thousand (10,000) pound batch of customer formula fertilizer guaranteed at 12.0-16.0-14.0 is analyzed and found at 10.6-16.4-14.3

Nutrient	Guaranteed	x price/lb	Found	x price/lb
N	12.0	$2.76 ($.23 x 12.0)	10.6	$2.438 ($.23 x 10.6)
P_2O_5	16.0	$4.32 ($.27 x 16.0)	16.4	$4.428 ($.27 x 16.4)

Nutrient	Guaranteed	x price/lb	Found	x price/lb
K_2O	14.0	$2.52 ($.18 x 14.0)	14.3	$2.574 ($.18 x 14.3)
Total		$9.60		$9.44

Overall Index Value = ($9.44/$9.60) x 100 = 98.3%

However, the nitrogen value is in violation. The investigational allowance for a nitrogen guarantee of 12.0% is 0.61% (see the chart in section 02.06.12.050.03 above) plus an additional 5% of the guarantee for customer formula mixes. Therefore the nitrogen value must be at least 10.79%: (12.0 – [.61 + 12.0(.05)] = 10.79%) in order to be within permissible values.

To find the amount (Lbs.) of N deficiency multiply the percent guaranteed by the weight of the lot minus the percentage found multiplied by the weight of the lot.

(.12) (12%) guaranteed x 10,000 lbs) – (.106) (10.6%) found x 10,000 lbs)) = 140 pounds

The penalty will be calculated as three times the value of a deficiency of 140 pounds of nitrogen in the 10,000 pound batch. 3 x [140 ($.23)] = $96.60

Example 2. A ten thousand (10,000) pound batch of customer formula fertilizer guaranteed at 12.0-16.0-14.0 is analyzed at 11.1-15.3-13.1.

Nutrient	Guaranteed	x price/lb	Found	x price/lb
N	12.0	$2.76 ($.23 x 12.0)	11.1	$2.553 ($.23 x 11.1)
P_2O_5	16.0	$4.32 ($.27 x 16.0)	15.3	$4.131 ($.27 x 15.3)
K_2O	14.0	$2.52 ($.18 x 14.0)	13.1	$2.358 ($.18 x 13.1)
Total		$9.60		$9.042

Overall Index Value = ($9.042/$9.60) x 100 = 94.2%

Although each of the individual nutrients is within the investigational allowance, the cumulative deficiency is reflected in the Overall Index Value.

The investigational allowance table shows for a nitrogen guarantee of 12%, the allowance is 0.61%. An additional allowance of 5% of the guarantee is 0.60%. The minimum nitrogen value is then 12.0 –[0.61 + (.05 x 12)] = 10.79.

The minimum acceptable values for P_2O_5 and K_2O will be 14.50 and 12.43, respectively.

The penalty will be calculated as follows:

Nutrient	Guaranteed lbs	-	Found lbs	=	Deficient lbs	x	price/lb
N	1200 (.12 x 10,000)	-	1110 (.111 x 10,000)	=	90	x	$20.70 ($.23 x 90 lbs)
P_2O_5	1600 (.16 x 10,000)	-	1530 (.153 x 10,000)	=	70	x	$18.90 ($.27 x 70 lbs)

Nutrient	Guaranteed lbs	-	Found lbs	=	Deficient lbs	x	price/lb
K_2O	1400 (.14 x 10,000)	-	1310 (.131 x 10,000)	=	90	x	$16.20 ($.18 x 90 lbs)
Total							$55.80

3 ($55.80) = $167.40

If the examples were specialty fertilizers rather than customer formula mixes, the penalties will be assessed in accordance with Subsection 090.01.c.i.(1). ~~*(3-30-01)*~~(7-28-04)T

(BREAK IN CONTINUITY OF SECTIONS)

081. -- 089. (RESERVED)

090. ENFORCEMENT GUIDELINES.

01. Civil Penalties. In addition to any other penalty provided by law, the Director may assess civil penalties for violations of Title 22, Chapter 6, Idaho Code. Civil penalties will be issued in accordance to the magnitude of the violation. The department is not precluded from utilizing other enforcement alternatives. Enforcement alternatives may include, but are not limited to, letter of advisement, notice of violation, stop sale, use or removal order, and registration revocation, suspension or denial. Prohibited acts are categorized as to the magnitude of violation as follows: (7-28-04)T

a. Category I (Major). The Director may issue a civil penalty for initial Category I violations in addition to any alternative enforcement action deemed necessary to protect the public interests. Category I violations include but are not limited to the following: (7-28-04)T

i. Register or attempt to register any fertilizer using fraudulent or deceptive practices to evade or attempt to evade the requirements set forth under Title 22, Chapter 6, Idaho Code, or rules adopted thereunder; (7-28-04)T

ii. Submit false or fraudulent registration applications, records, invoices or reports; (7-28-04)T

iii. Sell, use or remove any fertilizer subject to a Stop Sale, Use or Removal Order until the fertilizer has been released in accordance with the provisions of Title 22, Chapter 6, Idaho Code. (7-28-04)T

iv. Impede, obstruct, hinder or otherwise prevent or attempt to prevent the department from the performance of its duties under Title 22, Chapter 6, Idaho Code. (7-28-04)T

b. Category II (Moderate). The Director may take initial alternative enforcement action and may allow a specified amount of time to take corrective action prior to issuance of a civil penalty for a Category II violation. Failure to complete the required corrective action within the specified time period, or repeat violations, will result in the issuance of a civil penalty. Category II violations include but are not limited to the following: (7-28-04)T

i. Sell, offer for sale, or distribute adulterated fertilizers; (7-28-04)T

ii. Fail, refuse, or neglect to keep or maintain records as required under Title 22, Chapter 6, Idaho Code, or refuse to make available such records upon request by the department; (7-28-04)T

iii. Knowingly or intentionally make any false or misleading representations in connection with the

sale, offer for sale, or distribution of fertilizer. (7-28-04)T

c. Category III (Minor). The Director may take initial alternative enforcement action in writing and may allow a specified amount of time to take corrective action prior to the issuance of a civil penalty for a Category III violation, except in the case of a deficiency as listed in Subsection 090.01.c.i.(1), in which case a civil penalty will be issued. Failure to complete the corrective action within the specified time period, or repeat violations, may result in the issuance of a civil penalty. Category III violations include but are not limited to the following: (7-28-04)T

i. Sell, offer for sale, or distribute mislabeled fertilizers, including, but not limited to, when the fertilizer is: (7-28-04)T

(1) A specialty fertilizer deemed deficient as defined in Section 22-603 (7), Idaho Code; (7-28-04)T

(2) Labeled in violation of Section 22-607, Idaho Code. (7-28-04)T

ii. Fail, refuse, or neglect to deliver to a purchaser of a bulk fertilizer a printed label that complies with Section 22-603 (2) and (3), Idaho Code; (7-28-04)T

iii. Sell, offer for sale, or distribute a fertilizer that is not registered pursuant to Section 22-605, Idaho Code; (7-28-04)T

iv. Fail, refuse, or neglect to file a semi-annual tonnage report pursuant to Sections 22-608 and 22-609, Idaho Code; (7-28-04)T

v. Fail, refuse, or neglect to pay inspection fees required under Section 22-608, Idaho Code. (7-28-04)T

02. **Maximum Civil Penalties**. Penalties for Category II and III violations will accrue during one (1) calendar year; Violations for Category I will accrue during periods of three (3) calendar years beginning these intervals with the year 2004.

Category	1st Violation	2nd Violation	3rd+ Violation
Category I (Major)	$500	$1500	$10,000
Category II (Moderate)	$250	$750	$5000
Category III (Minor)	$125	$250	$500

(7-28-04)T

03. **Payment of Penalties**. As authorized under Section 22-619, Idaho Code, a civil penalty imposed may be remitted or reduced upon such terms and conditions as the Director considers proper and consistent with the public health and safety. (7-28-04)T

04. **Substantial Harm**. Any violation that results in substantial harm to human health or the environment, may be subject to a civil penalty of not more than ten thousand dollars ($10,000) for the initial violation or any subsequent violation. (7-28-04)T

0~~8~~91. -- 999. (RESERVED).

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.26 - RULES GOVERNING SEED POTATO CROP MANAGEMENT AREAS

DOCKET NO. 02-0626-0401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Title 22, Chapter 20, 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 15, 2004.

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

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

To define the geographical boundaries for a new Seed Potato Crop Management Area in Elmore County to be known as the Little Camas Ranch Seed Potato Crop Management Area.

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

To confer a benefit to the Idaho potato growers in Elmore County.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted due to the nature of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Garry West, Program Manager at (208) 736-2195 or Michael E. Cooper, Acting Administrator at (208) 332-8620.

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 22, 2004.

DATED this 30th day of July, 2004.

Michael E. Cooper, Acting Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 12-0626-0401

020. SEED POTATO CROP MANAGEMENT AREAS.

01. Fremont Seed Potato Crop Management Area. That portion of Fremont county described as follows: Beginning at a point which is the southwest corner of Section 16, Township 7 North, Range 43 East, Boise, Meridian, Fremont County, Idaho; Thence north approximately 1 mile to the northwest corner of Section 16, Township 7 North, Range 43 East; Thence west approximately 2 miles to the southwest corner of Section 7, Township 7 North, Range 43 East; Thence north approximately 1 mile to the northwest corner of Section 7, Township 7 North, Range 43 East; Thence west approximately 3 miles to the southwest corner of Section 3, Township 7 North, Range 42 East; Thence north approximately 2 miles to the northwest corner of Section 34, Township 8 North, Range 42 East; Thence west approximately 2 miles to the southwest corner of Section 29, Township 8 North, Range 42 East; Thence north approximately 1-3/8 miles to the center line of Fall River; Thence northwest along Fall River approximately 1-1/8 miles to where Fall River intersects the west line of Section 8, Township 8 North, Range 41 East; Thence north approximately 1-7/8 miles to the northwest corner of Section 7, Township 18 North, Range 41 East; Thence west approximately 2 miles to the southwest corner of Section 2, Township 8 North, Range 41 East; Thence north approximately 1 mile to the northwest corner of Section 2, Township 8 North, Range 41 East; Thence west approximately 1/4 of 1 mile; Thence north along an existing road approximately 4 miles; Thence northeasterly along said road approximately 1-1/10 miles to the northwest corner of Section 11, Township 9 North, Range 41 East; Thence north approximately 1 mile to the northwest corner of Section 2, Township 9 North, Range 41 East; Thence east approximately 14 miles to the northeast corner of Section 1, Township 9 North, Range 43 East; Thence south approximately 2 miles to the southeast corner of Section 12, Township 9 North, Range 43 East; Thence east approximately 4 miles to the northeast corner of Section 15, Township 9 North, Range 44 East, which is the west boundary line of the Targhee National Forest; Thence south along said forest boundary approximately 3 miles to the southeast corner of Section 27, Township 9 North, Range 44 East; Thence east continuing along said forest boundary approximately 2 miles to the northeast corner of Section 36, Township 9 North, Range 44 East; Thence south along said forest boundary approximately 1 mile to the east 1/4 corner of Section 1, Township 8 North, Range 44 East; Thence east continuing along said forest boundary approximately 2 miles to the east 1/4 corner of Section 5, Township 8 North, Range 45 East; Thence south continuing along said forest boundary approximately 5 miles to the east 1/4 corner of Section 32, Township 8 North, Range 45 East; Thence east continuing along said forest boundary approximately 1-1/2 miles to the center of Section 34, Township 8 North, Range 45 East; Thence south continuing along said forest boundary approximately 1-1/8 miles to the center line of Bitch Creek; Thence southwesterly along the center line of Bitch Creek approximately 10-1/2 miles to the confluence of Bitch Creek with the Teton River; Thence westerly 8 miles along the center line of the Teton River to the west line of Section 21, Township 7 North, Range 43 East; Thence north approximately 1/10 of a mile to the southwest corner of Section 16, Township 7 North, Range 43 East and the point of beginning. (5-3-03)

02. Teton And Portions Of Madison County Seed Potato Crop Management Area. (5-3-03)

a. All of Teton County, Idaho; (5-3-03)

b. That portion of Madison County, Idaho, located in Township 6 North and Township 7 North lying East of Canyon Creek; and (5-3-03)

c. That portion of Madison County, Idaho located in Township 6 North, Range 42 East which includes portions of Sections 11 and 13 located south of Highway 33 and all of Sections 14, 15, 23, and 24. (5-3-03)

03. Lost River Seed Potato Crop Management Area. Those portions of Butte and Custer Counties within Township 3 North to Township 7 North and Range 23 East to Range 27 East. (5-3-03)

04. Caribou And Franklin County Seed Potato Crop Management Area. All of Caribou County, Idaho and all of Franklin County, Idaho. (5-3-03)

05. Almo Valley Bridge Seed Potato Crop Management Area. (5-3-03)

a. That portion of Cassia County, Idaho located in Township 16 South, Range 24 East which includes all of Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; (5-3-03)

b. That portion of Cassia County, Idaho located in Township 15 South, Range 24 East which includes all of Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; (5-3-03)

c. That portion of Cassia County, Idaho located in Township 14 South, Range 24 East which includes all of Section 36; (5-3-03)

d. That portion of Cassia County, Idaho located in Township 14 South, Range 25 East which includes all of Sections 19, 20, 29, 30, 31, and 32; (5-3-03)

e. That portion of Cassia County, Idaho located in Township 15 South, Range 25 East which includes all of Sections 5, 6, 7, 8, 18, 19, 20, 29, 30, 31, 32 and the Northeast ¼ of Section 33; (5-3-03)

f. That portion of Cassia County, Idaho located in Township 16 South, Range 25 East which includes all of Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 29, 30, 31, 32, 33, 34, 35, and 36; (5-3-03)

g. That portion of Cassia County, Idaho located in Township 16 South, Range 26 East; and (5-3-03)

h. That portion of Cassia County, Idaho located in Township 16 South, Range 27 East which includes all of Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, and 30. (5-3-03)

06. Ririe Reservoir Seed Potato Crop Management Area. (5-3-03)

a. That portion of Bonneville County, Idaho located in Township 3 North, Range 40 East which includes all of Sections 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, and 36; (5-3-03)

b. That portion of Bonneville County, Idaho located in Township 3 North, Range 41 East which includes all of Sections 8, 15, 16, 17, 18, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36; (5-3-03)

c. That portion of Bonneville County, Idaho located in Township 2 North, Range 42 East which includes all of Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34; and (5-3-03)

d. That portion of Bonneville County, Idaho located in Township 3 North, Range 42 East which includes all of Sections 31, 32, and 33. (5-3-03)

07. Picabo Seed Potato Crop Management Area. That portion of Blaine County, Idaho beginning with Township 1S, in Range 18, all of sections 23 and 24, leading into Township 1N, in Range 19 all of sections: 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, and 34. Leading into Township 1S, in Range 19, the W ½ of section 1, and all of sections: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29. Leading into Township 1S, Range 20, all of sections: 7, 8, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 35, and 36, including the N ½ of Sections 33 and 34. Leading into Township 2S, Range 20, all of sections 1, 2, and 12. Leading into Township 1S, Range 21, all of sections: 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, W ½ of section 28, and all of sections 29, 30, 31, 32, and the NW ¼ of section 33, from Hwy 20 North, plus section 21 from Dry Creek Road North. Leading into Township 2S, Range 21, all of the W ½ of section 3, and all of the following sections: 4, 5, 6, 7, 8, E ½ of section 9, all of sections 17, 18, 19, 20, 21, 28, 29, 30, and 31, W ½ and the SE ½ of the NE ¼ of section 10. Leading into Township 1N, Range 21, all of sections: 30, 31, and 32. All U.S. Department of the Interior, Bureau of Land Management property and property owned by the state of Idaho existing within the above mentioned areas will not be considered part of the management area. (3-20-04)

08. Little Camas Ranch Seed Potato Crop Management Area. (7-1-04)T

a. That portion of Elmore County, Idaho located in Township 1 North, Range 9 East, Boise Meridian, which includes the S ½ N ½ SE ¼, S ½ SE ¼, SW ¼ of Section 27, the SE ¼ SE ¼, SW ¼ SW ¼ of Section 28, the S

½ S ½, N ½ SE ¼, SE ¼ NE ¼, W ½ NE ¼, NE ¼ NE ¼ NW ¼, S ½ NE ¼ NW ¼, SE ¼ NW ¼, N ½ SW ¼, NE ¼ NE ¼ of Section 32, the E ½, E ½ W ½, SW ¼ SW ¼, NW ¼ SW ¼, SW ¼ NW ¼, NW ¼ NW ¼ of Section 33, and all of Section 34; and (7-1-04)T

b. That portion of Elmore County, Idaho located in Township 1 South, Range 9 East, Boise Meridian which includes all of Section 4, all less the SW ¼ NW ¼ and less the W ½ SW ¼ of Section 5, the N ½ NE ¼ of Section 8, and the NW ¼ NE ¼, N ½ NW ¼ of Section 9; and (7-1-04)T

c. That portion of Elmore County, Idaho located in Township 1 South, Range 9 East, Boise Meridian, which includes Lots 1, 2, 3, and 4, and the S ½ N ½, N ½ SE ¼, SW ¼ of Section 3 less Tax Lot 1 described as follows: That portion of Elmore County, Idaho located in Township 1 South Range 9 East, Boise Meridian, described above as Tax Lot 1: Save and Except that portion of S ½ SW ¼, Section 3, Township 1 South, Range 9 East, Boise Meridian, Elmore County, Idaho more particularly described as follows: Commencing at the Southwest corner of Section 3, Township 1 South, Range 9 East, Boise Meridian, and running thence South 89°51' East along the South Section line of said Section 3, a distance of 437 feet to a steel pin in the center of a graveled road, the Real Point of Beginning. Thence continuing from the Real Point of Beginning North 0°04' West a distance of 1,000 feet to a steel pin; thence South 89°51' East a distance of 1,742.4 feet to a steel pin; thence South 0°04' East a distance of 1,000 feet to a steel pin on the South Section line of said Section 3; thence North 89°51' West along the South Section line of said Section 3 a distance of 1,742.4 feet, more or less to the Real Point of Beginning more particularly described as Tax Lot 1. (7-1-04)T

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.04 - RULES GOVERNING THE USE OF THE UNIFORM MECHANICAL CODE

DOCKET NO. 07-0304-0401 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 39-4107(1), Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the July 7, 2004 Idaho Administrative Bulletin, Volume 04-7, page 12. This chapter is being repealed in its entirety.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jack Rayne, Building Bureau Chief, 208-332-7151.

DATED this 28th day of July, 2004.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower Street
Meridian, Idaho 83642
Phone: (208) 332-7100/Fax: (208) 855-2164

IDAPA 07, TITLE 03, CHAPTER 04

RULES GOVERNING THE USE OF THE UNIFORM MECHANICAL CODE

This chapter is being repealed in its entirety.

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 04-7, July 7, 2004, page 12.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2005 Idaho State Legislature as a final rule.

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.07.01 - RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS

DOCKET NO. 07-0701-0401

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-5005(2), Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the July 7, 2004 Idaho Administrative Bulletin, Volume 04-7, pages 13 and 14.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Ted Hogander, Plumbing Bureau Chief, 208-332-7154.

DATED this 28th day of July, 2004.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower Street
Meridian, Idaho 83642
Phone: (208) 332-7100
Fax: (208) 855-2164

IDAPA 07, TITLE 07, CHAPTER 01

RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 04-7, July 7, 2004, pages 13 and 14.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2005 Idaho State Legislature as a final rule.

IDAPA 12 - DEPARTMENT OF FINANCE

12.01.08 - RULES PURSUANT TO THE IDAHO SECURITIES ACT

DOCKET NO. 12-0108-0401 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 30-14-605(a), Idaho Code, [effective September 1, 2004]. Repeal of the current rules is authorized by Section 30-1448, 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 15, 2004.

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: Repeal of these rules is necessary to implement the new Uniform Securities Act (2004) adopted by the legislature in the 2004 session and made effective September 1, 2004. Current rules pertaining to the repealed (as of September 1, 2004) Idaho Securities Act must be rescinded.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: The new rule will provide significant protections to investors, businesses and the proper operation of the securities markets. The repeal of this rule is needed immediately to implement the new Uniform Securities Act (2004) that is effective on September 1, 2004.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because extensive discussions were held with interested parties when drafting the Uniform Securities Act (2004), and copies of these rules have been sent to interested parties for comment.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Marilyn Chastain, 332-8070.

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 22, 2004.

DATED this 5th day of August, 2004.

Marilyn T. Chastain, Securities Bureau Chief
Securities Bureau, Idaho Department of Finance
Street address: 700 West State Street, 2nd Floor, Boise, ID 83702
Mailing address: P.O. Box 83720, Boise, ID 83720-0031
Telephone: (208) 332-8070 / Fax: (208) 332-8099

IDAPA 12.01.08 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 12 - DEPARTMENT OF FINANCE

12.01.08 - RULES PURSUANT TO THE IDAHO SECURITIES ACT

DOCKET NO. 12-0108-0402

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

(CHAPTER REWRITE - FEE RULE)

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 30-14-605(a), Idaho Code, [effective September 1, 2004]. Repeal of the current rules is authorized by Section 30-1448, 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 15, 2004. 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:

These rules are needed to implement the new Uniform Securities Act (2004) adopted by the legislature in the 2004 session and made effective September 1, 2004. These rules govern the registration of securities and investment professionals, exemptions from the registration requirements, fraud and liabilities in connection with securities transactions, and administrative and judicial review procedures. Current rules pertaining to the repealed (as of September 1, 2004) Idaho Securities Act must be rescinded.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: These rules provide significant protections to investors, businesses and the proper operation of the securities markets. The rules are needed immediately to implement the new Uniform Securities Act (2004) that is effective on September 1, 2004.

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

The fees in this rulemaking reiterate those listed, and set those authorized, in the Uniform Securities Act (2004), Title 30, Chapter 14, Idaho Code.

Rule 12.01.08.003.04: Securities Exemptions, Opinions, and No-Action Letter. Fee imposed is fifty dollars ($50) for opinion and no-action letters. This is the current fee charged under the Idaho Securities Act. Authority for imposition of this fee is found in Section 30-14-605(d), Idaho Code.

Rule 12.01.08.040.01.c: Renewal of Registration Statements. Fee imposed is three hundred dollars ($300) for all registered offerings. This is the current fee charged under the Idaho Securities Act. Authority for imposition of this fee is found in Section 30-14-305(h), Idaho Code.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because extensive discussions were held with interested parties when drafting the Uniform Securities Act of 2004, and copies of these rules have been sent to interested parties for comment.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Marilyn Chastain, 332-8070.

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 22, 2004.

DATED this 5th day of August, 2004.

Marilyn T. Chastain, Securities Bureau Chief
Securities Bureau, Idaho Department of Finance
Street address: 700 West State Street, 2nd Floor, Boise, ID 83702
Mailing address: P.O. Box 83720, Boise, ID 83720-0031
Telephone: (208) 332-8070 / Fax: (208) 332-8099

IDAPA 12
TITLE 01
CHAPTER 08

12.01.08 - RULES PURSUANT TO THE UNIFORM SECURITIES ACT (2004)

000. LEGAL AUTHORITY (RULE 0).
This chapter is promulgated pursuant to Section 30-14-605, Idaho Code. (9-1-04)T

001. TITLE AND SCOPE (RULE 1).

01. Title. The title of this chapter is the "Securities Rules of the Idaho Department of Finance"; and may be cited as IDAPA 12.01.08, "Rules Pursuant to the Uniform Securities Act (2004)". (9-1-04)T

02. Implementation. These rules implement statutory intent with respect to the offer and sale of securities and the giving of investment advice in the state of Idaho by licensed individuals and others. (9-1-04)T

002. WRITTEN INTERPRETATIONS -- AGENCY ACCESS -- FILINGS (RULE 2).
Written interpretations of these rules, if any, are available by mail from the Idaho Department of Finance, P.O. Box 83720, Boise, Idaho 83720-0031. Interpretive opinions including no-action letters are rendered only in writing. Informal discussions with the Administrator or Department staff shall not be taken to signify any determination or approval concerning the matters discussed. (9-1-04)T

003. SECURITIES EXEMPTIONS, OPINIONS, AND NO-ACTION LETTERS (RULE 3).
Interpretative Opinions. The Administrator, in his discretion, may honor requests from interested persons for formal interpretive opinions and no-action positions, including consideration of waivers, relating to an actual specific factual circumstance where appropriate and in the public interest, on the basis of facts stated and submitted in writing, with respect to the provisions of the Act or any rule or statement of policy adopted thereunder, provided such requests satisfy and conform to the following requirements: (9-1-04)T

01. Written Requests. Such requests shall be in writing and shall include or be accompanied by all information and material required by any statute, rule or statement of policy under which an exception or exemption may be claimed, including but not limited to, copies of prospectuses or offering circulars if applicable or appropriate. (9-1-04)T

02. Narrative. The letter should contain a brief narrative of the fact situation and should set out all of the facts necessary to reach a conclusion in the matter; however, such narratives should be concise and to the point. (9-1-04)T

03. Hypotheticals Not Considered. The names of the company or companies, organization or organizations and all other persons involved should be stated and should relate and be limited to a particular factual

circumstance. Letters relating to hypothetical situations will not warrant a formal response. (9-1-04)T

04. **Fee**. Each request for a no-action position or interpretive opinion letter shall be accompanied by payment of a fee in the amount of fifty dollars ($50). (9-1-04)T

004. ADMINISTRATIVE APPEALS (RULE 4).
Administrative appeals are not available within the department. (9-1-04)T

005. INCORPORATION BY REFERENCE (RULE 5).

01. **Incorporated Documents**. IDAPA 12.01.08, "Rules Pursuant to the Uniform Securities Act (2004)," adopts and incorporates by reference the full text of the following Statements of Policy and guidelines adopted by the North American Securities Administrators Association (NASAA): (9-1-04)T

a. **"**Loans and Other Material Affiliated Transactions," as adopted with amendments through November 18, 1997; (9-1-04)T

b. "Options and Warrants," as adopted with amendments through September 28, 1999; (9-1-04)T

c. "Corporate Securities Definitions," as adopted with amendments through September 28, 1999; (9-1-04)T

d. "Impoundment of Proceeds," as adopted with amendments through September 28, 1999; (9-1-04)T

e. "Preferred Stock," as adopted with amendments through April 27, 1997; (9-1-04)T

f. **"**Promotional Shares," as adopted with amendments through September 28, 1999; (9-1-04)T

g. **"**Promoters' Equity Investment," as adopted with amendments through April 27, 1997; (9-1-04)T

h. **"**Specificity in Use of Proceeds," as adopted with amendments through September 28, 1999; (9-1-04)T

i. **"**Underwriting Expenses, Underwriter's Warrants, Selling Expenses, and Selling Securities Holders," as adopted with amendments through September 28, 1999; (9-1-04)T

j. **"**Unsound Financial Condition," as adopted with amendments through September 28, 1999; and (9-1-04)T

k. "Unequal Voting Rights," as adopted October 24, 1991. (9-1-04)T

l. **"**Debt Securities," as adopted April 25, 1993. (9-1-04)T

m. **"**NASAA Guidelines Regarding Viatical Investments," as adopted October 1, 2002. (9-1-04)T

n. **"**NASAA Statement of Policy Regarding Small Company Offering Registrations (SCOR)," as adopted April 28, 1996. (9-1-04)T

02. **Availability of Referenced Documents**. Copies of the "NASAA Statements of Policy" are available at the following locations: (9-1-04)T

a. NASAA, 750 First Street, N.E., Suite 1140, Washington, D.C., 20002. (9-1-04)T

b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051. (9-1-04)T

c. Department of Finance, 700 W. State Street, P.O. Box 83720, Boise, ID 83720-0031. (9-1-04)T

d. Web address: www.nasaa.org. (9-1-04)T

006. OFFICE MAILING ADDRESS AND STREET ADDRESS (RULE 6).
The mailing address of the department is Idaho Department of Finance, P.O. Box 83720, Boise, Idaho 83720-0031. The street address of the department is Idaho Department of Finance, Joe R. Williams Building, 700 West State Street, 2nd floor, Boise, Idaho 83702. The telephone numbers of the department include (208) 332-8000, Administration; and (208) 332-8004, Securities Bureau. The telephone number of the facsimile machine is (208) 332-8099. All filings with the department in connection with rulemaking or contested cases shall be made with the Administrator of the Idaho Department of Finance, and shall include an original and one (1) copy. (9-1-04)T

007. PUBLIC RECORDS ACT COMPLIANCE (RULE 7).
All rules contained in this chapter are public records. (9-1-04)T

008. -- 009. (RESERVED).

010. DEFINITIONS (RULE 10).

01. **Act**. The Uniform Securities Act (2004). (9-1-04)T

02. **Administrator**. The Director of the Department of Finance. (9-1-04)T

03. **Agent of Issuer**. The term "agent of issuer" is used interchangeably with the term "issuer agent" through these rules. (9-1-04)T

04. **CRD**. Central Registration Depository. (9-1-04)T

05. **Department**. The Idaho Department of Finance. (9-1-04)T

06. **Form ADV**. The Uniform Application for Investment Adviser Registration. (9-1-04)T

07. **Form ADV-H**. The Uniform Application for a Temporary or Continuing Hardship Exemption. (9-1-04)T

08. **Form ADV-W**. The Uniform Request for Withdrawal of Investment Adviser Registration. (9-1-04)T

09. **Form BD**. The Uniform Application for Broker-Dealer Registration. (9-1-04)T

10. **Form BDW**. The Uniform Request for Withdrawal from Registration as a Broker-Dealer. (9-1-04)T

11. **Form D**. The federal form entitled "Notice of Sale of Securities Pursuant to Regulation D, Section 4(6) and or Uniform Limited Offering Exemption". (9-1-04)T

12. **Form NF**. The Uniform Notice Filing Form. (9-1-04)T

13. **Form 1-A**. A federal securities registration form of that number. (9-1-04)T

14. **Form S-18**. A federal securities registration form of that number. (9-1-04)T

15. **Form U-1**. The Uniform Application to Register Securities. (9-1-04)T

16. **Form U-2**. The Uniform Consent to Service of Process. (9-1-04)T

17. **Form U-4**. The Uniform Application for Securities Industry Registration or Transfer. (9-1-04)T

18. **Form U-5**. The Uniform Request for Withdrawal of Securities Industry Registration or Transfer.

(9-1-04)T

19. **Form U-7**. The Uniform Small Company Offering Registration Form. (9-1-04)T

20. **IARD**. Investment Adviser Registration Depository. (9-1-04)T

21. **NASAA**. The North American Securities Administrators Association, Inc. (9-1-04)T

22. **NASD**. The National Association of Securities Dealers, Inc. (9-1-04)T

23. **NASDAQ**. The National Association of Securities Dealers Automated Quotations. (9-1-04)T

24. **NMS**. The National Market System operated by the NASD. (9-1-04)T

25. **SEC**. The U.S. Securities and Exchange Commission. (9-1-04)T

26. **Transact Business**. For purposes of the Act, to "transact business" shall mean to buy or to sell or contract to buy or to sell or dispose of a security or interest in a security for value. It shall also mean any offer to buy or offer to sell or dispose of, and every solicitation of clients or of any offer to buy or to sell, a security or interest in a security for value. With respect to investment advisers and investment adviser representatives, "transact business" shall include preparation of financial plans involving securities, recommendations to buy or sell securities or interests in a security for value, and solicitation of investment advisory clients. (9-1-04)T

27. **UCSLE**.The Uniform Combined State Law Examination. (9-1-04)T

28. **UIALE**. The Uniform Investment Adviser Law Examination. (9-1-04)T

29. **USA**. The Uniform Securities Act (2004). (9-1-04)T

30. **USASLE**. The Uniform Securities Agent State Law Examination. (9-1-04)T

31. **Unsolicited Order or Offer**. (9-1-04)T

a. As used in these rules, an order or offer to buy is considered "unsolicited" if: (9-1-04)T

i. The broker-dealer has not made a direct or indirect solicitation or recommendation that the customer purchase the security; and (9-1-04)T

ii. The broker-dealer has not recommended the purchase of the security to the customer, either directly or in a manner that would bring its recommendation to the customer; and (9-1-04)T

iii. The broker-dealer has not volunteered information on the issuer to the customer; and (9-1-04)T

iv. The customer has previously, and independent of any information furnished by the broker-dealer, decided to buy the security. (9-1-04)T

b. Any offer or order to buy from a customer whose first knowledge of the specific security or issuer was volunteered to him by the broker-dealer, shall be regarded as a solicited order. (9-1-04)T

c. Any claim of exemption pursuant to Section 30-14-202(6), Idaho Code, shall be supported by the broker-dealer's certificate that the transaction in question was, in fact, unsolicited. (9-1-04)T

011. -- 019. (RESERVED).

020. APPLICATION FOR REGISTRATION OF SECURITIES (RULE 20).

01. **Registration by Coordination**. A registration statement to register securities by coordination shall

contain the following: (9-1-04)T

a. The Form U-1 and accompanying documents (including subscription agreement); (9-1-04)T

b. A consent to service of process (Form U-2) in compliance with Section 30-14-611, Idaho Code; (9-1-04)T

c. A copy of the prospectus, including financial statements where: (9-1-04)T

i. The prospectus for a securities registration by coordination under Section 30-14-303, Idaho Code, shall be prepared using the forms required under the Securities Act of 1933, and (9-1-04)T

ii. All historical financial statements in the registration statement shall be in conformity with generally accepted accounting principles (GAAP) and financial statements filed with a registration statement by coordination shall comply with the requirements of the United States Securities and Exchange Commission. (9-1-04)T

d. All exhibits filed with the United States Securities and Exchange Commission in connection with the registration statement; (9-1-04)T

e. The filing fee specified in Section 30-14-305(b), Idaho Code; and (9-1-04)T

f. Any additional information or documents requested by the Department. (9-1-04)T

02. Registration by Qualification. A registration statement to register securities by qualification shall contain the following in addition to the requirements of Section 30-14-304, Idaho Code: (9-1-04)T

a. Financial Statements. Except for SCOR applications, registration statements filed pursuant to Section 30-14-304, Idaho Code, shall contain audited financial statements of the issuer for its last two (2) fiscal years. Registration statements filed with SCOR applications on the Form U-7 shall contain the financial statements specified in the instructions to the Form U-7. (9-1-04)T

b. Unaudited Interim Financial Statements. If the audited financial statements or unaudited financial statements required in Subsection 020.02.a of this rule are not current to within four (4) months of the date of filing of the registration statement, additional unaudited financial statements as of the issuer's last fiscal quarter or any later date designated by the Administrator shall be included. (9-1-04)T

c. Small Company Offering Registration (SCOR). A SCOR registration statement shall contain the following: (9-1-04)T

i. The Form U-1 and accompanying documents (including subscription agreement); (9-1-04)T

ii. An executed Form D; (9-1-04)T

iii. A consent to service of process (Form U-2) in compliance with Section 30-14-611, Idaho Code; (9-1-04)T

iv. For SCOR offerings, the prospectus to be used shall be the Form U-7, as adopted and revised by NASAA in September 1999. (9-1-04)T

v. The filing fee specified in Section 30-14-305(b), Idaho Code; and (9-1-04)T

vi. Any additional information or documents requested by the Department. (9-1-04)T

d. Registration statements by qualification shall contain the following: (9-1-04)T

i. The Form U-1 and accompanying documents (including subscription agreement); (9-1-04)T

ii. A consent to service of process (Form U-2) in compliance with Section 30-14-611, Idaho Code; (9-1-04)T

iii. Financial statements prepared in accordance with Subsection 020.02.a. of this rule. (9-1-04)T

iv. A copy of the prospectus containing the information or records specified in Sections 30-14-304(b)(1) through 304(b)(18), Idaho Code; (9-1-04)T

v. The prospectus shall be prepared using one of the following forms: Part II of Form 1-A of Regulation A of the Securities Act of 1933; Parts I and II of Form SB-2 of the Securities Act of 1933; Form U-7; or any other applicable form used to prepare a prospectus under the Securities Act of 1933, if approved by the department. (9-1-04)T

03. Other Forms. Any other applicable form used to prepare a prospectus under the Securities Act of 1933, if approved by the Department, containing: (9-1-04)T

a. The filing fee specified in Section 30-14-305(b), Idaho Code; and (9-1-04)T

b. Any additional information or documents requested by the Department. (9-1-04)T

021. AMENDMENTS TO REGISTRATION STATEMENT (RULE 21).

01. Amendments Required. A correcting amendment to an effective registration statement shall be prepared and submitted to the Department any time that the information contained therein becomes inaccurate or incomplete in any material respect. The responsibility for identifying and reporting a material change lies with the registrant. (9-1-04)T

02. Contents of Amendment Filing. Each filing of a correcting amendment to a registration statement shall contain a copy of each item of the registration statement which has been changed, with all changes clearly marked. To be complete, a filing of a correcting amendment to the registration statement shall contain a report of material changes setting forth a summary of each material change and indicating the location of such change in the documents filed. Neither the Administrator nor any member of his staff shall be held to have taken notice of any item of material change not summarized in such a report. (9-1-04)T

03. Time of Filing and Undertaking. Every registration statement shall contain an undertaking by the applicant to file correcting amendments to the registration statement whenever the information in the registration statement becomes inaccurate or incomplete in any material respect by the earlier of: (9-1-04)T

a. Two (2) business days after filing such amendment with the SEC; or (9-1-04)T

b. Fifteen (15) business days following the event giving rise to the amendment. (9-1-04)T

c. If not registered with the SEC, registrants shall file an amended registration statement if required within fifteen (15) business days following the event giving rise to the amendment. (9-1-04)T

04. Effect of Failure to Amend. Solicitation of prospective investors through utilization of a prospectus containing information which is inaccurate or incomplete in any material respect is a violation of Section 30-14-501, Idaho Code, and constitutes a basis for the suspension or revocation of the registration under Section 30-14-306(a)(1), Idaho Code. Nothing in Section 021, of these rules, shall be construed to require any open-end investment company registered under the 1940 Act and the Act to disclose fluctuations in its investment portfolio. (9-1-04)T

022. FINANCIAL STATEMENTS (RULE 22).

01. Application of Regulation S-X. As to definitions, qualifications of accountants, content of accountant's certificates, requirements for consolidated or combined statements, and actual form and content of financial statements, the Administrator shall apply Regulation S-X of the SEC (17 C. F. R. Part 210) in its most

currently amended form as of the date of the filing of the application to all financial statements filed with the Department in connection with the registration of securities. (9-1-04)T

02. Financial Statements Incorporated by Reference. Where financial statements in a prospectus are incorporated by reference from another document, the Administrator may require that such other document be filed with the Department and be delivered to investors with the prospectus. (9-1-04)T

03. Application of Antifraud Provisions. Any financial statement distributed in connection with the offer or sale of securities under the Act shall be subject to the provisions of Section 30-14-501, Idaho Code. Any financial statement filed with the Department shall be subject to the provisions of Section 30-14-505, Idaho Code. (9-1-04)T

023. -- 035. (RESERVED).

036. NASAA STATEMENTS OF POLICY - REGISTERED OFFERINGS (RULE 36).
The Department will apply the applicable statement(s) of policy adopted by NASAA and incorporated herein by reference pursuant to Section 005, of these rules, to an offering seeking registration in Idaho when conducting a review to determine whether an offering is fair, just and equitable. Such an offering must comply with the requirements of such policy or policies, unless waived by the Administrator. (9-1-04)T

037. REGISTRATION OF DEBT SECURITIES (RULE 37).
In addition to the requirements contained in the NASAA Statement of Policy Regarding Debt Securities, as adopted on April 25, 1993, the issuer of debt securities will incorporate the following standards: (9-1-04)T

01. Suitability. In establishing standards of fairness and equity, the Department has established the following investor suitability guidelines for debt offerings registered under the Act: (9-1-04)T

a. No more than ten percent (10%) of any one (1) Idaho investor's net worth (exclusive of home, home furnishings, and automobiles) shall be invested in the securities being registered with the Department; and either (9-1-04)T

b. A gross income of forty-five thousand dollars ($45,000) and a net worth of forty-five thousand dollars ($45,000) (exclusive of home, home furnishings and automobiles); or (9-1-04)T

c. A net worth of one hundred fifty thousand dollars ($150,000) (exclusive of home, home furnishings and automobiles). (9-1-04)T

02. Department May Establish Standards. The suitability standard in Subsection 037.01 of this rule is a guideline. Higher or lower suitability standards may be established or may be required by the Department as a condition of registration. (9-1-04)T

03. Standards To Be Disclosed. The suitability standards must be disclosed in the prospectus. (9-1-04)T

038. WITHDRAWAL/ABANDONMENT OF A REGISTRATION STATEMENT (RULE 38).

01. Withdrawal. The withdrawal of an application (prior to effectiveness) may be permitted by the Administrator upon the written request of the applicant. (9-1-04)T

02. Abandonment. The abandonment of an application, where there has been no activity on the application by the applicant for a period of six (6) months or more, may be considered to signify a request for withdrawal. (9-1-04)T

03. Time Limit. An application for registration of securities pursuant to Section 30-14-303 or 30-14-304, Idaho Code, shall be deemed abandoned if such registration is not effective in the state of Idaho within one (1) year from the date of receipt by the Department of the initial filing of the application for registration. (9-1-04)T

04. Abandoned Applications Not Reinstated. Once deemed abandoned, the original application shall not be reinstated. A new application including the registration statement, appropriate exhibits and filing fees shall be required. (9-1-04)T

039. REPORT OF COMPLETION OF OFFERING (RULE 39).

01. Completion Statement. Within thirty (30) days of the completion of a registered offering in Idaho, the registrant shall provide a written statement to the Department that states the following: (9-1-04)T

a. The date the offering was completed in Idaho; and (9-1-04)T

b. The number and amount of registered securities sold in Idaho, for SCOR offerings and offerings registered by qualification. (9-1-04)T

02. Signatures. The written statement must be signed by an officer, director or agent of the issuer or by an authorized signatory of the registrant. (9-1-04)T

040. ANNUAL REPORT FOR THE RENEWAL OF A REGISTRATION STATEMENT (RULE 40).
To renew a registration statement for an additional year, the registrant shall file the following with the Department before the anniversary of the effective date of the registration statement in Idaho: (9-1-04)T

01. Cover Letter. A cover letter requesting renewal; (9-1-04)T

02. Consent to Service. A consent to service of process (Form U-2) in accordance with Section 30-14-611, Idaho Code; and (9-1-04)T

03. Filing Fee. A filing fee of three hundred dollars ($300) for all registered offerings. (9-1-04)T

041. SUBSCRIPTION AGREEMENT (RULE 41).
The subscription agreement shall contain, among other things, an acknowledgment by the subscriber that he has received a copy of the prospectus. Each completed subscription agreement shall be kept in the office of the issuer or broker-dealer for a period of five (5) years and be subject to inspection by the Department. (9-1-04)T

042. DELIVERY OF PROSPECTUS (RULE 42).
As a condition of registration, an applicant shall comply with the following: (9-1-04)T

01. Registration by Qualification. A person offering or selling a security under a registration by qualification, other than through a broker-dealer, shall deliver a copy of the final prospectus to each prospective purchaser before or at the time of the confirmation of a sale made by or for the account of the person; and (9-1-04)T

02. Registration by Coordination. A person offering or selling a security under a registration by coordination shall deliver a copy of the prospectus as required by the Securities Act of 1933. (9-1-04)T

043. REGISTRATIONS -- NOTICE OF INTENDED IDAHO BROKER -- DEALER OR AGENT (RULE 43).
At the time of filing of an application for registration of any security required to be registered in Idaho, written notice shall be provided to the Department of the name of at least one (1) broker-dealer or agent, registered as such in this state, that is intended or qualified to offer or sell such security in Idaho. The Administrator may deny or revoke effectiveness of any registration pending receipt of the notice or may hold the application without further review until the notice has been received. (9-1-04)T

044. RECORDS TO BE PRESERVED BY ISSUERS (RULE 44).

01. Required Records. All issuers who effect sales of registered securities, other than through a broker-dealer, shall preserve the following records for at least three (3) years following the expiration of the registration: (9-1-04)T

a. Copies of all documents contained in the registration statement; (9-1-04)T

b. Copies of all advertisements, including a record of the dates, names and addresses of media carrying those advertisements; (9-1-04)T

c. Copies of all communications received and sent by the issuer pertaining to the offer, sale and transfer of the securities, including purchase agreements and confirmations; and (9-1-04)T

d. A list of the name, address and telephone number of each investor to whom the securities were sold, and for each such person, information regarding: (9-1-04)T

i. The type of securities sold; (9-1-04)T

ii. The number and amount of securities sold; (9-1-04)T

iii. The type of consideration paid; and (9-1-04)T

iv. The name of the agent that sold the securities. (9-1-04)T

02. Retention Period. An issuer will need to retain the records set forth in Subsection 044.01 of this rule for each investor at least three (3) years after the investor's investment has terminated, even if more than three (3) years has lapsed since the expiration of the registration. (9-1-04)T

03. Form. Records may be stored in paper form or electronically. (9-1-04)T

045. EXAMINATION OF APPLICATION (RULE 45).
The Department shall conduct a special examination of each application for registration under Sections 30-14-303 and 30-14-304, Idaho Code, to determine the adequacy of disclosure and to fulfill the Department's obligations under Section 30-14-306, Idaho Code. This examination shall be based upon material contained in the registration statement and any other documentation which the applicant may be required to submit. Each application for registration shall be accompanied by the filing fee set forth in Section 30-14-305(b), Idaho Code. The examination report shall consist of the Department's written comments regarding the filing. (9-1-04)T

046. ON-SITE EXAMINATION OF ISSUERS (RULE 46).
The business and records of issuers offering and/or selling securities in, or out of, Idaho may be subject to periodic on-site examinations by the Administrator, or his designee, at such times as the Administrator determines necessary for the protection of the public. (9-1-04)T

047. ADVERTISING (RULE 47).

01. Definitions. The following words and terms, when used in Section 047, of these rules, shall have the following meaning, unless the context clearly indicates otherwise: (9-1-04)T

a. "Sales literature" means material published, or designed for use, in a newspaper, magazine or other periodicals, radio, television, telephone solicitation or tape recording, videotaped display, signs, billboards, motion pictures, telephone directories (other than routine listings), other public media and any other written communication distributed or made generally available to customers or the public including, but not limited to, prospectuses, pamphlets, circulars, form letters, seminar texts, research reports, surveys, performance reports or summaries and reprints or excerpts of other sales literature or advertising to include publications in electronic format. (9-1-04)T

b. "Sales literature package" means all submissions of sales literature to the Department under one (1) posting or delivery relating to a specific issue of securities. (9-1-04)T

02. Filing Requirement. Section 30-14-504, Idaho Code, requires a filing of all sales literature for review and response by the Administrator before use or distribution in Idaho. A complete filing shall consist of the sales literature package and a representation by the applicant, issuer or broker-dealer, that reads substantially as follows: "I ------ hereby attest and affirm that the enclosed sales literature or advertising package contains no false or

misleading statements or misrepresentations of material facts, and that all information set forth therein is in conformity with the Company's most recently amended registration statement as filed with the Department on or about -------." (9-1-04)T

03. Exemption From Filing. The following types of sales literature are excluded from the filing requirements set forth herein: (9-1-04)T

a. Sales literature which does nothing more than identify a broker-dealer and/or offer a specific security at a stated price; (9-1-04)T

b. Internal communications that are not distributed to the public; (9-1-04)T

c. Prospectuses, preliminary prospectuses, prospectus supplements and offering circulars which have been filed with the Department as part of a registration statement, including a final printed copy if clearly identified as such; (9-1-04)T

d. Sales literature solely related to changes in a name, personnel, location, ownership, offices, business structure, officers or partners, telephone or teletype numbers; and (9-1-04)T

e. Sales literature filed with and approved by the NASD. (9-1-04)T

04. Piecemeal Filings. The Department will not approve any sales literature package until a complete filing is received. Piecemeal filings will not be accepted and will result in the disapproval of any materials submitted therewith. (9-1-04)T

05. Application of Antifraud Provisions. Sales literature used in any manner in connection with the offer and sale of securities is subject to the provisions of Section 30-14-501, Idaho Code, whether or not such sales literature is required to be filed pursuant to Section 30-14-504, Idaho Code, or Section 047 of these rules. Further, sales literature filed with the Department is subject to the provisions of Sections 30-14-501 and 30-14-505, Idaho Code. Sales literature should be prepared accordingly and should not contain any ambiguity, exaggeration or other misstatement or omission of material fact, which might confuse or mislead an investor. (9-1-04)T

06. Prohibited Disclosures. Unless stating that the Administrator or Department has not approved the merits of the securities offering or the sales literature, no sales literature shall contain a reference to the Administrator or Department unless such reference is specifically requested by the Administrator. (9-1-04)T

048. DEPARTMENT ACCESS (RULE 48).

Each issuer examined shall provide the personnel of the Department access to business books, documents, and other records. Each issuer shall provide personnel with office space and facilities to conduct an on-site examination, and assistance in the physical inspection of assets and confirmation of liabilities. Failure of any issuer to comply with any provision here of shall constitute a violation of Section 048, of these rules, and shall be a basis for denial, suspension or revocation of the registration or application for registration or other administrative or civil action by the Department. (9-1-04)T

049. -- 052. (RESERVED).

053. FEDERAL COVERED SECURITIES (RULE 53).

01. Investment Company Notices. (9-1-04)T

a. Notice Requirement. Pursuant to Section 30-14-302, Idaho Code, prior to the offer in this state of a series or portfolio of securities of an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940, that is not otherwise exempt under Sections 30-14-201 through 30-14-203, Idaho Code, the issuer must file a notice with the Administrator relating to such series or portfolio of securities. (9-1-04)T

b. Content of Notice. Each required notice shall include the following; (9-1-04)T

i. A properly completed Form NF; (9-1-04)T

ii. A consent to service of process (Form U-2); (9-1-04)T

iii. A filing fee of three hundred dollars ($300) for mutual funds and one hundred dollars ($100) for unit investment trusts; (9-1-04)T

iv. Notification of SEC effectiveness (9-1-04)T

c. Renewal of Notice. The effectiveness of a notice required pursuant to Subsection 053.01.a of this rule may be renewed each year for an additional one (1) year period of effectiveness by filing on or before the expiration of the effectiveness of such notice: (9-1-04)T

i. A properly completed Form NF clearly indicating the state file number of the Notice to be renewed; (9-1-04)T

ii. A consent to service of process (Form U-2) in accordance with Section 30-14-611, Idaho Code; and (9-1-04)T

iii. A renewal fee of three hundred dollars ($300) for mutual funds and one hundred dollars ($100) for unit investment trusts. (9-1-04)T

d. Amendments. Amendment filings are required for the following: (9-1-04)T

i. Issuer name change; (9-1-04)T

ii. Address change for contact person; and (9-1-04)T

iii. Notification of termination or completion. (9-1-04)T

e. Other Documents. Documents other than those required in Subsections 053.01.b., 053.01.c, and 053.01.d. of this rule, unless specifically requested by the Department, should not be filed with the Department. Documents that should be filed with the Department only if specifically requested include, but are not limited to, registration statements, prospectuses, amendments, statements of additional information, quarterly reports, annual reports, and sales literature. Documents that should be filed with the Department only if specifically requested include, but are not limited to, registration statements, prospectuses, amendments, statements of additional information, quarterly reports, annual reports, and sales literature. (9-1-04)T

02. Regulation D Rule 506 Notice Filing. (9-1-04)T

a. Notice Requirement. Issuers offering a security in this state in reliance upon Section 30-14-301, Idaho Code, by reason of compliance with Regulation D, Rule 506, adopted by the United States Securities and Exchange Commission, shall be required to file a notice with the Department pursuant to the authority of Section 30-14-302(c), Idaho Code, if a sale of a security in this state occurs as a result of such offering. (9-1-04)T

b. Terms of Notice Filing. The issuer shall file with the Department no later than fifteen (15) days after the first sale of a security in this state for which a notice is required under Subsection 053.02.a. of this rule: (9-1-04)T

i. One (1) copy of the Form D as most recently filed with the SEC, and the Appendix thereto; (9-1-04)T

ii. A consent to service of process (Form U-2); and (9-1-04)T

iii. The notice filing fee of fifty dollars ($50). (9-1-04)T

iv. A cover letter should be included in the notice filing which states the date in which the first sale of securities occurred in Idaho. (9-1-04)T

c. Terms of Late Notice Filing. An issuer failing to file with the Administrator as required by Subsection 053.02.b. of this rule may submit its notice filing as required in Subsection 053.02.b. of this rule with an additional fifty dollars ($50) late filing payment within thirty (30) days after the first sale of a security in this state. Failure to file a notice on or before the thirtieth day after the first sale of a securities in Idaho will result in the inability of the issuer to rely on Section 30-14-302(c), Idaho Code, for qualification of the offering in Idaho. (9-1-04)T

d. Issuer Agent Registration. Pursuant to Section 30-14-402(5), Idaho Code, an individual who represents an issuer who effects transactions in a federal covered security under Section 18(b)(4)(d) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(D)) is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. (9-1-04)T

054. NOT FOR PROFIT DEBT SECURITIES NOTICE FILING (RULE 54).

01. Securities Exempt. With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness, such issuers relying upon the exemption from registration provided in Section 30-14-201(7), Idaho Code, shall file a notice with the Administrator at least thirty (30) days prior to the first offering of sale pursuant to such claim. Such exemption shall become effective thirty (30) days after the filing of a complete notice if the Administrator has not disallowed the exemption. (9-1-04)T

02. Notice Information. The notice required in Subsection 054.01 of this rule shall specify, in writing, the material terms of the proposed offer or sale to include, although not limited to, the following: (9-1-04)T

a. The identity of the issuer; (9-1-04)T

b. The amount and type of securities to be sold pursuant to the exemption; (9-1-04)T

c. A description of the use of proceeds of the securities; and (9-1-04)T

d. The person or persons by whom offers and sales will be made. (9-1-04)T

03. Notice Requirements. The following items must be included as a part of the notice in Subsection 054.01 of this rule: (9-1-04)T

a. The offering statement, if any; and (9-1-04)T

b. A consent to service of process (Form U-2). (9-1-04)T

04. Sales and Advertising Literature. All proposed sales and advertising literature to be used in connection with the proposed offer or sale of the securities shall be filed with the Administrator only upon request. (9-1-04)T

05. NASAA Statements of Policy or Guidelines. The Statements of Policy or guidelines adopted by NASAA may be applied, as applicable, to the proposed offer or sale of a security for which a notice must be filed pursuant to this rule. Failure to comply with the provisions of an applicable Statement of Policy or guideline promulgated by NASAA may serve as the grounds for disallowance of the exemption from registration provided by Section 30-14-201(7), Idaho Code. (9-1-04)T

06. Waiver. The Administrator may waive any term or condition set forth in this rule. (9-1-04)T

055. MORTGAGE NOTE EXEMPTION (RULE 55).

01. Investment Contract or Profit-Sharing Agreement. The exemption specified in Section 30-14-

202(11), Idaho Code, shall not extend to any transaction in a security in the nature of an investment contract or profit-sharing agreement. (9-1-04)T

02. Definition "Offered and Sold as a Unit". As used in Section 30-14-202(11), Idaho Code, "offered and sold as a unit" means an offer and sale of the entire mortgage or other security agreement to a single purchaser at a single sale. (9-1-04)T

056. MANUAL EXEMPTION (RULE 56).
For the purpose of the manual exemption (Section 30-14-202(2), Idaho Code), the following securities manuals or portions of the manuals are recognized. (9-1-04)T

a. Best's Insurance Reports- Life-Health. (9-1-04)T

b. Mergent's Industrial Manual. (9-1-04)T

c. Mergent's International Manual. (9-1-04)T

d. Standard & Poor's Corporation Records. (9-1-04)T

e. Walkers Manual of Western Corporations. (9-1-04)T

057. MINING, OIL OR GAS EXPLORATION EXEMPTION REQUIREMENTS (RULE 57).

01. Legal Opinion for Extractive Industries. If the Department deems it necessary or advisable in the public interest or for the protection of investors, he may require an issuer engaged in mining, gas, or oil exploration or extraction to submit an opinion of counsel on the nature of the title held to the property noting any defects or liens or both, and the principal terms of any lease or option with respect to the property. If continued possession of the property by the issuer depends upon the satisfaction of certain working conditions, describe these conditions and state the extent to which they have been met. The Department may require other issuers to submit a status of title to any real estate which is material to the business of the issuer. (9-1-04)T

02. Quarterly Reports. The issuer shall file quarterly reports, on the "Quarterly Report Form for Small Mining Issues", during the time the securities remain registered. Such reports are due within thirty (30) days following the end of the issuer's quarter. Failure to comply with this rule could be grounds for suspension or revocation of a permit. (9-1-04)T

03. Advertising. The only advertising of exempt mining securities, whether on radio, television, print media, or other medium, shall be restricted to announcing the securities offering and stating the name and address of the issuer, the type of security, the underwriter, and where additional information may be obtained. (9-1-04)T

04. Offering Circulars. All offers of the security must be accompanied by a complete, current offering circular previously reviewed by the Administrator adequate to satisfy the antifraud provisions of the Act. (9-1-04)T

058. STOCK EXCHANGE LISTED SECURITIES (RULE 58).
Stock exchanges specified by or approved under Section 30-14-201(6), Idaho Code, are as follows: (9-1-04)T

01. The New York Stock Exchange; (9-1-04)T

02. The American Stock Exchange; (9-1-04)T

03. The NASDAQ/NMS; (9-1-04)T

04. The Chicago Stock Exchange; (9-1-04)T

05. The Chicago Board Options Exchange; (9-1-04)T

06. Tier I of the Pacific Stock Exchange; and (9-1-04)T

07. Tier I of the Philadelphia Stock Exchange, Inc. (9-1-04)T

059. NOTICE FILINGS FOR TRANSACTIONS UNDER REGULATION D, RULE 505 (RULE 59).

01. Exempt Securities. Pursuant to Section 30-14-203(1), Idaho Code, transactions that are exempt securities under17 CFR 230.505 are exempt from Section 30-14-301, Idaho Code. As a condition of this exemption, the issuer shall comply with the requirements in Subsection 059.02 of this rule. (9-1-04)T

02. Disqualification. The exemption under Subsection 059.01 of this rule, is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent (10%) or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter: (9-1-04)T

a. Within the last five (5) years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the U.S. Securities and Exchange Commission; (9-1-04)T

b. Within the last five (5) years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit; (9-1-04)T

c. Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or (9-1-04)T

d. Is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five (5) years, temporarily, preliminary or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security. (9-1-04)T

03. Exceptions. Subsection 059.02 of this rule shall not apply if: (9-1-04)T

a. The party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party; (9-1-04)T

b. Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or (9-1-04)T

c. The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under Subsection 059.03.of this rule. (9-1-04)T

04. Notice Filings for Rule 505. The notice filing required for transactions in Idaho under 17 CFR 230.505, shall consist of the following: (9-1-04)T

a. One (1) manually signed copy of the Form D (including the Appendix); (9-1-04)T

b. Consent to service of process (Form U-2); (9-1-04)T

c. Copy of the private placement memorandum, and (9-1-04)T

d. Each notice shall be filed with the Department no later than ten (10) business days prior to effecting a sale in Idaho. (9-1-04)T

05. Amendments. During the period of the offering, the issuer shall take steps necessary to insure that all material information contained in the notice filing remains current and accurate. (9-1-04)T

06. Nonaccredited Investors. In all sales to nonaccredited investors in this state, one (1) of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry, shall believe that one (1) of the following conditions is satisfied: (9-1-04)T

a. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent (10%) of the investor's net worth, it is suitable. (9-1-04)T

b. The purchaser either alone or with her purchaser representative(s) has such knowledge and experience in financial and business matters that she is or they are capable of evaluating the merits and risks of the prospective investment. (9-1-04)T

07. Due Diligence. Nothing in this rule is intended to relieve registered securities broker-dealers or agents from the due diligence, suitability, or know your customer standards or any other requirements of law otherwise applicable to such registered person. (9-1-04)T

08. Disclosure. Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act. (9-1-04)T

09. Denial, Suspension, Revocation, Condition or Limitation of Exemption. Any issuer relying on the exemption under Regulation D, Rule 505 may be subject to the enforcement remedies provided in Section 30-14-204, Idaho Code, if it fails to satisfactorily address issues raised by the Department in comment letters or otherwise. (9-1-04)T

10. Issuer Agent Registration. Pursuant to Section 30-14-402(9), Idaho Code, an individual who represents an issuer who effects transactions that are exempt securities under17 CFR 230.505 and exempt from Section 30-14-301, Idaho Code, is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. (9-1-04)T

060. REGISTRATION OR EXEMPTION OF "BLIND POOL" OFFERINGS PROHIBITED (RULE 60).
An offering in which it is proposed to issue stock or other equity interest without an allocation of proceeds to sufficiently identifiable properties or objectives shall be considered a "blind pool" offering and one in which the duty to provide full disclosure cannot be met. Because of the inability or failure to make full disclosure, the Department is of the position that the offering would work a fraud upon purchasers and, therefore, the offering may not be registered or qualify for an exemption from registration in Idaho. (9-1-04)T

061. CROSS-BORDER TRANSACTIONS EXEMPTION (RULE 61).
By authority delegated to the Administrator in Section 30-14-203, Idaho Code, transactions effected by a Canadian broker-dealer and its agents that meet the requirements for exemption from registration pursuant to Section 080, of these rules, are determined to be classes of transactions for which registration is not necessary or appropriate for the protection of investors and are exempt from Sections 30-14-301 and 30-14-504, Idaho Code. (9-1-04)T

062. DESIGNATED MATCHING SERVICES (RULE 62).

01. In General. Sections 30-14-301 through 30-14-305, Idaho Code, shall not apply to any offer or sale of a security by an issuer in a transaction that meets the requirements of this rule. A designated matching service shall not be deemed a broker-dealer subject to registration within the meaning of the Act or the rules thereunder. (9-1-04)T

02. Definitions. The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise. (9-1-04)T

a. Designated Matching Service. Means a matching service designated by the Administrator under Section 062 of these rules. (9-1-04)T

b. Designated Matching Service Facility. Means a computer system operated, or a seminar or meeting conducted, by a designated matching service. (9-1-04)T

c. Individual Accredited Investor. Means any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars ($1,000,000) or any natural person who had an individual income in excess of two hundred thousand dollars ($200,000) in each of the two (2) most recent years or joint income with that person's spouse in excess of three hundred thousand dollars ($300,000) in each of those years and has a reasonable expectation of reaching the same income level in the current year. In addition each purchaser must evidence such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment. The term "individual accredited investor" shall also include any self-directed employee benefit plan with investment decisions made solely by persons that are "individual accredited investors" as defined in Subsection 062.02.c. of this rule, and the individual retirement account of any such individual accredited investor. (9-1-04)T

d. Investor Member. Means an investor who has been properly qualified by and uses a designated matching service. Either of the following investors may be properly qualified: any institutional investor as described in Section 30-14-22(13), Idaho Code, or an individual accredited investor as defined in this rule. (9-1-04)T

e. Issuer Member. Means an issuer who uses a designated matching service facility. (9-1-04)T

f. Summary Business Plan. Means a brief statement specifically describing the issuer, its management, its products or services, and the market for those products or services. Other information, including, specifically, financial projections, must not be included in a summary business plan. (9-1-04)T

03. **Application**. A person may apply to the Administrator to be a designated matching service by filing such forms as required by the Administrator. No designation will be made unless the applicant demonstrates that it: (9-1-04)T

a. Owns, operates, sponsors, or conducts a matching service facility limited to providing investor members with the summary business plans and identities of issuer members; (9-1-04)T

b. Will not be involved in any manner in the sale, offer for sale, solicitation of a sale or offer to buy, a security other than as set forth in Subsection 062.03.a. of this rule; (9-1-04)T

c. Will make a reasonable factual inquiry to determine whether an investor member is properly qualified; (9-1-04)T

d. Is a governmental entity, quasi-governmental entity, an institution of higher education or an Idaho nonprofit corporation that is associated with a governmental or quasi-governmental entity or an institution of higher education; (9-1-04)T

e. Does not employ any person required to be registered under the Act as a broker-dealer, investment adviser, agent, or investment adviser representative; (9-1-04)T

f. Does not have, and does not employ any person who has a business relationship with any investor member or issuer member other than to provide such member access to the matching service facility; (9-1-04)T

g. Charges fees only in an amount necessary to cover its reasonable operating costs and that are unrelated to the amount of money being raised by any issuer member or the amount of securities sold by any issuer member; (9-1-04)T

h. Agrees to not use any advertisement of its matching service facility that advertises any particular issuer or any particular securities or the quality of any securities or that is false or misleading or otherwise likely to deceive a reader thereof; and (9-1-04)T

i. Meets such other conditions as the Administrator considers appropriate for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act, and the rules thereunder. (9-1-04)T

04. Designation Consistent With Act. Designation under this rule is not available to any matching service formed in a manner that constitutes part of a scheme to violate or evade the provisions of the Act or rules thereunder. (9-1-04)T

05. Withdrawal of Designation. The Administrator, upon ten (10) days notice and hearing before the Administrator or a hearing officer, may withdraw a person's designation as a matching service if the person does not meet the standards for designation provided in this rule. (9-1-04)T

06. Disqualifications. (9-1-04)T

a. No exemption under this rule shall be available for the securities of any issuer if the issuer: (9-1-04)T

i. Within the last five (5) years, has filed a registration statement which is the subject of a currently effective registration stop order entered by the United States Securities and Exchange Commission or any state securities administrator; (9-1-04)T

ii. Within the last five (5) years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit or a misdemeanor involving financial fraud; (9-1-04)T

iii. Is the subject of any state or federal administrative enforcement order, entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or (9-1-04)T

iv. Is the subject of any order, judgment or decree of any court of competent jurisdiction, entered within the last five (5) years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security. (9-1-04)T

b. For purposes of this rule, the term "issuer" includes: (9-1-04)T

i. Any of the issuer's predecessors or any affiliated issuer; (9-1-04)T

ii. Any of the issuer's directors, officers, general partners, or beneficial owners of ten percent (10%) or more of any class of its equity securities (beneficial ownership meaning the power to vote or direct the vote or the power to dispose or direct the disposition of such securities); (9-1-04)T

iii. Any of the issuer's promoters presently connected with the issuer in any capacity, including: (9-1-04)T

(1) Any person who, acting alone or in conjunction with one (1) or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; or (9-1-04)T

(2) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, ten percent (10%) or more of any class of securities of the issuer or ten percent (10%) or more of the proceeds from the sale of any class of such securities; however, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of Subsection 062.06.b.iii. of this rule, if such person does not otherwise take part in founding and organizing the enterprise. (9-1-04)T

iv. Any underwriter of the issuer. (9-1-04)T

c. The exemption under this rule is not available to an issuer that is in the development stage that either has no specific business plan or purpose or had indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person. (9-1-04)T

07. Notice of Transaction. The issuer shall file with the Administrator a notice of transaction, consent to service of process (Form U-2), and a copy of its summary business plan within fifteen (15) days after the first sale in this state. (9-1-04)T

063. -- 077. (RESERVED).

078. IMPLEMENTATION OF CRD (RULE 78).

01. Designation and Use of CRD System. Pursuant to Section 30-14-406, Idaho Code, the Administrator designates the web-based Central Registration Depository (CRD) operated by the National Association of Securities Dealers to receive and store filings and collect related fees from broker-dealers, agents and investment adviser representatives on behalf of the Administrator. Forms U-4, U-5, BD, and BDW shall be used to register or terminate agents, investment adviser representatives or broker-dealers, respectively, in the state of Idaho through the CRD system. The CRD system will be utilized to effect NASD registration as well as registration, termination, and renewal in the state. (9-1-04)T

02. Registrations Not Automatic. A filing of Form U-4 or BD with the CRD system does not constitute an automatic registration in Idaho. Broker-dealers and investment advisers should not consider agents or investment adviser representatives registered until such approval from the state of Idaho has been received by them through CRD. (9-1-04)T

03. Electronic Signature. When a signature or signatures are required by the particular instructions of any filing to be made through CRD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to CRD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing. (9-1-04)T

079. IMPLEMENTATION OF IARD (RULE 79).

01. Designation. Pursuant to Section 30-14-406, Idaho Code, the Administrator designates the web-based Investment Adviser Registration Depository (IARD) operated by the National Association of Securities Dealers to receive and store filings and collect related fees from investment advisers on behalf of the Administrator. (9-1-04)T

02. Use of IARD. Unless otherwise provided, all investment adviser applications, amendments, reports, notices, related filings and fees required to be filed with the Administrator pursuant to the rules promulgated under the Act, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings: (9-1-04)T

a. Electronic Signature. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing. (9-1-04)T

b. When Filed. Solely for purposes of a filing made through IARD, a document is considered filed with the Administrator when all fees are received and the filing is accepted by IARD on behalf of the state.(9-1-04)T

03. Electronic Filing. The electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees and thirty (30) days notice is provided by the Administrator. Any documents or fees required to be filed with the Administrator that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the Administrator.

(9-1-04)T

04. Hardship Exemptions. Subsection 079.04 of this rule provides two (2) "hardship exemptions" from the requirements to make electronic filings as required by the rules. (9-1-04)T

a. Temporary Hardship Exemption. (9-1-04)T

i. Investment advisers registered or required to be registered under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically. (9-1-04)T

ii. To request a temporary hardship exemption, the investment adviser must file Form ADV-H which can be found at 17 CFR 279.3 in paper format with the Administrator where the investment adviser's principal place of business is located, no later than one (1) business day after the filing (that is the subject of the Form ADV-H) was due; and submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven (7) business days after the filing was due. (9-1-04)T

iii. Effective Date - Upon Filing. The temporary hardship exemption will be deemed effective upon receipt by the Administrator of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Administrator. (9-1-04)T

b. Continuing Hardship Exemption. (9-1-04)T

i. Criteria for Exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome. (9-1-04)T

ii. To apply for a continuing hardship exemption, the investment adviser must file Form ADV-H which can be found at 17- CFR 279.3 in paper format with the Administrator at least twenty (20) business days before a filing is due; and, if a filing is due to more than one (1) securities regulator, the Form ADV-H must be filed with the Administrator where the investment adviser's principal place of business is located. The Administrator who receives the application will grant or deny the application within ten (10) business days after the filing of Form ADV-H. (9-1-04)T

iii. Effective Date - Upon Approval. The exemption is effective upon approval by the Administrator. The time period of the exemption may be no longer than one (1) year after the date on which the Form ADV-H is filed. If the Administrator approves the application, the investment adviser must, no later than five (5) business days after the exemption approval date, submit filings to IARD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted. (9-1-04)T

080. BROKER-DEALER REGISTRATION -- APPLICATION/RENEWAL (RULE 80).

01. Initial Application - NASD Member Firms. Broker-dealers applying for initial registration pursuant to Section 30-14-406, Idaho Code, and who are contemporaneously applying for NASD membership or who are an NASD member, shall file: (9-1-04)T

a. With CRD, a completed Form BD, including Schedules A-E; (9-1-04)T

b. With CRD, a filing fee as specified in Section 30-14-410, Idaho Code. (9-1-04)T

02. Initial Application - Non-NASD Member Firms. Broker-dealers applying for initial registration pursuant to Section 30-14-406, Idaho Code, and who are not contemporaneously applying for NASD membership or are not an NASD member, shall file with the Department: (9-1-04)T

a. A completed Form BD, including Schedules A-E; (9-1-04)T

b. The filing fee specified in Section 30-14-410, Idaho Code; (9-1-04)T

c. Audited financial statements; (9-1-04)T

d. Documentation of compliance with the minimum capital requirements of Rule 87 of the Act; (9-1-04)T

e. Designation and qualification of a principal officer; (9-1-04)T

f. A list of the addresses, telephone numbers and resident agents of all office locations within the state of Idaho, to be provided within sixty (60) days of becoming registered; (9-1-04)T

g. A copy of the written supervisory procedures of the broker-dealer; (9-1-04)T

h. Any additional documentation, supplemental forms and information as the Administrator may deem necessary. (9-1-04)T

03. Incomplete Applications. After a period of six (6) months from date of receipt, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. (9-1-04)T

04. Annual Renewal. (9-1-04)T

a. An NASD member shall renew its registration by submitting the renewal fee specified in Section 30-14-410, Idaho Code, to the CRD according to their policies and procedures. A non-NASD member shall renew its registration by submitting to the Department current information required for initial registration, and the renewal fee specified in Section 30-14-410, Idaho Code. (9-1-04)T

b. It is required that an application for the renewal of the registration of a broker-dealer must be filed with the Department before the registration expires, which is the thirty-first day of December next following such registration, per the provisions of Section 30-14-406(d), Idaho Code. Any registration that is not renewed within that time limit will be deemed to have lapsed, thus requiring the broker-dealer to reapply for registration with the Department in accordance with the requirements of the Act. (9-1-04)T

05. Updates and Amendments. (9-1-04)T

a. A broker-dealer must file with CRD, in accordance with the instructions in Form BD, any amendments to the broker-dealer's Form BD. All broker-dealers must assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form BD or by direct notice to the Department. (9-1-04)T

b. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment; and (9-1-04)T

c. Litigation Notice. Any broker-dealer shall notify the Administrator in writing or through the CRD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as a broker-dealer. (9-1-04)T

d. Notice of Address. Every broker-dealer shall provide the Department, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (9-1-04)T

e. Change of Name. If a registered broker-dealer desires to change its name, notice of such an intent must be submitted to the CRD or this Department for non-NASD members, either before or within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. (9-1-04)T

06. Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all required submissions have been received by the Administrator. (9-1-04)T

07. Deferral of Effectiveness. The Administrator may, by order, defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. (9-1-04)T

081. WITHDRAWAL OF BROKER -- DEALER AND AGENT REGISTRATION (RULE 81).

01. Application Withdrawal. Withdrawal from registration as a broker-dealer or agent becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within sixty (60) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a revocation or suspension proceeding under Section 30-14-412, Idaho Code, within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration is effective. (9-1-04)T

02. Broker-Dealer. The application for withdrawal of registration as a broker-dealer shall be completed by following the instructions on Form BDW and filing Form BDW with CRD. (9-1-04)T

03. Agents. The application for withdrawal of registration as an agent shall be completed by following the instructions on Form U-5 and filed upon Form U-5 with CRD. (9-1-04)T

082. WITHDRAWAL OF AGENT OF ISSUER REGISTRATION (RULE 83).

01. Pending Revocation or Suspension. Withdrawal from registration as an agent of issuer becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within sixty (60) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a revocation or suspension proceeding under Section 30-14-412, Idaho Code, within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration is effective. (9-1-04)T

02. Agent of Issuer. The application for withdrawal of registration as an agent of issuer shall be completed by following the instructions on Form U-5 and filed upon Form U-5 with the Department. (9-1-04)T

083. BROKER-DEALER AGENT/ISSUER AGENT REGISTRATION (RULE 83).

01. Broker-Dealer Agents. Agents of broker-dealers applying for initial registration in the state of Idaho pursuant to Section 30-14-406, Idaho Code, shall file the following: (9-1-04)T

a. With CRD, a completed Form U-4; (9-1-04)T

b. With CRD, the filing fee specified in Section 30-14-410, Idaho Code; (9-1-04)T

c. With CRD, proof of successful completion of the applicable examinations specified in Section 103 of these rules; (9-1-04)T

d. With the Department, any additional documentation, supplemental forms and information as the Administrator may deem necessary. (9-1-04)T

e. With the Department, Subsections 083.01.a. through 083.01.d. of this rule, for any agent of a non-

NASD member. (9-1-04)T

02. Agents of Issuer. (9-1-04)T

a. Agents of issuers applying for initial registration in the state of Idaho pursuant to Section 30-14-406, Idaho Code, shall file the following with the Department: (9-1-04)T

i. A completed Form U-4; (9-1-04)T

ii. The fee specified in Section 30-14-410, Idaho Code; (9-1-04)T

iii. Proof of successful completion of the applicable examination(s) specified in Section 103 of these rules; (9-1-04)T

iv. Proof of a bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of ten thousand dollars ($10,000) and conditioned upon faithful compliance with the provisions of the Act by the agent, such that upon failure to so comply by the agent, the surety company shall be liable to any and all persons who may suffer loss by reason thereof. Provided, however, that the obligation of the surety bond must be maintained at all times in the amount therein provided; and provided further, that a certificate of deposit issued by any bank in the state of Idaho and assigned to the Administrator in an amount equal to the bond which would otherwise be required may be accepted by the administrator in lieu of a bond, if the certificate of deposit is maintained at all times in the amount and manner herein provided during the term for which the registration is effective and for three (3) years thereafter. (9-1-04)T

v. Any additional documentation, supplemental forms and information as the Administrator may deem necessary. (9-1-04)T

b. An individual who represents an issuer that effects transactions in a federal covered security under Section 18(b)(3) (transactions relating to "qualified purchasers" as that term may be defined by the SEC) or 18(b)(4)(D) (commonly known as Regulation D, Rule 506) of the Securities Act of 1933 is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated, directly or indirectly, for participation in the specified securities transactions. (9-1-04)T

c. Exceptions for officers. If there are not more than two (2) officers of an issuer, such officers may be registered as agents for a particular original offering of the issuer's securities without being required to pass such written examination or file a agent's bond as required by Subsection 083.02.a.iii. and 083.02.a.iv. of this rule, unless such person has registered under this rule within the prior five (5) years. (9-1-04)T

03. Incomplete Applications. After a period of six (6) months from date of receipt, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. (9-1-04)T

04. Annual Renewal. (9-1-04)T

a. Broker-Dealer Agent. Agents of NASD members shall renew their registrations by submitting the renewal fee specified in Section 30-14-410, Idaho Code, to the CRD. Agents of non-NASD members shall renew their registrations by submitting a completed renewal application and a renewal fee as specified in Section 30-14-410, Idaho Code. (9-1-04)T

b. Issuer Agent. Issuer agents shall renew their registrations by submitting a completed renewal application and a renewal fee as specified in Section 30-14-410, Idaho Code. (9-1-04)T

05. Updates and Amendments. (9-1-04)T

a. A broker-dealer agent or agent of issuer must file with CRD, or with this Department, in accordance with the instructions in Form U-4, any amendments to the broker-dealer agent's or issuer agent's Form U-4. It is the responsibility of each broker-dealer agent or issuer agent to assure that current and accurate information is

on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form U-4 or by direct notice to the Department. (9-1-04)T

b. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment; and (9-1-04)T

c. Litigation Notice. Any broker-dealer agent or issuer agent shall notify the Administrator in writing or through the CRD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as a broker-dealer. (9-1-04)T

d. Notice of Address. Every broker-dealer agent and issuer agent shall provide the Department with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (9-1-04)T

e. Change of Name. If a registered broker-dealer agent or issuer agent changes his or her name, notice of such must be submitted to the CRD or this Department within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. (9-1-04)T

06. Completion of Filing. An application for initial or renewal registration is not considered complete for purposes of Section 30-14-406(c), Idaho Code, until the required fee and all required amendments, including submissions requested by the Department, have been received by the Department. (9-1-04)T

07. Deferral of Effectiveness. The Administrator may, by order, defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. (9-1-04)T

084. CROSS-BORDER LICENSING EXEMPTION (RULE 84).
By authority delegated to the Administrator in Section 30-14-401(d), Idaho Code, a Canadian broker-dealer meeting all of the following conditions is determined to be exempt from the registration requirement in Section 30-14-401(a), Idaho Code: (9-1-04)T

01. Canadian Broker-Dealer. The broker-dealer is registered in Canada, does not have an office or other physical presence in this state, and is not an office or branch of a broker-dealer domiciled in the United States. (9-1-04)T

02. Registered Broker-Dealer. The broker-dealer is registered with or a member of a Canadian self-regulatory organization, stock exchange, or the Bureau des Services Financiers and maintains that registration or membership in good standing. (9-1-04)T

03. Customers. The broker-dealer and its agents effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by: (9-1-04)T

a. An individual from Canada that temporarily resides or is temporarily present in this state and with whom the broker-dealer had a bona fide broker-dealer-customer relationship before the individual entered the United States; or (9-1-04)T

b. An individual present in this state whose transactions relate to a self-directed, tax advantaged Canadian retirement plan of which the individual is the holder or contributor. (9-1-04)T

04. Disclosure. The broker-dealer prominently discloses in writing to its clients in this state that the broker-dealer and its agents are not subject to the full regulatory requirement of the Act. (9-1-04)T

05. Jurisdiction. Neither the broker-dealer nor its agents disclaim the applicability of Canadian law or jurisdiction to any transaction conducted pursuant to this exemption. (9-1-04)T

06. Anti-Fraud Provisions. The broker-dealer and its agents comply with the antifraud provisions of the Act and of federal securities laws. (9-1-04)T

07. Consent to Service. Prior to or contemporaneously with the first transaction in Idaho, the broker-dealer must file a consent to service of process (Form U-2) in a manner that effectively appoints the Administrator as agent for service of process. (9-1-04)T

08. Provide Requested Information. Any Canadian broker-dealer or agent relying on this exemption shall, upon written request, furnish the Department any information relative to a transaction covered by Section 084, of these rules, that the Administrator deems relevant. (9-1-04)T

085. RELICENSING (FORMERLY TEMPORARY AGENT TRANSFER (TAT) SYSTEM) (RULE 85).

01. Relicensing Agents. Transfer of agents from one broker-dealer to another shall be effected pursuant to, and in accordance with, the NASAA/CRD Relicense program which allows for an automatic temporary license. (9-1-04)T

02. Relicensing Investment Adviser Representatives. Transfer of investment adviser representatives from one (1) investment adviser to another shall be effected pursuant to, and in accordance with, the NASAA/CRD Relicense program which allows for an automatic temporary license. (9-1-04)T

03. Temporary License Expiration. An agent or investment adviser representative may not transact business in Idaho after the expiration of a temporary license unless a permanent license has been issued. In all cases, the Administrator retains the right to deny, suspend, or revoke a temporary license for the causes listed in Section 30-14-412, Idaho Code. (9-1-04)T

086. AGENT TERMINATION (RULE 86).
Termination notice pursuant to the requirements of Section 30-14-408, Idaho Code, shall be given by filing within thirty (30) calendar days of termination, a completed Form U-5. For agents terminating registration with a NASD member, such notice shall be filed with the CRD. For agents terminating registration with a non-NASD member, such notice shall be filed with the Department. (9-1-04)T

087. NET CAPITAL REQUIREMENTS FOR BROKER-DEALERS (RULE 87).
Every registered broker-dealer shall have and maintain an adjusted net capital in compliance with 17 CFR 240.15c3-1 under the Securities Exchange Act of 1934, as currently amended. (9-1-04)T

088. RECORDS REQUIRED FOR BROKER-DEALERS (RULE 88).

01. Required Books and Records. Unless otherwise provided by order of the SEC, each broker-dealer registered or required to be registered under the Act shall make, maintain and preserve books and records in compliance with the SEC rules 17a-3 (17 C.F.R. Section 240.17a-3), 17a-4 (17 C.F.R. Section 240.17a-4), 15g-9 (17 C.F.R. Section 240.15g-9) and 15c2-11 (17 C.F.R. Section 240.15c2-11), which are adopted and incorporated by reference. (9-1-04)T

02. Compliance. To the extent that the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended are not subject to enforcement action by the Department for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule. (9-1-04)T

089. INVESTMENT ADVISER REGISTRATION -- APPLICATION/RENEWAL (RULE 89).

01. Initial Application. The application for initial registration as an investment adviser, pursuant to Section 30-14-406, Idaho Code, shall be made by completing Form ADV which can be found at 17 C.F.R. 279.1 in accordance with the form instructions and by filing the form with IARD. The application for initial registration shall also include the following: (9-1-04)T

a. Proof of compliance by the investment adviser with the examination requirements of Section 103

of these rules; (9-1-04)T

b. A bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of twenty-five thousand ($25,000) and conditioned upon faithful compliance with the provisions of the Act by the investment adviser such that upon failure to so comply by the investment adviser, the surety company shall be liable to any and all persons who may suffer loss by reason thereof. Except that an investment adviser that has its principal place of business in a state other than this state shall be excluded from these bonding requirements provided that such investment adviser is registered as an investment adviser in the state where it maintains its principal place of business and is in compliance with such state's bonding requirements; (9-1-04)T

c. A hard copy of the completed Form ADV Part II, only until such time as this form can be electronically submitted via IARD; (9-1-04)T

d. A copy of the investment advisory contract to be executed by Idaho clients; (9-1-04)T

e. A balance sheet dated as of the investment adviser's prior fiscal year-end; however, if the investment adviser has not been in operation for an entire year, a balance sheet dated within ninety (90) days of filing shall be submitted; (9-1-04)T

f. The fee required by Section 30-14-410, Idaho Code; and; (9-1-04)T

g. Any other information the Department may reasonably require. (9-1-04)T

02. Incomplete Applications. After a period of six (6) months from the date of receipt by the Department, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. (9-1-04)T

03. Annual Renewal. The application for annual renewal registration as an investment adviser shall be filed with IARD according to their policies and procedures. The application for annual renewal registration shall include the fee required by Section 30-14-410, Idaho Code. (9-1-04)T

04. Applications Prior to Expiration. An application for the renewal of the registration of a investment adviser must be filed with the Department before the registration expires, which is the thirty-first day of December next following such registration, per the provisions of Section 30-14-406(d), Idaho Code. Any registration that is not renewed within that time limit will be deemed to have lapsed, thus requiring the investment adviser to reapply for registration with the Department in accordance with the requirements of the Act. (9-1-04)T

05. Updates and Amendments. (9-1-04)T

a. An investment adviser must file with IARD, in accordance with the instructions in Form ADV, any amendments to the investment adviser's Form ADV. All investment advisers must assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form ADV or by direct notice to the Department. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. (9-1-04)T

b. Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file a copy of the investment adviser's balance sheet as of the prior fiscal year-end. (9-1-04)T

c. Litigation Notice. Any investment adviser shall notify the Administrator in writing or through the IARD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as an investment adviser. (9-1-04)T

d. Notice of Address. Every investment adviser representative shall provide the Department, through IARD, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil

Procedure. (9-1-04)T

06. Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all required submissions have been received by the Administrator. (9-1-04)T

090. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION - APPLICATION/RENEWAL (RULE 90).

01. Initial Application. The application for initial registration as an investment adviser representative pursuant to Section 30-14-406, Idaho Code, shall be made by completing Form U-4 in accordance with the form instructions and by filing Form U-4 with CRD. The application for initial registration also shall include the following: (9-1-04)T

a. Proof of compliance by the investment adviser representative with the examination requirements of Section 103 of these rules; and (9-1-04)T

b. The fee required by Section 30-14-410, Idaho Code. (9-1-04)T

02. Incomplete Applications. After a period of six (6) months from the date of receipt by the Department, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. (9-1-04)T

03. Annual Renewal. The application for annual renewal registration as an investment adviser representative shall be filed with CRD. The application for annual renewal registration shall include the fee required by Section 30-14-410, Idaho Code. (9-1-04)T

04. Updates and Amendments. (9-1-04)T

a. The investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur. All investment adviser representatives must assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form U-4. (9-1-04)T

b. An investment adviser representative and the investment adviser must file promptly with CRD any amendments to the representative's Form U-4. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. (9-1-04)T

c. Litigation Notice. Any investment adviser representative shall notify the Administrator in writing, through CRD, of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as an investment adviser representative. (9-1-04)T

d. Change of Name. If a registered investment adviser representative changes his or her name, notice of such must be submitted to the CRD or this Department either before or within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. (9-1-04)T

e. Notice of Address. Every investment adviser representative shall provide the Department with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (9-1-04)T

05. Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all required submissions have been received by the Administrator. (9-1-04)T

06. Dual Registration Exemption. A person may transact business in this state as an investment adviser representative if he is registered as an agent pursuant to Section 30-14-402, Idaho Code, and is employed by a

broker-dealer registered pursuant to Section 30-14-401, Idaho Code, and (9-1-04)T

a. The person's investment advisory activities are limited to recommending the investment advisory services of an investment adviser registered under Section 30-14-403, Idaho Code, or a federal covered adviser that has made a notice filing pursuant to Section 30-14-405, Idaho Code, and all such recommendations are made on behalf of the employing broker-dealer; (9-1-04)T

b. The person is not compensated directly for making such recommendations; and (9-1-04)T

c. The person provides written notice to the administrator that he is relying on this exemption from the requirement to be registered as an investment adviser representative. (9-1-04)T

091. WITHDRAWAL OF INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE REGISTRATION (RULE 91).

01. Application Withdrawal. Withdrawal from registration as an investment adviser or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within sixty (60) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a revocation or suspension proceeding under Section 30-14-412, Idaho Code, within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration is effective. (9-1-04)T

02. Investment Adviser. The application for withdrawal of registration as an investment adviser shall be completed by following the instructions on Form ADV-W which can be found at 17 C.F.R. 279.2 and filed upon Form ADV-W with IARD. (9-1-04)T

03. Investment Adviser Representative. The application for withdrawal of registration as an investment adviser representative shall be completed by following the instructions on Form U-5 and filed upon Form U-5 with CRD. (9-1-04)T

092. NOTICE FILING REQUIREMENTS FOR FEDERAL COVERED ADVISERS (RULE 92).

01. Notice Filing. The notice filing for a federal covered adviser pursuant to Section 30-14-405, Idaho Code, shall be filed with IARD on an executed Form ADV which can be found at 17 C.F.R. 279.1. A notice filing of a federal covered adviser shall be deemed filed when the fee required by Section 30-14-410, Idaho Code, and the Form ADV are filed with and accepted by IARD on behalf of the state. (9-1-04)T

02. Portions of Form ADV Not Yet Accepted by IARD. Until IARD provides for the filing of Part II of Form ADV, the Administrator will deem filed Part II of Form ADV if a federal covered adviser provides, within five (5) days of a request, Part II of Form ADV to the Administrator. Because the Administrator deems Part II of the Form ADV to be filed, a federal covered adviser is not required to submit Part II of Form ADV to the Administrator unless requested. (9-1-04)T

03. Renewal. The annual renewal of the notice filing for a federal covered adviser pursuant to Section 30-14-410, Idaho Code, shall be filed with IARD. The renewal of the notice filing for a federal covered adviser shall be deemed filed when the fee required by Section 30-14-410(e), Idaho Code, is filed with and accepted by IARD on behalf of the state. (9-1-04)T

04. Updates and Amendments. A federal covered adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the federal covered adviser's Form ADV. (9-1-04)T

093. RECORDS REQUIRED OF INVESTMENT ADVISERS (RULE 93).
Pursuant to provisions of the Act, every investment adviser registered or required to be registered under the Act shall

make and keep true, accurate and current books and records in compliance with 17 CFR 275.204-2 under the Investment Advisers Act of 1940, as currently amended. (9-1-04)T

094. CLIENT CONTRACTS - INVESTMENT ADVISERS (RULE 94).

01. Contract. As used in this rule, "investment advisory contract" means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account for a person other than an investment company, as defined in the Investment Company Act of 1940, as amended. (9-1-04)T

02. Contents of Client Contract. No investment adviser shall enter into, extend, or renew any investment advisory contract, or in any way perform any investment advisory contract entered into, extended, or renewed, after the effective date of this rule, unless such contract is in writing and contains the following: (9-1-04)T

a. Provides that an investment adviser shall not receive compensation based on a share of capital gains upon or capital appreciation of funds or any portion of the funds of the client, unless the investment adviser adheres to the provisions set forth in 17 CFR 275.205-3 under the Investment Adviser Act of 1940; (9-1-04)T

b. Provides that no assignment of the contract shall be made by the investment adviser without the written consent of the client; (9-1-04)T

c. Provides that if the investment adviser is a partnership, the investment adviser shall notify the client of any change in the membership of such partnership within a reasonable time after such change; (9-1-04)T

d. Provides the investment adviser's policy regarding termination of the contract, in compliance with 17 CFR 275.204-3(b). (9-1-04)T

e. Detailed description of the services to be provided; (9-1-04)T

f. Terms of the contract; (9-1-04)T

g. Amount of the advisory fee, the formula for computing the fee, and the amount of any prepaid fee to be returned in the event of contract termination or non-performance; (9-1-04)T

h. Discloses whether the contract grants discretionary power to the investment adviser; (9-1-04)T

i. A contract may not contain any provision that limits or purports to limit the liability of the investment adviser for conduct or omission arising from the advisory relationship that does not conform to the Act, applicable federal statutes, or common law fiduciary standard of care; or the remedies available to the client at law or equity or the jurisdiction where any action shall be filed or heard. (9-1-04)T

095. INVESTMENT ADVISER BROCHURE RULE (RULE 95).
An investment adviser registered or required to be registered under the Act shall, in accordance with 17 CFR 275-204-3 under the Investment Advisers Act of 1940, furnish each advisory client and prospective advisory client with a written disclosure statement that may be either a copy of Part II of its Form ADV which complies with 17 CFR 275-201(b) of the Investment Advisers Act of 1940, or a written document containing at least the information then so required by Part II of Form ADV. (9-1-04)T

096. REQUIREMENTS FOR CUSTODY (RULE 96).
If an investment adviser registered or required to be registered under the Act maintains custody of client funds, it shall be done in accordance with 17 CFR 275-206(4)-2 of the Investment Advisers Act of 1940. (9-1-04)T

097. INVESTMENT ADVISER AFFILIATION WITH BROKER-DEALERS/ISSUERS/AGENTS (RULE 97).
If an investment adviser becomes affiliated with a broker-dealer or issuer, he will be under a continuing obligation to make full disclosure of the affiliation to all parties to the affiliation, and must provide written notice to the Administrator of any material changes concerning any affiliation. Compliance with Part II of Uniform Form ADV and delivery of Part II of that form, or of a separate brochure or document containing substantially the same

information that meets the requirements of the federal brochure rule, will be deemed to be in compliance with this rule. (9-1-04)T

098. NAMES USED BY BROKER-DEALERS AND INVESTMENT ADVISERS (RULE 98).

01. Unregistered Names. (9-1-04)T

a. Broker-dealers, Broker-dealer Agents. Upon written request, the Administrator, in his discretion, may allow use by a broker-dealer of the name of an entity which is not registered with the Department as a broker-dealer if, in all communications and advertising, a notation is prominently displayed indicating that all securities transactions are made through a named registered broker-dealer. However, any and all payments received must be in the name of the registered broker-dealer. The Administrator may impose any further conditions or restrictions on the use of the nonregistered name that he deems appropriate for the protection of the public. Except as provided in this rule, the use of unregistered names by a broker-dealer is prohibited. (9-1-04)T

b. Investment Advisers, Investment Adviser Representatives. All advising, transactions, communications, and advertising regarding securities and the conducting of business as an investment adviser must be accomplished under the name of the investment adviser that is currently registered with the Department. Upon written request, the Administrator, in his discretion, may allow use by an investment adviser or investment adviser representative of the name which is not registered with the Department. (9-1-04)T

02. Change of Name. If a registered broker-dealer, investment adviser, investment adviser representative or agent desires a name change, notice of such an intent must be submitted through CRD or to the Department within thirty (30) days after the effective date of the change. The name change will not be effective in this state until the notice is received. Any notice of a name change must include a copy of the rider to be attached to the investment adviser's surety bond, if such bond is required, reflecting the name change. (9-1-04)T

099. CIRCUMVENTION OF ORDERS PROHIBITED (RULE 99).
A broker-dealer, investment adviser, agent, or investment adviser representative may not circumvent the imposition of an order denying registration or revoking registration by withdrawing the application through the CRD system after such order has been issued. Such action will not be recognized by the Administrator, and will have no effect on the outcome of the order. (9-1-04)T

100. WAIVER BY ADMINISTRATOR (RULE 100).
The Administrator may, either upon request or upon his own motion, waive or modify the application of any particular section to a particular agent, broker-dealer or investment adviser when, in his opinion, just and reasonable cause exists for such action and the waiving or modifying of such rule would not be contrary to the provisions of the Act or to the public interest. (9-1-04)T

101. NOTIFICATION OF OPENING, CLOSING OR RELOCATION OF BRANCH OFFICES (RULE 101).
Any broker-dealer or investment adviser, registered as such with the Department, shall notify the Administrator in writing or through CRD, no later than thirty (30) days after the opening, closing or relocation of any branch office. For purposes of this rule, "branch office" is defined to include any location where any of the broker-dealer's or investment adviser's business is conducted on a regular basis outside the broker-dealer's or investment adviser's main office or principal place of business including, but not limited to, any financial institutions, residences, or seasonal offices used by the broker-dealer or investment adviser and its agents. (9-1-04)T

102. CANCELLATION OF REGISTRATION OR APPLICATION -- GROUNDS (RULE 102).
If the Administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, salesman or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the Administrator may by order cancel the registration or application. (9-1-04)T

103. EXAMINATION REQUIREMENTS (RULE 103).

01. Examination Required. The following examinations are required for the following applicants:

(9-1-04)T

a. Broker-dealer agent application. General agents of securities broker-dealers are required to take and pass: (9-1-04)T

i. The applicable NASD examination; and (9-1-04)T

ii. Either the Series 63 or the Series 66 examination. (9-1-04)T

b. Investment adviser representative and investment adviser qualifying officer application. Applicants for registration as investment adviser representatives or as an investment adviser qualifying officer shall take and pass: (9-1-04)T

i. The Series 65; or (9-1-04)T

ii. The Series 66 and Series 7 examinations. (9-1-04)T

c. Specialized agent of a broker-dealer, issuer agent and qualifying officer for non-NASD broker-dealer application. Specialized agents of broker-dealers, issuer agents and qualifying officers for non-NASD broker-dealers application are required to take and pass: (9-1-04)T

i. The applicable NASD examination; and (9-1-04)T

ii. Either the Series 63 or the Series 66 examination. (9-1-04)T

d. Sales of Viaticals. Persons selling viatical investments are required to take and pass the Series 7 examination. (9-1-04)T

02. Specialized Examination Authority. Any registration granted pursuant to a specialized examination will be restricted, and the registrant will be authorized to effect securities transactions only in securities of the type specified by the conditions of the license. (9-1-04)T

03. Investment Adviser Representatives - Waiver. An applicant for investment adviser representative or investment adviser qualifying officer registration may qualify for a waiver of the examination requirement if the applicant currently holds one (1) of the following designations: (9-1-04)T

a. Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.; (9-1-04)T

b. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania; (9-1-04)T

c. Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; (9-1-04)T

d. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants; (9-1-04)T

e. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or (9-1-04)T

f. Such other professional designation as the Administrator may by rule or order recognize. (9-1-04)T

04. Waiver. The Administrator, in his sole discretion, may waive any examination required by this rule upon a sufficient showing of good cause and upon any conditions he may impose. (9-1-04)T

104. FRAUDULENT, DISHONEST AND UNETHICAL PRACTICES - BROKER-DEALER, BROKER-DEALER AGENTS, ISSUER AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES (RULE 104).

01. Fraudulent, Dishonest and Unethical Practices. Any broker-dealer, agent, issuer agent, investment adviser or investment adviser representative who engages in one (1) or more of the following practices shall be deemed to have engaged in one (1) or both of the following: (9-1-04)T

a. An "act, practice, or course of business that operates or would operate as a fraud or deceit" as used in Section 30-14-501, Idaho Code; (9-1-04)T

b. A dishonest and unethical practice as used in Section 30-14-412(d)(13), Idaho Code, and such conduct may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by statute. (9-1-04)T

c. This rule is not intended to be all-inclusive, and thus, acts or practices not enumerated herein may also be deemed fraudulent, or dishonest and unethical. (9-1-04)T

02. Delivery Delays. Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers. (9-1-04)T

03. Churning. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account. (9-1-04)T

04. Unsuitable Recommendations. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer. Subsection 104.04 of this rule may be referred to hereinafter as the suitability rule. (9-1-04)T

05. Unauthorized Transactions. Executing a transaction on behalf of a customer without authorization to do so. (9-1-04)T

06. Discretionary Authority. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the executing of orders. (9-1-04)T

07. Margin Accounts. Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement before or promptly after the initial transaction in the account. (9-1-04)T

08. Segregation of Client Securities. Failing to segregate customers' free securities or securities held in safekeeping. (9-1-04)T

09. Hypothecating Customer Securities. Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent before or promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission. (9-1-04)T

10. Unreasonable Price, Commission. Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit. (9-1-04)T

11. Failure to Supervise. Failure by a broker-dealer or investment adviser to exercise diligent supervision over the securities activities of all its broker-dealer agents, investment adviser representatives and employees a set forth in Section 105 of these rules. (9-1-04)T

12. **Unreasonable Fees**. Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business. (9-1-04)T

13. **Sales at the Market**. Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such broker-dealer, or by any such person for whom the broker-dealer is acting or with whom the broker-dealer is associated in such distribution, or any person controlled by, controlling, or under common control with such broker-dealer. (9-1-04)T

14. **Manipulative, Deceptive or Fraudulent Practices**. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, which may include: (9-1-04)T

a. Effecting any transaction in a security which involves no change in the beneficial ownerships thereof; (9-1-04)T

b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. However, nothing in Subsection 104.14, of this rule, prohibits a broker-dealer from entering bona fide agency cross transactions for customers; or (9-1-04)T

c. Effecting, alone or with one (1) or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others. (9-1-04)T

15. **Loss Guarantees**. Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer. (9-1-04)T

16. **Bona Fide Price Reports**. Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security. (9-1-04)T

17. **Deceptive or Misleading Advertising**. Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. (9-1-04)T

18. **Disclosure of Control**. Failing to disclose that the broker-dealer or investment adviser is controlled by, controlling, affiliated with, or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction. (9-1-04)T

19. **Bona Fide Distribution**. Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member by, among other things, transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or parking or withholding securities. (9-1-04)T

20. **Customer Communication**. Failure or refusal to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint. (9-1-04)T

21. Loans from Customers. Borrowing money or securities from a customer unless the customer is a broker-dealer, an affiliate, or a financial institution engaged in the business of loaning funds or securities, or immediate family. For purposes of this rule, the term "immediate family" means parents, mother-in-law, father-in-law, husband, wife, brother, sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and children. (9-1-04)T

22. Unrecorded Transactions. Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction. (9-1-04)T

23. Fictitious Accounts. Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited. (9-1-04)T

24. Profit/Loss Sharing. Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents. (9-1-04)T

25. Splitting Commissions. Dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person not also registered in Idaho as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control. (9-1-04)T

26. Unsolicited Transactions. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited. (9-1-04)T

27. NASD Rules Compliance. Failing to comply with any applicable provision of the Conduct Rules and any other Rules of Fair Practice of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission. (9-1-04)T

28. Contradicting Prospectus Information. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead. (9-1-04)T

29. Inside Information. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer, agent, investment adviser or investment adviser representative is in possession of material, non-public information which would impact the value of the security. (9-1-04)T

30. Contradictory Recommendations. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each investor. (9-1-04)T

31. Prospectus Delivery. Failure to comply with any prospectus delivery requirement promulgated under federal law. (9-1-04)T

32. Penny Stock Sales. Effect any transaction in, or to induce or attempt to induce the purchase or sale of, any penny stock by any customer except in accordance with the requirements as set forth in the 1934 Securities Exchange Act, Section 15(g) and the rules and regulations prescribed thereunder. (9-1-04)T

33. Unsuitable Recommendations. Recommending to a client to whom investment management or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser. (9-1-04)T

34. Loans to Clients. Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser. (9-1-04)T

35. Misrepresentations Concerning Advisory Services. To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading. (9-1-04)T

36. Unreasonable Advisory Fees. Charging a client an unreasonable advisory fee. (9-1-04)T

37. Conflicts of Interest. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including: (9-1-04)T

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and (9-1-04)T

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees. (9-1-04)T

38. Guaranteeing Specific Results. Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered. (9-1-04)T

39. Advertising. Publishing, circulating, or distributing any advertisement that does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940. (9-1-04)T

40. Disclosure of Private Information. Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client. (9-1-04)T

41. Advisory Contract Disclosures. Entering into, extending, or renewing any investment advisory contract unless such contract is in writing and discloses, in substance the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract. (9-1-04)T

42. Protection of Non-Public Information. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940. (9-1-04)T

43. Advisory Contract to Comply with Federal Law. To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the Act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940. (9-1-04)T

44. Waiver of State or Federal Law Prohibited. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contrary to the provisions of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940. (9-1-04)T

45. Fraudulent, Deceptive or Manipulative Acts. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contrary to the provisions of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940. (9-1-04)T

46. Outside Business Activities - Selling Away. Any agent or investment adviser representative associated with a broker-dealer or investment adviser registered under the Act shall not engage in business activities, for which he receives compensation either directly or indirectly, outside the scope of his regular employment unless he has provided prior written notice to his employer firm. (9-1-04)T

47. Third Party Conduct. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Act or any rules thereunder, or engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). (9-1-04)T

48. Misleading Filings. For purposes of Section 30-14-505, Idaho Code, the term "proceeding" includes, but is not limited to, any investigation, examination or other inquiry initiated by the Department. (9-1-04)T

105. SUPERVISION OF AGENTS, INVESTMENT ADVISER REPRESENTATIVES AND EMPLOYEES (RULE 105).

01. Supervision Required. Every broker-dealer, investment adviser, and designated supervisor shall exercise diligent supervision over the securities activities of all of his agents, investment adviser representatives and employees. (9-1-04)T

02. Broker-Dealer Procedures. Every agent and employee of the broker-dealer shall be subject to the supervision of a supervisor designated by such broker-dealer. The supervisor may be the broker-dealer in the case of a sole proprietor, or a partner, officer, office manager, or any other qualified person. (9-1-04)T

03. Written Compliance Procedure. Every broker-dealer shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted by the broker-dealer to comply with the following duties imposed by this rule, and shall state at which business office or offices the broker-dealer keeps and maintains the records required by Section 30-14-411, Idaho Code: (9-1-04)T

a. The review and written approval by the designated supervisor of the opening of each new customer account; (9-1-04)T

b. The frequent examination of all customer accounts to detect and prevent irregularities or abuses, including a review for churning and switching of securities in customers' accounts, as well as unsuitable recommendations and sales of unregistered securities; (9-1-04)T

c. The prompt review and written approval by the designated supervisor of all securities transactions and all correspondence pertaining to the solicitation or execution of all securities transactions; (9-1-04)T

d. The review of back office operations, i.e., all systems and procedures, including the currency and accuracy of books and records, the status and causes of "Fails to Receive" and "Fails to Deliver", net capital, credit extensions and financial reports; (9-1-04)T

e. The review of form, content and filing of all correspondence related in any way to the purchase or sale or solicitation for the purchase or sale of securities; (9-1-04)T

f. The review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to his account to a stated agent or associate of the broker-dealer and the prompt written approval of each discretionary order entered on behalf of that account; and (9-1-04)T

g. The prompt review and written approval of the handling of all customer complaints. As used in these rules, "complaint" is considered to be any written statement by a customer or by any person acting for a customer which complains about the activities of the broker-dealer, agent or associate in connection with the solicitation or execution of a transaction or the disposition of funds of that customer. (9-1-04)T

04. Investment Adviser Procedures. Every investment adviser shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted to comply with the following duties as applicable to the business of the investment adviser: (9-1-04)T

a. The review and written approval by the designated supervisor of the opening of each new customer account; (9-1-04)T

b. The frequent examination of all customer accounts to detect and prevent irregularities or abuses, including a review for unsuitable recommendations and recommendations of unregistered securities; (9-1-04)T

c. The prompt review and written approval by the designated supervisor of all securities recommendations and all correspondence pertaining to the solicitation or execution of all securities recommendations; (9-1-04)T

d. The review of form, content and filing of all correspondence related in any way to the recommendation of the purchase of any securities; (9-1-04)T

e. The prompt review and written approval of the handling of all customer complaints. As used in these rules, a "complaint" is considered to be any written statement by a customer, or by any person acting for a customer, questioning the activities of the investment adviser or representative in connection with recommendations concerning, or disposition of, funds in the account. (9-1-04)T

106. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.01 - HEALTH PROFESSIONAL LOAN REPAYMENT PROGRAM

DOCKET NO. 16-0201-0401 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 39, Chapter 59, 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 15, 2004.

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

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

This entire chapter of rule is being repealed. In 2000, the Idaho legislature replaced Idaho Statute Title 39, Chapter 59 (Health Professional Loan Repayment Program) that provided the authority for IDAPA 16.02.01 with a new Idaho Statute Title 39, Chapter 59 (Idaho Rural Health Care Access Program). However, the Health Professional Loan Repayment Program administered under IDAPA 16.02.01 has continued to operate until the final payments could be issued to all loan repayment recipients. The final loan payment was issued in February 2004; therefore, IDAPA 16.02.01 is being repealed as it is no longer being used.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the repeal of this chapter is due to legislative action.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mary Sheridan at (208) 332-7212.

Anyone can submit written comments regarding this proposed rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before September 22, 2004.

DATED this 28th day of July, 2004.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone
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IDAPA 16.02.01 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.11 - IMMUNIZATION REQUIREMENTS FOR CHILDREN ATTENDING LICENSED DAY CARE FACILITIES IN IDAHO

DOCKET NO. 16-0211-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-1118, 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 15, 2004.

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

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

The Idaho Medical Association's committee on public health has recommended that Idaho add the fifth dose of diphtheria, tetanus and a-cellular pertussis (DTaP) vaccine and a second dose of mumps, measles and rubella vaccine to the immunization requirements for children attending licensed day care facilities in Idaho. These added vaccinations are in line with the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices (ACIP) recommendations and will help promote the health and safety of Idaho's children. This chapter has also been revised and updated for plain language and IDAPA requirements.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these recommendations were made by medical professionals for the health and safety of Idaho's children.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Russell Duke at 208 334-0670.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before September 22, 2004.

DATED this 27th day of July, 2004.

Sherri Kovach
Program Supervisor
Administrative Procedures Section
Department of Health and Welfare
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0211-0401

000. LEGAL AUTHORITY.
The Idaho Legislature has granted to the Idaho Board of Health and Welfare the authority to adopt rules for the administration and enforcement of an immunization program for children attending licensed day care facilities in Idaho, ~~*pursuant to*~~ under Section 39-1118, Idaho Code. ~~*(5-24-91)*~~( )

001. TITLE AND SCOPE.

01. Title. The~~*se rules are to be cited as Idaho Department of Health and Welfare Rules*~~ title of this chapter is, IDAPA 16~~,~~. ~~*Title*~~ 02~~,~~. ~~*Chapter*~~ 11, "Immunization Requirements for Children Attending Licensed Day Care Facilities in Idaho". ~~*(5-24-91)*~~( )

02. Scope. These rules contain the legal requirements for the administration and enforcement of an immunization program for children who attend licensed day care facilities in Idaho. (5-24-91)

~~***002. -- 004. (RESERVED).***~~

002. WRITTEN INTERPRETATIONS.
The Department has no written interpretations that apply to rules in this chapter in accordance with Section 67-5201(19)(b)(iv), Idaho Code. ( )

003. ADMINISTRATIVE APPEALS.
Administrative appeals for decisions made by the Department are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". ( )

004. INCORPORATION BY REFERENCE.
No documents have been incorporated by reference in this chapter of rules. ( )

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- 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. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ( )

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

04. Telephone. (208) 334-5500. ( )

05. Internet Website Address. Department Internet address is: "http://www2.state.id.us/dhw/". ( )

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.
Any use or disclosure of Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records". ( )

007. -- 009. (RESERVED).

0~~*05*~~10. DEFINITIONS.

01. **ACIP**. The Center for Disease Control Prevention's Advisory Committee on Immunization Practices. ( )

0~~1~~2. **Board**. The Idaho State Board of Health and Welfare. (12-31-91)

0~~2~~3. **Board of Medicine**. The Idaho State Board of Medicine. (5-24-91)

0~~3~~4. **Child**. A person less than twelve (12) years of age. (5-24-91)

0~~4~~5. **Department**. The Idaho Department of Health and Welfare. (5-24-91)

0~~5~~6. **Director**. The Director of the Idaho Department of Health and Welfare, or designated individual. (12-31-91)

0~~6~~7. **Immunization Document**. A medical or other written record initiated and retained by a licensed day care facility which gives the month, day and year of each immunization a child has received. (5-24-91)

0~~7~~8. **Immunization Record**. A written document signed by a physician or a physician's representative which states the month, day and year of each immunization a person has received. (5-24-91)

0~~8~~9. **Initial Attendance**. The first admission of a child to any licensed day care facility in Idaho. (5-24-91)

~~09~~10. **Laboratory Proof**. A ~~*written or typed document or*~~ certificate from a licensed medical laboratory ~~*licensed by the Department's Bureau of Laboratories or by a substantially similar body in another state or jurisdiction within the United States,*~~ stating the type of test performed, the date of each test and the results. Tests performed must meet the requirements of ~~*Idaho Department of Health and Welfare Rules,*~~ IDAPA 16.02.06, "Rules Governing Quality Assurance for Idaho Clinical Laboratories". ~~*(12-31-91)*~~( )

1~~0~~1. **Licensed Day Care Facility**. Any Idaho day care facility maintained by an individual, organization or corporation and licensed by an authorized governmental entity to provide care to children. (5-24-91)

1~~1~~2. **Licensed Day Care Facility Operator**. Any person~~*(s)*~~ who owns and operates or is designated by ~~*the*~~ an individual, organization or corporation ~~*owner(s)*~~ to manage the day-to-day operation of a licensed day care facility described in Subsection ~~*005.10*~~ 010.11 of these rules. ~~*(12-31-91)*~~( )

1~~2~~3. **Parent, Custodian or Guardian**. The legal parent, custodian or guardian of a child or those with limited power of attorney for the temporary care or custody of a minor child. (5-24-91)

14. **Pertussis**. An infectious agent, *Bordetella pertussis*, that causes the disease commonly known as whooping cough. ( )

1~~3~~5. **Physician**. A medical doctor or osteopath licensed by the Idaho State Board of Medicine, or by a ~~*substantially*~~ similar body in another state or jurisdiction within the United States~~*recognized by that Board*~~. ~~*(5-24-91)*~~( )

1~~4~~6. **Physician's Representative**. Any person appointed by or vested with the authority to act on behalf of a physician in matters concerning health. (5-24-91)

1~~5~~7. **Regulatory Authority**. The Director of the Idaho Department of Health and Welfare or the Director's designee. (5-24-91)

0~~06~~11. -- 099. (RESERVED).

100. IMMUNIZATION PROGRAM.
~~*In accordance with medical standards recognized by the Board of Medicine and the "Immunization Recommendations" available from the Department's Bureau of Preventive Medicine, within fourteen (14) days of a*~~

~~*child's initial attendance to any licensed day care facility in Idaho, the following immunizations are required and must be administered, appropriate for age, to children four (4) months of age and older:*~~ All immunizations listed in Subsections 100.01 through 100.05 of these rules, are required of children who are to attend licensed day care facilities. These immunizations must be administered according to the "General Recommendations on Immunizations" established by the ACIP. These recommendations are available from the Department.
~~*(5-24-91)*~~(____)

01. Diphtheria, Tetanus and A-Cellular Pertussis (DTaP). ~~*Four*~~ Five (~~*4*~~5) ~~*or more*~~ doses of DTaP (Diphtheria, Tetanus and a-cellular Pertussis) vaccine are required and must be administered to the child unless fewer doses are medically recommended. ~~*(3-14-95)L*~~(____)

02. Polio. Three (3) ~~*or more*~~ doses of polio vaccine are required and must be administered to the child unless fewer doses are medically recommended. See Section 110 of these rules. ~~*(5-24-91)*~~(____)

03. Measles, Rubella and Mumps. ~~*One*~~ Two (~~*1*~~2) doses of measles, rubella and mumps vaccine ~~*is*~~ are required and must be administered to the child ~~*on or after age fifteen (15)*~~ according to ACIP recommendations.
~~*(5-24-91)*~~(____)

04. Haemophilus Influenza Type B. Haemophilus influenza type b (HIB) vaccine is required and must be administered to the child ~~*as recommended by the Idaho Immunization Program*~~ according to ACIP recommendations. ~~*(3-14-95)L*~~(____)

05. Hepatitis B. Three (3) doses of hepatitis B vaccine administered to children born after November 22, 1991, unless fewer doses are medically recommended. ~~*(s*~~See S~~*ubs*~~ection 110~~*.01)*~~ of these rules.
~~*(3-14-95)L*~~(____)

101. TIME PERIOD FOR COMPLIANCE.
The legal parent, custodian or guardian of a child must comply with the provisions contained in this chapter within fourteen (14) days of initial attendance to any licensed day care facility in Idaho. ~~*(12-31-91)*~~(____)

102. EVIDENCE OF IMMUNIZATION STATUS.

01. Immunization Certification Statement. Within the deadlines established in Section 101 of these rules, a legal parent, custodian or guardian of each child must present to the licensed day care facility operator~~*(s)*~~ an immunization record or ~~*a true and correct copy of an immunization record*~~ certification statement signed by a physician or a physician's representative stating the type, number and dates ~~*(month, day and year)*~~ of immunizations received. ~~*(12-31-91)*~~(____)

02. Schedule of Intended Immunizations. ~~*A*~~ The licensed day care facility operator, within fourteen (14) days of initial attendance, must have a statement by a legal parent, custodian or guardian of any child who ~~*has not received the required immunizations described in Subsections 100.01 through 100.05, excepted in Section 105, exempted in Section 110, or*~~ is not immunized, excepted or exempted, and who is in the process of receiving, or has been scheduled to receive the required immunizations~~*,*~~. ~~*must be in the possession of the licensed day care facility operator(s) within fourteen (14) days of initial attendance and*~~ This statement must include the following information: ~~*(12-31-91)*~~(____)

a. Name and age of child; ~~*and*~~ ~~*(5-24-91)*~~(____)

b. Type, number and dates~~*, month, day and year*~~ of immunizations to be administered; ~~*and*~~
~~*(5-24-91)*~~(____)

c. Signature of the legal parent, custodian or guardian providing the information; and~~*(5-24-91)*~~(____)

d. Signature of a physician or physician's representative. (5-24-91)

103. -- 104. (RESERVED).

105. EXCEPTION TO IMMUNIZATION REQUIREMENT FOR THE APPLICABLE DISEASE.
A child who meets one (1) or both of the following conditions, ~~*if*~~ when supporting documentation is in the possession of the licensed day care facility operator~~*(s)*~~, ~~*shall*~~ will not be required to undergo the required immunizations: ~~*(5-24-91)*~~(____)

01. Laboratory Proof. A child who has laboratory proof of immunity to any of the ~~*eight*~~ nine (~~*8*~~9) childhood diseases listed in Section 100 of these rules, ~~*shall*~~ will not be required to undergo the required immunizations. ~~*(12-31-91)*~~(____)

02. Disease Diagnosis. A child who has a statement signed by a licensed physician stating the child has had measles (rubeola) or mumps disease and diagnosed by the physician upon personal examination ~~*shall*~~ will not be required to undergo the required immunizations. ~~*(5-24-91)*~~(____)

106. -- 109. (RESERVED).

110. EXEMPTIONS TO IMMUNIZATION REQUIREMENT.
~~*A*~~ When supporting documentation is in the possession of the licensed day care facility operator, a child who meets one (1) or both of the following conditions, ~~*if supporting documentation from the parent, custodian or guardian is in the possession of the licensed day care facility operator(s), shall*~~ will be exempt from the required immunization~~*(s) for which the condition(s) exists:*~~. ~~*(5-24-91)*~~(____)

01. Life or Health Endangering Circumstances. A ~~*child who has a*~~ signed statement ~~*signed by*~~ of a licensed physician ~~*or physician's representative*~~ that the child's life or health would be endangered if any or all of the required immunizations ~~*in Section 100, were*~~ are administered~~*shall be exempt from the required immunization(s).*~~; or ~~*(12-31-91)*~~(____)

02. Religious or Other Objections. A ~~*child who has a*~~ signed statement ~~*signed by*~~ of the legal parent, custodian or guardian on a form provided by the Department or one ~~*(1)*~~ containing ~~*substantially*~~ similar information, and includes the following~~*information shall be exempt from the required immunization(s)*~~: ~~*(5-24-91)*~~(____)

a. Name of child; and (5-24-91)

b. A statement of objection on religious or other grounds. (5-24-91)

111. -- 199. (RESERVED).

200. DOCUMENTATION AND RETENTION OF IMMUNIZATIONS DATA BY LICENSED DAY CARE FACILITY OPERATOR~~*(S)*~~.

01. Provision of Information. The licensed day care facility operator ~~*shall make available upon request by*~~ will provide to the legal parent, custodian or guardian, information on ~~*the licensed day care*~~ immunization requirements and the ~~*medically*~~ ACIP recommended immunization schedule. ~~*(5-24-91)*~~(____)

02. Immunization Document. The licensed day care facility operator ~~*shall transcribe*~~ will copy the immunization data from the child's immunization record to a day care immunization document or have on file a true and correct copy of the child's immunization record. This immunization document ~~*or true and correct copy of the child's immunization record shall*~~ must include the month, day and year of each immunization the child has received. ~~*(5-24-91)*~~(____)

03. Immunization Document Retention. The immunization document described in Subsection 200.02 of these rules, ~~*shall*~~ must be retained by the licensed day care facility on all children ~~*four (4) months of age and older*~~ for as long as the child attends the licensed day care facility plus one (1) year. ~~*(12-31-91)*~~(____)

201. -- 299. (RESERVED).

300. INSPECTIONS BY PUBLIC DISTRICT HEALTH DEPARTMENTS.

01. Compliance Inspection. The regulatory authority ~~*shall*~~ will verify that the immunization document described in Subsection 200.02 of these rules, is initiated and retained in the licensed day care facility. ~~*(12-31-91)*~~(____)

02. Recording of Violation. Following an inspection which reveals a violation of this chapter by a licensed day care facility, the regulatory authority ~~*shall*~~ will record the violations in writing and provide a copy to the licensed day care facility operator~~*(s)*~~. ~~*(12-31-91)*~~(____)

03. Response to Violation. The licensed day care facility operator~~*(s) shall*~~ will submit a written report to the regulatory authority within thirty (30) days following the inspection stating that the specified violations have been corrected. ~~*(5-24-91)*~~(____)

04. Failure to Respond. The regulatory authority ~~*shall*~~ will report in writing to the licensing authority any violation~~*(s)*~~ recorded in Subsection 300.02 of these rules, to which a licensed day care facility operator~~*(s)*~~ has not responded as required by Subsection 300.03 of these rules. ~~*(12-31-91)*~~(____)

301. -- 309. (RESERVED).

310. ENFORCEMENT OF IMMUNIZATION REQUIREMENT.

01. Noncompliance~~*by Parent, Custodian or Guardian*~~. Licensed day care facility operators in Idaho must exclude ~~*A*~~any child who is not in compliance with this chapter within fourteen (14) days of initial attendance in ~~*any licensed*~~ their day care facility~~*in Idaho shall be excluded by the licensed day care facility operator(s)*~~. ~~*(12-31-91)*~~(____)

02. Length of Exclusion. Any child excluded from a licensed day care facility in Idaho ~~*in accordance with*~~ as required in Subsection 310.01 of these rules, ~~*shall*~~ may not be readmitted to ~~*any licensed day care*~~ the facility ~~*in Idaho*~~ until they are in compliance with the requirements of this chapter. ~~*(12-31-91)*~~(____)

311. -- 399. (RESERVED).

400. TECHNICAL ASSISTANCE.

01. Random Evaluations. A representative of the ~~*Idaho Immunization Program shall*~~ Department will randomly select and visit licensed day care facilities in Idaho to evaluate the facility files for the following: (____)

a. ~~*i*~~Immunization documents described in Subsection 200.02~~,~~ of these rules; (____)

b. ~~*e*~~Exceptions documentation described in Section 105 of these rules; and (____)

c. ~~*e*~~Exemption statements described in Section 110~~*, and filed by the licensed day care facility*~~ of these rules. ~~*(12-31-91)*~~(____)

02. Notice of Intent to Review. A representative of the ~~*Idaho Immunization Program shall*~~ Department will inform licensed day care facilities selected in Subsection 400.01 of these rules, at least thirty (30) days prior to an intent to review the licensed day care facilities' documents. ~~*(12-31-91)*~~(____)

03. Evaluation Results. Information ~~*shall*~~ will be provided to the licensed day care facility about the results of the immunization evaluation described in Subsection 400.01 of these rules, and the recommendations for correcting deficiencies and increasing immunity levels. ~~*(12-31-91)*~~(____)

401. -- 99~~*5*~~9. (RESERVED).

~~***996. ADMINISTRATIVE PROVISIONS.***~~
~~*Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000, et seq., "Rules Governing Contested Case Proceedings and Declaratory Rulings".* *(12-31-91)*~~

~~***997. CONFIDENTIALITY OF RECORDS.***~~
~~*Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records".* *(5-24-91)*~~

~~***998. INCLUSIVE GENDER AND NUMBER.***~~
~~*For the purposes of these rules, words used in the masculine gender include the feminine, or vice versa, where appropriate.* *(5-24-91)*~~

~~***999. SEVERABILITY.***~~
~~*Idaho Department of Health and Welfare Rules, IDAPA 16.02.11, "Immunizations Requirements for Children Attending Licensed Day Care Facilities in Idaho," are severable. If any rule or part thereof, or the application of such rule to any person or circumstance, is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter.* *(5-24-91)*~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.15 - IMMUNIZATION REQUIREMENTS FOR IDAHO SCHOOL CHILDREN

DOCKET NO. 16-0215-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-4801, 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 15, 2004.

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

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

The Idaho Medical Association's committee on public health has recommended that Idaho add the fifth dose of diphtheria, tetanus and a-cellular pertussis (DTaP) vaccine and a second dose of mumps, measles and rubella vaccine to the immunization requirements for children attending schools in Idaho. These added vaccinations are in line with the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices (ACIP) recommendations and will help promote the health and safety of Idaho's children. This chapter has also been revised and updated for plain language and IDAPA requirements.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these recommendations were made by medical professionals for the health and safety of Idaho's children.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Russell Duke at 208 334-0670.

Anyone can submit written comments regarding this proposed rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before September 22, 2004.

DATED this 27th day of July, 2004.

Sherri Kovach
Program Supervisor
Administrative Procedures Section
Department of Health and Welfare
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone
(208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0215-0401

000. LEGAL AUTHORITY.
The Idaho Legislature has granted to the Board of Health and Welfare, in cooperation with the State Board of Education and the Idaho School Boards Association, the authority to adopt rules for the administration and enforcement of an immunization program for Idaho school children, ~~*pursuant to*~~ under Section 39-4801, Idaho Code. ~~*(1-25-79)*~~( )

001. TITLE AND SCOPE.

01. Title. The~~*se rules are to be cited as Idaho Department of Health and Welfare Rules*~~ title of this chapter is, IDAPA 16.02.15, "Immunization Requirements for Idaho School Children". ~~*(1-25-79)*~~( )

02. Scope. These rules contain the legal requirements for the administration of an immunization program for children enrolled in grades preschool, kindergarten through twelve (12) of any Idaho public, private, or parochial school. (10-13-92)

~~***002. – 004. (RESERVED).***~~

002. WRITTEN INTERPRETATIONS.
The Department has no written interpretations that apply to rules in this chapter in accordance with Section 67-5201(19)(b)(iv), Idaho Code. ( )

003. ADMINISTRATIVE APPEALS.
Administrative appeals on decisions made by the Department are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". ( )

004. INCORPORATION BY REFERENCE.
No documents have been incorporated by reference in this chapter of rules. ( )

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- 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. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ( )

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

04. Telephone. (208) 334-5500. ( )

05. Internet Website Address. Department Internet address is: "http://www2.state.id.us/dhw/". ( )

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.
Any use or disclosure of Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records". ( )

007. -- 009. (RESERVED).

0~~*05*~~10. DEFINITIONS.

01. **ACIP**. The Center for Disease Control's Advisory Committee on Immunization Practices. ( )

02. ***First*** **Admission**. *Initial* *e*Enrollment of a child who is admitted for the first time at the commencement of or during the regular school term to public, private or parochial school. *(1-25-79)*( )

0*1*3. **Child**. A minor who is enrolled in preschool, kindergarten through grade twelve (12) in any Idaho public, private, or parochial school. (10-13-92)

0*3*4. **Department**. Idaho Department of Health and Welfare. (10-13-92)

0*4*5. **Laboratory Proof**. A *written or typed document or* certificate from a licensed medical laboratory*, licensed by the Department's Bureau of Laboratories or by a substantially similar body in another state or jurisdiction within the United States,* stating the type of test performed, the date of each test, and the results. Tests performed must meet the requirements of *Idaho Department of Health and Welfare Rules,* IDAPA 16.02.06, "Rules Governing Quality Assurance for Idaho Clinical Laboratories". *(10-13-92)*( )

0*5*6. ***Legal*** **Parent, Custodian or Guardian**. The legal parent, custodian or guardian of a child or those with limited power of attorney for the temporary care or custody of a minor child. *(1-25-79)*( )

07. **Pertussis**. An infectious agent, *Bordetella pertussis*, that causes the disease commonly known as whooping cough. ( )

0*6*8. **Physician**. A medical doctor or osteopath licensed by the Idaho State Board of Medicine, or by a *substantially* similar body in another state or jurisdiction within the United States *recognized by that Board*. *(1-25-79)*( )

0*7*9. **Physician's Representative**. Any person appointed by, or vested with the authority to act on behalf of a physician in matters concerning health. (8-15-79)

***08*10.** **Private or Parochial School**. Any Idaho school maintained by an individual, organization or corporation, not at public expense, and open only to children selected and admitted by the individual, organization or corporation, or to children of a certain class or possessing certain qualifications, which may or may not charge tuition fees. (1-25-79)

***09*11.** **Public School**. Any Idaho school maintained at the public expense and open to all children within a given district, including those responsible for the education and training of exceptional children or those schools specially chartered. (1-25-79)

1*0*2. **School Authority**. An authorized representative designated by the Board of Trustees of a public school or a person or body designated to act on behalf of the governing body of a private or parochial school. (8-15-79)

0*06*11. -- 099. (RESERVED).

100. IMMUNIZATION PROGRAM.
The All immunizations, listed in Subsections 100.01 through 100.04 of these rules, are required of children who are to attend preschool, kindergarten through grade twelve (12) in any Idaho public, private, or parochial school. *and must be* Immunizations will be recognized if administered *in the manner and in accordance with medical standards recognized* according to the "General Recommendations on Immunizations" established by the *Idaho Board of Medicine and with the "Immunization Recommendations"* ACIP or their equivalent. These recommendations are available from the *Bureau of Communicable Disease Prevention within the* Department. *(10-13-92)*( )

01. **Measles, Rubella, and Mumps**. *One* Two (*1*2) doses of Measles, Rubella and Mumps vaccine administered to the child *on or after his first (1st) birthday; and* according to ACIP recommendations for children entering preschool or kindergarten on or after the beginning of the 2005 school term. *(10-13-92)*( )

02. Diphtheria, Tetanus, A-Cellular Pertussis (DTaP), Diphtheria, Tetanus (DT Pediatric) ~~and/~~or Tetanus, Diphtheria (Td). Any combination of ~~*four*~~ five (~~*4*~~5) ~~*or more*~~ doses of DTaP (Diphtheria, Tetanus, a-cellular Pertussis), DT (Diphtheria, Tetanus) ~~*and/*~~or Td (Tetanus, Diphtheria) vaccine are required for all children entering Preschool or Kindergarten on or after the beginning of the 2005 school term, unless fewer doses are medically recommended. ~~*(s*~~See S~~*ubs*~~ection 110~~*.01); and*~~ of these rules. If the fourth dose was administered on or after the child's fourth birthday, the fifth dose is not needed, ~~*(3-14-95)L*~~(____)

03. Polio. Three (3) ~~*or more*~~ doses of Polio vaccine, unless fewer doses are medically recommended. ~~*(s*~~See S~~*ubs*~~ection 110~~*.01)*~~ of these rules. ~~*(12-31-91)*~~(____)

04. Hepatitis B. Three (3) doses of Hepatitis B vaccine administered to children born after November 22, 1991, unless fewer doses are medically recommended. ~~*(s*~~See S~~*ubs*~~ection 110~~*.01)*~~ of these rules. ~~*(3-14-95)L*~~(____)

101. DEADLINE FOR COMPLIANCE.
The legal parent, custodian, or guardian of any child who is to attend any public, private, or parochial school in Idaho must comply with the provisions contained in this chapter at the time of ~~*first*~~ admission and before attendance. ~~*(10-13-92)*~~(____)

102. EVIDENCE OF IMMUNIZATION STATUS.

01. Immunization Certification Statement. Within the deadlines established in Section 101 of these rules, a legal parent, custodian, or guardian of each child must present to school authorities an immunization certification statement signed by a physician or a physician's representative stating the type, number and dates of immunizations received. ~~*(10-13-92)*~~(____)

02. Schedule of Intended Immunizations. ~~*A*~~ School authorities, at the time of admission and before attendance, must have a statement by a legal parent, custodian or guardian of any child who is not immunized, excepted or exempted, and who is in the process of receiving, or has been scheduled to receive the required immunizations~~,~~. ~~*must be in the possession of school authorities at the time of first admission and before attendance on a*~~A form is provided by the Department, or one ~~*substantially*~~ similar~~*, to*~~ must include the following information: ~~*(10-13-92)*~~(____)

a. Name and age of child; ~~*and*~~ ~~*(7-9-90)*~~(____)

b. School and grade child is enrolled in and attending ~~*and grade in which enrolled*~~; ~~*and*~~ ~~*(7-9-90)*~~(____)

c. Type, number and dates of immunizations to be administered; ~~*and*~~ ~~*(7-9-90)*~~(____)

d. Signature of the legal parent, custodian or guardian providing the information; and (10-13-92)

e. Signature of a physician or physician's representative. (7-9-90)

03. Children Admitted to School and Failing to Continue the Schedule of Intended Immunizations. A child, who does not receive the required immunizations as scheduled in Subsection 102.02 of these rules, ~~*shall*~~ will be excluded by school authorities until documentation of the administration of the required immunization~~*(s)*~~ is provided to school authorities by the child's legal parent, custodian, or guardian.~~*(10-13-92)*~~(____)

103. -- 104. (RESERVED).

105. EXCEPTIONS TO IMMUNIZATION REQUIREMENT.
~~*A*~~ When supporting documentation is in the possession of school authorities at the time of admission and before attendance, a child who meets one (1) or more of the following conditions, ~~*if supporting documentation is in the possession of school authorities at the time of first admission and before attendance,*~~ will not be required to undergo the required immunizations: ~~*(10-13-92)*~~(____)

01. Laboratory Proof. Laboratory proof of immunity to any of the ~~*seven*~~ eight (~~*7*~~8) childhood diseases

listed in Section 100 of these rules, will not require the immunization for that disease; or ~~*(10-13-92)*~~(____)

02. Disease Diagnosis. A signed statement of a licensed physician stating that the child has had ~~*M*~~measles or ~~*M*~~mumps disease diagnosed by the physician upon personal examination, will not require the immunization for the diagnosed disease. ~~*(1-25-79)*~~(____)

106. -- 109. (RESERVED).

110. EXEMPTIONS TO IMMUNIZATION REQUIREMENT.

~~*A*~~ When supporting documentation is in the possession of school authorities, at the time of admission and before attendance, a child who meets one (1) or both of the following conditions, ~~*if supporting documentation from the legal parent, custodian or guardian is in the possession of school authorities at the time of first admission and before attendance,*~~ will not be required to undergo the required immunization~~*(*~~s~~*) for which the condition(s) exists:*~~. ~~*(10-13-92)*~~(____)

01. Life- or Health- Endangering Circumstances. A signed statement of a licensed physician that the child's life or health would be endangered if any or all of the required immunizations are administered; or ~~*(8-15-79)*~~(____)

02. Religious or Other Objections. A signed statement of the legal parent, custodian or guardian on a form provided by the Department or ~~*on*~~ one containing ~~*substantially*~~ similar information, ~~*to*~~ and includes the following ~~*information*~~: ~~*(10-13-92)*~~(____)

a. Name of child; and (1-25-79)

b. A statement of objection on religious or other grounds. (1-25-79)

111. -- 149. (RESERVED).

150. ENFORCEMENT OF IMMUNIZATION REQUIREMENT.

01. Noncompliance. Any child not in compliance with this chapter upon ~~*first*~~ admission in preschool, kindergarten through grade twelve (12) in any Idaho public, private or parochial school, ~~*shall*~~ will be denied attendance by school authorities. ~~*(10-13-92)*~~(____)

02. Length of Exclusion. Any child denied attendance in accordance with Subsection 150.01 ~~*shall*~~ of these rules, will not be allowed to attend any Idaho public, private or parochial school until they are in compliance with the requirements of this chapter. ~~*(10-13-92)*~~(____)

151. -- 199. (RESERVED).

200. REPORTS BY SCHOOL AUTHORITIES.

01. Responsibility and Timeliness. School authorities must ~~*transmit copies of*~~ submit a report of each school's immunization status, by grade, to the ~~*State*~~ Department ~~*of Education*~~ on or before the first day of November ~~*of*~~ each year. ~~*(10-13-92)*~~(____)

02. Form and Content of Report. ~~*On a form provided by the Department, t*~~The following information will be provided on a Department form or electronically by school ~~*and by grade must be reported*~~: ~~*(10-13-92)*~~(____)

~~*a. School and enrollment identification information including;*~~ ~~*(10-13-92)*~~

~~*i*~~**a.** Inclusive dates of reporting period; (10-13-92)

~~*ii*~~**b.** Name and address of school, school district and county ~~*in which located*~~; ~~*(10-13-92)*~~(____)

~~iii~~**c.** Grade being reported and total number of children enrolled in ~~each~~ the grade; ~~and~~ ~~(10-13-92)~~(____)

~~iv~~**d.** The ~~signature~~ name and title of the person completing the report form. ~~(10-13-92)~~(____)

~~**b.** Total number of children enrolled and attending school in each grade who: (10-13-92)~~

~~i~~**e.** Number of children who ~~M~~meet all of the required immunizations listed in Section 100 of these rules; ~~and~~ ~~(12-31-91)~~(____)

~~ii~~**f.** Number of children who ~~D~~do not meet all of the required number of immunizations listed by specific immunization type~~s for the following reasons:~~; ~~(8-15-79)~~(____)

~~(1)~~**g.** ~~They~~ Number of children who do not meet the immunization requirement, but are in the process of receiving the required immunizations; ~~or~~ and ~~(10-13-92)~~(____)

~~(2)~~**h.** ~~They~~ Number of children who claimed exemption to the required immunizations as allowed in Section 110 of these rules. ~~(10-13-92)~~(____)

201. -- 99~~5~~9. (RESERVED).

~~***996. ADMINISTRATIVE PROVISIONS.***~~
~~*Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000, et seq., "Rules Governing Contested Case Proceedings and Declaratory Rulings".* (12-31-91)~~

~~***997. CONFIDENTIALITY OF RECORDS.***~~
~~*Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records".* (12-31-91)~~

~~***998. INCLUSIVE GENDER.***~~
~~*For the purposes of these rules, words used in the masculine gender include the feminine, or vice versa, as appropriate.* (1-25-79)~~

~~***999. SEVERABILITY.***~~
~~*The rules of IDAPA 16.02.15, Rules of the Department of Health and Welfare, are severable. If any rule, or part thereof, or the application of such rules, to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter.* (1-25-79)~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0403

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), 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 15, 2004.

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

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

This docket reflects changes necessary because of rules approved by the 2004 Legislature. The changes in IDAPA 16.03.09 are required due to approval of the new chapter IDAPA 16.03.17, "Service Coordination," and will prevent conflicts for service coordinators. Those sections of rule dealing with service coordination in IDAPA 16.03.09 are deleted or revised in this docket.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule is necessary to avoid a conflict in rules due to the passage of the new service coordination chapter.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Paul Leary at (208) 364-1840.

Anyone can submit written comments regarding this proposed rulemaking. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before September 22, 2004.

DATED this 27th day of July, 2004.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0403

118. ~~*TARGETED*~~ DEVELOPMENTAL DISABILITIES SERVICE COORDINATION.
The Department will purchase ~~*targeted case management, hereafter referred to as Targeted S*~~service ~~*C*~~coordination ~~*(TSC)*~~ services for Medicaid-eligible participants with developmental disabilities when authorized through the Department's prior authorization process in IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services," and provided by an organized service coordination provider agency who has entered into a written provider agreement with the Department. The purpose of these services, as described in IDAPA 16.03.17, "Service Coordination," is to assist eligible individuals to obtain needed health, educational, vocational, residential, and social services. ~~*(3-20-04)*~~( )

~~***01. Eligible Target Group****. Only Medicaid eligible adults, eighteen (18) years of age or older, and adolescents, age fifteen (15) through the month of their eighteenth birthday, who are eligible for the Idaho State School and Hospital (ISSH) waiver who desire to live, learn, or work in community based settings are eligible. All participants must have a diagnosis of developmental disability.*~~ ~~*(3-20-04)*~~

~~***a.*** *The following diagnostic and functional criteria will be applied to determine eligibility for Targeted Service Coordination: "Developmental Disability," as defined in Section 66-402, Idaho Code, means a chronic disability of a person that appears before twenty-two (22) years of age and:*~~ ~~*(3-20-04)*~~

~~*i. Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and*~~ ~~*(10-1-94)*~~

~~*ii. Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and*~~ ~~*(3-20-04)*~~

~~*iii. Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and individually planned or coordinated.*~~ ~~*(10-1-94)*~~

~~***b.*** *Eligible individuals may reside in certified family homes, residential care, semi-independent living, room and board, their own homes, or be homeless.*~~ ~~*(3-20-04)*~~

~~***c.*** *Eligible individuals may be receiving DDA services, waiver services, or other services. These individuals may not be receiving any other types of service coordination.*~~ ~~*(3-20-04)*~~

~~***02. TSC Service Description****. Targeted service coordinators may be paid plan developers and plan monitors as described in IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". TSC consists of the following core functions:*~~ ~~*(3-20-04)*~~

~~***a.*** *Linking the Participant to Needed Services. Linking includes finding, arranging, and assisting the participant with maintaining the services, supports, and community resources identified on the plan of service. Linking also includes advocating for the unmet needs of the participant and encouraging his independence.*~~ ~~*(3-20-04)*~~

~~***b.*** *Monitoring and Coordination of Services. Monitoring and coordination of services includes assisting the participant and his family or guardian to coordinate and retain services and assure consistency and nonduplication between services. This includes assuring that the services are satisfactory to the participant and making adjustments to the plan of service when needed. Targeted service coordinators must report immediately all allegations or suspicions of mistreatment, abuse, neglect, or exploitation, as well as injuries of unknown origin to the Regional Medicaid Services (RMS), the adult protection authority, and any other entity identified under Section 39-5303, Idaho Code, or federal law.*~~ ~~*(3-20-04)*~~

~~***03. Targeted Service Coordination Agency Qualifications****. Targeted Service Coordination agencies must meet the following criteria:*~~ ~~*(10-1-94)*~~

~~***a.*** *Have demonstrated the ability to provide supervision over and assure the provision of all the core functions of Targeted Service Coordination to the target population as described in Subsection 118.02 of these rules* *(3-20-04)*~~

~~***b.*** *Employ individuals qualified to do Targeted Service Coordination;* *(3-20-04)*~~

~~***c.*** *Not provide service coordination to any individual for whom the agency, owners or employees also provide direct services. Agencies must disclose any interest by the owners of the agency, their employees or their contractors in any other agency that provides services to people with developmental disabilities;* *(3-20-04)*~~

~~***d.*** *Assure that all targeted service coordinators they employ successfully complete the service coordination certification specified by the Department;* *(3-20-04)*~~

~~***e.*** *Follow the written procedures for service coordination authorized and adhered to by the Department;* *(3-20-04)*~~

~~***f.*** *Adhere to the Department's mission and value statements for "right service," "right setting," and "right cost"; and* *(3-20-04)*~~

~~***g.*** *Adhere to the Department's requirements, billing, and reimbursement procedures.* *(3-20-04)*~~

~~***04.*** ***TSC Provider Staff Qualifications****. All individual service coordinators, paid plan developers, and paid plan monitors must be employees or contractors of an organized provider agency that has a valid provider agreement with the Department. The employing entity will supervise the individual service coordinators, paid plan developers, and paid plan monitors and assure that they meet the following qualifications:* *(3-20-04)*~~

~~***a.*** *Must be a psychologist, Ph.D., Ed.D., M.A./M.S.; nurse, B.S.N., M.S., Ph.D.; Q.M.R.P.; Developmental Specialist; M.D.; D.O.; or possess a valid Idaho social work license issued by the Board of Social Work Examiners;* *(3-20-04)*~~

~~***b.*** *Must have documentation of at least twelve (12) months based on an average of twenty (20) hours per week, of on-the-job experience providing direct service to the target population, or be working under the supervision of a fully qualified service coordinator;* *(3-20-04)*~~

~~***c.*** *Must satisfactorily complete a criminal history check as required by IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks";* *(3-20-04)*~~

~~***d.*** *Must be supervised by an individual with the authority to oversee the service delivery, and to remove the individual if the participant's needs are not met; provider agencies will supervise their service coordinators, plan developers, and plan monitors;* *(3-20-04)*~~

~~***e.*** *Cannot be the service coordinator, plan developer, or plan monitor for any participant for whom the service coordinator has individual responsibility for the provision of any other care or treatment;* *(3-20-04)*~~

~~***f.*** *Must have at least six (6) months work experience both as an EPSDT service coordinator, as described in Section 530 of these rules, and as a targeted service coordinator if they are providing services for adolescents on the ISSH waiver;* *(3-20-04)*~~

~~***g.*** *Must not at any time have a total caseload so large as to violate the purpose of the program or adversely affect the health and welfare of any participant served by the service coordinator.* *(3-20-04)*~~

~~***h.*** *Paraprofessionals may be used to assist in the implementation of the plan of service. They may not be paid plan developers or plan monitors. Paraprofessionals must meet the following qualifications:* *(3-20-04)*~~

~~*i.* *Be eighteen (18) years of age and have a high school diploma or the equivalent (G.E.D.);* *(3-20-04)*~~

~~*ii. Be able to read and write at a level commensurate with the general flow of paperwork and forms; and* (3-20-04)~~

~~*iii. Complete a training program developed by the Department and be working under the supervision of a fully qualified targeted service coordinator.* (3-20-04)~~

~~*iv. All paraprofessionals must satisfactorily complete the Department's criminal history check in accordance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks".* (3-20-04)~~

~~***05. Participant's Choice**. The participant may choose to receive or not to receive TSC services. The participant has the choice of:* (3-20-04)~~

~~***a.** Developing and monitoring his own plan of service, with the choice of still using the services described in Subsection 118.02.a. of these rules; or* (3-20-04)~~

~~***b.** Using the targeted service coordinator for plan development, monitoring, and service coordination; or* (3-20-04)~~

~~***c.** Selecting a non-paid plan developer, and receiving plan monitoring and service coordination by a targeted service coordinator; or* (3-20-04)~~

~~***d.** Selecting a non-paid plan developer and a non-paid plan monitor and not receiving service coordination.* (3-20-04)~~

~~***06. Payment for Services**. Payment for services includes the following conditions:* (3-20-04)~~

~~***a.** Service coordination includes coordinating services and plan monitoring paid at a monthly rate.* (3-20-04)~~

~~***b.** Plan development is paid as a separate service on an hourly basis.* (3-20-04)~~

~~***c.** Plan monitoring is paid as a separate service on an hourly basis when there is no service coordination.* (3-20-04)~~

~~***d.** Targeted service coordinators, plan developers, and plan monitors may not deliver or be paid for direct services.* (3-20-04)~~

~~***e.** Payment will not be made for TSC services provided to individuals who are inpatients in NFs, ICFs/MR, or hospitals, except as follows.* (3-20-04)~~

~~*i. Medicaid will reimburse for TSC on the same date a participant is admitted or discharged from NF, ICF/MR or other institutional setting, as long as the participant is not yet admitted or has been discharged at the time of the service delivery.* (3-20-04)~~

~~*ii. TSC may be provided during the last thirty (30) days of inpatient stay or when the inpatient stay is not expected to last longer than thirty (30) days when not duplicating those services included in the responsibilities of the facility.* (10-1-94)~~

~~***f.** The Department will not provide Medicaid reimbursement for on-going TSC services delivered prior to the completion of assessments and plan of service.* (3-20-04)~~

~~***g.** Medicaid reimbursement will be provided only for the following TSC services:* (10-1-94)~~

~~*i. Face-to-face contact between the service coordinator and the participant, the participant's family members, guardian, service providers, legal representatives, primary caregivers, or other interested persons;* (3-20-04)~~

~~*ii. Telephone contact between the service coordinator and the participant, the participant's family, guardian, service providers, legal representatives, primary caregivers, or other interested persons; (3-20-04)*~~

~~*iii. Plan development, review, and addenda as needed, if the service coordinator is chosen as the plan developer; (3-20-04)*~~

~~***h.*** *The provider will provide the Department with access to all information required to review compliance with these rules. (1-7-94)*~~

~~***i.*** *Failure to provide services for which reimbursement has been received or to comply with these rules will be cause for recoupment of payments for services, sanctions, or both. (1-7-94)*~~

~~***j.*** *The Department will not provide Medicaid reimbursement for TSC provided to a group of individuals. (10-1-94)*~~

~~***k.*** *The TSC agency must release all pertinent information to direct service providers when written informed consent is obtained from the participant. (3-20-04)*~~

~~***l.*** *The targeted service coordinator may be paid separately for community crisis supports as described in IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". (3-20-04)*~~

~~***07. Record Requirements****. In addition to the development and maintenance of the plan of service, the following documentation must be maintained by the provider: (3-20-04)*~~

~~***a.*** *Name of participant; (3-20-04)*~~

~~***b.*** *Name of provider agency and person providing the service; (1-7-94)*~~

~~***c.*** *Date, time, and duration of service; (1-7-94)*~~

~~***d.*** *Place of service delivery; (1-7-94)*~~

~~***e.*** *Activity record describing the service(s) provided; (1-7-94)*~~

~~***f.*** *Documented review of progress toward each service plan goal, and assessment of the participant's need for TSC and other services as the participant's needs change; (3-20-04)*~~

~~***g.*** *Documentation using the Department-required form justifying the provision of community crisis supports to the participant; and (3-20-04)*~~

~~***h.*** *An informed consent form clearly explaining the purpose of the TSC and signed by the participant or legal guardian. (3-20-04)*~~

(BREAK IN CONTINUITY OF SECTIONS)

146. PERSONAL CARE SERVICES (PCS).
Under Sections 39-5601 through 39-5607, Idaho Code, it is the intent of the Department to provide personal care services (PCS) to eligible participants in their own homes or personal residences to prevent unnecessary institutional placement, to provide for the greatest degree of independence possible, to enhance quality of life, to encourage individual choice, and to maintain community integration. (3-20-04)

01. Personal Assistance Agency (PAA). A Personal Assistance Agency is an organization that has signed the Medicaid Provider General Agreement and the Additional Terms-Personal Assistance Agencies, Aged and Disabled Waiver Provider Agreement with the Department. The PAA agrees to comply with all conditions within the

agreements. A Personal Assistance Agency may also provide fiscal intermediary services as defined in Section 669 of these rules. Each Personal Assistance Agency must direct, control, and monitor the work of each of its personal assistants. A Personal Assistance Agency must be capable of and is responsible for all of the following, no matter how the PAA is organized or the form of the business entity it has chosen: (3-20-04)

a. Recruitment, hiring, firing, training, supervision, scheduling and payroll for personal assistants and the assurance that all providers are qualified to provide quality service; (3-20-04)

b. Participation in the provision of worker's compensation, unemployment compensation and all other state and federal tax withholdings; (3-20-04)

c. Maintenance of liability insurance coverage. Termination of either worker's compensation or professional liability insurance by the provider is cause for termination of the provider's provider agreement; (3-20-04)

d. Provision of a licensed professional nurse (RN) or, where applicable, a QMRP supervisor to develop and complete plans of care and provide ongoing supervision of a participant's care; (3-20-04)

e. Assignment of qualified personal assistants to eligible participants after consultation with and approval by the participants; (3-20-04)

f. Assuring that all personal assistants meet the qualifications in Subsection 146.09 of these rules; (3-20-04)

g. Billing Medicaid for services approved and authorized by the RMS; (3-20-04)

h. Making referrals for PCS-eligible participants for ~~*case management*~~ service~~s~~ coordination as described in IDAPA 16.03.17, "Service Coordination," when a need for these services is identified; and ~~*(3-20-04)*~~( )

i. Assuring that it provides quality services in compliance with applicable rules. Results of quality assurance reviews conducted by the Department must be transmitted to the provider within forty-five (45) days after the review is completed. The provider must respond within forty-five (45) days after the results are received. If problems are identified, the provider must implement a quality improvement plan and report the results to the Department upon request. (3-20-04)

02. Participant Eligibility Determination. The participant's eligibility for PCS must be redetermined at least annually under Subsection 146.10 of these rules. (3-20-04)

a. Financial Eligibility. The participant must be financially eligible for Medical Assistance (MA) under IDAPA 16.03.01, "Rules Governing Eligibility for Medicaid for Families and Children" or 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled". (3-20-04)

b. Medical Eligibility. All PCS must be provided under the order of a licensed physician or authorized provider. The physician or authorized provider must: (3-20-04)

i. Certify in writing that the services are medically necessary; (3-20-04)

ii. Recommend institutional placement of the participant if he identifies that PCS, in combination with other community resources or services offered through the Home and Community Based Waivers, are no longer sufficient to ensure the health or safety of the participant. (3-20-04)

c. Other Eligibility Requirements. Regional Medicaid Services (RMS) will prior authorize payment for the amount and duration of all services when all of the following conditions are met: (3-20-04)

i. The RMS finds that the participant is capable of being maintained safely and effectively in his own home or personal residence using PCS; (3-20-04)

ii. The participant is an adult for whom a Uniform Assessment Instrument (UAI) has been completed. A UAI is not to be completed for a child participant; (3-20-04)

iii. The RMS reviews the documentation for medical necessity; (3-20-04)

iv. The participant has a plan of care; and (3-20-04)

v. Services are ordered by a physician or authorized provider. (3-20-04)

d. State Plan Option. A participant who receives MA is eligible for PCS under the State Medicaid Plan option if the Department finds he requires PCS due to a medical condition that impairs his physical or mental function or independence. (3-20-04)

03. Service Limitations. (3-20-04)

a. Adults who receive PCS under the State Medicaid Plan option are limited to a maximum of sixteen (16) hours per week per participant. (3-20-04)

b. Children who meet the necessity criteria for EPSDT services under Section 536 of these rules may receive up to twenty-four (24) hours of PCS per day per child through the month of their twenty-first birthday. (3-20-04)

04. Medical Care and Services Provided. PCS services include medically-oriented tasks related to a participant's physical or functional requirements, as opposed to housekeeping or skilled nursing care, provided in the participant's home or personal residence. The provider must deliver at least one (1) of the following services: (3-20-04)

a. Basic personal care and grooming to include bathing, care of the hair, assistance with clothing, and basic skin care; (3-20-04)

b. Assistance with bladder or bowel requirements that may include helping the participant to and from the bathroom or assisting the participant with bedpan routines; (3-20-04)

c. Assisting the participant with physician-ordered medications that are ordinarily self-administered, such as opening the packaging or reminding the participant to take medications; (3-20-04)

d. Assistance with food, nutrition, and diet activities including preparation of meals if incidental to medical need; (3-20-04)

e. The continuation of active treatment training programs in the home setting to increase or maintain participant independence for the developmentally disabled participant; (3-20-04)

f. Non-nasogastric gastrostomy tube feedings if authorized by RMS prior to implementation and if the following requirements are met: (3-20-04)

i. The task is not complex and can be safely performed in the given participant care situation; (3-20-04)

ii. A Licensed Professional Nurse (RN) has assessed the participant's nursing care needs and has developed a written standardized procedure for gastrostomy tube feedings, individualized for the participant's characteristics and needs; (3-20-04)

iii. Individuals to whom the procedure can be delegated are identified by name. The RN must provide proper instruction in the performance of the procedure, supervise a return demonstration of safe performance of the procedure, state in writing the strengths and weaknesses of the individual performing the procedure, and evaluate the performance of the procedure at least monthly; (3-20-04)

iv. Any change in the participant's status or problem related to the procedure must be reported immediately to the RN; (3-20-04)

v. The individualized procedure, the supervised performance of the procedure, and follow-up evaluation of the performance of the procedure must be documented in writing by the supervising RN and must be readily available for review, preferably with the participant's record; and (3-20-04)

vi. Routine medication may be given by the personal assistant through the non-nasogastric tube if authorized by the supervising RN. (3-20-04)

g. The provider is excluded from delivering the following services: (3-20-04)

i. Irrigation or suctioning of any body cavities that require sterile procedures or the application of dressings involving prescription medication and aseptic techniques; (3-20-04)

ii. Insertion or sterile irrigation of catheters; (3-20-04)

iii. Injecting fluids into the veins, muscles or skin; and (3-20-04)

iv. Administering medication. (3-20-04)

05. Non-Medical Care and Services Provided. PCS services may also include non-medical tasks. In addition to performing at least one (1) of the services listed in Subsections 146.04.a. through 146.04.f. of this rule, the provider may also perform the following services: (3-20-04)

a. Incidental housekeeping services essential to the participant's comfort and health, including changing bed linens, rearranging furniture to enable the participant to move around more easily, laundry, and room cleaning incidental to the participant's treatment. Cleaning and laundry for any other occupant of the participant's residence are excluded. (3-20-04)

b. Accompanying the participant to clinics, physicians' office visits or other trips that are reasonable for the purpose of medical diagnosis or treatment. (3-20-04)

c. Shopping for groceries or other household items specifically required for the health and maintenance of the participant. (3-20-04)

06. Place of Service Delivery. PCS may be provided only in the participant's own home or personal residence. The participant's personal residence may be a Certified Family Home (CFH) or a licensed Residential or Assisted Living Facility. The following living situations are specifically excluded as a personal residence: (3-20-04)

a. Certified nursing facilities (NFs) or hospitals. (3-20-04)

b. Licensed Intermediate Care Facilities for the Mentally Retarded (ICFs/MR). (3-20-04)

c. A home that receives payment for specialized foster care, professional foster care or group foster care, as described in IDAPA 16.06.01, "Rules Governing Family and Children's Services". (3-20-04)

07. Service Delivery Based on Plan of Care or NSA. All PCS services are provided based on a written plan of care or a negotiated service agreement (NSA). The requirements for the NSA for participants in Residential or Assisted Living Facilities are described in IDAPA 16.03.22, "Rules for Licensed Residential or Assisted Living Facilities in Idaho". The requirements for the NSA for participants in Certified Family Homes are described in IDAPA 16.03.19, "Rules Governing Certified Family Homes". The Personal Assistance Agency and the participant who lives in his own home are responsible to prepare the plan of care. (3-20-04)

a. The plan of care for participants who live in their own homes is based on: (3-20-04)

i. The physician's or authorized provider's information, including their orders for service; (3-20-04)

ii. The results of the UAI for adults, the Personal Assistance Agency's assessment for children and, if applicable, the QMRP's assessment and observations of the participant; and (3-20-04)

iii. Information obtained from the participant. (3-20-04)

b. The plan of care must include all aspects of medical and non-medical care that the provider needs to perform, including the amount, type and frequency of necessary services. (3-20-04)

c. The plan of care must be revised and updated based upon treatment results or a change(s) in the participant's needs, or both, but at least annually. (3-20-04)

08. Service Supervision. The delivery of PCS may be overseen by a licensed professional nurse (RN) or Qualified Mental Retardation Provider (QMRP). The RMS must identify the need for supervision. (3-20-04)

a. Oversight must include all of the following: (3-20-04)

i. Assistance in the development of the written plan of care; (3-20-04)

ii. Review of the treatment given by the personal assistant through a review of the participant's PCS record as maintained by the provider; (3-20-04)

iii. Reevaluation of the plan of care as necessary; and (3-20-04)

iv. Immediate notification of the guardian, emergency contact, or family members of any significant changes in the participant's physical condition or response to the services delivered. (3-20-04)

b. All participants who are developmentally disabled, other than those with only a physical disability as determined by the RMS, may receive oversight by a QMRP as defined in 42 CFR 483.430. Oversight must include: (3-20-04)

i. Assistance in the development of the plan of care for those aspects of active treatment which are provided in the participant's personal residence by the personal assistant; (3-20-04)

ii. Review of the care or training programs given by the personal assistant through a review of the participant's PCS record as maintained by the provider and through on-site interviews with the participant; (3-20-04)

iii. Reevaluation of the plan of care as necessary, but at least annually; and (3-20-04)

iv. An on-site visit to the participant to evaluate any change of condition when requested by the personal assistant, the Personal Assistance Agency, the nurse supervisor, the service coordinator or the participant. (3-20-04)

09. Provider Qualifications for Personal Assistants. (3-20-04)

a. All personal assistants must have at least one (1) of the following qualifications: (3-20-04)

i. Licensed Professional Nurse (RN). A person currently licensed by the Idaho State Board of Nursing as a licensed professional nurse; (3-20-04)

ii. Licensed Practical Nurse (LPN). A person currently licensed by the Idaho State Board of Nursing as a licensed practical nurse; or (3-20-04)

iii. Personal Assistant. A person who meets the standards of Section 39-5603, Idaho Code, and receives training to ensure the quality of services. The assistant must be at least age eighteen (18) years of age. The RMS may require a certified nursing assistant (CNA) if, in their professional judgment, the participant's medical

condition warrants a CNA. (3-20-04)

b. In the case where care is provided in the participant's own home, and the participant has a developmental disability that is not physical only and requires more than physical assistance, all those who provide care must have completed one (1) of the Department-approved developmental disabilities training courses, or have experience providing direct services to people with developmental disabilities. RMS determines whether developmental disability training is required. Providers who are qualified as QMRPs are exempted from the Department-approved developmental disabilities training course. (3-20-04)

c. In order to serve a participant with a developmental disability, a region may temporarily approve a PCS provider who meets all qualifications except for the required training course or experience, if all the following conditions are met: (3-20-04)

i. The RMS verifies that there are no other qualified providers available; (3-20-04)

ii. The provider is enrolled in the next available training course with a graduation date no later than six (6) months from the date of the request for temporary provider status; and (3-20-04)

iii. The supervising QMRP makes monthly visits until the provider graduates from the training program. (3-20-04)

d. If PCS is paid for by Medicaid, a PCS service provider cannot be the spouse of any participant or be the parent of a participant if the participant is a minor child. (3-20-04)

e. When care for a child is delivered in the provider's home, the provider must be licensed or certified for the appropriate level of child foster care or day care. The provider must be licensed for care of individuals under age eighteen (18), as defined in Section 39-1213, Idaho Code. Noncompliance with these standards is cause for termination of the provider's provider agreement. (3-20-04)

f. When care for an adult is provided in a home owned or leased by the provider, the provider must be certified as a Certified Family Home under IDAPA 16.03.19, "Rules Governing Certified Family Homes". (3-20-04)

10. Annual Eligibility Redetermination. (3-20-04)

a. The annual financial eligibility redetermination must be conducted under IDAPA 16.03.01, "Rules Governing Eligibility for Medicaid for Families and Children" or 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled". RMS must make the medical eligibility redetermination. The redetermination can be completed more often than once each year at the request of the participant, the Self-Reliance Specialist, the Personal Assistance Agency, the personal assistant, the supervising RN, the QMRP, or the physician or authorized provider. (3-20-04)

b. The medical redetermination must assess the following factors: (3-20-04)

i. The participant's continued need for PCS; (3-20-04)

ii. Discharge from PCS; and (3-20-04)

iii. Referral of the participant from PCS to a nursing facility. (3-20-04)

11. Criminal History Check. All PCS providers, including service coordinators, RN supervisors, QMRP supervisors and personal assistants, must participate in a criminal history check as required by Section 39-5604, Idaho Code. The criminal history check must be conducted in accordance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". (3-20-04)

12. Health Screen. Each Personal Assistance Agency employee who serves as a personal assistant must complete a health questionnaire. Personal Assistance Agencies must retain the health questionnaire in their personnel files. If the personal assistant indicates on the questionnaire that he has a medical problem, he is required to

submit a statement from a physician or authorized provider that his medical condition does not prevent him from performing all the duties required of a personal care provider. Misrepresentation of information submitted on the health questionnaire may be cause for termination of employment for the personal assistant and would disqualify the employee to provide services to Medicaid participants. (3-20-04)

13. PCS Record Requirement - Participant in His Own Home. The PCS record must be maintained on all participants who receive PCS in their own homes. (3-20-04)

a. Written Requirements. The PCS provider must maintain written documentation of every visit made to the participant's home and must record the following minimum information: (3-20-04)

i. Date and time of visit; (3-20-04)

ii. Length of visit; (3-20-04)

iii. Services provided during the visit; and (3-20-04)

iv. Documentation of any changes noted in the participant's condition or any deviations from the plan of care. (3-20-04)

b. Participant's Signature. The participant must sign the record of service delivery verifying that the services were delivered. The RMS may waive this requirement if it determines the participant is not able to verify the service delivery. (3-20-04)

c. Plan of Care. The plan of care must contain all the elements required under Subsection 146.07 of these rules. (3-20-04)

d. A copy of the information required in Subsections 146.13.a. through 146.13.d. of this rule must be maintained in the participant's home unless the RMS authorizes the information to be kept elsewhere. Failure to maintain this information may result in recovery of funds paid for undocumented services. (3-20-04)

e. Telephone Tracking System. Agencies may employ a software system that allows personal assistants to register their start and stop times and a list of services by placing a telephone call to the agency system from the participant's home. This system will not take the place of documentation requirements of Subsections 146.13.a. through 146.13.d. of this rule. (3-20-04)

14. Participant in a Residential or Assisted Living Facility. The PCS record requirements for participants in Residential or Assisted Living Facilities are described in IDAPA 16.03.22, "Rules for Licensed Residential or Assisted Living Facilities in Idaho". (3-20-04)

15. Participant in a Certified Family Home. The PCs record requirements for participants in Certified Family Homes are described in IDAPA 16.03.19, "Rules Governing Certified Family Homes". (3-20-04)

16. Provider Responsibility for Notification. The Personal Assistance Agency is responsible to notify the RMS and physician or authorized provider when any significant changes in the participant's condition are noted during service delivery. This notification must be documented in the Personal Assistance Agency record. (3-20-04)

17. Provider Coverage Limitations. (3-20-04)

a. The provider must not bill for more time than was actually spent in service delivery. (3-20-04)

b. No provider home, regardless of the number of providers in the home, may serve more than two (2) children who are authorized for eight (8) or more hours of PCS per day. (3-20-04)

147. ~~*TARGETED CASE MANAGEMENT*~~ SERVICE COORDINATION FOR PERSONAL CARE SERVICE RECIPIENTS.

The Department will purchase ~~*case management (CM)*~~ service coordination services, as described in IDAPA 16.03.17, "Service Coordination," for Medicaid-eligible recipients who have been approved for personal care services (PCS). Services will be provided by an organized ~~*case management*~~ service coordination provider agency who has entered into a written provider agreement with the Department. Services will be authorized in amount, scope and duration by regional Medicaid ~~*unit*~~ services (RM~~*U*~~S) staff. ~~*(10-28-90)*~~( )

~~***01. Eligible Target Group****. Those recipients who are approved for PCS and who require and desire assistance to adequately access services necessary to maintain their own independence in the community are eligible for case management services. The scope and amount of services will be determined by the Regional Medicaid Unit based upon the individual community service plan.*~~ ~~*(10-28-90)*~~

~~***02. Service Definition****. For the purposes of providing case management services to PCS eligible recipients, case management is an individualized service provided by an employee of a qualified case management provider agency acting in the role of a coordinator of multiple services to ensure that the various needs of the individual are assessed and met. Components of case management are:*~~ ~~*(10-28-90)*~~

~~***a.*** *An assessment of the service needs of the client including information available regarding the client and a face-to-face interview with the client and significant others; and*~~ ~~*(10-28-90)*~~

~~***b.*** *The development of an individual community service plan; and*~~ ~~*(10-28-90)*~~

~~***c.*** *Arranging for and assisting with access to all services necessary to maintain the recipient in the community at the highest level of independence possible; and*~~ ~~*(10-28-90)*~~

~~***d.*** *Face-to-face contact at least every thirty (30) days with the recipient and others as necessary to coordinate and monitor the progress of the existing individual community service plan.*~~ ~~*(10-28-90)*~~

~~***03. Core Services****. The core services consist of the following:*~~ ~~*(10-28-90)*~~

~~***a.*** *Assessment. A comprehensive evaluation of the recipient's ability to function in the community including, but not limited to:*~~ ~~*(10-28-90)*~~

~~*i. Medical needs, physical problems and strengths; and*~~ ~~*(10-28-90)*~~

~~*ii. Mental and emotional problems and strengths; and*~~ ~~*(10-28-90)*~~

~~*iii. Physical living environment; and*~~ ~~*(10-28-90)*~~

~~*iv. Vocational and educational needs; and*~~ ~~*(10-28-90)*~~

~~*v. Financial and social needs; and*~~ ~~*(10-28-90)*~~

~~*vi. An evaluation of the community support system including the involvement of family or significant others; and*~~ ~~*(10-28-90)*~~

~~*vii. Safety and risk factors; and*~~ ~~*(10-28-90)*~~

~~*vii. Legal status.*~~ ~~*(10-28-90)*~~

~~***b.*** *Individual community service plan (ICSP) development. Based on the information obtained during the recipient assessment and input obtained from professionals involved with the recipient, the case manager will develop a written plan which will include at least the following:*~~ ~~*(10-28-90)*~~

~~*i. Problems identified during the assessment; and*~~ ~~*(10-28-90)*~~

~~*ii. Overall goals to be achieved; and*~~ ~~*(10-28-90)*~~

~~*iii. Reference to all services and contributions provided by the informal support system including the actions, if any, taken by the CM to develop the support system; and* (10-28-90)~~

~~*iv. Documentation of who has been involved in the service planning, including the client's involvement; and* (10-28-90)~~

~~*v. Schedules for CM monitoring and reassessment; and* (10-28-90)~~

~~*vi. Documentation of unmet need and service gaps; and* (10-28-90)~~

~~*vii. References to any formal services arranged including costs, specific providers, schedules of service initiation, frequency or anticipated dates of delivery.* (10-28-90)~~

~~*viii. The ICSP will be reevaluated and updated by the case manager at least annually and approval continued, if appropriate, by the Regional Medical Unit.* (10-22-93)~~

~~*ix. A copy of the current ICSP will be provided to the recipient or their legal representative.* (10-28-90)~~

~~***c.*** *Linking/coordination of service. The case manager will actively advocate for services required by the client and coordinate such service delivery between multiple agencies, individuals and others.* (10-28-90)~~

~~***d.*** *Continuity of care. The case manager will monitor and evaluate the services required and received by the recipient at least every thirty (30) days and is responsible to assure that the services are delivered in accordance with the individual community service plan. If new needs are identified, then the individual community service plan will be revised and the new needs addressed.* (10-28-90)~~

~~***e.*** *The case manager will encourage the independence of the recipient by demonstrating to the individual how to best access service delivery systems such as energy assistance, legal assistance, financial assistance, etc. Such encouragement will be conducted on an ongoing basis.* (10-22-93)~~

~~***04. Record Requirements****. In addition to the development and maintenance of the individual community service plan, the following documentation must be maintained by the case management provider:* (10-28-90)~~

~~***a.*** *Name of recipient; and* (10-28-90)~~

~~***b.*** *Name of provider agency and person providing the service; and* (10-28-90)~~

~~***c.*** *Date and time of service; and* (10-28-90)~~

~~***d.*** *Place of service; and* (10-28-90)~~

~~***e.*** *Activity record describing the recipient and community contact; and* (10-28-90)~~

~~***f.*** *Signature of the recipient on the ICSP; and* (10-28-90)~~

~~***g.*** *Written consent and acceptance of case management services and release of information forms.* (10-28-90)~~

~~***05. Case Manager Provider Qualifications/Limitations****. All individual case managers must be employees of an organized entity that has a valid provider agreement with the Department's Bureau of Medicaid Policy and Reimbursement.* (10-22-93)~~

~~***a.*** *The case management agency cannot provide personal care services and case management services to the same recipient.* (10-28-90)~~

~~**b.** The employing entity will supervise individual case management providers and assure that the following qualifications are met. (10-28-90)~~

~~i. The individual case manager must be a licensed social worker; or licensed professional nurse (R.N.); or have at least a BA or BS in a human services field and at least one (1) year's experience in service delivery to the service population. (10-22-93)~~

~~ii. The individual case manager must be supervised by an individual who has at least a BA or BS degree and is a licensed social worker, psychologist or licensed professional nurse (registered nurse/RN) with at least two (2) years experience in service delivery to the service population. The supervisor will oversee the service delivery and have the authority and responsibility to remove the individual CM if the client's needs are not met. (10-28-90)~~

~~iii. Individual case managers will not be assigned case management responsibility for more than thirty (30) active CM clients. (10-28-90)~~

~~iv. The Bureau may grant a waiver of the caseload limit when requested by the agency when the following critera are met: (10-22-93)~~

~~(1) The availability of case management providers is not sufficient to meet the needs of the service area. (10-22-93)~~

~~(2) The recipient that has chosen the particular provider that has reached their limit, has just cause to need that particular manager over other available managers. (10-22-93)~~

~~(3) The individual case manager's caseload consists of twenty-five percent (25%) or more maintenance level (two (2) hours per month or less of CM service) clients. (10-22-93)~~

~~v. The request for waiver must include: (10-22-93)~~

~~(1) The time period for which the waiver is requested; and (10-22-93)~~

~~(2) The alternative caseload limit requested; and (10-22-93)~~

~~(3) Documentation that the granting of the waiver would not diminish the effectiveness of the case manager's services, violate the purposes of the program, or adversely affect the health and welfare of any of the case managers' clients. (10-22-93)~~

~~vi. The Bureau may impose any conditions, including limiting the duration of a waiver, which it deems necessary to ensure the quality of case management services provided. (10-22-93)~~

~~**06. CM Agency Responsibilities**. The CM agency must demonstrate prior to approval of provider status by the Department: (10-28-90)~~

~~**a.** The capacity to provide all case services as required in Subsection 147.03; and (12-31-91)~~

~~**b.** Experience with the target population. If a limited segment of the population will be served, such specialization must be indicated; and (10-28-90)~~

~~**c.** Appropriate personnel practices including, but not limited to: (10-28-90)~~

~~i. Conduct an orientation program for all new employees which covers at least the local resources available, case management service delivery, confidentiality of information and client rights. (10-28-90)~~

~~ii. Sufficient staff to meet the CM service needs of the target population; and (10-28-90)~~

~~iii. Provider screening and hiring practices which assure provider qualifications in accordance with~~

~~*Subsection 147.05; and*~~ ~~*(12-31-91)*~~

~~*iv. Qualified supervision of individual CM staff; and*~~ ~~*(10-28-90)*~~

~~*v. An administration system which will assume adequate documentation of cases and services.*~~ ~~*(10-28-90)*~~

~~***07. Recipient's Choice**. The eligible recipient will have free choice of case management providers as well as the providers of medical and other services under the case management program.*~~ ~~*(10-28-90)*~~

~~***08. Payment for Services**. The scope, duration and total hours of case management services to be reimbursed by the Medicaid Program will be authorized by the Department's regional Medicaid program staff.*~~ ~~*(10-28-90)*~~

~~***a.** Payment for case management services will not duplicate payment made by any other private or public reimbursement source to the provider for the same purpose.*~~ ~~*(10-28-90)*~~

~~***b.** The initial evaluation and ICSP development will be authorized by the RMU and paid using a fee-for-service established by the Department's Bureau of Medicaid Policy and Reimbursement. The RMU may also authorize up to eight (8) hours of service delivery at the time that the evaluation and care plan is authorized.*~~ ~~*(10-28-90)*~~

~~***c.** Ongoing CM services will be authorized by the RMU and paid utilizing an hourly rate for service delivery. The amount to be paid will be established by the Department's Bureau of Medicaid Policy and Reimbursement. This rate will include travel costs.*~~ ~~*(10-28-90)*~~

~~***d.** Medicaid program reimbursement for CM services is limited to eight (8) hours of service delivery per client per month. Additional hours may be authorized in writing by the RMU based on documentation of client need by the provider or client.*~~ ~~*(10-28-90)*~~

~~***e.** Failure to provide services for which reimbursement has been received or to maintain records as required in Subsection 147.04 will be cause for recoupment of payments for the services.*~~ ~~*(12-31-91)*~~

~~***f.** Individuals requiring and desiring case management services will be identified by the regional Medicaid program personnel during the approval process for personal care services based on referrals from individual supervising nurses and/or PCS provider agencies. Individuals will be identified based on their medical, social and family situation. The scope, duration and total hours of case management services to be provided will be based upon the needs as determined in the ICSP. Case management services will not be provided to individuals who choose to direct and obtain their own services within the community.*~~ ~~*(10-28-90)*~~

~~***g.** Individuals who are identified by the RMU as not meeting the criteria for inclusion in the target population and are therefore not eligible for CM services may appeal such action utilizing procedures contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Section 301, et seq., "Rules Governing Contested Case Proceedings and Declaratory Rulings".*~~ ~~*(7-1-94)*~~

(BREAK IN CONTINUITY OF SECTIONS)

476. ~~*TARGETED CASE MANAGEMENT*~~ <u>SERVICE COORDINATION</u> FOR THE MENTALLY ILL.
The Department will purchase ~~*case management (CM)*~~ <u>service coordination</u> services<u>, as described in IDAPA 16.03.17, "Service Coordination,"</u> for adult Medicaid recipients with severe disabling mental illness. Services will be provided by an organized provider agency that has entered into a provider agreement with the Department. The purpose of these services is to assist eligible individuals to gain access to needed medical, social, educational, mental health and other services. ~~*(3-20-04)*~~**<u>( )</u>**

~~**477. ELIGIBLE TARGET GROUP.**~~
~~*Only those individuals who are mentally ill and eighteen (18) years of age or older who are using or have a history of using high-cost medical services associated with exacerbations of mental illness are eligible for CM services.* (3-20-04)~~

~~**01. Diagnostic and Functional Criteria**. *The following diagnostic and functional criteria will be applied to determine membership in this target population:* (3-30-01)~~

~~**a.** *Diagnosis: A condition of severe and persistent mental illness determined by a licensed physician or other licensed practitioner of the healing arts within the scope of his practice under state law, and be a diagnosis listed in the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) within one (1) of the following classification codes for:* (3-30-01)~~

~~*i. Schizophrenia and Other Psychotic Disorders;* (3-30-01)~~

~~*ii. Organic mental disorders associated with Axis III physical disorders or conditions, or whose etiology is unknown;* (3-30-01)~~

~~*iii. Mood disorders - bipolar and depressive;* (3-30-01)~~

~~*iv. Schizoid, Schizotypal, Paranoid, and Borderline Personality disorders.* (3-20-04)~~

~~*v. If the only diagnosis is one (1) or more of the following, the person is not included in the target population for CM services:* (8-1-92)~~

~~*(1) Mental retardation; or* (8-1-92)~~

~~*(2) Alcoholism; or* (8-1-92)~~

~~*(3) Drug abuse.* (8-1-92)~~

~~**b.** *Functional limitations: The psychiatric disorder must be of sufficient severity to cause a disturbance in the role performance or coping skills in at least two (2) of the following areas, on either a continuous (more than once per year) or an intermittent (at least once per year) basis:* (8-1-92)~~

~~*i. Vocational or academic: Is unemployed, unable to work or attend school, is employed in a sheltered setting or supportive work situation, or has markedly limited skills and a poor work history.* (8-1-92)~~

~~*ii. Financial: Requires public financial assistance for out-of-hospital maintenance and may be unable to procure such assistance without help, or the person is unable to support him or manage his finances without assistance.* (8-1-92)~~

~~*iii. Social/interpersonal: Has difficulty in establishing or maintaining a personal social support system, has become isolated, has no friends or peer group and may have lost or failed to acquire the capacity to pursue recreational or social interests.* (8-1-92)~~

~~*iv. Family: Is unable to carry out usual roles and functions in a family, such as spouse, parent, or child, or faces gross familial disruption or imminent exclusion from the family.* (8-1-92)~~

~~*v. Basic living skills: Requires help in basic living skills, such as hygiene, food preparation, or other activities of daily living, or is gravely disabled and unable to meet daily living requirements.* (8-1-92)~~

~~*vi. Housing: Has lost or is at risk of losing his current residence.* (8-1-92)~~

~~*vii. Community: Exhibits inappropriate social behavior or otherwise causes a public disturbance due to poor judgment, bizarre, or intrusive behavior which results in intervention by law enforcement and/or the judicial system.* (8-1-92)~~

~~*viii. Health: Requires substantial assistance in maintaining physical health or in adhering to medically rigid prescribed treatment regimens, e.g. brittle diabetic.* (3-30-01)~~

~~***02. Recipient's Residence**. Recipients may reside in adult foster care, residential care, semi-independent living, room and board or their own homes.* (3-30-01)~~

~~***03. Other Services**. Recipients may be receiving homemaker, personal care, home health, respite or other services.* (3-30-01)~~

~~***04. Hospice Services**. Recipients who elect hospice services as found in Section 104, or are receiving case management services through another program are excluded from CM services.* (3-30-01)~~

~~***478. CASE MANAGEMENT SERVICES.***~~
~~*CM services shall be designed to foster independence and be delivered by eligible providers to assist the Medicaid recipient to obtain and coordinate needed health, educational, vocational and social services in the least restrictive, most appropriate and most cost-effective setting. CM services shall consist of the following core functions:* (3-20-04)~~

~~***01. Assessment**. A CM provider must have the capacity to perform written comprehensive assessments of a person's assets, deficits and needs. Assessment is an interactive process with the maximum feasible involvement of the recipient. Should the assessments reveal that the person does not need CM services, appropriate referrals will be made to meet other needs of the participant. All the following areas must be evaluated and addressed:* (3-30-01)~~

~~***a.** Psychiatric history and current mental status: Includes but is not limited to age of onset, childhood history of physical or sexual abuse, number of hospitalizations, precursors of hospitalizations, symptoms of decompensation that the client manifests, is the client able to identify his symptoms, medication history; substance abuse history, history of mental illness in the family, current mental status observation, any other information that contributes to their current psychiatric status; and* (10-22-93)~~

~~***b.** Medical history and current medical status: Includes but is not limited to history of any major non-psychiatric illnesses, surgeries, hospitalizations, dates of last physical, dental, or eye examinations, pertinent family history of medical illness, current health problems/needs, current medications; name of current physician; and* (10-22-93)~~

~~***c.** Vocational status: Includes but is not limited to current and past job status, level of satisfaction with the vocation, educational level, military status, strengths and barriers to employment; and* (10-22-93)~~

~~***d.** Financial status: Includes but is not limited to adequacy and stability of the client's financial status, what difficulties they perceive with it, what resources may be available, client's ability to manage personal finances; and* (10-22-93)~~

~~***e.** Social relationships/support: Includes but is not limited to client's ability to establish/maintain personal support systems or relationships, client's ability to acquire leisure, recreational, or social interests; and* (10-22-93)~~

~~***f.** Family status: Includes but is not limited to: client's ability or desire to carry out family roles, client's perception of the support he receives from their family, what role does the family play in the client's mental illness; and* (10-22-93)~~

~~***g.** Basic living skills: Includes but is not limited to client's ability to meet their basic living needs, what does the client want to accomplish in this area; and* (10-22-93)~~

~~***h.** Housing: Includes but is not limited to: current living situation and level of satisfaction with the arrangement, is present situation appropriate to the client's needs; and* (8-1-92)~~

~~***i.** Community/Legal status: Includes but is not limited to legal history with law enforcement,*~~

~~transportation needs, supports the client has in the community, daily living skills necessary for community living. (8-1-92)~~

~~**02. Service Plan Development and Implementation**. Following the assessment(s) and determination of need for CM, a written service plan shall be developed and implemented as a vehicle to address the case management needs of the recipient. To the maximum extent possible, the development of a service plan shall be a collaborative process involving the recipient, his family or other support system, and the CM provider. The written service plan shall be developed within thirty (30) calendar days of when the recipient chooses the agency as his provider and must be signed by a licensed physician or other licensed practitioner of the healing arts within the scope of his practice under State law according to Title 54, Chapter 18, Idaho Code, indicating the services are medically necessary, and must include, at a minimum: (3-20-04)~~

~~**a.** A list of focus problems identified during the assessments; and (8-1-92)~~

~~**b.** Concrete, measurable goals to be achieved, including time frames for achievement; and (8-1-92)~~

~~**c.** Specific plans directed toward the achievement of each one of the goals; and (8-1-92)~~

~~**d.** Documentation of who has been involved in the service planning; the recipient, if possible, must be involved. The recipient or the recipient's legal guardian must sign the service plan or documentation must be provided as to why this was not possible. A copy of the plan must be given to the recipient; and (8-1-92)~~

~~**e.** Reference to any formal services arranged, including specific providers where applicable; and (8-1-92)~~

~~**f.** Planned frequency of services initiated. (8-1-92)~~

~~**03. Crisis Case Management**. Crisis case management services are linking, coordinating and advocacy services provided to assist a recipient with accessing emergency community resources in order to resolve a crisis. Crisis case management services do not include crisis counseling, transportation to emergency service providers, direct skills building services, or encouragement of independence as identified in Subsection 478.05 of these rules. The crisis must be precipitated by an unanticipated event, circumstance, or life situation that places a recipient at risk of: (3-20-04)~~

~~**a.** Hospitalization; or (3-20-04)~~

~~**b.** Incarceration; or (3-20-04)~~

~~**c.** Becoming homeless; or (3-20-04)~~

~~**d.** Losing employment or major source of income; or (3-20-04)~~

~~**e.** Physical harm to self or others, including family altercation or psychiatric relapse. (3-20-04)~~

~~**04. Linking/Coordination of Services**. Through negotiation and referrals, the case manager links the recipient to various providers of services/care and coordinates service delivery. Coordination of service delivery includes activities such as: assuring that needed services have been delivered, consulting with service providers to ascertain whether they are adequate for the needs of the recipient, and consulting with the client to identify the need for changes in a specific service or the need for additional services. The case manager may refer to his own agency for services but may not restrict the recipient's choice of service providers. It may be necessary to mobilize more than one set of resources to make adequate services available. The case manager may be needed to act as an advocate for the recipient. There must be a minimum of one face-to-face contact with the recipient at least every thirty (30) days. (10-22-93)~~

~~**05. Case Manager**. The case manager will encourage independence of the recipient by demonstrating to the individual how to best access service delivery systems such as transportation and Meals on Wheels, etc. Such assistance must be directed toward reducing the number of case management hours needed. Such assistance is~~

~~*limited to thirty (30) days per service delivery system.* (3-30-01)~~

~~***479. (RESERVED).***~~

~~***480. CM PROVIDER AGENCY QUALIFICATIONS.***~~
~~*Case management provider agencies must meet the following criteria:* (8-1-92)~~

~~***01. Intake/Pre-Screening**. Utilization of a standardized intake and prescreening process for determining whether or not Medicaid eligible individuals are included in the target group for case management services. Prescreening must be effective in sorting out who does and who does not need a full assessment of needs for CM.* (3-30-01)~~

~~***02. Core Elements**. Demonstrated capacity in providing all core elements of case management services to the target population including:* (3-30-01)~~

~~***a.** Comprehensive assessment; and* (8-1-92)~~

~~***b.** Comprehensive service plan development and implementation; and* (8-1-92)~~

~~***c.** Crisis case management services which include arranging access to emergency community resources; and* (3-20-04)~~

~~***d.** Linking/coordination of services; and* (8-1-92)~~

~~***e.** Encouragement of independence.* (10-22-93)~~

~~***481. PROVIDER QUALIFICATIONS.***~~
~~*All individual CM providers must be employees of an organized provider agency that has a valid CM provider agreement with the Department. The employing entity will supervise individual CM providers and assure that the following qualifications are met for each individual CM provider. A provider must be a(n):* (3-20-04)~~

~~***01. Psychiatrist**. Psychiatrist, M.D., D.O.; or* (3-20-04)~~

~~***02. Physician**. Physician, M.D., D.O.; or* (3-20-04)~~

~~***03. Licensed Psychologist**. Licensed Psychologist; or* (3-20-04)~~

~~***04. Psychologist Extender**. Psychologist Extender who is registered with the Bureau of Occupational Licenses; or* (3-20-04)~~

~~***05. Social Worker**. Social worker with a valid Idaho social work license issued by the Board of Social Work Examiners; or* (3-20-04)~~

~~***06. Nurse**. Nurse, R.N.; or* (3-20-04)~~

~~***07. Licensed Clinical Professional Counselor**. Licensed Clinical Professional Counselor; or* (3-20-04)~~

~~***08. Licensed Marriage and Family Therapist**. Licensed Marriage and Family Therapist; or* (3-20-04)~~

~~***09. Clinician**. Clinician employed by a state agency and who meets the requirements of the Division of Human Resources and the Personnel Commission; or* (3-20-04)~~

~~***10. Holder of a Bachelor's Degree in a Human Services Field**. Individual having a B.A. or B.S. in a human services field and at least one (1) year experience with the target population. Individuals without the one (1) year of experience may gain this experience by working for one (1) year under the supervision of a fully-qualified*~~

~~*case manager.* (3-20-04)~~

~~***482. RECIPIENT'S CHOICE.***~~
~~*The eligible recipient will be allowed to choose whether or not he desires to receive CM services. All recipients who choose to receive CM services will have free choice of CM providers as well as the providers of medical and other services under the Medicaid program.* (8-1-92)~~

~~***483. PAYMENT FOR SERVICES.***~~
~~*When an assessment indicates the need for medical, psychiatric, social, educational, or other services, referral or arrangement for such services may be included as CM services, however, the actual provision of the service does not constitute CM. Medicaid will reimburse only for core services (Section 480 of these rules) provided to members of the eligible target group by qualified staff.* (3-20-04)~~

~~***01. Duplication****. Payment for CM will not duplicate payment made to public or private entities under other program authorities for the same purpose.* (3-30-01)~~

~~***02. Inpatients****. Payment will not be made for CM services provided to individuals who are inpatients in nursing homes or hospitals.* (3-30-01)~~

~~***03. Evaluation/Service Plan Development****. Reimbursement for the initial evaluation and individual service plan development shall be paid based on an hourly rate, not to exceed six (6) hours. The rate will be established by the Department.* (3-20-04)~~

~~***04. Case Management****. Reimbursement for on-going case management services shall be at a rate established by the Department.* (3-20-04)~~

~~***05. Reimbursement****. Medicaid reimbursement shall be provided only for the following case management services:* (3-30-01)~~

~~***a.*** *Face-to-face contact between the case manager and the recipient, no less than every thirty days;* (3-30-01)~~

~~***b.*** *Telephone contact between the case manager and the recipient, the recipient's mental health and other service providers, a recipient's family members, primary caregivers, legal representative, or other interested persons;* (8-1-92)~~

~~***c.*** *Face-to-face contacts between the case manager and the recipient's family members, legal representative, primary caregivers, mental health providers or other service providers, or other interested persons;* (8-1-92)~~

~~***d.*** *Development, review, and revision of the recipient's individual service plan, including the case manager's functional assessment of the recipient.* (8-1-92)~~

~~***06. Services Delivered Prior to Assessment****. The Department will not provide Medicaid reimbursement for on-going non-crisis case management services delivered prior to the completion of the assessments and individual service plan.* (3-20-04)~~

~~***07. Crisis Case Management****. The Department will provide Medicaid reimbursement for crisis case management services identified under Subsection 478.03 of these rules. Crisis case management services may be delivered prior to, or after, the completion of the assessment and individual service plan. Without authorization by the Department or its designee, crisis case management services are limited to a total of three (3) hours per calendar month. The Department or its designee may authorize additional crisis case management services beyond the three (3) hour limit if a recipient still has severe or prolonged crisis case management needs that meet all of the following criteria:* (3-20-04)~~

~~***a.*** *The service recipient is at imminent risk (within fourteen (14) days) of hospitalization or institutionalization, including jail or nursing home; and* (3-20-04)~~

~~**b.** *The service recipient is experiencing symptoms of psychiatric decompensation; and* *(3-20-04)*~~

~~**c.** *The service recipient has already received the maximum number of monthly hours of ongoing case management and crisis case management services; and* *(3-20-04)*~~

~~**d.** *No other crisis assistance services are available to the recipient under other Medicaid mental health option services, including Psychosocial Rehabilitation Services (PSR).* *(3-20-04)*~~

~~**08.** **Audit Reviews**. *Audit reviews will be conducted at least once a calendar year by the Department or its designee. Review findings may be referred to the Department's Surveillance and Utilization Review Section for appropriate action.* *(3-20-04)*~~

~~**09.** **Recoupment**. *Failure to provide services for which reimbursement has been received or to comply with these rules will be cause for recoupment of payments for services, sanctions, or both.* *(3-30-01)*~~

~~**10.** **Information**. *The provider will provide the Department with access to all information required to review compliance with these rules.* *(3-30-01)*~~

~~**11.** **Group Case Management**. *The Department will not provide Medicaid reimbursement for case management services provided to a group of recipients.* *(3-30-01)*~~

~~**12.** **Case Management in a Facility**. *Medicaid will reimburse for case management services on the same date a recipient is admitted or discharged from a hospital, nursing facility, or other institutional setting, as long as the recipient is not yet admitted or has been discharged at the time of service delivery. Services may be provided during the last thirty (30) days of inpatient stay or if the inpatient stay is not expected to last longer than thirty (30) days, when not duplicating those included in the responsibilities of the facility.* *(3-30-01)*~~

~~**13.** **On-Going Non-Crisis Case Management**. *On-going non-crisis case management services are limited to a total of five (5) hours per calendar month.* *(3-20-04)*~~

~~**484.** **RECORD REQUIREMENTS.**~~
~~*In addition to the development and maintenance of the service plan, the following documentation must be maintained by the provider:* *(8-1-92)*~~

~~**01.** **Name**. *Name of recipient.* *(3-30-01)*~~

~~**02.** **Provider**. *Name of the provider agency and person providing the service.* *(3-30-01)*~~

~~**03.** **Diagnosis**. *Diagnosis, contained in Subsection 477.01.a. of these rules, documented by a qualified physician or other licensed practitioner of the healing arts within the scope of his practice under state law, prior to assessment.* *(3-20-04)*~~

~~**04.** **Date**. *Date, time, and duration of service.* *(3-30-01)*~~

~~**05.** **Place of Service**. *Place of service.* *(3-30-01)*~~

~~**06.** **Activity Record**. *Activity record describing the recipient and the service provided. The activity record must also include the dated signature and credential(s), including professional license(s), of the service provider.* *(3-20-04)*~~

~~**07.** **Documentation**. *Documented review of progress toward each CM service plan goal, and assessment of the recipient's need for CM and other services at least every one hundred eighty (180) days. Documentation to support authorization of crisis case management services beyond the monthly limitation must be submitted to the Department or its designee before such authorization may be granted. Documentation to support delivery of crisis case management services must also be maintained in the recipient's agency record and must include:* *(3-20-04)*~~

~~***a.*** *A description of the crisis including identification of unanticipated event(s) that precipitate the need for crisis case management services; and* *(3-20-04)*~~

~~***b.*** *A brief review of case management and other services or supports available to, or already provided to, the recipient to resolve the crisis; and* *(3-20-04)*~~

~~***c.*** *A crisis resolution plan; and* *(3-20-04)*~~

~~***d.*** *Outcomes of crisis case management service provision.* *(3-20-04)*~~

~~***08.*** ***Informed Consent****. An informed consent form signed by the recipient or legal guardian clearly explaining the purpose of case management.* *(3-30-01)*~~

4~~85~~77. -- 499. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

530. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT) SERVICE COORDINATION.

The Department will purchase ~~*case management services hereafter referred to as* *S*~~service ~~*C*~~coordination ~~*(SC)*~~ services as described in IDAPA 16.03.17, "Service Coordination," for Medicaid eligible children age birth to twenty-one (21) years of age who meet medical necessity criteria. ~~*(10-1-94)*~~(____)

~~***01.*** ***Medical Necessity Criteria****. Medical necessity criteria for SC services under EPSDT are as follows:* *(10-1-94)*~~

~~***a.*** *Children eligible for SC must meet one of the following diagnostic criteria:* *(10-1-94)*~~

~~*i.* *Children who are diagnosed with a physical or mental condition which has a high probability of resulting in developmental delay or disability, or children with developmental delay or disability. Developmentally delayed children are children with or without established conditions who by assessment measurements have fallen significantly behind developmental norms in one or more of the five functional areas which include cognitive development; physical development including vision and hearing; communication; social/emotional development; and adaptive skills.* *(10-1-94)*~~

~~*ii.* *Children who have special health care needs requiring medical and multidisciplinary habilitation or rehabilitation services to prevent or minimize disability. Special health care needs may include a wide range of physical, mental, or emotional limitations from birth defects, illnesses, or injuries.* *(5-24-95)*~~

~~*iii.* *Children who have been diagnosed with a severe emotional/behavioral disorder under DSM-IV or subsequent revisions or another classification system used by the Department; and expected duration of the condition is at least one (1) year or more.* *(5-24-95)*~~

~~***b.*** *Children eligible for SC must have one (1) or more of the following problems associated with their diagnosis:* *(10-1-94)*~~

~~*i.* *The condition requires multiple service providers and treatments; or* *(10-1-94)*~~

~~*ii.* *The condition has resulted in a level of functioning below age norm in one (1) or more life areas, such as school, family, or community; or* *(10-1-94)*~~

~~*iii.* *There is risk of out-of-home placement or the child is returning from an out-of-home placement as a result of the condition; or* *(10-1-94)*~~

~~*iv. There is imminent danger to the safety or ability to meet basic needs of the child as a result of the condition; or* (10-1-94)~~

~~*v. Further complications may occur as a result of the condition without provision of service coordination services; and* (5-24-95)~~

~~*vi. The family needs a service coordinator to assist them to access medical and other services for the child.* (5-24-95)~~

~~***02. Service Descriptions****. SC services shall be delivered by eligible providers to assist the Medicaid child and their family to obtain and coordinate needed health, educational, early intervention, advocacy, and social services identified in an authorized SC plan developed by the Department or their contractor. Services must take place in the least restrictive, most appropriate and most cost effective setting. SC services shall consist of the following core functions:* (10-1-94)~~

~~***a.*** *Coordination/Advocacy, which is the process of facilitating the child's access to the services, evaluations, and resources identified in the service plan. The case manager may advocate on behalf of the child and family for appropriate community resources and coordinate the multiple providers of social and health services defined in the service plan to avoid the duplication of services for the child.* (10-1-94)~~

~~***b.*** *Monitoring, which is the ongoing process of ensuring that the child's service plan is implemented and assessing the child's progress toward meeting the goals outlined in the service plan and the family's satisfaction with the services. Direct in-person contact with the child and the child's family is essential to the monitoring process.* (10-1-94)~~

~~***c.*** *Evaluation, which is the process of determining whether outcomes have been reached on the service plan, the need for additional revised outcomes, the need for a new plan, or if services are no longer needed. Evaluation is accomplished through periodic in-person reassessment of the child, consultation with the child's family, and consultation and updated assessment from other providers. The addition of new services to the plan or increase in the amount of an authorized service on the existing plan must be authorized by the Department prior to implementation.* (5-24-95)~~

~~***d.*** *Crisis Assistance, which are those SC activities that are needed in emergency situations in addition to those identified on the service plan. These are necessary activities to obtain needed services to ensure the health or safety of the child. To the extent possible the plan should include instructions for families to access emergency services in the event of a crisis. If a need for twenty-four (24) hour availability of service coordination is identified, then arrangements will be made and included on the plan.* (10-1-94)~~

~~***e.*** *Encouragement of Independence, which is the demonstration to the child, parents, family, or legal guardian of how to best access service delivery systems.* (10-1-94)~~

~~***03. SC Provider Agency Qualifications****. SC provider agencies must have a valid provider agreement with the Department and meet the following criteria:* (10-1-94)~~

~~***a.*** *Demonstrated experience and competency in providing all core elements of service coordination services to children meeting the medical necessity criteria.* (5-24-95)~~

~~***b.*** *Level of knowledge sufficient to assure compliance with regulatory requirements. Adherence to provision of provider agreement for EPSDT service coordination. Provider agreement may include, but is not limited to, requirements for training, quality assurance, and personnel qualifications.* (10-1-94)~~

~~***04. Service Coordination Individual Provider Staff Qualifications****. All individual SC providers must be employees of an organized provider agency that has a valid SC provider agreement with the Department. The employing entity will supervise the individual SC providers and assure that the following qualifications are met for each individual SC provider:* (10-1-94)~~

~~**a.** *Must be a licensed M.D., D.O., social worker, R.N., or have at least a B.A./B.S. in human/health services field; and have at least one (1) year's experience working with children meeting the medical necessity criteria.* (5-24-95)~~

~~**b.** *Individuals without the one (1) year experience may gain this experience by working for one (1) year under the supervision of an individual who meets the above criteria.* (5-24-95)~~

~~**c.** *Paraprofessionals, under the supervision of a qualified SC, may be used to assist in the implementation of the service plan. Paraprofessionals must meet the following qualifications: be eighteen (18) years of age and have a high school diploma or the equivalent (G.E.D.); be able to read at a level commensurate with the general flow of paperwork and forms; meet the employment standards and required competencies of the provider agency; and meet the training requirements according to the agency provider agreement.* (10-1-94)~~

~~**d.** *Pass a criminal history background check.* (10-1-94)~~

~~**e.** *At no time will the total caseload of a service coordinator be so large as to violate the purpose of the program or adversely affect the health and welfare of any children served by the service coordinator.* (3-20-04)~~

~~**05.** **Recipient's Choice**. *The eligible child's family, custodian, or legal guardian will be allowed to choose whether or not they desire to receive SC services. All eligible children and their families who choose to receive SC services will have free choice of qualified SC providers as well as the qualified providers of medical and other services under the Medicaid program.* (10-1-94)~~

~~**06.** **Payment for Services**. *When a recipient is enrolled in managed care/Healthy Connections, the referral for assessment and services must be authorized by primary care providers. When an assessment indicates the need for medical, advocacy, psychiatric, social, educational, early intervention or other services, referral or arrangement for such services may be included as SC services; however, the actual provision of the service does not constitute SC. Medicaid will reimburse for SC services only when ordered by a physician/nurse practitioner/ physician assistant and provided by qualified staff of an approved provider agency or their contractor to eligible children who meet the medical necessity criteria.* (5-24-95)~~

~~**a.** *Payment for SC will not duplicate payment made to public or private entities under other program authorities for the same purpose.* (10-1-94)~~

~~**b.** *Payment will not be made for SC services provided to children who are inpatients in nursing facilities or hospitals, other than activities performed within the last thirty (30) days of residence which are directed toward discharge and do not duplicate services included in the facility's content of care.* (10-1-94)~~

~~**c.** *Reimbursement for ongoing SC services shall be paid at rates established by the Department or its designee.* (3-20-04)~~

~~**d.** *Medicaid reimbursement shall be provided only for the following SC services:* (10-1-94)~~

~~*i.* *Face-to-face contact between the service coordinator and the eligible child, the child's family members, custodian, legal representative, primary care givers, service providers, or other interested groups or persons;* (10-1-94)~~

~~*ii.* *Telephone contact between the service coordinator and the child, the child's service providers, the child's family members, custodian or legal guardian, primary caregivers, legal representative, or other interested persons.* (10-1-94)~~

~~**e.** *Except for crisis assistance the Department will not provide Medicaid reimbursement for ongoing SC services delivered prior to development of the plan by the Department.* (10-1-94)~~

~~**f.** *Audit reviews will be completed by the Department.* (10-1-94)~~

~~**g.** *Plans must be reviewed, updated as needed and re-authorized by the Department/Contractor at*~~

~~*least annually. Documentation of provision of services will be reviewed and progress toward expected outcomes will be evaluated. Documentation of satisfaction with services and supports will be obtained from parents, family and guardians.* (10-1-94)~~

~~***h.*** *Failure to provide services for which reimbursement has been received or to comply with these rules will be cause for recoupment of payments for services, sanctions, or both.* (10-1-94)~~

~~***i.*** *The Department will not provide Medicaid reimbursement for SC services provided to a group of children at the same time.* (10-1-94)~~

~~***j.*** *Medicaid will reimburse for SC services on the same date a child is admitted to a hospital, nursing facility, or other institutional setting, so long as the child is not yet admitted at the time of the service delivery.* (10-1-94)~~

~~***07.*** ***Record Requirements****. The following documentation must be maintained by the provider:* (10-1-94)~~

~~***a.*** *Name of eligible child; and* (10-1-94)~~

~~***b.*** *Name of provider agency and person providing the service; and* (10-1-94)~~

~~***c.*** *A copy of the current approved SC plan which includes the expected outcomes and objectives and is signed by the child's parents, custodian or legal guardian, and the authorizing representative of the Department; and* (10-1-94)~~

~~***d.*** *Date, time, and duration of service; and* (10-1-94)~~

~~***e.*** *Place of service; and* (10-1-94)~~

~~***f.*** *Activity record describing the child and the service provided; and* (10-1-94)~~

~~***g.*** *Documented review of progress toward each SC service plan goal; and* (10-1-94)~~

~~***h.*** *Documentation from parents, family, and guardians of their satisfaction with services and supports.* (5-24-95)~~

~~***i.*** *A copy of the signed informed consent.* (5-24-95)~~

~~***08.*** ***Confidentiality****. No personally identifiable information may be released in the absence of written informed consent for release by the child's parent, custodian or legal guardian.* (5-24-95)~~

~~***09.*** ***Informed Consent****. Informed consent must include an explanation of service coordination and the rights and responsibilities of recipient confidentiality assured through existing state laws and rules.* (5-24-95)~~

(BREAK IN CONTINUITY OF SECTIONS)

669. DEFINITIONS <u>FOR WAIVER SERVICES FOR AGED OR DISABLED ADULTS</u>.
The following definitions apply to Sections 664 through 704 of the rules: ~~(4-5-00)~~(____)

01. Uniform Assessment Instrument (UAI). A set of standardized criteria adopted by the Department to assess functional and cognitive abilities. (4-5-00)

02. Personal Assistance Agency That Provides Fiscal Intermediary (FI) Services. A personal assistance agency that focuses on fostering participant independence and personal control of services delivered. The

core tasks are: (3-30-01)

a. To directly assure compliance with legal requirements related to employment of waiver service providers; (3-30-01)

b. To offer supportive services to enable participants or families consumers to perform the required employer tasks themselves; (3-30-01)

c. To bill the Medicaid program for services approved and authorized by the Department; (3-30-01)

d. To collect any participant participation due; (3-30-01)

e. To pay personal assistants and other waiver service providers for service; (3-30-01)

f. To perform all necessary withholding as required by state and federal labor and tax laws, rules and regulations; (3-30-01)

g. To offer a full range of services and perform all services contained in a written agreement between the participant and the provider; (3-30-01)

h. Make referrals for PCS eligible participant for ~~*case management*~~ service~~s~~ coordination when a need for such services is identified; and ~~*(3-30-01)*~~( )

i. Obtain such criminal background checks and health screens on new and existing employees of record and fact as required. (3-30-01)

03. Fiscal Intermediary Services. Services that allow the participant receiving personal assistance services, or his designee or legal representative, to choose the level of control he will assume in recruiting, selecting, managing and dismissing his personal assistant regardless of who the employer of record is, and allows the participant control over the manner in which services are delivered. (3-30-01)

04. Individual Service (IS) Plan. A document which outlines all services including, but not limited to, personal assistance services and IADLs, required to maintain the individual in his home and community. The plan is initially developed by the RM~~*U*~~S or its contractor for services provided under the Home and Community-Based Services Waiver. This plan must be approved by the RM~~*U*~~S and all Medicaid reimbursable services must be contained in the plan. ~~*(3-30-01)*~~( )

05. Personal Assistance Agency or Agency. An entity that recruits, hires, fires, trains, supervises, schedules, oversees quality of work, takes responsibility for the care given, and provides payroll, including all required withholding for federal and state tax purposes, and benefits for care providers working for them. They also bill Medicaid for services provided by employees, and collect participant contribution. (3-30-01)

06. Employer of Record. An entity which bills for services, withholds required taxes, and conducts other administrative activities for a waiver program participant. Such an entity is also called a personal assistance agency functioning as a fiscal intermediary. (3-30-01)

07. Employer of Fact. A participant or representative of a participant who hires, fires, and directs the services delivered by a waiver program provider. This individual may be a family member. (4-5-00)

08. Participant. An aged or disabled individual who requires and receives services under the Home and Community-based Waiver program. (4-5-00)

670. SERVICES PROVIDED.

01. Services Provided Under Waiver. Services that may be provided under the waiver are: (4-5-00)

a. Adult day care; (3-30-01)

b. Assistive technology; (4-5-00)

c. Assisted transportation; (4-5-00)

d. Attendant care; (4-5-00)

e. ~~*Case management*~~ Service coordination; ~~(3-30-01)~~( )

f. Chore services; (4-5-00)

g. Adult companion; (4-5-00)

h. Adult residential care; (4-5-00)

i. Consultation; (4-5-00)

j. Home delivered meals; (4-5-00)

k. Homemaker; (4-5-00)

l. Home modifications; (4-5-00)

m. Personal emergency response system; (4-5-00)

n. Psychiatric consultation; (4-5-00)

o. Respite care; and (4-5-00)

p. Skilled nursing. (4-5-00)

02. Administrative Case Management. The Department will also provide administrative case management. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

672. PROVIDER QUALIFICATIONS.
Each provider must have a signed provider agreement with the Department for each of the services it provides. (4-5-00)

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 where no agency exists, or no FI is willing to provide services. Such agreements will be reviewed annually to verify whether coverage by an agency or FI is still not available. (3-30-01)

02. Provider Qualifications. All providers of homemaker, respite care, adult day health, transportation, chore companion, attendant adult residential care, home delivered meals, and behavior consultants 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/activities in the Department's approved Aged and Disabled waiver as approved by the Health Care Financing Administration (HCFA). (3-30-01)

a. A waiver provider can not be a relative of any participant to whom the provider is supplying services. (3-30-01)

b. For the purposes of Section 672, a relative is defined as a spouse or parent of a minor child. (3-30-01)

03. Specialized Medical Equipment Provider Qualifications. Providers of specialized medical equipment and supplies must be enrolled in the Medicaid program as participating medical vendor providers. (4-5-00)

04. Nursing Service Provider Qualifications. Nursing Service Providers must be licensed as an R.N. or L.P.N. in Idaho or be practicing on a federal reservation and be licensed in another state. (4-5-00)

05. Psychiatric Consultation Provider Qualifications. Psychiatric Consultation Providers must have: (4-5-00)

a. A master's degree in a behavioral science; (4-5-00)

b. Be licensed in accordance with state law and regulations; or (4-5-00)

c. Have a bachelor's degree and work for an agency with direct supervision from a licensed or Ph.D. psychologist and have one (1) year's experience in treating severe behavior problems. (4-5-00)

06. ~~***Case Management***~~ **Service Coordination**. ~~*Case managers*~~ Service coordinators and ~~*case management*~~ service coordination agencies will meet the same requirements as PCS ~~*case managers*~~ service coordinators specified in ~~*Section 147*~~ IDAPA 16.03.17, "Service Coordination," unless specifically modified by another section of these rules. ~~*(3-30-01)*~~( )

07. Consultation Services. 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. (3-30-01)

08. Adult Residential Care Providers. The facility 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. (4-5-00)

09. Home Delivered Meals. Providers must be a public agency or private business and must be capable of: (4-5-00)

a. Supervising the direct service; (4-5-00)

b. Providing assurance that 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; (4-5-00)

c. Delivering the meals in accordance with the plan for care, in a sanitary manner and at the correct temperature for the specific type of food; (4-5-00)

d. Maintaining documentation that the meals served are made from the highest USDA grade for each specific food served; and (4-5-00)

e. Being inspected and licensed as a food establishment by the district health department. (4-5-00)

10. Personal Emergency Response Systems. Providers must have a Land Mobile License from the Federal Communications Commission (FCC). (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

692. ~~*CASE MANAGEMENT*~~ SERVICE COORDINATION.
~~*Case management*~~ Service coordination includes all of the activities contained in ~~*Subsection 147.03 of these rules*~~ IDAPA 16.03.17, "Service Coordination," Sections 250, 300 and 400. Such services are designed to foster independence of the participant, and will be time limited. ~~*(3-30-01)*~~( )

01. Service Care. All services will be provided in accordance with an Individual Service Plan, which will take the place of the Individual Community Service Plan found in ~~*Subsection 147.03.b*~~ IDAPA 16.03.17, "Service Coordination," Section 400. All services will be incorporated into the Individual Service plan and authorized by the RM~~*U*~~S. ~~*(3-30-01)*~~( )

02. Requirements for an FI. Participants of PCS will have one (1) year from the date which services begin in their geographic region, as described in Section 667 of these rules, to obtain the services of an FI and become an employee in fact or to use the services of an agency unless the provisions of Subsection 670.01 are met. Provider qualifications are in accordance with Subsections 147.05 and 147.06. (3-30-01)

03. Notification by ~~*Case Manager*~~ Service Coordinator. The ~~*case manager*~~ service coordinator will notify the RM~~*U*~~S, the Personal Assistance Agency, as well as the medical professionals involved with the participant of any significant change in the participant's situation or condition. ~~*(3-30-01)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

796. PROVIDER QUALIFICATIONS.
All providers of waiver services must have a valid provider agreement/performance contract with the Department. Performance under this agreement/contract will be monitored by the Regional Medicaid Services in each region. (3-20-04)

01. Residential Habilitation Service Providers. Providers of residential habilitation services must meet the following requirements: (3-20-04)

a. Direct service staff must meet the following minimum qualifications: be at least eighteen (18) years of age; be a high school graduate or have a GED or demonstrate the ability to provide services according to a Plan of Care; have current CPR and First Aid certifications; be free from communicable diseases; pass a criminal background check (when residential habilitation services are provided in a certified family home, all adults living in the home must pass a criminal background check); participate in an orientation program, including the purpose and philosophy of services, service rules, policies and procedures, proper conduct in relating to waiver participants, and handling of confidential and emergency situations that involve the waiver participant, provided by the agency prior to performing services; and 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. (3-20-04)

b. The provider agency will be 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. Skill training may be provided by a Program Coordinator, if no agency is available in their geographic area as outlined in Subsection 796.01.c. of this rule, who has demonstrated experience in writing skill training programs. Additional training requirements may also include: instructional technology; behavior technology; feeding; communication/sign language; mobility; assistance with medications (training in assistance with medications must be provided by a licensed nurse); activities of daily living; body mechanics and lifting techniques; housekeeping techniques and maintenance of a clean, safe, and healthy environment. (3-20-04)

c. Residential habilitation providers who are unable to be employed by an agency because one is not available in their geographic area, must receive program development, implementation and oversight of service delivery services by a Program Coordinator who has a valid ~~*case management, service coordination, or targeted*~~

service coordination provider agreement with the Department and who has taken a traumatic brain injury training course approved by the Department. ~~*(3-20-04)*~~(____)

d. When residential habilitation services are provided in the provider's home, the agency must meet the environmental sanitation standards; fire and life safety standards; and building, construction and physical home standards for certification as a certified family home. Non-compliance with the above standards will be cause for termination of the provider's provider agreement/contract. (3-20-04)

02. Chore Service Providers. Providers of chore services must meet the following minimum qualifications: (7-1-99)

a. Be skilled in the type of service to be provided; and (7-1-99)

b. Demonstrate the ability to provide services according to a Plan of Care. (3-20-04)

03. Respite Care Service Providers. Providers of respite care services must meet the following minimum qualifications: (7-1-99)

a. Meet the qualifications prescribed for the type of services to be rendered, for instance. Residential Habilitation providers must be an employee of an agency selected by the waiver participant and/or the family or guardian; and (7-1-99)

b. Have received caregiving instructions in the needs of the person who will be provided the service; and (7-1-99)

c. Demonstrate the ability to provide services according to a Plan of Care; and (3-20-04)

d. Have good communication and interpersonal skills and the ability to deal effectively, assertively and cooperatively with a variety of people; and (7-1-99)

e. Be willing to accept training and supervision by a provider agency or the primary caregiver of services; and (7-1-99)

f. Be free of communicable diseases; and (3-20-04)

g. Have successfully completed a traumatic brain injury training course approved by the Department. (3-20-04)

04. Supported Employment Service Providers. Supported Employment services must be provided by an agency capable of supervising the direct service and be accredited by the Commission on Accreditation of Rehabilitation Facilities; or other comparable standards; or meet State requirements to be a State-approved provider, and have taken a traumatic brain injury training course approved by the Department. (3-20-04)

05. Transportation Service Providers Must: (7-1-99)

a. Possess a valid driver's license; and (7-1-99)

b. Possess valid vehicle insurance. (7-1-99)

06. Environmental Modifications Service Providers. Environmental Modifications services must: (7-1-99)

a. Be done under a permit, if required; and (7-1-99)

b. Demonstrate that all modifications, improvements, or repairs are made in accordance with local and state housing and building codes. (7-1-99)

07. Specialized Medical Equipment and Supplies. Specialized Medical Equipment and Supplies purchased under this service must: (7-1-99)

a. Meet Underwriter's Laboratory, FDA, or Federal Communication Commission standards where applicable; and (7-1-99)

b. Be obtained or provided by authorized dealers of the specific product where applicable. For instance, medical supply businesses or organizations that specialize in the design of the equipment. (7-1-99)

08. Personal Emergency Response Systems. Personal Emergency Response Systems must demonstrate that the devices installed in waiver participants' homes meet Federal Communications Standards or Underwriter's Laboratory standards or equivalent standards. (7-1-99)

09. Home Delivered Meal Services. Home Delivered Meals under this section may only be provided by an agency capable of supervising the direct service and must: (7-1-99)

a. Provide assurances that each meal meets one third (1/3) of the Recommended Dietary Allowance as defined by the Food and Nutrition Board of National Research Council or meet physician ordered individualized therapeutic diet requirement; and (7-1-99)

b. Maintain Registered Dietitian documented review and approval of menus, menu cycles and any changes or substitutes; and (7-1-99)

c. Must provide assurances that the meals are delivered on time and demonstrate the ability to deliver meals at a minimum of three (3) days per week; and (7-1-99)

d. Maintain documentation reflecting the meals delivered are nutritionally balanced and made from the highest U.S.D.A. Grade for each specific food served; and (7-1-99)

e. Provide documentation of current driver's license for each driver; and (7-1-99)

f. Must be inspected and licensed as a food establishment by the District Health Department.(7-1-99)

10. Extended State Plan Service Providers. All therapy services, with the exception of physical therapy, must be provided by a provider agency capable of supervising the direct service. Providers of services must meet the provider qualifications listed in the State Plan and have taken a traumatic brain injury training course approved by the Department. (3-20-04)

11. Nursing Service Providers. Nursing Service Providers must provide documentation of current Idaho licensure as a RN or LPN in good standing and have taken a traumatic brain injury training course approved by the Department. (3-20-04)

12. Behavior Consultation/Crisis Management Service Providers. Behavior Consultation/Crisis Management Providers must meet the following: (7-1-99)

a. Have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, or a closely related course of study; or (3-20-04)

b. Be a licensed pharmacist; or (7-1-99)

c. Work for a provider agency capable of supervising the direct service or work under the direct supervision of a licensed psychologist or Ph.D., with training and experience in treating severe behavior problems and training and experience in applied behavior analysis; and (7-1-99)

d. Take a traumatic brain injury training course approved by the Department. (3-20-04)

e. Emergency back-up providers must also meet the minimum provider qualifications under

Residential Habilitation services. (3-20-04)

13. Day Rehabilitation Providers. Day Rehabilitation Providers 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. (3-20-04)

14. Personal Care Service Providers. Personal Care Service providers must meet the requirements outlined in IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Subsections 146.06.a. through 146.06.~~*h*~~c. - PCS Provider Qualifications. Providers must take a traumatic brain injury training course approved by the Department. ~~*(3-20-04)*~~(____)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.22 - RULES FOR LICENSED RESIDENTIAL AND ASSISTED LIVING FACILITIES

DOCKET NO. 16-0322-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-3305, 39-3371, 39-3505, and 39-3561, 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 15, 2004.

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

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

The Department rule requires facilities to carry liability insurance which imposes a financial burden on these facilities. There is no statutory requirement for residential and assisted living facilities to maintain liability insurance. To remove this burden, the Department proposes the requirement for liability insurance be deleted, and have the facility inform the resident of coverage is maintained and the amount of the coverage.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with providers of residential care and assisted living facilities, Residential Care Council for the Elderly and the Board and Care Council.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Debby Ransom at 334-6626.

Anyone can submit written comments regarding this proposed rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before September 22, 2004.

DATED this 26th day of July, 2004.

Sherri Kovach
Program Supervisor
Administrative Procedures Section
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THE FOLLOWING IS THE TEXT FOR DOCKET 16-0322-0401

102. APPLICATIONS.

01. **Initial License**. The owner/applicant must apply for a license on forms provided by the Department giving such information as the Department requires including: (5-3-03)

a. A written statement that the applicant has thoroughly read and reviewed this chapter and is prepared to comply with all provisions of IDAPA 16.03.22, "Rules for Licensed Residential or Assisted Living Facilities in Idaho"; (5-3-03)

b. Satisfactory evidence that the applicant is of reputable and responsible character to include a criminal history check as provided in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". A criminal history check must be repeated every three (3) years. If the applicant is unable to obtain an acceptable criminal record clearance, the Department shall deny the application; (3-10-00)

c. A signed resume including a chronological employment history covering the last five (5) years; (3-10-00)

d. Four (4) character references, two (2) of which must be provided by professional licensed individuals, including addresses and telephone numbers. Character references may not include relatives; (3-10-00)

e. The applicant must provide a written statement that discloses any license revocation or other disciplinary action taken or in the process of being taken, against a license held or previously held by the entities in Idaho as specified in Section 39-3345 or 39-3545 or both, Idaho Code, or any other jurisdiction, or that verifies that the applicant has never been involved in any such action; (3-10-00)

f. A statement must be provided which indicates that the applicant has completed the Department approved orientation; (3-10-00)

g. If the owner/applicant is not the administrator, then the administrator shall meet the requirements of Subsections 102.01 through 102.01.f., 102.01.p., and 102.01.q.; (3-10-00)

h. If the owner/applicant is a firm, association, organization, partnership, business trust, corporation, or company, the administrator or other members of the organization who will provide direct resident care or who will directly influence the facility shall provide the information contained in Subsections 102.01.a. through 102.01.g. Each shareholder/investor holding ten percent (10%) or more interest in the firm shall be listed on the application; (3-10-00)

~~***i.*** *Evidence of liability insurance sufficient to cover claims against the facility;* *(3-10-00)*~~

~~***j***~~**i.** 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; (3-10-00)

~~***k***~~**j.** The building shall be required to meet all applicable requirements of local, state, and national codes, including current electrical and plumbing requirements; (3-10-00)

~~***l***~~**k.** A statement from a licensed electrician or the local/state electrical inspector that all wiring in the facility complies with applicable local codes. A copy of the statement shall be kept on file at the facility; (3-10-00)

~~***m***~~**l.** If the facility is not utilizing an approved municipal water or sewage treatment system, a statement from a local environmental health specialist indicating that the water supply and sewage disposal system meet the requirements of the Department. The reports shall be kept on file at the facility, and shall be kept current; (3-10-00)

~~***n***~~**m.** Completed application form signed by the applicant; (3-10-00)

~~***o***~~**n.** A complete set of operational policies and procedures which meets the requirements of these rules. (3-10-00)

~~***p***~~**o.** Licensed Administrator Requirements. If the owner/applicant is not the administrator, only the

administrator is required to be licensed as an Idaho Residential Care Administrator. (3-10-00)

~~o~~p. Administrator's License. A copy of the Idaho Residential Care Administrator's license, or evidence that the administrator is currently in the process of obtaining a license, must be provided with the application. (3-10-00)

~~p~~q. Facility Floor Plan. A rough sketch detailing the floor plan of the facility, including measurement of all rooms, or a copy of professionally prepared blueprints shall be submitted for evaluation by the Department (see Sections 526 and 527). (3-10-00)

02. Building Evaluation Fee. The application must be accompanied by a five hundred dollar ($500) initial building evaluation fee. (3-10-00)

03. Written Request for Building Evaluation. The applicant must provide a written request for a building evaluation for existing buildings, which includes the address of the building that is to be evaluated; the level of care of the residents for whom the building is being evaluated to serve; and the name, address, and telephone number of the person who is to receive the building evaluation report completed by the Department. (3-10-00)

04. Failure of the Applicant to Cooperate With the Licensing Agency in the Completion of the Application Process Shall Result in the Denial of the Application. Failure to cooperate means that the information described in Section 102 of the rules has not been provided, or not provided in the form requested by the licensing agency, or both. This application process cannot exceed six (6) months. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

423. ADMISSION AGREEMENTS.

01. Admission Agreements. Prior to or on the day of admission to the facility, the facility and the resident or the resident's legal guardian/conservator shall enter into an admission agreement. The agreement shall be in writing and shall be signed by both parties. The admission agreement may be integrated with the negotiated service agreement provided that all requirements for the negotiated service agreement and admission agreement are met. The admission agreement shall include at a minimum the following: (5-3-03)

a. Services that the facility shall provide including, but not limited to, daily activities, recreational activities, maintenance of self-help skills, assistance with activities of daily living, arrangements for medical and dental services, provisions for trips to social functions, special diets, and arrangements for payments; (3-10-00)

b. Whether or not the resident shall assume responsibility for his own medication including reporting missed medication or medication taken on a PRN basis; (3-10-00)

c. Whether or not the facility shall accept responsibility for the residents' personal funds; (3-10-00)

d. How a partial month's refund shall be handled; (3-10-00)

e. Responsibility for valuables belonging to the resident and provision for the return of residents' valuables should the resident leave the facility; (3-10-00)

f. Fifteen (15) calendar days' written notice or up to thirty (30) calendar days as agreed to in the admission agreement prior to transfer or discharge on the part of either party; (3-10-00)

g. Conditions under which emergency transfers shall be made; (3-10-00)

h. Permission to transfer pertinent information from the resident's medical record to an acute care facility, nursing facility, licensed residential or assisted living facility, or certified family home; (5-3-03)

i. Resident responsibilities as appropriate; and (3-10-00)

j. Other information as may be appropriate. (3-10-00)

k. Written documentation of the resident's preference regarding the formulation of an Advance Directive in accordance with Idaho state law. If applicable, a copy of the resident's Advance Directive shall be available. (3-10-00)

l. The facility must disclose in writing, on or before time of admission, whether the facility has liability insurance coverage and the amount of the coverage. ( )

02. Conditions of Termination of the Admission Agreement. The admission agreement shall not be terminated except under the following conditions: (3-10-00)

a. By written notification by either party giving the other party fifteen (15) calendar days' written notice or up to thirty (30) calendar days as agreed to in the admission agreement; (3-10-00)

b. The resident's mental or physical condition deteriorates to a level requiring evaluation, service, or both that cannot be provided in a facility; (3-10-00)

c. Nonpayment of the resident's bill; (3-10-00)

d. In emergency conditions a resident may be transferred out of the facility without fifteen (15) days' written notice or up to thirty (30) days as agreed to in the admission agreement to protect the resident or other residents in the facility from harm; and (3-10-00)

e. Other written conditions as may be mutually established between the resident, the resident's legal guardian/conservator and the administrator of the facility at the time of admission. (3-10-00)

03. Admission and Discharge Register. Each facility shall maintain an admission and discharge register listing names of each resident, date admitted, the place from which the resident was admitted, date discharged, reason for discharge, and adequate identification of the facility to which the resident is discharged or future home address. (3-10-00)

04. Maintaining the Admission and Discharge Register. The admission and discharge register shall be maintained as a separate document, apart from individual resident files, and shall be kept current. (3-10-00)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.04.11 - RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES

DOCKET NO. 16-0411-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Sections 39-4601 et seq., 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 15, 2004.

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

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

This rulemaking is necessary to revise definitions for "Service Coordination" and "Service Coordinator" to conform with the definitions in the new chapter of rule IDAPA 16.03.17 "Service Coordination." The new chapter for "Service Coordination" was approved by the 2004 Legislature and this rulemaking will prevent a conflict in definitions between rules. The term "Targeted Service Coordinators" will be deleted as it no longer is used.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule is necessary to avoid a conflict in rules due to the passage of the new service coordination chapter.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cameron Gilliland at (208) 334-0924.

Anyone can submit written comments regarding this proposed rulemaking. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before September 22, 2004.

DATED this 14th day of July, 2004.

Sherri Kovach, Program Supervisor
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0411-0401

011. DEFINITIONS -- P THROUGH Z.
For the purposes of these rules, the following terms are used as defined below: (3-20-04)

01. Paraprofessional. A person such as an aide or therapy technician who is qualified to assist DDP's in providing services. (7-1-97)

02. Participant. A person who receives health care services, has been identified as having a developmental disability as defined in this chapter, and who is receiving services through a DDA. (3-20-04)

03. Person-Centered Planning Process. A meeting facilitated by the plan developer, comprised of family and individuals significant to the participant who collaborate with the participant to develop the plan of service. (3-20-04)

04. Person-Centered Planning Team. The group who develops the plan of service. This group includes, at a minimum, the participant and the service coordinator or plan developer chosen by the participant. The person-centered planning team may include others identified by the participant or agreed upon by the participant and the Department as important to the process. (3-20-04)

05. Plan Developer. A paid or nonpaid person identified by the participant who is responsible for developing one (1) plan of service and subsequent addenda that covers all services and supports, based on a person-centered planning process. (3-20-04)

06. Plan Monitor. A person who oversees the provision of services on a paid or non-paid basis. The plan developer is the plan monitor unless there is a Service Coordinator, in which case the Service Coordinator assumes both roles. (3-20-04)

07. Plan of Service. An initial or annual plan that identifies all services and supports based on a person-centered planning process. Plans are authorized annually every three hundred sixty-five (365) days. (3-20-04)

08. Physical Therapist. A person qualified to conduct physical therapy evaluations and therapy, who is registered to practice in Idaho, and has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities. (7-1-97)

09. Physician. A person licensed to practice medicine in Idaho in accordance with the provisions of the Medical Practice Act, Sections 54-1801 et seq., Idaho Code. (7-1-97)

10. Prior Authorization (PA). A process for determining a participant's eligibility for services and medical necessity prior to the delivery or payment of services as provided by these rules. (3-20-04)

11. Provider. Any individual or organization furnishing services through the provisions of these rules. (7-1-97)

12. Provider Agreement. An agreement between a provider and third-party payor whereby the third-party payor agrees to pay the provider for furnishing developmental disabilities rehabilitative and habilitative services in accordance with these rules. (7-1-97)

13. Provider Status Review. The written documentation that identifies the participant's progress toward goals defined in the plan of service. (3-20-04)

14. Provisional License. A license issued to a DDA which is found not to be in substantial compliance with these rules but not to have deficiencies which jeopardize the health or safety of participants. A provisional license can be issued for a specific period of time, not to exceed one hundred eighty (180) days, while corrections are being completed. (3-20-04)

15. Psychologist. A person licensed by the State of Idaho in accordance with the provisions of Sections 54-2301 et seq., Idaho Code, to independently practice psychology, or who is exempt from such requirements and meets the minimum qualifications established by the Idaho Personnel Commission to perform the duties assigned in classified service as defined by the Department, and has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities. (7-1-97)

16. **Psychology Assistant**. An individual who practices psychology under the supervision of a licensed psychologist as required by Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners". (7-1-97)

17. **Rehabilitation**. The process of improving skills or level of adjustment to increase the person's ability to maintain satisfactory independent or dependent functioning. (7-1-97)

18. **Rehabilitative and Habilitative Services**. Evaluation and diagnostic services which include medical, social, developmental, psychological/psychiatric services, occupational therapy, physical therapy, and speech and hearing therapy. Treatment services which include individual, group and family-centered psychotherapy; individual and group speech and hearing therapy; individual and group physical therapy; individual and group developmental therapy, and individual and group occupational therapy. Evaluation, diagnostic and treatment services are to be provided on an outpatient basis and may be community-based, home-based, or center-based as consistent with the requirements of this chapter. (7-1-97)

19. **Service**. Evaluation, diagnosis, therapy, training, assistance, or support provided to a person with a developmental disability by a DDA. (7-1-97)

20. **Service Coordination**. Service coordination is an activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. See IDAPA 16.03.17, "Service Coordination," Section 010. ~~(3-20-04)~~(____)

21. **Service Coordinator**. An individual who provides service coordination to a Medicaid-eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under IDAPA 16.03.~~09~~17, "~~Rules Governing the Medical Assistance Program~~ Service Coordination," Section ~~118~~700. ~~This includes Targeted Service Coordinators.~~ ~~(3-20-04)~~(____)

22. **Social Worker**. A person licensed in accordance with the Social Work Licensing Act, Sections 54-3201 et seq., Idaho Code, and who has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities. (7-1-97)

23. **Speech and Language Pathologist**. A person qualified to conduct speech/language evaluation and therapy, who possesses a certificate of clinical competency in speech-language pathology or who will be eligible for certification within one (1) year of employment. Certification must be from the American Speech Language and Hearing Association (ASHA). (3-20-04)

24. **State Developmental Disability Authority**. The Department is the State Developmental Disability Authority which has statewide responsibility for planning, coordinating and monitoring developmental disabilities services. (3-20-04)

25. **Substantial Compliance**. Deficiencies identified at the time of the survey by the licensing agency that do not present a serious risk to participants' health or safety or seriously impede the agency's ability to provide habilitative or rehabilitative services. (3-20-04)

26. **Supervision**. Initial direction and procedural guidance by a DDP and periodic inspection of the actual work performed at the site of service delivery. (7-1-97)

27. **Supports**. Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. (3-20-04)

28. **Temporary Developmental Disabilities Site Approval**. A location, established by a fully licensed agency, to provide additional services for ninety (90) or less consecutive days. (7-1-97)

29. **U.L**. Underwriters Laboratories. (7-1-97)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.04.11 - RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES

DOCKET NO. 16-0411-0402

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), and 39-4605, 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 15, 2004.

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

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

In response to a recommendation from the Governor-appointed Interagency Coordinating Council (ICC) to the Idaho Infant Toddler Program, the Department has elected to increase the education requirements for Developmental Specialists serving children under three. A "grandfather clause" has also been added for practicing Developmental Specialists who serve children under three and are in compliance with the current requirements.

Currently, this chapter makes no reference to the requirements with which Developmental Disabilities Agencies (DDAs) must comply under the federal Individuals with Disabilities Education Act (IDEA), Part C, when they provide services to children under three. Reference to these requirements is being added to assure that DDAs comply with this federal act.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change stating required compliance with IDEA, Part C, is a reference to federal law already in effect. The increase in the educational requirements for Developmental Specialists was based on a recommendation from the Governor-appointed Interagency Coordinating Council, an advisory body representing a broad spectrum of stakeholders, including parents, providers, advocates, a legislator, higher education faculty, and Department staff.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mary Jones at (208) 334-5512.

Anyone can submit written comments regarding this proposed rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before September 22, 2004.

DATED this 14th day of July, 2004.

Sherri Kovach, Program Supervisor
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0411-0402

010. DEFINITIONS -- A THROUGH O.
For the purposes of these rules the following terms are used as defined below: (3-20-04)

01. Adult. A person who is eighteen (18) years of age or older or an ISSH Waiver participant. (3-20-04)

02. Annual. Every three hundred sixty-five (365) days except during a leap year which equals three hundred sixty-six (366) days. (7-1-97)

03. Audiologist. A person qualified to conduct hearing evaluation and therapy, who possesses a certificate of clinical competency in audiology or who will be eligible for certification within one (1) year of employment. Certification must be from the American Speech, Language and Hearing Association (ASHA). (3-20-04)

04. Baseline. Current level of ability to complete a task independently, as a basis for initiating therapeutic intervention. (7-1-97)

05. Board. The Idaho State Board of Health and Welfare. (7-1-97)

06. Department. The Idaho Department of Health and Welfare. (7-1-97)

07. Developmental Disabilities Agency (DDA). A developmental disabilities facility designated in accordance with these rules to provide (outpatient) rehabilitative or habilitative services to children or adults with developmental disabilities. (7-1-97)

08. Developmental Disabilities Facility. Any public or private organization or agency which provides developmental disabilities services on an inpatient, outpatient, residential, clinical or other programmatic basis, including community rehabilitation programs and developmental disabilities agencies. (7-1-97)

09. Developmental Disabilities Professional (DDP). A physician, psychologist, social worker, audiologist, speech and language pathologist specialist, developmental specialist, occupational therapist, physical therapist, or therapeutic recreation specialist employed by the developmental disabilities agency to provide evaluation and services as defined by the Department. (7-1-97)

10. Developmental Disability. A developmental disability, as defined in Section 66-402, Idaho Code, means a chronic disability of a person which appears before the age of twenty-two (22) years of age and: (3-20-04)

a. Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments, which requires similar treatment or services or is attributable to dyslexia resulting from such impairments; and (7-1-97)

b. Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (7-1-97)

c. Reflects the need for a combination or sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated. (7-1-97)

11. Developmental Specialist. A person qualified to conduct developmental evaluation and therapy, including: (3-30-01)

a. A person who possesses a bachelor's or master's degree in special education, early childhood special education, speech and language pathology, applied behavioral analysis, psychology, physical therapy, occupational therapy, social work, or therapeutic recreation and who has a minimum of two hundred forty (240) hours of professionally supervised experience with individuals who have developmental disabilities; or (3-30-01)

b. A person who possesses a bachelor's or master's degree in an area not listed in Subsection 010.11.a. of these rules, and who: (3-20-04)

i. Has completed a competency course jointly approved by the Department and the Idaho Association of Developmental Disabilities Agencies which relates to the job requirements of a developmental specialist; and (3-30-01)

ii. Has passed a competency examination approved by the Department; and (3-30-01)

iii. Has a minimum of two hundred forty (240) hours of professionally supervised experience with individuals who have developmental disabilities; or (3-30-01)

c. A person who possesses a bachelor's or master's degree in an area not listed in Subsection 010.11.a. of these rules, and who: (3-20-04)

i. Has passed a competency examination approved by the Department; and (3-30-01)

ii. Has a minimum of two hundred forty (240) hours of professionally supervised experience with individuals who have developmental disabilities; or (3-30-01)

d. A person who is exempt from the requirements of these rules: (3-30-01)

i. Any person employed as a developmental specialist prior to October 6, 1988 will be exempt from the requirements of these rules as long as there is not a gap of more than three (3) years of employment as a developmental specialist; or (3-30-01)

ii. Any person employed as a developmental specialist prior to May 30, 1997, unless previously disallowed by the Department, will be exempt from the requirements of these rules. (3-30-01)

e. Developmental Specialists providing services to infants and toddlers, birth to three (3) years of age, must have a minimum of two hundred forty (240) hours of professionally supervised experience with young children who have developmental disabilities and one (1) of the following: (3-30-01)

i. An Elementary Education Certificate or Special Education Certificate with an Endorsement in Early Childhood Special Education; or (3-30-01)

ii. A bachelor's or master's degree in special education, elementary education, speech language pathology, early childhood education, physical therapy, occupational therapy, psychology, social work, or nursing plus a minimum of twenty-four (2~~0~~4) semester credits in Early Childhood/Early Childhood Special Education (EC/ECSE) ~~from the listing of approved courses~~. Courses must cover content in each of the following areas: ~~normal~~ typical child development, characteristics of young children with disabilities and foundations of special education, curriculum and instruction in EC/E~~S~~CSE, assessment in EC/E~~S~~CSE and families of young children with disabilities. Closely related electives may be ~~accepted~~ approved by the Department with a recommendation from an institution of higher education. Developmental Specialists who possess a bachelor's or master's degree listed in Subsection 010.11.e.ii., have completed a minimum of twenty (20) semester credits in ECSE, and with Department approval are serving children under three (3) years of age as of July 1, 2005, will be allowed to continue providing services. ~~In circumstances where~~ When the Department in its role as lead agency for implementation of Part C of the Individuals with Disabilities Education Act (IDEA) has determined that there is a shortage in a specific geographic area of such qualified personnel to meet service needs the Department may approve the most qualified individuals who are demonstrating satisfactory progress toward completion of applicable course work in accordance with the individuals's approved plan to meet the required standard within three (3) years of being hired. Satisfactory progress

will be determined on an annual review by the Department. Individuals who have an approved plan for completion of twenty (20) semester credits in ECSE prior to July 1, 2005, will be allowed to continue providing services so long as they demonstrate satisfactory progress on the plan and complete the requirements on the plan within three (3) years of their date of hire. ~~(3-30-01)~~( )

f. Developmental Specialists providing services to children ages three (3) through seventeen (17) must meet one (1) of the Developmental Specialists definitions listed in Subsections 010.11.a. through 010.11.d. of these rules, and also complete a competency course regarding developmental evaluation and therapy for children and pass a competency examination that includes demonstration of learned skills within one (1) year of the availability of the Department approved competency course and examination. (3-20-04)

g. Developmental Specialists providing services to children under the provisions of an Individualized Education Plan approved by a local school district must meet the personnel requirements established by the State Department of Education, Bureau of Special Education. Services must also be delivered in accordance with local school district and state education requirements for mandatory school attendance, and coordination of services, see Section 821 of these rules. (3-20-04)

12. **Director**. The Director of the Idaho Department of Health and Welfare or his designee. (7-1-97)

13. **Evaluation**. A process by which the need for services or progress toward identified goals is determined. It may include a comprehensive assessment or a specific skill assessment for the purpose of determining baseline or the need for further intervention for the discipline area being assessed. (7-1-97)

14. **Habilitation**. The process of developing skills and abilities. (7-1-97)

15. **Initial License**. A license issued to a DDA upon application when the Department determines that all application requirements have been met. An initial license can be issued for a period not to exceed one hundred eighty (180) days from the initiation of services. This license allows the Department time to evaluate the agency's ongoing capability to provide services and to meet these rules. (7-1-97)

16. **Normalization**. The process of providing services which promote a life as much as possible like that of other citizens of the community, including living in the community and access to community resources. These services are designed to enhance the social image and personal competence of those being served. (7-1-97)

17. **Objective**. A behavioral statement of outcome developed to address an identified need of an individual. The need is identified by the participant and guardian where applicable, and others the participant has chosen to participate on his planning team, to be incorporated into the participant's repertoire of functional behaviors. The objective is written in measurable terms which specify a target date for completion, no longer than two (2) years in duration, and criteria for successful attainment of the objective. (3-20-04)

18. **Occupational Therapist**. A person qualified to conduct occupational therapy evaluations and therapy, who is certified by the American Occupational Therapy Certification Board and licensed to practice in Idaho, and who has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

800. STANDARDS FOR DEVELOPMENTAL DISABILITIES AGENCIES (DDA) PROVIDING SERVICES TO PARTICIPANTS AGE EIGHTEEN OR OLDER AND ISSH WAIVER PARTICIPANTS.
DDA services for participants eighteen (18) years of age or older and ISSH Waiver participants must be prior authorized in accordance with IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". Each DDA providing services under the requirements of Section 800 must provide the following rehabilitative and habilitative services consistent with the needs of persons with developmental disabilities eighteen (18) years of age or older or ISSH Waiver participants based on a plan of service authorized by the Department. (3-20-04)

01. **Intake**. Prior to the delivery of any DDA services: (3-20-04)

a. The person must be determined by the Department to be eligible for DDA services; (3-20-04)

b. The current medical/social history, SIB-R, and the medical care evaluation form must be obtained from the Department or its designee; and (3-20-04)

c. All services must be prior authorized by the Department or its designee under IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". IBI services are authorized under Section 8~~09~~11 of these rules. ~~(3-20-04)~~( )

02. **Evaluations**. Evaluations required for the development of the implementation plan administered by the DDA must: (3-20-04)

a. Be conducted by qualified professionals for the respective disciplines as defined in this chapter; (7-1-97)

b. Be identified as a service on the plan of service and be prior authorized by the Department or its designee. (3-20-04)

03. **Specific Skill Assessments**. Specific skill assessments which are completed by the agency must: (3-20-04)

a. Be completed by qualified professionals for the respective disciplines as defined in this chapter; and (7-1-97)

b. Be identified as a service or need on the plan of service; and (3-20-04)

c. Be conducted for the purposes of determining baselines, or the need for further interventions. (7-1-97)

04. **Plan of Service**. Any services provided by the DDA must be included on the plan and authorized by the Department or its designee before a participant can receive the service from the agency. (3-20-04)

05. **Implementation Plan**. The DDA must develop an Implementation Plan for each service or support that is included on the participant's plan of service provided by the agency as outlined in these rules. The Implementation Plan must be completed within fourteen (14) days after the initial provision of service, be revised whenever participant needs change, and must include: (3-20-04)

a. The participant's name; and (3-20-04)

b. The specific skill area; and (7-1-97)

c. A baseline statement addressing the participant's specific skills and abilities related to the specific skill to be learned; and (3-20-04)

d. Measurable, behaviorally stated objectives which are developed from an identified service or support in the plan of service; and (3-20-04)

e. Written instructions to staff such as curriculum, lesson plans, locations, activity schedules, type and frequency of reinforcement and data collection, directed at the achievement of each objective. These instructions may be standardized, however, they must be individualized and revised as necessary to promote participant progress toward the stated objective. (3-20-04)

f. Identification of the specific environment(s) where services will be provided. (3-20-04)

g. The target date for completion. (7-1-97)

06. Changes To The Implementation Plan. (3-20-04)

a. The DDA must coordinate the participant's DDA program with other service providers to maximize learning. (3-20-04)

b. Documentation of Implementation Plan changes will be included in the participant's record. This documentation must include, at a minimum, the reason for the change, documentation of coordination with other service providers (where applicable), the date the change was made, and the signature of the person making the change complete with date and title. (3-20-04)

c. If there are changes to an Implementation Plan that affect the service on the plan of service, an addendum to the plan of service must be completed in accordance with IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". (3-20-04)

07. Program Documentation. Each participant's record must include documentation of the participant's involvement in and response to services provided. This documentation must include at a minimum: (3-20-04)

a. Daily entry of all activities conducted toward meeting participant objectives; and (3-20-04)

b. Sufficient progress data to accurately assess the participant's progress toward each objective; and (3-20-04)

c. A review of the data and, when indicated, changes in the daily activities or specific implementation procedures by a DDP. The review must include the DDP's dated initials; and (3-20-04)

d. Documentation of notification of the participant and when applicable, the participant's guardian. (3-20-04)

08. Records. Each DDA licensed under these rules must maintain accurate, current and complete participant and administrative records. Each participant record must contain the following information: (3-20-04)

a. Documentation which verifies that the services provided are authorized by the Department or its designee. A copy of a plan of service will suffice for compliance to this requirement; and (3-20-04)

b. When evaluations are completed or obtained by the agency the participant's record must include the evaluation forms and narrative reports, signed and dated by the respective evaluators; and (3-20-04)

c. A copy of the plan of service authorized by the Department or its designee; and (3-20-04)

d. Program documentation and monitoring records which comply with all applicable sections of these rules; and (3-20-04)

e. The case record must be divided into program/discipline areas identified by tabs, such as, plan of service, medical, social, psychological, speech, and developmental. (3-20-04)

09. Provider Status Review. DDAs must submit semiannual and annual status reviews to the plan monitor reflecting the status of behavioral objectives or services identified on the plan of service. Semiannual status reviews must remain in the participant's file and annual status reviews must be attached to annual plan of service. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

802. SERVICES FOR CHILDREN BIRTH TO THREE YEARS OF AGE (INFANT TODDLER).
Services provided by a developmental disabilities agency to children birth to three (3) years of age must meet the requirements and provisions of the Individuals with Disabilities Education Act (IDEA), Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. These requirements include: adherence to procedural safeguards and time lines, use of multi-disciplinary evaluations and Individualized Family Service Plans (IFSPs), provision of early intervention services in the natural environment, transition planning, and program enrollment and reporting requirements. For children birth to age three (3), the IFSP will be used in lieu of the Individual Program Plan (IPP). ( )

802~~3~~. FUNDS.
Agencies which receive funds under these rules must maintain accurate records of the receipt, obligation and disbursement of funds. Reimbursement for services is contingent upon documentation in participant records which supports the need for the type and amount of each service. (3-20-04)

803~~4~~. ACCESSIBILITY.
Records must be accessible during normal operation of the agency to the Department for the purpose of inspection, with or without prior notification, under Section 39-108, Idaho Code. (3-20-04)

804~~5~~. REQUIRED SERVICES.
Services provided must be sufficient in quantity and quality to meet the needs of each person receiving services, and must be provided by qualified professionals for the respective disciplines defined in this chapter. The following services, individual, group, community-based and home-based must be available as recommended by the physician and based on participant needs, interests, or choices to eligible participants either by employees of the agency or through formal written agreement and must comply with all applicable rules of this chapter: (3-20-04)

01. Psychotherapy. Psychotherapy services when provided by a physician, psychiatrist, psychologist, psychology assistant, or social worker in accordance with the objectives specified. Psychotherapy services available must include the following: (3-20-04)

a. Individual psychotherapy; and (7-1-97)

b. Group psychotherapy in which there is a minimum ratio of one (1) qualified staff person for every twelve (12) individuals in group therapy; and (3-20-04)

c. Family-centered psychotherapy that includes the participant and at least one (1) other family member at any given time. (3-20-04)

02. Speech and Hearing Therapy. Speech and hearing therapy services provided in accordance with the specified objectives. (7-1-97)

03. Physical Therapy. Physical therapy services provided by a licensed physical therapist in accordance with the specified objectives. (7-1-97)

04. Developmental Therapy. Developmental therapy services: (7-1-97)

a. Must be provided by qualified developmental disabilities staff in accordance with objectives specified; and (3-20-04)

b. Therapy must be directed toward the rehabilitation/habilitation of physical or mental disabilities in the areas of self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living or economic self-sufficiency. (3-20-04)

05. Occupational Therapy. Occupational therapy services provided by a licensed occupational

therapist in accordance with the specified objectives. (7-1-97)

80~~5~~6. OPTIONAL SERVICES.
Optional services include medication consultation, psychiatric advice~~s~~, and Intensive Behavioral Intervention (IBI). (3-20-04)

80~~6~~7. MEDICATION CONSULTATION.
Consultation for the purpose of prescribing, monitoring, or administering medications. These consultations must be provided by a physician or licensed nurse practitioner in direct face-to-face contact with the participant and incorporated into the individual plan with the type, amount, and duration of the service specified. (3-20-04)

80~~7~~8. PSYCHIATRIC SERVICES.
Psychiatric evaluations and services for the purpose of establishing a diagnosis, identifying participant strengths and needs, and recommending or implementing interventions to address each need. These evaluations and services must be conducted by a physician in direct face-to-face contact with the participant and incorporated into the participant's individual plan with the type, amount, and duration of service specified. (3-20-04)

80~~8~~9. INTENSIVE BEHAVIORAL INTERVENTION (IBI).

01. Individualized and Comprehensive Interventions. Individualized and comprehensive interventions used on a short term, one-to-one basis that have been shown to be effective and produce measurable outcomes which diminish behaviors that interfere with the development and use of language and appropriate social interaction skills or broaden an otherwise severely restricted range of interest. (3-20-04)

02. Service Availability. Intensive Behavioral Intervention is available only to children birth through age twenty-one (21) who have self-injurious, aggressive or severely maladaptive behavior and severe deficits in the following areas: (3-20-04)

a. Verbal and nonverbal communication; or (3-20-04)

b. Social interaction; or (3-20-04)

c. Leisure and play skills. (3-20-04)

80~~09~~10. QUALIFICATIONS TO PROVIDE INTENSIVE BEHAVIORAL INTERVENTION (IBI).
A person qualified to provide or direct the provision of Intensive Behavioral Intervention (IBI) must meet the following requirements: (5-3-03)

01. Degree. A qualified IBI professional must hold at least a bachelor's degree in a health, human services, educational, behavioral science or counseling field from a nationally accredited university or college. (5-3-03)

02. Experience. An individual applying for IBI paraprofessional or professional certification must be able to provide documentation of one (1) year's supervised experience working with children with developmental disabilities. The year's experience must include one thousand (1,000) hours of direct contact or care of children with developmental disabilities in a behavioral context. (3-20-04)

03. Training and Certification. Qualified IBI professionals and paraprofessionals must complete and pass a Department-approved training course and examination for certification. The training must include a curriculum that addresses standards of competence for the provision of intensive behavioral intervention and ethical standards. Specifically, the curriculum must include: assessment of individuals, behavioral management, services or treatment of individuals, supervised practical experience, and an observation of demonstrated competencies. An individual applying for IBI professional certification or to be certified as an IBI trainer must also be able to demonstrate their competency in the provision of IBI services by passing a certification examination. A certified IBI professional who has a break in the provision of IBI services of more than one (1) year will be required to meet any additional Department requirements implemented subsequent to the individual's certification. (3-20-04)

04. Individuals Previously Certified. Beginning July 1, 2003, an individual certified as an IBI professional prior to that date ~~*must*~~ will continue to be certified as an IBI professional as long as ~~*they*~~ he meets the requirements of Subsection 8~~09~~10.03 of these rules. ~~*(3-20-04)*~~( )

05. Use of Paraprofessionals. An aide or therapy technician who has completed Department approved training and certification may be used to provide Intensive Behavioral Intervention under the supervision of a professional who is certified by the Department to provide Intensive Behavioral Intervention. (4-5-00)

a. The agency must assure adequate professional supervision during its services hours; and (3-20-04)

b. Paraprofessionals must not conduct evaluations or establish the Implementation Plan. These activities must be conducted by a professional qualified to provide or direct the provision of Intensive Behavioral Intervention; and (3-20-04)

c. The professional must, on a weekly basis or more often if necessary, give instructions, review progress and provide training on the program(s) and procedures to be followed; and (3-20-04)

d. A professional must, on a monthly basis or more often if necessary, observe and review the work performed by the paraprofessional to assure the paraprofessional has been trained on the program(s) and demonstrates the necessary skills to correctly implement the program(s). (3-20-04)

06. Limitation to Service Provision by a Paraprofessional. Intensive Behavioral Intervention provided by a paraprofessional is limited to ninety percent (90%) of the direct intervention time. The remaining ten percent (10%) of the direct intervention time must be provided by the professional qualified to provide or direct the provision of Intensive Behavioral Intervention. (4-5-00)

81~~0~~1. INITIAL PRIOR AUTHORIZATION.
Initial Intensive Behavioral Intervention services or consultation must be prior authorized by the Department. The DDA must submit evidence of each child's eligibility for Intensive Behavioral Intervention, the Implementation Plan, the number of hours of service requested, and the measurable outcomes expected as the result of the intervention. (4-5-00)

81~~1~~2. PROGRESS REPORTS, EVALUATION, AND CONTINUED PRIOR AUTHORIZATION.
The provider must submit a report on the child's progress toward Intensive Behavioral Intervention outcomes to the Department every one hundred twenty (120) days and seek prior authorization for continuation or modification of services. On an annual basis, a multi disciplinary treatment team that includes at a minimum, the parent(s), staff psychologist and staff providing services to the child, will review current evaluations and make a recommendation for continuation or modification of the intervention. (4-5-00)

81~~2~~3. PARENT AND STAFF CONSULTATION.
Professionals may provide consultation to parents and to other staff who provide therapy or care for the child in other disciplines to assure successful integration and transition from Intensive Behavioral Intervention to other therapies. (4-5-00)

81~~3~~4. STAFFING REQUIREMENTS FOR AGENCIES.

01. Physician. For participants whose services are governed by Section 801 of these rules, the agency must have a physician available a sufficient amount of time to: (3-20-04)

a. Review medical/social history information for the purpose of ordering appropriate evaluations; and (3-20-04)

b. Perform necessary medical assessments; and (3-20-04)

c. Review and recommend the services identified in the Individual Program Plans; and (3-20-04)

d. Participate in annual reviews of participant services to determine continued appropriateness of the plan if applicable. (3-20-04)

02. Professionals. The agency must have available, at a minimum, the qualified DDP as employees of the agency or through formal written agreement: (3-20-04)

a. Audiologist or speech and language pathologist; and (3-20-04)

b. Developmental specialist; and (3-20-04)

c. Occupational therapist; and (3-20-04)

d. Physical therapist; and (3-20-04)

e. Physician; and (3-20-04)

f. Psychologist; and (3-20-04)

g. Social worker. (3-20-04)

814~~4~~5. -- 819. (RESERVED).

820. PAYMENT PROCEDURES.
Payment for agency services must be in accordance with rates, forms, policies and procedures established by the Department. Payment for services is contingent upon documentation in each participant's record which supports the type and amount of each service based on the agency's integrated records system and compliance with the requirements specified under Section 80~~2~~3 of these rules. ~~*(3-20-04)*~~(____)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.04.17 - RULES GOVERNING RESIDENTIAL HABILITATION AGENCIES

DOCKET NO. 16-0417-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Sections 39-4601 et seq., 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 15, 2004.

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

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rulemaking: This rulemaking is necessary to revise definitions for "Service Coordination" and "Service Coordinator" to conform with the definitions in the new chapter of rule IDAPA 16.03.17 "Service Coordination". The new chapter for "Service Coordination" was approved by the 2004 Legislature and this rulemaking will prevent a conflict in definitions between rules. The term "Targeted Service Coordinators" will be deleted as it no longer is used.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule is necessary to avoid a conflict in rules due to the passage of the new service coordination chapter.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mary Wells at (208) 364-1955.

Anyone can submit written comments regarding this proposed rulemaking. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before September 22, 2004.

DATED this 7th day of July, 2004.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 01-0417-0401

011. DEFINITIONS -- M THROUGH Z.
For the purposes of these rules the following terms are used as defined below: (3-20-04)

01. Measurable Objective. A statement which specifically describes the skill to be acquired or service/support to be provided, includes quantifiable criteria for determining progress towards and attainment of the service, support or skill, and identifies a projected date of attainment. (7-1-95)

02. Mechanical Restraint. Any device that the participant cannot remove easily that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body or environment. Excluded are devices used to achieve proper body position, balance, or alignment. (3-20-04)

03. Medication. Any substance or drug used to treat a disease, condition or symptoms which may be taken orally, injected or used externally and is available through prescription or over-the-counter. (7-1-95)

04. Neglect. The negligent failure to provide those goods or services which are reasonably necessary to sustain the life and health of a person under Section 39-5302 (8), Idaho Code. (3-20-04)

05. Outcome-Based Review. An on-site review conducted by a trained reviewer authorized by the Department to determine participant satisfaction with the services received and improvement or impact upon his lifestyle following implementation of the plan of service. (3-20-04)

06. Participant. A person who receives health care services, is eligible for Medicaid, and who is receiving residential habilitation services. (3-20-04)

07. Person-Centered Planning Process. A meeting facilitated by the plan developer, comprised of family and individuals significant to the participant who collaborate with the participant to develop the plan of service. (3-20-04)

08. Person-Centered Planning Team. The group who develops the plan of service. This group includes, at a minimum, the participant and the service coordinator or plan developer chosen by the participant. The person-centered planning team may include others identified by the participant or agreed upon by the participant and the Department as important to the process. (3-20-04)

09. Physical Restraint. Any manual method that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body. Excluded are physical guidance and prompting techniques of brief duration. (7-1-95)

10. Physician. Any person licensed as required by Title 54, Chapter 18, Idaho Code. (7-1-95)

11. Plan Developer. A paid or nonpaid person identified by the participant who is responsible for developing one (1) plan of service and subsequent addenda that cover all services and supports, based on a person-centered planning process. (3-20-04)

12. Plan Monitor. A person who oversees the provision of services on a paid or non-paid basis. The plan developer is the plan monitor unless there is a Service Coordinator, in which case the Service Coordinator assumes both roles. (3-20-04)

13. Plan of Service. An initial or annual plan that identifies all services and supports based on a person-centered planning process. Plans are authorized annually every three hundred sixty-five (365) days. (3-20-04)

14. Provider Status Review. The written documentation that identifies the participant's progress toward goals defined in the plan of service. (3-20-04)

15. Psychosocial Information. A combined summary of psychological and social histories of a participant designed to provide the person-centered planning team with an accurate reflection of the participant's current skills, abilities, and needs. (3-20-04)

16. Progress Note. A written notation, dated and signed by a member of the person-centered planning

team or service provider, that documents facts about the participant's assessment, services provided, and the participant's response during a given period of time. (3-20-04)

17. **Punishment**. Any procedure in which an adverse consequence is presented that is designed to produce a decrease in the rate, intensity, duration or probability of the occurrence of a behavior; or the administration of any noxious or unpleasant stimulus or deprivation of a participant's rights or freedom for the purpose of reducing the rate, intensity, duration, or probability of a particular behavior. (3-20-04)

18. **QMRP**. Qualified Mental Retardation Professional as defined in 42 CFR 483.430. (7-1-95)

19. **Residential Habilitation**. Services consisting of an integrated array of individually-tailored services and supports furnished to an eligible participant which are designed to assist them to reside successfully in their own homes, with their families, or alternate family home. (3-20-04)

20. **Reviewer**. A person or other entity authorized by the Department to conduct reviews to determine compliance with the program requirements and participant satisfaction with the services. (3-20-04)

21. **Rule**. A requirement established by state, federal, or local government under the law and having the effect of law. (3-20-04)

22. **Seclusionary Time Out**. The contingent removal of an individual from a setting in which reinforcement is occurring that is designed to result in a decrease in the rate, intensity, duration or probability of the occurrence of a response, and entails the removal of the individual to an isolated setting. (7-1-95)

23. **Substantial Compliance**. An agency is in substantial compliance with these rules when there are no deficiencies which would endanger the health, safety or welfare of the participants. (3-20-04)

24. **Supervision**. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity. (7-1-95)

25. **Service Coordination**. Service coordination is an activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. See IDAPA 16.03.17, "Service Coordination," Section 010. ~~*(3-20-04)*~~( )

26. **Service Coordinator**. An individual who provides service coordination to a Medicaid-eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under IDAPA 16.03.~~*09*~~17, "~~*Rules Governing the Medical Assistance Program*~~ Service Coordination," Section ~~*118*~~700. ~~*This includes Targeted Service Coordinators.*~~ ~~*(3-20-04)*~~( )

27. **Services**. Services paid for by the Department that enable the individual to reside safely and effectively in the community. (3-20-04)

28. **Supports**. Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. (3-20-04)

29. **Transition Plan**. An interim plan developed by the residential habilitation agency defining activities to assist the participant to transition out of residential habilitation services from that agency. (3-20-04)

30. **Waiver Services**. Individually tailored services and supports as amended under Waiver Number 0076.90 (B) provided by an agency to an eligible recipient to prevent unnecessary institutional placement, to provide for the greatest degree of independence possible, to enhance the quality of life, to encourage choice, and to achieve and maintain community integration and participation. (7-1-95)

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.50 - ADOPTION OF THE 2003 INTERNATIONAL FIRE CODE

DOCKET NO. 18-0150-0401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 41-211, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2004.

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 it supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed changes are minor modifications needed to adapt the International Fire Code to conform with Idaho Code, and for use by local jurisdictions. The changes will provide uniformity and consistency in the plan review process for state-owned buildings, update the basic fire and life safety code for the state, and remain current with the building code adopted by the Legislature.

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 reason: The rule complies with deadlines in amendments to the International Fire Code and affects fire and building departments across the state.

FEE SUMMARY: The rule does not impose a fee.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Mark Larson at (208) 334-4370.

Anyone may submit written comments regarding the proposed rulemaking. All written comments and data concerning the rule must be directed to the undersigned and must be received on or before September 22, 2004.

Dated this 20th day of July, 2004.

Mary L. Hartung, Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4250
Facsimile No. (208) 334-4298

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0150-0401

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 18.01.50, Rules of the Idaho Department of Insurance, Title 01, Chapter 50, "Adoption of the 200~~0~~3 International Fire Code". ~~(5-3-03)~~(9-1-04)T

02. Scope. Pursuant to the authority provided by Section 41-253, Idaho Code, the Idaho Fire Marshal hereby adopts the 200~~0~~3 edition of the International Fire Code in order to provide uniformity in the plan review process for state owned and maintained buildings and to maintain consistency and conformity with the International Building Code. ~~(5-3-03)~~(9-1-04)T

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

01. 200~~0~~3 International Fire Code. In accordance with Section 67-5229, Idaho Code, and pursuant to the authority provided by Section 41-253, Idaho Code, the Idaho Fire Marshal hereby adopts the 200~~0~~3 edition of the International Fire Code as published by the International Code Council ~~*in cooperation with the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, and the Southern Building Code Congress International, Inc.,*~~ with the following revisions, additions, deletions and appendixes. ~~(5-3-03)~~(9-1-04)T

02. Availability of Referenced Material. Copies of the 200~~0~~3 edition of the International Fire Code are available for public inspection at the office of the State Fire Marshal, the State Law Library, and the State Legislative Council. Copies of the 200~~0~~3 International Fire Code may be procured by writing the International ~~*Conference of Building Officials*~~ Code Council, Northwest Resource Center, 2122 112th Ave NE, Suite C, Bellevue, WA 98004. ~~(5-3-03)~~(9-1-04)T

(BREAK IN CONTINUITY OF SECTIONS)

021. -- 0~~36~~25. (RESERVED).

026. SECTION 903.2.7 GROUP R AUTOMATIC SPRINKLER SYSTEM REQUIREMENTS.
Add to the paragraph, "Exception: automatic sprinkler systems are not required in 3- or 4-unit Group R buildings". (9-1-04)T

027. SECTION 906.1, PORTABLE FIRE EXTINQUISHERS, WHERE REQUIRED.
Item 1 Exception: delete the exception. (9-1-04)T

028. – 036. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

052. REFERENCED STANDARDS, CHAPTER 45, INTERNATIONAL FIRE CODE.
Beginning on Page 3~~51~~65, of the NFPA Referenced Standards, make the following changes to the referenced editions:

Delete	Add	Delete	Add	Delete	Add
~~12-98~~ 10-98	~~12-200~~ 10-2002	~~51A-96~~ 51-97	~~51A-2001~~ 51-2002	~~481-95~~ 407-96	~~481-2000~~ 407-2001
~~13-96~~ 11-98	~~12-1999~~ 11-2002	~~58-98~~ 52-98	~~58-2001~~ 52-2002	~~485-96~~ 430-95	~~495-2001~~ 430-2000
~~13D-96~~ 12A-97	~~13D-1999~~ 12A-2004	~~59A-96~~ 57-99	~~59A-2001~~ 57-2002	~~498-96~~ 480-98	~~498-2001~~ 484-2002
~~13R-96~~ 13-99	~~13R-1999~~ 13-2002	~~61-95~~ 58-2001	~~61-1999~~ 58-2004	~~505-96~~ 481-2000	~~505-1999~~ 484-2002
~~13-96~~ 13D-99	~~14-2000~~ 13D-2002	~~72-96~~ 61-99	~~72-1999~~ 61-2002	~~654-98~~ 482-96	~~654-2000~~ 484-2002
~~15-96~~ 13R-99	~~15-2001~~ 13R-2002	~~86-95~~ 69-97	~~86-1999~~ 69-2002	~~655-93~~ 490-98	~~655-2001~~ 490-2002
~~20-96~~ 14-2000	~~20-1999~~ 14-2003	~~96-98~~ 72-99	~~96-2001~~ 72-2002	~~701-96~~ 495-96	~~701-1999~~ 495-2001
~~25-98~~ 15-96	~~25-2002~~ 15-2001	~~99-99~~ 85-2001	~~99-2002~~ 85-2004	~~703-95~~ 498-96	~~703-2000~~ 498-2001
~~30-96~~ 16-99	~~30-2000~~ 16-2003	~~101-97~~ 86-99	~~101-2000~~ 86-2003	~~704-96~~ 505-99	~~704-2001~~ 505-2002
~~30A-96~~ 17-98	~~30A-2000~~ 17-2002	~~110-99~~ 99-99	~~110-2002~~ 99-2002	~~750-96~~ 650-98	~~750-2000~~ 654-2000
~~31-97~~ 17A-98	~~30-2001~~ 17A-2002	~~111-96~~ 101-2000	~~111-2001~~ 101-2003	~~780-97~~ 651-98	~~780-2000~~ 654-2000
~~32-96~~ 20-99	~~32-2000~~ 20-2003	~~211-96~~ 110-99	~~211-2000~~ 110-2002	~~909-97~~ 655-93	~~909-2001~~ 655-2001
~~33-95~~ 22-98	~~33-2000~~ 22-2003	~~241-96~~ 211-2000	~~241-2000~~ 211-2003	~~1123-95~~ 664-98	~~1123-2000~~ 664-2002
~~34-95~~ 24-95	~~34-2000~~ 24-2003	~~255-96~~ 231-98	~~255-2000~~ 230-2003	~~1125-95~~ 704-96	~~1125-2001~~ 704-2001
~~40-97~~ 25-98	~~40-2001~~ 25-2002	~~385-98~~ 231C-98	~~385-2000~~ 230-2003	~~1126-96~~ 750-2000	~~1126-2001~~ 750-2003
~~50-96~~ 30-2000	~~50-2001~~ 30-2003	~~407-96~~ 231D-98	~~407-2001~~ 230-2003	~~2001-96~~ 1122-97	~~2001-2001~~ 1125-2001
~~51-97~~ 30A-2000	~~51-2002~~ 30A-2003	~~430-95~~ 260-98	~~430-2000~~ 260-2003	1123-2000	1126-2001
30B-98	30B-2002	261-98	261-2003	1124-98	1124-2003
33-2000	33-2003	265-98	265-2002	1125-95	1125-2001
34-2000	34-2003	266-98	272-2003	1127-98	1127-2002
40-97	40-2001	267-98	272-2003	2001-2000	2001-2004

~~(5-3-03)~~(9-1-04)T

(BREAK IN CONTINUITY OF SECTIONS)

056. REFERENCES TO APPENDIX, INTERNATIONAL FIRE CODE.
When this code references the appendix, the provisions of the appendix shall not apply unless specifically incorporated by reference. The following appendixes of the International Fire Code are incorporated by reference: (5-3-03)

01. Appendix B, Fire Flow Requirements for Buildings. (5-3-03)

02. Appendix C, Fire Hydrant Location and Distribution. (5-3-03)

03. Appendix D, Fire Apparatus Access Roads. D107.1 One- or two-family dwelling residential developments. Exceptions: Item 1. In the first sentence delete the word "fewer" and add the word "more". (9-1-04)T

0~~3~~4. Appendix E, Hazard Categories. (5-3-03)

0~~4~~5. Appendix F, Hazard Rankings. (5-3-03)

IDAPA 19 - BOARD OF DENTISTRY

19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY

DOCKET NO. 19-0101-0401

NOTICE OF RULEMAKING

PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is October 1, 2004. The pending rule has been adopted by the agency and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 54-912(4), Idaho Code.

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

The purpose for adopting the pending rule is to implement and effectuate legislation enacted in the Idaho Dental Practice Act during the 2004 legislative session. The pending rules provide the following: specific requirements for the issuance and renewal of the extended access dental hygiene endorsement; specific requirements to entitle a dental hygienist to volunteer in an extended access oral health care program; a specific list of permissible and prohibited functions for a dental hygienist practicing under specified levels of supervision in a private dental office or in an extended access oral health care program; a specific list of permissible and prohibited functions for a dental assistant practicing under the direct supervision of a dentist; and continuing education standards for volunteer dentists and dental hygienists holding an extended access dental hygiene endorsement.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, as the result of public comment. In order to keep the temporary rule in place while the pending rule awaits legislative approval, the Board of Dentistry amended the temporary rule with the same revisions which were made to the pending rule. The original text of the proposed rule was published in the June 2, 2004, Idaho Administrative Bulletin, Vol. 04-6, pages 38 through 45.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary and pending rules, contact Michael J. Sheeley, Executive Director, Idaho State Board of Dentistry, at (208) 334-2369.

DATED this 19th day of July, 2004.

Michael J. Sheeley, Executive Director
Idaho State Board of Dentistry
708 ½ W. Franklin Street, Boise, Idaho 83720
(208) 334-2369 (telephone) / (208) 334-3247 (facsimile)

IDAPA 19, TITLE 01, CHAPTER 01

RULES OF THE IDAHO STATE BOARD OF DENTISTRY

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 04-6, June 2, 2004, pages 38 through 45.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2005 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF PENDING RULE DOCKET NO. 19-0101-0401

Subsections 035.02.f., 035.02.g.v., and 035.02.g.vi.

035. DENTAL ASSISTANTS - PRACTICE (RULE 35).

02. Prohibited Duties. Subject to other applicable provisions of these rules and of the Act, dental assistants are hereby prohibited from performing any of the activities specified below: (7-1-93)

f. Any intra-oral procedure using a highspeed handpiece*, except to the extent authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity*. ~~*(7-1-04)T*~~(10-1-04)T

g. The following expanded functions, unless authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity and performed under direct supervision: (7-1-04)T

v. Coronal polishing, unless authorized by a Certificate of Registration; this refers to the technique of removing soft substances from the teeth with pumice or other such abrasive substances with a rubber cup or brush. This in no way authorizes the mechanical removal of calculus nor is it to be considered a complete oral prophylaxis. This technique (coronal polishing) would be applicable only after examination by a dentist and removal of calculus by a dentist or dental hygienist~~.~~*; and* ~~*(7-1-93)*~~(10-1-04)T

vi. Use of a highspeed handpiece restricted to the removal of orthodontic cement or resin. (10-1-04)T

IDAPA 19 - BOARD OF DENTISTRY

19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY

DOCKET NO. 19-0101-0402

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-912(4), 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 15, 2004.

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 proposed rulemaking is for the following purposes: to incorporate the American Dental Hygienists' Association's Code of Ethics for Dental Hygienists into the Board of Dentistry's administrative rules by reference; to specify that a violation of the American Dental Hygienists' Association's Code of Ethics for Dental Hygienists constitutes unprofessional conduct by a dental hygienist that may constitute grounds for disciplinary action; to specifically identify three (3) additional areas of specialty dental practice (oral and maxillofacial radiology, oral and maxillofacial pathology and dental public health) to be recognized and licensed by the Board of Dentistry; and to include the three (3) additional areas of specialty dental practice to be recognized and licensed by the Board of Dentistry in the specialty advertising standards.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted. Notice of the proposed rulemaking was previously provided to interested parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael J. Sheeley, Executive Director, at (208) 334-2369.

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 22, 2004.

DATED this 19th day of July, 2004.

Michael J. Sheeley, Executive Director
Idaho State Board of Dentistry
708½ W. Franklin Street
Boise, Idaho 83702
(208) 334-2369 (telephone)
(208) 334-3247 (facsimile)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 19-0101-0402

004. INCORPORATION BY REFERENCE (RULE 4).
Pursuant to Section 67-5229, Idaho Code, this chapter incorporates by reference the following documents: (7-1-93)

01. Documents. (7-1-93)

a. American Association of Oral and Maxillofacial Surgeons, Office Anesthesia Evaluation Manual, 6th Edition, 2000. (3-15-02)

b. American Dental Association, Council on Dental Education, Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, October 2000. (3-15-02)

c. American Dental Association, Council on Dental Education, Guidelines for Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists, October 2000. (3-15-02)

d. Centers for Disease Control and Prevention, DHHS, Guidelines for Infection Control in Dental Health-Care Settings, 2003. (7-1-04)T

e. American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), January 2003(as amended). (3-20-04)

f. American Dental Hygienists' Association, Code of Ethics for Dental Hygienists (ADHA Code), 1995. ( )

02. Availability. These documents are available for public review at the Idaho State Board of Dentistry, 708 1/2 West Franklin Street, Boise, Idaho 83720, or the Idaho State Law Library, Supreme Court Building, 451 W. State Street, Boise, Idaho 83720. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

040. UNPROFESSIONAL CONDUCT (RULE 40).
A dentist or hygienist shall not engage in unprofessional conduct in the course of his practice. Unprofessional conduct by a person licensed under the provisions of Title 54, Chapter 9, Idaho Code, is defined as, but not limited to, one (1) of the following: (7-1-93)

01. Fraud. Obtaining fees by fraud or misrepresentation, or over-treatment either directly or through an insurance carrier. (7-1-93)

02. Unlicensed Practice. Employing directly or indirectly any suspended or unlicensed dentist or dental hygienist to practice dentistry or dental hygiene as defined in Title 54, Chapter 9, Idaho Code. (7-1-93)

03. Unlawful Practice. Aiding or abetting licensed persons to practice dental hygiene or dentistry unlawfully. (7-1-93)

04. Dividing Fees. A dentist shall not divide a fee for dental services with another party, who is not a partner or associate with him in the practice of dentistry, unless: (7-1-93)

a. The patient consents to employment of the other party after a full disclosure that a division of fees will be made; (7-1-93)

b. The division is made in proportion to the services performed and responsibility assumed by each dentist or party. (7-1-93)

05. Controlled Substances. Prescribing or administering controlled substances not reasonably

necessary for, or within the scope of, providing dental services for a patient. In prescribing or administering controlled substances, a dentist shall exercise reasonable and ordinary care and diligence and exert his best judgment in the treatment of his patient as dentists in good standing in the state of Idaho, in the same general line of practice, ordinarily exercised in like cases. A dentist may not prescribe controlled substances for or administer controlled substances to himself. A dentist shall not use controlled substances as an inducement to secure or maintain dental patronage or aid in the maintenance of any person's drug addiction by selling, giving or prescribing controlled substances. (3-18-99)

06. Harassment. The use of threats or harassment to delay or obstruct any person in providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of Title 54, Chapter 9, Idaho Code, or the Board's Rules, or to aid in such compliance. (7-1-93)

07. Discipline in Other States. Conduct himself in such manner as results in a suspension, revocation or other disciplinary proceedings with respect to his license in another state. (3-18-99)

08. Altering Records. Alter a patient's record with intent to deceive. (7-1-93)

09. Office Conditions. Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession in the state of Idaho and current recommendations of the American Dental Association and the Centers for Disease Control as referred to in Subsections 006.01.c. and 006.01.d. (7-1-93)

10. Abandonment of Patients. Abandonment of patients by licensees before the completion of a phase of treatment, as such phase of treatment is contemplated by the customary practice and standards of the dental profession in the state of Idaho, without first advising the patient of such abandonment and of further treatment that is necessary. (7-1-93)

11. Use of Intoxicants. Practicing dentistry or dental hygiene while under the influence of an intoxicant or controlled substance where the same impairs the dentist's or hygienist's ability to practice dentistry or hygiene with reasonable and ordinary care. (7-1-93)

12. Mental or Physical Illness. Continued practice of dentistry or dental hygiene in the case of inability of the licensee to practice with reasonable and ordinary care by reason of one (1) or more of the following: (7-1-93)

a. Mental illness; (7-1-93)

b. Physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill. (7-1-93)

13. Consent. Revealing personally identifiable facts, data or information obtained in a professional capacity without prior consent of the patient, except as authorized or required by law. (3-18-99)

14. Scope of Practice. Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities that the licensee knows or has reason to know that he or she is not competent to perform. (3-18-99)

15. Delegating Duties. Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or with the exercise of reasonable care and control should know, that such a person is not qualified by training or by licensure to perform them. (3-18-99)

16. Unauthorized Treatment. Performing professional services that have not been authorized by the patient or his legal representative. (3-18-99)

17. Supervision. Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of a licensed professional. (7-1-93)

18. **Legal Compliance**. Failure to comply with any provisions of federal, state or local laws, statutes, rules, and regulations governing the practice of dentistry. (3-18-99)

19. **Exploiting Patients**. Exercising undue influence on a patient in such manner as to exploit a patient for the financial or personal gain of a practitioner or of a third party. (7-1-93)

20. **Misrepresentation**. Willful misrepresentation of the benefits or effectiveness of dental services. (7-1-93)

21. **Disclosure**. Failure to advise patients or their representatives in understandable terms of the treatment to be rendered, alternatives, and disclosure of reasonably anticipated fees relative to the treatment proposed. (3-18-99)

22. **Sexual Misconduct**. Making suggestive, sexual or improper advances toward a patient or committing any lewd or lascivious act upon or with a patient. (7-1-93)

23. **Patient Management**. Use of unreasonable and/or damaging force to manage patients, including but not limited to hitting, slapping or physical restraints. (7-1-93)

24. **American Dental Association Compliance**. Failure by a dentist to comply with the American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), as incorporated by reference in this chapter. (3-20-04)

25. **American Dental Hygienists' Association Compliance**. Failure by a dental hygienist to comply with the American Dental Hygienists' Association, Code of Ethics for Dental Hygienists (ADHA Code), as incorporated by reference in this chapter. (____)

041. -- 044. (RESERVED).

045. LICENSURE OF DENTAL SPECIALISTS (RULE 45).

01. **Qualifications**. Each applicant shall have a general license for the practice of dentistry in the state of Idaho or another state. Any applicant who desires to be licensed in one (1) of the Board recognized specialties, which include and are limited to Dental Public Health, Endodontics, Oral and Maxillofacial Pathology, Oral and Maxillofacial Radiology, Oral and Maxillofacial Surgery, Orthodontics, Pediatric Dentistry, Periodontics, and Prosthodontics, must be a graduate of and hold a certificate from both a dental school and a Graduate Training Program that are accredited by the Commission on Dental Accreditation of the American Dental Association. Any dentist licensed in Idaho who has met the educational requirements and standards approved by the Board, and who has practiced in a Board recognized specialty prior to February 1, 1992, may be granted a specialty license by the Board without undergoing examination. ~~(3-20-04)~~(____)

02. **Application**. Application for license to practice a recognized dental specialty must be filed in the office of the Board of Dentistry, Statehouse Mail, Boise, Idaho. The application must be attested before a notary public. (7-1-93)

03. **Examination**. Specialty licensure in those specialties recognized may be granted solely at the discretion of the Idaho State Board of Dentistry. An examination covering the applicant's chosen field may be required and, if so, will be given by the Idaho State Board of Dentistry or its agent. Candidates who are certified by the American Board of that particular specialty as of the date of application for speciality licensure, and who meet the qualifications set forth in the Board's Rules, may be granted specialty licensure by Board approval. (3-20-04)

04. **Limitation of Practice**. No dentist shall announce or otherwise hold himself out to the public as a specialist unless he has first complied with the requirements established by the Idaho State Board of Dentistry for such specialty and has been issued a specialty license authorizing him to do so. Any individual granted a specialty license must limit his practice to the specialty(s) in which he is licensed. (3-20-04)

046. ADVERTISING (RULE 46).

Dentists and dental hygienists licensed to practice in Idaho may advertise in any medium or by other form of public communication so long as any such advertising is not false, deceptive, misleading or not readily subject to verification. In addition to any other applicable grounds, a violation of this advertising rule shall constitute and be considered as unethical and unprofessional conduct pursuant to the Idaho Dental Practice Act and this chapter. (3-20-04)

01. General Advertising Provisions. (3-20-04)

a. "Advertisement" shall mean any public communication, made in any form or manner whatsoever, about a licensee's professional services or qualifications for the purpose of soliciting business. "Advertising" or "advertise" shall mean holding out, broadcasting, mailing, publishing, transmitting, announcing, distributing or otherwise disseminating any advertisement, whether directly or indirectly through the efforts of another person or entity. Any sign soliciting business, whether at the location of the dental practice or otherwise, shall be considered as an advertisement. A licensee who engages or authorizes another person or entity to advertise for or on the licensee's behalf is responsible for the content of the advertisement unless the licensee can prove that the content of the advertisement was contrary to the licensee's specific directions. (3-20-04)

b. If the form or manner of advertising consists of or contains verbal communication to the public by television, radio, or other means, the advertisement shall be prerecorded and approved for broadcast by the licensee and a recording of the actual advertisement shall be retained by the licensee for a period of two (2) years. Upon receipt of a written request from the Board, a licensee shall provide any such recorded advertisement to the Board within five (5) working days. (3-20-04)

c. Any advertisement made under or by means of a fictitious or assumed business name or in the name of a professional service corporation shall be the responsibility of all licensees who are owners of the business or corporation. (3-20-04)

02. Prohibited Advertising. A licensee shall not advertise in any form or manner which is false, misleading or deceptive to the public or which is not readily susceptible to verification. False, misleading or deceptive advertising or advertising that is not readily susceptible to verification includes, but is not limited to, advertising that: (3-20-04)

a. Makes a material misrepresentation of fact or omits a material fact; (3-20-04)

b. Makes a representation likely to create an unjustified expectation about the results of a dental procedure; (3-20-04)

c. Compares a licensee's services with another licensee's services unless the comparison can be factually substantiated; (3-20-04)

d. Makes a representation that is misleading as to the credentials, education, or the licensing status of a licensee; (3-20-04)

e. Represents that the benefits of a dental insurance plan will be accepted as full payment when deductibles or copayments are required; (3-20-04)

f. Makes a representation that is intended to take advantage of the fears or emotions of a particularly susceptible type of patient; and (3-20-04)

g. Refers to benefits of dental procedures or products that involve significant risks without including realistic assessments of the safety and efficacy of those procedures or products. (3-20-04)

03. Specialty Advertising. The Board recognizes and licenses the following specialty areas of dental practice: Dental Public Health; Endodontics; Oral and Maxillofacial Pathology; Oral and Maxillofacial Radiology; Oral and Maxillofacial Surgery; Orthodontics; Pediatric Dentistry; Periodontics; and Prosthodontics. The specialty advertising rules are intended to allow the public to be informed about recognized dental specialities and specialization competencies of licensees and to require appropriate disclosures to avoid misperceptions on the part of

the public. ~~*(3-20-04)*~~(____)

a. An advertisement shall not state that a licensee is a specialist, or specializes in a recognized specialty area of dental practice, or limits his practice to any recognized specialty area of dental practice unless the licensee has been issued a license or certification in that specialty area of dental practice by the Board. Use of words or terms in advertisements such as "Endodontist," "Pedodontist," "Pediatric Dentist," "Periodontist," "Prosthodontist," "Orthodontist," "Oral and Maxillofacial Pathologist," "Oral Pathologist," "Oral and Maxillofacial Radiologist," "Oral Radiologist," "Oral and Maxillofacial Surgeon," "Oral Surgeon," "Specialist," "Board Certified," "Diplomate," "Practice Limited To," and "Limited To Specialty Of" shall be prima facie evidence that the licensee is announcing or holding himself out to the public as a specialist or that the licensee specializes in a recognized area of dental practice. ~~*(3-20-04)*~~(____)

b. A licensee who has not been licensed or certified by the Board in a recognized specialty area of dental practice may advertise as being qualified in a recognized specialty area of dental practice so long as each such advertisement, regardless of form, contains a prominent disclaimer that the licensee is "licensed as a general dentist" or that the specialty services "will be provided by a general dentist". Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. (3-20-04)

c. A licensee shall not advertise as being a specialist in or as specializing in any area of dental practice which is not a Board recognized and licensed specialty area unless the advertisement, regardless of form, contains a prominent disclaimer that the advertised area of dental practice is not recognized as a specialty area of dental practice by the Idaho Board of Dentistry. Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. (3-20-04)

IDAPA 23 - IDAHO STATE BOARD OF NURSING

23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-0401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 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 15, 2004.

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:

In addition to a few housekeeping matters, the proposed rulemaking is necessary to implement recent legislation requiring criminal background checks, eliminating APPN supervision, clarifying examination requirements for multistate licensure, and requiring peer review as a condition of renewal or reinstatement of APPN licensure.

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:

This rulemaking is necessary to implement amendments made by the legislature to governing law.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rules implement statutory requirements language or are relatively simple (updating citations).

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

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 22, 2004.

DATED this 5th day of August, 2004.

Sandy Evans, MAEd., R.N.
Executive Director
Idaho State Board of Nursing
280 N. 8th St. (8th & Bannock), Ste. 210
P. O. Box 83720
Boise, ID 83720-0061
Phone: (208) 334-3110
Fax: (208) 334-3262

THE FOLLOWING IS THE TEXT OF DOCKET NO. 23-0101-0401

010. DEFINITIONS.

01. Accreditation. The official authorization or status granted by a recognized accrediting entity or agency other than a state board of nursing. (7-1-93)

02. Administration of Medications. The process whereby a prescribed medication is given to a patient by one (1) of several routes. Administration of medication is a complex nursing responsibility which requires a knowledge of anatomy, physiology, pathophysiology and pharmacology. Licensed nurses may administer medications and treatments as prescribed by health care providers authorized to prescribe medications. (5-3-03)

03. Approval. The process by which the Board evaluates and grants official recognition to education programs that meet standards established by the Board. (5-3-03)

04. Assist. To aid or help in the accomplishment of a prescribed set of actions. (7-1-93)

05. Assistance With Medications. The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a patient who cannot independently self-administer medications: (5-3-03)

06. Board. The Idaho Board of Nursing. (7-1-93)

07. Board Staff. The Executive Director and other such personnel as are needed to implement the Nursing Practice Act and these Rules. (7-1-93)

08. Charge Nurse. A licensed nurse who bears primary responsibility for assessing, planning, prioritizing and evaluating care for the patients on a unit, as well as the overall supervision of the licensed and unlicensed staff delivering the nursing care. (5-3-03)

09. Clinical Preceptor. A licensed professional nurse who acts to facilitate student training in a manner prescribed by a written agreement between the preceptor's employer and an educational institution. (5-3-03)

10. Competence. Safely performing those functions within the role of the licensee in a manner that demonstrates essential knowledge, judgment and skills. (5-3-03)

11. Curriculum. The systematic arrangement of learning experiences including didactic courses, practical experiences, and other activities needed to meet the requirements of the nursing program and of the certificate or degree conferred by the parent institution. (5-3-03)

12. Delegation. The process by which a licensed nurse assigns tasks to be performed by others. (5-3-03)

13. Disability. Any physical, mental, or emotional condition that interferes with the nurse's ability to practice nursing safely and competently. (5-3-03)

14. Emeritus License. A license issued to a nurse who desires to retire from active practice for any length of time. (5-3-03)

15. Licensing Examination. A licensing examination that is acceptable to the board. (5-3-03)

16. License in Good Standing. A license not subject to current disciplinary action, restriction, probation or investigation in any jurisdiction. (5-3-03)

17. Limited License. A nursing license subject to specific restrictions, terms, and conditions. (5-3-03)

18. Nursing Assessment. The systematic collection of data related to the patient's health care needs.

(5-3-03)

19. **Nursing Diagnosis**. The clinical judgment or conclusion regarding patient/client/family/community response to actual or potential health problems made as a result of the nursing assessment. (7-1-93)

20. **Nursing Intervention**. An action deliberately selected and performed to support the plan of care. (5-3-03)

21. **Nursing Service Administrator**. A licensed professional nurse who has administrative responsibility for the nursing services provided in a health care setting. (7-1-93)

22. **Organized Program of Study**. A written plan of instruction to include course objectives and content, teaching strategies, provisions for supervised clinical practice, evaluation methods, length and hours of course, and faculty qualifications. (7-1-93)

23. **Patient**. An individual or a group of individuals who are the beneficiaries of nursing services in any setting and may include client, resident, family, community. (5-3-03)

24. **Patient Education**. The act of teaching patients and their families, for the purpose of improving or maintaining an individual's health status. (5-3-03)

25. **Plan of Care**. The goal-oriented strategy developed to assist individuals or groups to achieve optimal health potential. (5-3-03)

26. **Practice Standards**. General guidelines that identify roles and responsibilities for a particular category of licensure and, used in conjunction with the decision-making model, define a nurse's relationship with other care providers. (5-3-03)

27. **Probation**. A period of time set forth in an order in which certain restrictions, conditions or limitations are imposed on a licensee. (5-3-03)

28. **Protocols**. Written standards that define or specify performance expectations, objectives, and criteria. (5-3-03)

29. **Revocation**. Termination of the authorization to practice. (5-3-03)

30. **Scope of Practice**. The extent of treatment, activity, influence, or range of actions permitted or authorized for licensed nurses based on the nurse's education, preparation, and experience. (5-3-03)

31. **Supervision**. ~~*Except as provided in Subsection 271.17, concerning advanced practice professional nursing, d*~~Designating or prescribing a course of action, or giving procedural guidance, direction, and periodic evaluation. Direct supervision requires the supervisor to be physically present and immediately accessible to designate or prescribe a course of action or to give procedural guidance, direction, and periodic evaluation. ~~*(5-3-03)*~~(7-1-04)T

32. **Suspension**. An order temporarily withdrawing a nurse's right to practice nursing. (5-3-03)

33. **Universal Standards**. The recommendations published by the Center for Disease Control, Atlanta, Georgia, for preventing transmission of infectious disease, also referred to as "Standard Precautions". (5-3-03)

34. **Wrongful Abandonment**. The termination of a nurse/patient relationship without first making appropriate arrangements for continuation of required nursing care by others. The nurse/patient relationship begins when responsibility for nursing care of a patient is accepted by the nurse. Refusal to accept an employment assignment or refusal to accept or begin a nurse/patient relationship is not wrongful abandonment. Reasonable notification, or a timely request for alternative care for a patient, directed to an attending physician or to a staff supervisor, prior to leaving the assignment, is sufficient to permit termination of the nurse/patient relationship. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

077. MULTISTATE LICENSURE.

01. Definitions. In Section 077, the following terms have the meanings indicated. (3-15-02)

a. Board means the regulatory body responsible for issuing nurse licenses. (3-15-02)

b. Compact means the Nurse Multistate Licensing Compact. (3-15-02)

c. Coordinated Licensure Information System (CLIS) means an integrated process for collecting, storing, and sharing information on nurse licensing and enforcement activities related to nurse licensing laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards. (3-15-02)

d. Home state means the party state that is the nurse's primary state of residence. (3-15-02)

e. Party state means a state that is a signatory on the compact. (3-15-02)

f. Primary state of residence means the state of an individual's declared, fixed, and permanent residence. (3-15-02)

g. Public means an individual or entity other than designated staff or representatives of party state boards or the National Council of State Boards of Nursing, Inc. (3-15-02)

02. Examination. No applicant may be issued a compact license granting a multistate privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX (National Council Licensure Examination) examination: (7-1-04)T

a. NCLEX-RN for professional nursing; or (7-1-04)T

b. NCLEX-PN for practical nursing. (7-1-04)T

0~~2~~3. Issuance of License in Compact Party State. (3-15-02)

a. A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. This evidence shall include a declaration signed by the licensee. Further evidence that may be requested includes, but is not limited to: (3-15-02)

i. Driver's license with a home address; (3-15-02)

ii. Voter registration card displaying a home address; or (3-15-02)

iii. Federal income tax return declaring the primary state of residence. (3-15-02)

b. A nurse changing primary state of residence, from one (1) party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed thirty (30) days. (3-15-02)

c. The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance, and the thirty (30) day period in Subsection 077.02.b. shall be stayed until resolution of the pending investigation. (3-15-02)

d. The former home state license is not valid upon the issuance of a new home state license. (3-15-02)

e. If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days, and the former home state will take action in accordance with that state's laws and regulations. (3-15-02)

0~~3~~4. Multistate Licensure Privilege Limitations. (3-15-02)

a. Home state boards shall include, in all disciplinary orders or agreements that limit practice or require monitoring, the requirement that the licensee subject to the order or agreement shall limit the licensee's practice to the home state during pendancy of the disciplinary order or agreement. (3-15-02)

b. The requirement referred to in Subsection 077.03.a. may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and other party state boards. (3-15-02)

0~~4~~5. Information System. (3-15-02)

a. Levels of Access. (3-15-02)

i. Public access to nurse licensure information shall be limited to: (3-15-02)

(1) The licensee's name; (3-15-02)

(2) Jurisdictions of licensure; (3-15-02)

(3) Licensure expiration date; (3-15-02)

(4) Licensure classification and status; (3-15-02)

(5) Public emergency, summary, and final disciplinary actions, as defined by contributing state authority; and (3-15-02)

(6) The status of multistate licensure privileges. (3-15-02)

ii. Non-party state boards shall have access to all CLIS data except current significant investigative information and other information as limited by contributing party state authority. (3-15-02)

iii. Party state boards shall have access to all CLIS data contributed by the party states and other information as allowed by contributing non-party state authority. (3-15-02)

b. Right to Review. (3-15-02)

i. The licensee may request, in writing, to the home state board to review data relating to the licensee in the CLIS. (3-15-02)

ii. If a licensee asserts that any data relating to the licensee is inaccurate, the burden of proof is on the licensee to provide evidence substantiating that claim. (3-15-02)

iii. Within ten (10) business days, the Board shall correct information that it finds to be inaccurate in the CLIS. (3-15-02)

c. Changes in Disciplinary Data. (3-15-02)

i. Within ten (10) business days, the Board shall report to CLIS: (3-15-02)

(1) Disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring unless the agreement or order relating to participation in alternative programs is

required to remain nonpublic by the contributing state authority; (3-15-02)

(2) Dismissal of the complaint; and (3-15-02)

(3) Changes in status of disciplinary action, or licensure encumbrance. (3-15-02)

ii. The Board shall delete current significant investigative information from the CLIS within ten (10) business days after: (3-15-02)

(1) A disciplinary action; (3-15-02)

(2) An agreement or order requiring participation in alternative programs; (3-15-02)

(3) An agreement or agreements, which limit practice or require monitoring; or (3-15-02)

(4) Dismissal of a complaint. (3-15-02)

iii. The CLIS administrator shall make changes to licensure information in the CLIS within ten (10) business days upon notification by a board. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

120. REINSTATEMENT.

01. Application. Applicants for reinstatement of revoked licenses must apply on forms provided by the Board and must pay any required fees. (3-15-02)

02. Appearance Before Board. Applicants for reinstatement may be required to appear before the Board. (3-15-02)

03. Evaluation of Applications. In considering applications for reinstatement, the Board will evaluate: (3-15-02)

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

b. The conduct of the applicant subsequent to the revocation of license; and (6-1-78)

c. The lapse of time since revocation; and (6-1-78)

d. The degree of compliance with all terms and conditions the Board may have set forth as a prerequisite for reinstatement; and (3-15-02)

e. Any intervening circumstances that may have altered the need for compliance; and (3-15-02)

f. The degree of rehabilitation attained by the applicant as evidenced by statements sent directly to the Board from qualified people who have professional knowledge of the applicant; and (11-28-84)

g. The applicant's adherence to or violation of any applicable law or rule regulating the practice of nursing~~.~~; and ~~(3-15-02)~~(7-1-04)T

h. The applicant's criminal background information as evidenced by a current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (7-1-04)T

04. Board Action Possible. After evaluation, the Board may deny a reinstatement, grant a

reinstatement, or issue a license permitting the applicant to practice nursing under specified terms and conditions. (3-15-02)

05. Assessment of Costs. As a condition of withdrawing, reversing, modifying or amending a suspension or revocation order, the applicant may be required to pay all or any part of the costs incurred by the Board in the proceedings in which the order was entered. (3-15-02)

06. Application for Reinstatement After Revocation. Unless otherwise provided in the order of revocation, applicants for reinstatement of revoked licenses may not apply for reinstatement for a period of two (2) years after entry of the order. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

221. EXAMINATION APPLICATION.
A completed application for licensure by examination shall consist of: (3-15-02)

01. Application. Completed, notarized application form provided by the Board; and (3-15-02)

02. Affidavit. Notarized affidavit of graduation signed by the nursing education administrator, or designee; and (3-15-02)

03. Fees. Payment of all required fees. (3-15-02)

04. Criminal Background Check. A current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (7-1-04)T

(BREAK IN CONTINUITY OF SECTIONS)

242. APPLICATION FOR LICENSURE BY ENDORSEMENT.
A completed application for licensure by interstate endorsement must include all of the following: (7-1-93)

01. Application Form. Completed, notarized application form provided by the Board; and (6-1-78)

02. Verification. Verification and documentation of licensure status from state of applicant's original licensure; and (3-15-02)

03. Employment Reference. One (1) satisfactory nursing employment reference from the three (3) year period immediately preceding the application; and (3-15-02)

04. Census Questionnaire. Completed Census Questionnaire; and (6-1-78)

05. Fee. Payment of all required fees. (3-15-02)

06. Criminal Background Check. A current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (7-1-04)T

243. -- 259. (RESERVED).

260. QUALIFICATIONS FOR LICENSURE OF GRADUATES OF SCHOOLS OF NURSING LOCATED OUTSIDE THE UNITED STATES OR ITS TERRITORIES.
A graduate from a nursing education program outside of the United States or its territories must: (3-30-01)

01. Examination. Pass examination(s), approved by the Board, which demonstrate nursing knowledge and written and spoken English proficiency. ~~*(3-30-01)*~~(7-1-04)T

02. Education Credentials. Have education qualifications that are substantially equivalent to Idaho's minimum requirements at the time of application. (3-30-01)

03. License. Hold a license in good standing from a country outside the United States or its territories. (3-30-01)

04. Examination. Take licensing examination required in Subsection 263.01 and achieve the score determined as passing for that examination by the Board. (3-30-01)

05. Applicants Licensed in Another State or Territory. Graduates of schools of nursing located outside the United States or its territories who are licensed in a state or territory who meet the requirements of Section 240 may be processed as applicants for licensure by endorsement from another state. (3-30-01)

261. APPLICATION FOR LICENSURE OF GRADUATES OF SCHOOLS OF NURSING LOCATED OUTSIDE THE UNITED STATES OR ITS TERRITORIES.
A completed application for licensure by a graduate of a nursing education program outside of the United States or its territories must include the following: (3-30-01)

01. Verification. Verification of demonstrated nursing knowledge and written and spoken English proficiency; and ~~*(3-30-01)*~~(7-1-04)T

02. Application Form. Completed notarized application form provided by the Board; and (6-1-78)

03. Official Transcript. Official transcript from the applicant's nursing education program, and certified translation if original transcript is not in English or completed equivalence credentials form issued by an organization acceptable to the Board; and (3-30-01)

04. Verification of Licensure. Verification of licensure from state, province, or country of applicant's original licensure; and (6-1-78)

05. Employment Reference. One (1) satisfactory nursing employment reference from the three (3) year period immediately preceding the application; and (3-30-01)

06. Fee. Payment of the fee for licensure by examination. (3-30-01)

07. Criminal Background Check. A current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (7-1-04)T

(BREAK IN CONTINUITY OF SECTIONS)

271. DEFINITIONS RELATED TO ADVANCED PRACTICE PROFESSIONAL NURSING.

01. Accountability. Means being answerable for one's own actions. (7-1-99)

02. Advanced Practice Professional Nurse. Means a professional nurse licensed in this state who has gained additional specialized knowledge, skills and experience through a post-basic program of study as defined herein and is authorized to perform advanced nursing practice, which may include acts of diagnosis and treatment, and the prescribing, administering and dispensing of therapeutic pharmacologic and non-pharmacologic agents, as defined herein. Advanced practice professional nurses shall include certified nurse-midwives, clinical nurse specialists, nurse practitioners, and registered nurse anesthetists. Advanced practice professional nurses, when functioning within the recognized scope of practice, assume primary responsibility for the care of their patients. This

practice incorporates the use of professional judgment in the assessment and management of wellness and conditions appropriate to the advanced practice professional nurse's area of specialization. (7-1-99)

03. Authorized Advanced Practice Professional Nurse. Means an advanced practice professional nurse authorized by the board to prescribe and dispense pharmacologic and non-pharmacologic agents pursuant to Section 315. (7-1-99)

04. Certification. Means recognition of the applicant's advanced knowledge, skills and abilities in a defined area of nursing practice by a national organization recognized by the board. The certification process measures the theoretical and clinical content denoted in the advanced scope of practice, and is developed in accordance with generally accepted standards of validation and reliability. (7-1-99)

05. Certified Nurse-Midwife. Means a licensed professional nurse who has graduated from a nationally accredited nurse-midwifery program, passed a qualifying examination recognized by the board and has current initial certification or current recertification as a nurse-midwife from a national organization recognized by the board. (7-1-99)

06. Clinical Nurse Specialist. Means a licensed professional nurse who has graduated from a nationally accredited graduate program in nursing with a clinical focus, passed a qualifying examination recognized by the board and has current initial certification or current recertification as a clinical nurse specialist from a national organization recognized by the board. (7-1-99)

07. Collaboration. Means the cooperative working relationship with another health care provider, each contributing his respective expertise in the provision of patient care, and such collaborative practice includes the discussion of patient treatment and cooperation in the management and delivery of health care. (7-1-99)

08. Consultation. Means conferring with another health care provider for the purpose of obtaining information or advice. (7-1-99)

09. Diagnosis. Means identification of actual or potential health problems and the need for intervention based on analysis of data collected. Diagnosis depends upon the synthesis of information obtained during the interview, physical exam, or diagnostic tests. (7-1-99)

10. Intervention. Means measures to promote health, protect against disease, treat illness in its earliest stages, manage acute and chronic illness, and treat disability. Interventions may include, but are not limited to ordering diagnostic studies, performing direct nursing care, prescribing pharmacologic or non-pharmacologic or other therapies and consultation with or referral to other health care providers. (7-1-99)

11. Nurse Practitioner. Means a licensed professional nurse who has graduated from a nationally accredited nurse practitioner program, passed a qualifying examination recognized by the board, and has current initial certification or current recertification as a nurse practitioner from a national organization recognized by the board. (7-1-99)

12. Prescriptive and Dispensing Authorization. Means the legal permission to prescribe, deliver, distribute and dispense pharmacologic and non-pharmacologic agents to a client in compliance with board rules and applicable federal and state laws. Pharmacologic agents include legend and Schedule II through V controlled substances. (7-1-99)

13. Referral. Means directing a client to a physician or other health professional or resource. (7-1-99)

14. Registered Nurse Anesthetist. Means a licensed professional nurse who has graduated from a nationally accredited nurse anesthesia program, passed a qualifying examination recognized by the board and has current initial certification or current recertification as a nurse anesthetist from a national organization recognized by the board. (7-1-99)

15. Scope of Practice of Advanced Practice Professional Nurse. Means those activities that the advanced practice professional nurse may perform. Those activities shall be defined by the board according to the

advanced practice professional nurse's education, preparation, experience and the parameters set forth by the advanced practice professional nurse's recognized, national certifying organization. (7-1-99)

16. **Specialization**. Means focusing the advanced practice professional nurse's clinical area of practice, including but not limited to, family health, mental health, child health, gerontological health, adult health or other. (7-1-99)

~~***17.*** ***Supervision****. Means designation of a course of action or provision of guidance and direction by a physician licensed pursuant to Chapter 18, Title 54, Idaho Code.*~~ ~~*(7-1-99)*~~

272. -- 279. (RESERVED).

280. STANDARDS OF PRACTICE FOR ADVANCED PRACTICE PROFESSIONAL NURSING.

01. **Purpose**. (7-1-99)

a. To establish standards essential for safe practice by the advanced practice professional nurse; and (7-1-99)

b. To serve as a guide for evaluation of advanced practice professional nursing to determine if it is safe and effective. (7-1-99)

02. **Core Standards for All Categories of Advanced Practice Professional Nursing**. The advanced practice professional nurse shall practice in a manner consistent with the definition of advanced practice professional nursing and the standards set forth in these rules. The advanced practice professional nurse may provide client services for which the advanced practice professional nurse is educationally prepared and for which competence has been attained and maintained. (7-1-99)

a. The advanced practice professional nurse shall consult and collaborate with other members of the health care team. (7-1-99)

b. The advanced practice professional nurse shall recognize his limits of knowledge and experience and shall consult and collaborate with and refer to other health care professionals as appropriate. (7-1-99)

c. The advanced practice professional nurse shall retain professional accountability for advanced practice professional nursing care according to the advanced practice professional nurse's scope of practice and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsections 400.01 and 400.02. (7-1-99)

d. The advanced practice professional nurse shall evaluate and apply current research findings relevant to the advanced nursing practice category. (7-1-99)

e. The advanced practice professional nurse shall assess clients, identify problems or conditions, establish diagnoses, develop and implement treatment plans and evaluate patient outcomes. (7-1-99)

f. The advanced practice professional nurse shall use advanced knowledge and skills in teaching and guiding clients and other health care team members. (7-1-99)

g. The advanced practice professional nurse shall use critical thinking and independent decision-making, commensurate with the autonomy, authority and responsibility of the practice category. (7-1-99)

h. The advanced practice professional nurse shall have knowledge of the statutes and rules governing advanced nursing practice, and function within the established boundaries of the appropriate advanced nursing practice category. (7-1-99)

03. **Certified Nurse-Midwife**. In addition to the core standards, advanced practice professional nurses in the category of certified nurse-midwife shall practice in accord with standards established by the American College of Nurse Midwives Certifying Council or the American College of Nurse Midwives. Certified nurse-midwives who

meet qualifying requirements and are licensed by the board, may manage women's health care focusing on pregnancy, childbirth, the post-partum period, care of the newborn and reproductive and gynecological needs of well women as defined by the certified nurse-midwife's scope of practice. ~~*The certified nurse-midwife shall practice with supervision and provide for appropriate medical consultation, collaborative management and referral.*~~ The scope of practice of an authorized certified nurse-midwife may include prescribing and dispensing pharmacologic and non-pharmacologic agents. ~~*(7-1-99)*~~(7-1-04)T

04. Clinical Nurse Specialist. In addition to the core standards, advanced practice professional nurses in the category of clinical nurse specialist shall practice in accord with standards established by the American Nurses Credentialing Center. Clinical nurse specialists who meet qualifying requirements and are licensed by the board, may practice as expert clinicians in a particular specialty or subspecialty of nursing practice. The clinical nurse specialist provides direct client care, which may include assessing, diagnosing, planning, health promotion and preventive care within this specialized area of practice, as defined by the clinical nurse specialist's scope of practice. ~~*The clinical nurse specialist shall practice with supervision and provide for appropriate medical consultation, collaborative management and referral.*~~ The scope of practice of an authorized clinical nurse specialist may include the prescribing and dispensing of pharmacologic and non-pharmacologic agents. ~~*(7-1-99)*~~(7-1-04)T

05. Nurse Practitioner. In addition to the core standards, advanced practice professional nurses in the category of nurse practitioner shall practice in accord with standards established by the American Nurses Credentialing Center, the American Academy of Nurse Practitioners, the National Association of Pediatric Nurse Associates and Practitioners or the Association of Women's Health Obstetrics and Neonatal Nurses. Nurse practitioners who meet qualifying requirements and are licensed by the board may perform comprehensive health assessments, diagnosis, health promotion and the direct management of acute and chronic illness and disease as defined by the nurse practitioner's scope of practice. ~~*The nurse practitioner shall practice with supervision and provide for appropriate medical consultation, collaborative management and referral.*~~ The scope of practice of an authorized nurse practitioner may include the prescribing and dispensing of pharmacologic and non-pharmacologic agents. ~~*(7-1-99)*~~(7-1-04)T

06. Registered Nurse Anesthetist. In addition to the core standards, advanced practice professional nurses in the category of registered nurse anesthetist shall practice in accord with standards established by the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists. Registered nurse anesthetists who meet qualifying requirements and are licensed by the board, may, in collaboration with a physician, dentist or podiatrist authorized to practice in Idaho, provide anesthesia care services including selecting, ordering and administering medications as defined by national standards approved by the board. The scope of practice for authorized registered nurse anesthetists may include the prescribing and dispensing of pharmacologic agents. (7-1-99)

07. Documentation of Specialization. The advanced practice professional nurse must document competency within his specialty area of practice based upon education, experience and national certification in the specialty. Nurse practitioners authorized to practice prior to July 1, 1998, must document competency within the specialty area of practice based upon education, experience and national certification in that specialty or education, experience and approval by the board. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

290. APPLICATION FOR LICENSURE - ADVANCED PRACTICE PROFESSIONAL NURSE.
The advanced practice professional nurse requesting licensure to practice as a certified nurse-midwife, clinical nurse specialist, nurse practitioner or registered nurse anesthetist must submit an application to the board which includes: (7-1-99)

01. Application Form. Completed, notarized application form provided by the board. (7-1-99)

02. Official Transcript. Official transcript from the advanced practice nursing education program verifying successful completion. (7-1-99)

03. National Certification. Verification of current national certification from the board-recognized certifying agent; and (7-1-99)

04. Enrollment in Continuing Competency Assessment Program. In addition to verification of national certification, a certified nurse-midwife must submit proof of enrollment in the continuing competency assessment program of the American College of Nurse-Midwives which bears a current expiration date. At the end of five (5) years, the certified nurse-midwife must submit evidence of completion of the continuing competency requirement of the program. (7-1-99)

05. Fee. A non-refundable fee of ninety dollars ($90). (7-1-99)

06. Criminal Background Check. A current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (7-1-04)T

(BREAK IN CONTINUITY OF SECTIONS)

300. RENEWAL AND REINSTATEMENT OF ADVANCED PRACTICE PROFESSIONAL NURSE LICENSE.
The advanced practice professional nurse license may be renewed every two (2) years as prescribed in the Section 54-1411, Idaho Code, provided that the advanced practice professional nurse: (7-1-99)

01. Current Professional License. Maintains a current professional nurse license, or privilege, to practice in Idaho. (3-15-02)

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

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

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

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

06. Criminal Background Check. Submits a current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (7-1-04)T

07. Peer Review Process. Provides evidence, satisfactory to the board, of completion of a peer review process acceptable to the board. Applies to: (7-1-04)T

a. CNM, Certified Nurse Midwife; (7-1-04)T

b. CNS, Clinical Nurse Specialist; and (7-1-04)T

c. NP, Nurse Practitioner. (7-1-04)T

0~~6~~8. Exemption From Requirements. Nurse practitioners not certified by a national organization recognized by the board and approved prior to July 1, 1998 shall be exempt from the requirement set forth in IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsection 300.02. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

680. CURRICULUM, EDUCATIONAL PROGRAM.

01. Student Competence. (4-5-00)

a. Students enrolled in a program for unlicensed assistive personnel shall be provided the opportunity to acquire and demonstrate the knowledge, skills, and abilities for safe and effective practice. (4-5-00)

b. Students enrolled in a practical nursing program shall be provided the opportunity to acquire and demonstrate the knowledge, skills, and abilities for safe and effective nursing practice. The graduate from a practical nurse program is responsible and accountable to practice according to the standards of practice for the licensed practical nurse as defined in Section 4~~01~~60. ~~(4-5-00)~~(7-1-04)T

c. Students enrolled in a professional nurse program shall be provided the opportunity to acquire and demonstrate the knowledge, skills, and abilities for safe and effective nursing practice. The graduate from a professional nurse program is responsible and accountable to practice according to the standards of practice for the professional nurse as defined in Section 4~~6~~01. ~~(4-5-00)~~(7-1-04)T

d. Students enrolled in advanced practice professional nursing education shall be provided the opportunity to acquire and demonstrate the knowledge, skills, and abilities for safe and effective advanced nursing practice. The graduate from an advanced practice professional nursing program is responsible and accountable to practice according to the standards for the advanced practice nursing role for which the nurse is prepared as defined in Section 280. (4-5-00)

02. Program Evaluation. The program shall have a plan for total program evaluation that includes, but is not limited to the following: organization and administration, faculty, students, curriculum, and performance of graduates. Implementation of the plan and use of findings for relevant decision making must be evident. (4-5-00)

IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD

25.01.01 - RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

DOCKET NO. 25-0101-0402 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) (36-2107(b) and (d), 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 15, 2004.

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 changes in Rule 002 provide that an "incidental" amendment would be a "minor" amendment; deletes the definition of "nonuse" because it is defined elsewhere; clarifies that a licensed boatman need not be in the same boat as long as the licensed boatman can render immediate assistance; adds selling lifetime hunts to the definition of "unethical/unprofessional conduct"; and deletes the definition of "zero use" because "nonuse" is already defined elsewhere. The changes in Rule 007 provide that temporary employment or short term loan or transfer shall not be on a routine basis, the employing outfitter or authorized agent shall keep written documentation of the loan or transfer, and that repeated transfers or loans of guides should be done by using the amendment process. The word "guide" is changed to "individual" in this rule because these individuals are not licensed guides. The changes in Rule 009 delete amendment fees which are provided elsewhere by statute and rule, and provide for outfitter license codes and guide activity codes. The changes in Rule 015 provide that instead of a late fee, a penalty fee shall be paid before the license is issued, that an outfitter shall pay an annual license fee for each license they hold and, if required, to submit use reports for each license, and be able to differentiate between each business and its clients. The change in Rule 018 provides that a new outfitter application or an outfitter license amendment application in the case of a sale and purchase of the outfitter business shall include the sales agreement(s) or contract(s) including the purchase price. The change in Rule 019 deletes the requirement that the bond name the business and the designated agent since the statute only requires proof of a bond. The change in Rule 021 provides that the outfitter application shall include the name of the business entity registered as a "d.b.a." or the name registered with the Secretary of State. The change in Rule 022 provides that the outfitter shall operate under the name(s) licensed by the Board and under no other names and that certain business entities must have a Designated Agent in order to be licensed and to operate. The change in Rule 024 deletes the current intent and descriptions of nonuse and waiver and provides for new definitions for these terms as well as definitions of "Zero Use," "Negligible Use," the process for finding non-use and what acceptable use is. It also provides for required records, for non-use during a sale and for waiver of compliance. The changes in Rule 028 provide for deleting the current language regarding transferability and issuance of a license to a purchaser and addresses the procedures for buying or selling an outfitter business as currently found in the user manual. The changes provide that an outfitter license is not transferable, that licenses have no sale value and reviews transfer of title and change in control of an outfitter business. The change in Rule 030 clarifies that outfitter waiting lists apply to all licensed rivers, lakes and reservoirs in Rule 59 and for each specific Idaho Department of Fish and Game unit. They also clarify the directions the Board may take if there is no waiting list for an operating area and the application process and fee for each area to be considered, and that a name shall be kept on a waiting list for a period of two years or until December 31 of the second year the name is placed on the list. Criteria used in making selections shall include those used to consider new outfitter applications or license amendments. Rule 034 provides that a licensee will produce upon request, a valid first aid card while guiding. It also provides for gender-neutral wording. The changes in Rule 044 provide that the Technical Advisory Committee shall be comprised of five (5) members who are qualified backcountry ski outfitters and guides and will be appointed by the executive Directory to advise the Board on non-hazardous and hazardous terrain skiing. The TAC will recommend whether or not the Board shall license an applicant for these activities. The changes in Rule 053 provide that in order to conduct a controlled hunt outside the outfitter's operating area the applicant must obtain written permission from all outfitters whose licensed area(s) will be directly involved in the hunt, or obtain a finding by the Board that it is appropriate for a proposed trophy species hunt to take place in another specified area outside the outfitter's operating area, and that an outfitter minor

amendment fee must be submitted for each hunter. The boundaries of the CL1 Section of the Clearwater River shall be from Lowell to the Upper Bridge at Kooskia, on CL2 at the Upper Bridge at Kooskia to the Bridge at Orofino, and on CL3 from the Orofino Bridge to the Railroad Bridge at Lewiston. On this section each outfitter may use at any one time a maximum of (a) three (3) power boats or three float boats or combination thereof if licensed for both fishing, and (b) five (5) boats for other boating activities per license. The Coeur d'Alene river has been added with four sections, CDNF which is the Headwaters of the North Fork of the Coeur d'Alene River, CD1 which is the Coeur d'Alene River from Devil's Elbow to the South Fork confluence and CD2, the South Fork confluence downstream to Cataldo Mission Boat Ramp, and CD3, the Lateral (Coeur d'Alene chain) Lakes connected by the Coeur d'Alene River from the Cataldo Mission Boat Ramp to the Highway 97 Bridge. Subsection 02 of this Rule includes the Salmon River through the Snake River and Section 03 of this Rule includes the Snake River through the Teton River.

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

Fees discussed in the rulemaking are implementation of existing fees.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted prior to submission, however the public will have the opportunity to comment on the rules as provided hereunder and may request a hearing as provided by 67-5222, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact: Jake Howard, Executive Director (208) 327-7380 - FAX (208) 327-7382

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 22, 2004.

DATED this 9th day of August, 2004.

Jake Howard
Executive Director
Outfitters and Guides Licensing Board
1365 North Orchard, Suite 172
Boise, ID 83706
(208) 327-7380
FAX (208) 327-7382

THE FOLLOWING IS THE TEXT OF DOCKET NO. 25-0101-0402

002. DEFINITIONS.
The Act defines certain terminology applicable to its interpretation and administration (Idaho Code 36-2102). Further definitions, for the purposes of these Rules are: (4-1-92)

01. **Act**. Shall mean Idaho Code, Title 36, Chapter 21, commonly known as the Outfitters and Guides Act, as amended. (4-1-92)

02. **Administrative Noncompliance**. (3-10-03)

a. Two (2) or more repeated failures to apply for license renewal in a timely manner; or (3-10-03)

b. Two (2) or more repeated failures to file a complete application pursuant to Section 36-2113(a)(1), Idaho Code. (3-10-03)

03. **Authorized Person**. An investigator or enforcement agent in the employ of the Board, a conservation officer of the Idaho Department of Fish and Game, or any local, state, or federal law enforcement officer. (4-1-92)

04. **Board**. The Idaho Outfitters and Guides Licensing Board. (4-1-92)

05. **Board Meeting**. The set schedule of meeting dates established for conduct of regular Board business on a calendar year basis. Additional meetings may be scheduled as necessary (See Section 071). (4-1-92)

06. **Booking Agent**. Any individual, firm, business, partnership, or corporation that makes arrangements for the use of the services of a licensed outfitter and receives compensation therefore. A booking agent does not supply personnel or facilities and services to outfitter clientele. (4-1-92)

07. **Compensation**. The receipt or taking of goods, services, or cash in exchange for outfitted or guided activities. A bona fide charging of out-of-pocket travel expenses by members of a recreational party shall not be deemed compensation. However, such out-of-pocket expenses may not include depreciation, amortization, wages, or other recompense. (4-1-92)

08. **Completed Application**. An application submitted for Board consideration which contains all of the material required to be submitted by the Board for that license category. (4-1-92)

09. **Consideration**. The receipt or taking of goods, services, or cash in exchange for the provision of facilities and services in the conduct of outfitted or guided activities. (4-1-92)

10. **Desert**. A region of scarce rainfall and vegetation in areas often having great differences between day, night and seasonal temperatures. A desert is a land surface ranging from level, plateau land, or undulating to sharply breaking hill-lands and sand dunes that, in addition, may be broken by poor to well-defined, deeply entrenched drainage systems, rims, cliffs, and escarpments. (4-1-92)

11. **Designated Agent**. An individual who meets all qualifications for an outfitter's license who is employed as an agent by any person, firm, partnership, corporation, or other organization or combination thereof that is licensed by the Board to operate as an outfitter and who shall, together with the licensed outfitter, be responsible and accountable for the conduct of the licensed outfitter's operations. ~~*The name of each designated agent employed by an outfitter shall appear on the outfitter's bond.*~~ A designated agent may act as a guide if he possesses the qualifications of a guide as determined by the Board. (Previously referred to as Managing Agent). ~~*(4-1-92)*~~(____)

12. **Drift Boats**. Shall be substituted for and have the same meaning as “float boats” defined below. (4-1-92)

13. **Enforcement Agent**. An individual employed by the Board having the power of peace officers to enforce the provisions of the Idaho Outfitters and Guides Act (Idaho Code, Title 36, Chapter 21) and the Rules promulgated thereunder. (4-1-92)

14. **Facilities and Services**. The provision of personnel, lodging (tent, home, lodge, or hotel/motel), transportation (other than by commercial carrier), guiding, preparation and serving of food and equipment, or any other accommodation for the benefit of clientele in the conduct of outdoor recreational activities as designed in Section 36-2102(b), Idaho Code. (4-1-92)

15. **First Aid Card**. A valid card issued by the American Red Cross to denote the individual whose name and signature appear thereon has successfully completed an applicable Red Cross course and is qualified to render appropriate, minimal first aid as prescribed by the American Red Cross, or other valid evidence showing successful completion of an equivalent course conducted by an organization acceptable to the Board. (4-1-92)

16. **Fishing**. Fishing activities on those waters and for those species described in the rules of the Idaho Department of Fish and Game, IDAPA 13.01.11, "Rules Governing Fish," general fishing seasons and any anadromous fishing rules; for purposes of the "Act", fishing is defined as follows: (4-1-92)

a. Anadromous fishing means fishing for salmon or steelhead trout. (4-1-92)

b. Float boat fishing means the use of floatboats without motors for the conduct of fishing as a major activity on those waters open to commercial activities as set forth in Section 059. (4-1-92)

c. Fly fishing means a licensed activity restricted to the use of fly fishing equipment and procedures, as defined by Idaho Department of Fish and Game rules. (4-1-92)

d. Incidental fishing means fishing conducted as a minor activity. (4-1-92)

e. Power boat fishing means the use of power boats in conduct of fishing as a major activity on those Idaho waters open to commercial outfitting activities as set forth in Section 059. (4-1-92)

f. Walk and wade fishing means fishing conducted along or in a river, stream, lake or reservoir, and may include the use of personalized flotation equipment, but does not include the use of watercraft. (4-1-92)

17. **Float Boats**. Watercraft (inflatable watercraft, dories, drift boats, canoes, catarafts, kayaks, sport yaks, or other small watercraft) propelled by, and moving with the stream flow, maneuvered by oars, paddles, sweeps, pike poles or by motors for downstream steerage only. Downstream steerage does not include holding or upstream travel of a watercraft with a motor. Excluded as float boats are personal flotation devices, innertubes, air mattresses, or similar devices. (4-1-92)

18. **Guide**. An individual who meets the criteria as set forth in Idaho Code 36-2102(c), and has further met the required qualifications as prescribed in the Rules to provide professional guided services to clientele in the pursuit and conduct of licensed activities. (4-1-92)

19. **Guide License**. A license issued by the Board to an individual who is employed by a licensed outfitter to furnish personal services for the conduct of outdoor recreational activities as defined in Idaho Code 36-2102(c). (4-1-92)

20. **Hazardous Excursions**. Outfitted or guided activities conducted outside municipal limits in a desert or mountainous environment which may constitute a potential danger to the health, safety, or welfare of participants involved. These activities shall include, but are not limited to: day or overnight trailrides, backpacking, technical mountaineering/rock climbing, cross-country skiing, backcountry alpine skiing, llama and goat packing, snowmobiling, survival courses, and motored and non-motored cycling, but does not include wagon rides or sleigh rides. (3-10-03)

21. **He/His/Him**. Shall mean either the male or female gender. (4-1-92)

22. **Hunting**. The pursuit of any game animal or bird and all related activities including packing of client camp equipment, supplies, game meat and clients to and from a hunting camp. (3-30-01)

23. **Incidental Activity**. Shall be and is the same as a minor activity. (4-1-92)

24. ~~***Incidental***~~ **Minor Amendment**. All outfitter license amendment requests that can be processed by the Board without requiring outside research or recommendation of a land managing agency or other agency before the Board takes final action on said amendment request. ~~*(4-1-92)*~~(____)

25. **Investigator**. An individual employed by the Board to monitor compliance with the provisions of the Outfitters and Guides Act (Idaho Code, Title 36, Chapter 21) and Rules promulgated thereunder and issue warning tickets for violations thereof. An investigator shall not have arrest powers nor any other power of a peace officer. (4-1-92)

26. **Major Activity**. A licensed activity, the nature of which requires a significant commitment of time and effort by an outfitter in its execution and is intended to provide a significant amount of income to an outfitter. (4-1-92)

27. **Major Amendment**. All outfitter license amendment requests requiring Board research or recommendation of a land management agency or other agency before the Board takes final action on the amendment request. (4-1-92)

28. **Minor Activity**. A licensed activity the nature of which must be carried out in conjunction with a major activity, but is not the primary purpose of the excursion. (3-15-02)

29. **Mountainous**. A region receiving limited to abundant annual precipitation with an associated vegetative cover of grass, weeds, shrubs, or trees. Cool summer temperatures and cold winter temperatures prevail. A mountainous area is a land surface ranging from level to gently rolling low hills to elevated lands that are often broken with poor to well-developed, deeply entrenched drainage systems, rims, cliffs, and escarpments to steepsided land masses of impressive size and height. (4-1-92)

30. **New Opportunity**. A proposed commercial outfitted activity to be conducted in an area where no similar commercial outfitted activity has been conducted in the past. (4-1-92)

31. **Nonresident**. An individual, corporation, firm, or partnership who is not a resident of the state of Idaho. (See "Resident"). (4-1-92)

~~***32.*** ***Nonuse****. Inactivity, such as incidental activity only, or an outfitter's making zero (0) use of major licensed activities for any two (2) of the three (3) preceding years. See Definitions, "Zero (0) use," and Subsection 024.01.* *(3-23-98)*~~

3~~3~~2. **Operating Area**. The area assigned by the Board to an outfitter for the conduct of outfitting activities. (4-1-92)

3~~4~~3. **Operating Plan**. A detailed schedule or plan of operation which an outfitter proposes to follow in the utilization of licensed privileges, areas, or activities. (See Subsection 018.03). (4-1-92)

3~~5~~4. **Outfitter**. An individual, corporation, firm, partnership, or other organization or combination thereof that meets the criteria as set forth in Idaho Code 36-2102(b), and has further met the required qualifications as prescribed in the Rules to conduct an outfitting business in Idaho. (4-1-92)

3~~6~~5. **Outfitter License**. A license issued by the Board to an individual, partnership, corporation, or other duly constituted organization to conduct activities as defined in Section 36-2102(b), Idaho Code. The conduct of an outfitted operation on any land(s) is not authorized unless signed permission, a permit, or a lease is obtained from the land owner(s), or their agent(s), and filed with the Board. (3-15-02)

3~~7~~6. **Out-of-Pocket Costs**. The direct costs attributable to a recreational activity. Such direct costs shall not include: (4-1-92)

a. Compensation for either sponsors or participants; (4-1-92)

b. Amortization or depreciation of debt or equipment; or (4-1-92)

c. Costs of non-expendable supplies. (4-1-92)

3~~8~~7. **Power Boats**. All motorized watercraft used on Idaho waters open to commercial outfitting activities as set forth in Subsections 059.01 and 059.02. Excluded as power boats are hovercraft, jetskis or similar devices, and float boats using motors for downstream steerage. (4-1-92)

3~~9~~8. **Relinquishment of License Privileges**. The failure to re-apply at the expiration of a license; the loss through nonuse, inactivity, revocation, or voluntary surrender of a license; or other loss of license. (See

Subsection 030.03). (3-23-98)

~~40~~39. **Resident**. An individual, corporation, firm, or partnership who has resided in the state of Idaho for a period of six (6) months next preceding the time of application for license. (4-1-92)

~~41~~0. **Rules**. The Rules of the Board. (4-1-92)

~~42~~1. **Stay of Board Action**. An order, pursuant to Idaho Code 67-5215(c), stopping or delaying the enforcement of a Board decision, order or action. (4-1-92)

~~43~~2. **Third Party Agreement**. The allowing of the conduct of an outfitted or guided activity by the outfitter licensed to conduct those activities by any persons not directly employed by said outfitter. (See Section 023). (4-1-92)

~~44~~3. **Trainee**. A person not less than sixteen (16) years of age who does not possess the necessary experience or skill qualifications required to obtain a guide license, but who is working toward obtaining the necessary experience or skill qualifications. This required training shall be recorded on a form provided by the Board. A trainee may not provide any direct guiding services for clients, but may assist while under direct supervision. (5-1-95)

~~45~~4. **Boat Trainee Under Supervision**. A boat trainee must be in a boat operated by a licensed boatman, or one in which the operation is closely monitored by a licensed boatman. The licensed boatman need not be in the same boat during training as long as the trainee's activity is closely monitored and the licensed boatman can render immediate assistance. ~~*(3-10-03)*~~( )

~~46~~5. **Unethical/Unprofessional Conduct**. Any activity(ies) by an outfitter or guide which is inappropriate to the conduct of the outfitting or guiding profession. These activities include, but are not limited to: (3-30-01)

a. An outfitter employing an unlicensed guide; (3-30-01)

b. Providing false, fraudulent or misleading information to the Board; (3-30-01)

c. Failure to obey an order of the Board; (3-30-01)

d. Failure to provide services as advertised or contracted; (3-30-01)

e. Harassment of the public in their use of Idaho's outdoor recreational opportunities; (3-30-01)

f. Violation of state or federal fish and game laws; (3-30-01)

g. Engaging in unlicensed activities or conducting outfitter/guide services outside the operating area for which the licensee is licensed; (3-30-01)

h. Disregard for the conservation, maintenance or enhancement of fish, game, land and water resources; (3-30-01)

i. Failure to pay a supplier of goods or services to the outfitter business; (3-15-02)

j. Failure to pay state taxes; or (3-15-02)

k. Operating in a manner which endangers the health, safety, or welfare of the public. (3-30-01)

l. Selling lifetime excursions, lifetime hunts, or selling of outfitted activities to an individual for the life of that individual and collecting fees accordingly. ( )

~~47~~6. **Validated Training Form**. An approved form bearing the "Great Seal of the State of Idaho" and

the official stamp of the Board affixed thereon. (4-1-92)

~~48~~7. **Watercraft**. A boat or vessel propelled mechanically or manually, capable of operating on inland water surfaces. Excluded as watercraft are hovercraft, jetskis, personal flotation devices (PFD's), or similar devices. (4-1-92)

~~***49.*** ***Zero Use****. No or negligible use by an outfitter of his licensed activity unless the lack of use is due to an act of nature or season or hunting or fishing restrictions by a state or federal agency that limit the ability of the outfitter to seek and accommodate clientele.*~~ ~~*(4-1-92)*~~

(BREAK IN CONTINUITY OF SECTIONS)

007. LICENSE RESTRICTIONS.
A license issued by the Board shall, for an outfitter license, specify the operating area and all activities for which the outfitter is licensed; for a guide license, specify all activities for which a guide is qualified to guide and shall indicate the outfitter(s) who signed the guide license application as the employing outfitter(s); and identify such limitation(s) or qualification(s) as may be imposed by the Board in issue of said license. (10-15-88)

01. Restriction. An outfitter shall not conduct any activities not specified on the outfitter license, nor operate in any area(s), nor on any water(s) for which he is not licensed. (10-15-88)

02. Qualified. All outfitters must be qualified to guide or have in their employment a licensed guide or guides who are qualified for the activity(ies) for which the outfitter is licensed. (10-15-88)

03. Review. An outfitter's qualifications to guide shall be reviewed by the Board, and, if approved, he will be issued both an outfitter and guide license at no additional fee. (10-15-88)

04. Guide Restrictions. A guide shall not guide for any activity(ies), or on any water, or in any operating area for which his employing outfitter is not licensed. (5-1-95)

05. Qualifications. The qualification(s) of an outfitter or guide licensee shall be determined in accordance with Idaho Code, Title 36, Chapter 21, and Rules promulgated thereunder. (10-15-88)

06. Limitation. A limitation in number of clientele served, operating area, or any other criteria affecting the safety, health, and welfare, of the public or viability of the fish, and wildlife, or other natural resources shall be imposed in licensing where such limitation is deemed necessary by the Board in accordance with Idaho Code, Title 36, Chapter 21, and the Idaho Outfitters and Guides Licensing Board Rules. (10-15-88)

07. Notification. An outfitter shall notify the Board: (10-15-88)

a. When an outfitter permanently terminates the services of a licensed guide during the season, the Board shall be notified within fifteen (15) days, stating the date of termination. (10-15-88)

b. When an outfitter employs a licensed guide who is not currently licensed under his outfitter's license, said outfitter shall notify the Board within fifteen (15) days. ~~*(10-15-88)*~~(____)

c. The above requirements shall not apply in the case of a temporary employment, or short term "loan" or transfer (less than fifteen (15) days duration and not on a routine basis) of a guide between outfitters, or termination of employment of a guide upon completion of the seasonal activity for which the guide was employed. When there is a loan or transfer, the employing outfitter or authorized agent shall keep written documentation of the loan or transfer and dates and times. Repeated transfers or loans of guides are required to be done by using the amendment process. ~~*(10-15-88)*~~(____)

d. In addition, an outfitter may employ an individual to guide for ten (10) days or for one (1)

excursion, whichever is less, using a ~~*one-time temporary guide license on a form*~~ letter of authorization provided by the Board. With the exception of a current first-aid card, the ~~*guide*~~ individual shall be otherwise fully qualified to provide guiding services in the area and for the activity guided. The employing outfitter shall certify to the Board prior to employment that the ~~*guide*~~ individual is qualified and may only use one (1) ~~*guide*~~ individual in this manner per license year. ~~*(3-23-98)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

009. ~~*(RESERVED)*~~ OUTFITTER LICENSE CODES AND GUIDE ACTIVITY CODES.

01. Outfitter License Codes.

License Codes	Guide Activity Codes
1A	Antelope
1B	Bobcat
1D	Deer
1E	Elk
1G	Goat
1M	Moose
1S	Sheep
1W	Wolf
2B	Bear
2C	Cougar
3P	Predators
4BG	Blue Grouse
4CH	Chukar, Grey Partridge and Hun Partridge
4TK	Turkey
4UG	Upland Game Birds (shooting perserves)
4WF	Waterfowl
14DH	Day Hikes
16LP	Llama and Goat Packing
17SV	Survival Course
19BT	Mountain Bike Touring
20PT	Photography Trips
5AF	Anadromous Fishing (including walk and wade fishing unless otherwise restricted. Includes all fish unless otherwise restricted.)
5F	Fishing (including walk and wade fishing unless otherwise restricted. Does not include anadromous fish)

License Codes	Guide Activity Codes
5PBF	Powerboat Fishing (including walk and wade fishing unless otherwise restricted)
5FBF	Floatboat Fishing (including walk and wade fishing unless otherwise restricted)
5WW	Walk and Wade Fishing Only (access by land based means only)
6BCS	Backcountry Snowshoeing
6SKI1	Level I Skiing
6SKI2	Level II Skiing
6MTR	Motorized Trail Rides
6TR	Non-motorized Trailrides, Equestrian Rides, etc.
7BP	Backpacking
8SN	Snowmobiling
9TM	Technical Mountaineering
10 FB	Float Boating and Kayaking
10 PB	Power Boating

(____)

02. Guide Activity Codes.

License Codes	Guide Activity Codes
GBG	Big Game (deer, elk, goat, sheep, bear, cougar, moose, antelope, wolf, predators)
GH	Bird Hunting (chuckar, forest grouse, waterfowl, turkey)
GR	Recreation (fishing, day hikes, photography trips, trail rides, backpacking, llama and goat packing, survival courses, mountain bike touring)
GSKI1	Skiing, Level I
GSKI2	Skiing, Level II
GSM	Snowmobiling
GTM	Technical Mountaineering
GB	Boating Guide (licensed by river section)
GS	Snowshoe Guide

(____)

(BREAK IN CONTINUITY OF SECTIONS)

015. ANNUAL DATE, MULTIPLE YEARS, FEES, AND PAYMENT.

01. Annual Dates. (3-20-04)

a. All outfitter and designated license applications must be completed and received by the Board by January 31 of each year. (3-20-04)

b. All outfitter applications and designated agent applications received by the Board after January 31 that are not complete will be subject to special processing fees. (3-20-04)

c. The last day of the license year for all licenses is March 31 of each year. (3-20-04)

d. Guide license applications may be submitted at any time during the year. (3-20-04)

02. Outfitter And Designated Agent ~~*Late*~~ Penalty Fee. When a completed renewal application is filed with the Board after the last day of the license year, the following penalty shall apply: ~~*(3-20-04)*~~(____)

a. A completed application received by the Board the last day of the license year - no ~~*late*~~ penalty fee shall apply. ~~*(3-10-03)*~~(____)

b. A completed application received by the Board after the last day of the license year - a ~~*fifty dollar ($50) late*~~ penalty fee shall be paid before the license is issued. ~~*(3-10-03)*~~(____)

03. License Lapsed And Relinquished. A completed outfitter application received by the Board after ninety (90) days after the last day of the license year will not be accepted for licensure. The license will have lapsed and therefore is void and vacated. If a completed application is not received by the Board by ninety (90) days after the last day of the license year, the license is relinquished. (3-10-03)

04. Refund Of Unused One Time Application Fees. All unused portions of one (1) time new outfitter, new designated agent, or new guide application fees shall be returned to the applicant. (3-19-99)

05. Multiple Year Licenses. (3-20-04)

a. Beginning in license year 2004, outfitter and designated agent licenses may be issued for a one (1) year or three (3) year period. All new applicants must be licensed for two (2) years before the applicant may apply for a three (3) year license. (3-20-04)

b. License fees shall be prorated based on the number of years for which the applicant is licensed. The multiyear license fee may be transferred to the bona fide purchaser of an outfitter business. Bona fide purchasers of an outfitter business will be credited for annual license fees for prorated years remaining with a business at the time of the purchase. (3-20-04)

c. The multiple year fee must be paid at the time of renewal and prior to the beginning of the license period. This does not relieve a licensed outfitter from submitting annual reports and use reports, and annual bonding and insurance requirements. (3-20-04)

d. There shall be no reimbursement of fees should the license become revoked or relinquished. (3-20-04)

e. Outfitters must submit renewal applications no later than January 31 prior to the subsequent license period. (3-20-04)

06. Payment. (____)

a. Prior to the issuance of a license, an applicant must submit the appropriate fee in the form of a certified check, cashier's check, money order, outfitter's company check or use of outfitter and designated agent credit cards. ~~*(3-20-04)*~~(____)

b. The applicant must pay an annual license fee for each license issued submit annual use reports for each license, and be able to differentiate between each business and its clients. (____)

c. Designated Agents must pay an annual license fee for each license issued. ( )

d. Guides must pay an annual license fee for a license but that license can be amended to include more than one (1) outfitter. ( )

07. Expedited or Emergency Application Fees. The fee for expedited or emergency applications for which there is a request to have the application pulled forward before other applications and have it processed and a license issued within seven (7) days of receipt of the application shall be: (3-16-04)

a. One hundred fifty dollars ($150) for an outfitter license; (3-16-04)

b. Seventy-five dollars ($75) for a designated agent license; and (3-16-04)

c. Fifty dollars ($50) for a guide license. (3-16-04)

08. Resubmittal, Exceptional or Special Processing of Application. The fee for resubmittal, exceptional or special processing of an application that is incomplete, or for other reasons for which the Board is otherwise unable to process the application shall be: (3-16-04)

a. One hundred dollars ($100) for an outfitter license; (3-16-04)

b. Seventy-five dollars ($75) for a designated license; (3-16-04)

c. Fifty dollars ($50) for a guide license; and (3-16-04)

d. Five dollars ($5) for allocation fee recovery. (3-16-04)

09. Fees Associated With the Filing of Applications. There shall be a credit for online and electronic filing of applications, and a fee for the use of credit cards corresponding to the cost to the agency for processing the card pursuant to Section 36-2108, Idaho Code. (3-16-04)

a. Twenty dollars ($20) for an outfitter license; (3-16-04)

b. Seven dollars ($7) for a designated agent license; and (3-16-04)

c. Five dollars and twenty-five cents ($5.25) for a guide license. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

018. NEW OUTFITTER OR OUTFITTER LICENSE AMENDMENT APPLICATION.
In order to be complete, a new outfitter license or outfitter license amendment application, or new landowner signoff in existing areas must, in addition to all other requirements: (3-15-02)

01. Signed. Be signed by the applicant. A new outfitter license application must be signed under oath before a notary public and be accompanied by a bond on a form approved by the Board. (3-23-98)

02. Other Signatures. Include the signatures of: (9-1-90)

a. The affected state and federal land managers in all areas where an outfitter plans to utilize lands administered by the state or federal government (this may involve memorandum of understanding procedures as applicable to proposed operation on national forest or public domain lands); and, (9-1-90)

b. Private land owners, or their agents, where an outfitter applicant proposes to use such private lands in his operation. (9-1-90)

03. **Sales Agreements**. A new outfitter application, or an outfitter license amendment application in the case of a sale and purchase of the outfitter business, shall include a copy of the contract or contracts for the sale, including the purchase price. ( )

0~~3~~4. **Operating Plan**. Include an operating plan. The operating plan shall include, among other things, the following: (9-1-90)

a. A list of the activities to be conducted in the operating area(s) requested. (9-1-90)

b. A detailed map showing the operating area(s) requested for each activity and a worded description of the boundaries of said operating area(s), described in terms of rivers, creeks, and ridges with prominent reference coordinates (section, township, and range). (9-1-90)

c. An outfitter whose operation is solely on rivers, streams, lakes or reservoirs should specify put-in and take-out points but need not send maps. (9-1-90)

d. A detailed description of how and when each operating area(s) will be used for each activity. (9-1-90)

e. The proposed number of guests intended to be accommodated for each activity within the proposed operating area(s). (9-1-90)

f. A list of the names and locations of camps that will be used for each activity, and whether on public or private land. (9-1-90)

g. A list of the basic equipment, facilities, and livestock, and proof of financial capability necessary to conduct the proposed outfitted activity or business. (9-1-90)

h. The number, title (guide, lead guide, etc.), and principal activities of individuals to be employed in the business operation. (9-1-90)

i. A plan to assure the safety and provide for emergency medical care of guests. (9-1-90)

0~~4~~5. **Hearing**. If more than one (1) applicant submits a complete application with landowner signoff(s), a hearing will be held to decide the successful applicant. (3-15-02)

0~~5~~6. **Existing Operating Area**. A licensed outfitter may be given priority for any opportunities within the outfitter's existing operating area boundaries. (3-15-02)

019. DESIGNATED AGENT.
When the applicant is a corporation, firm, partnership, or other organization or combination thereof, a supplemental form shall be completed and it shall designate at least one (1) designated agent who is a qualified outfitter who shall be responsible for the outfitting business. The outfitter business and designated agent(s) must each make application and obtain licenses. ~~*One (1)*~~ Proof of a bond ~~*naming the business and the designated agent(s)*~~ must be submitted to the Board to complete a renewal application. Any new applicant who has been approved by the Board must submit a bond prior to the issuance of a license. ~~*(10-15-88)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

021. EVALUATION OF THE OUTFITTER APPLICATION.
In evaluating an outfitter application for approval or denial, the Board shall consider, but not be limited to, the following criteria: (3-1-86)

01. **Compliance**. Applicant compliance with qualification criteria as prescribed in the Act and the Rules. (3-1-86)

02. **Need For Services**. The public need for the proposed service(s) in the area requested on the application. (3-1-86)

03. **Other**. The extent of the applicant's experience, knowledge, and ability in the area and in the conduct of activities requested. (3-1-86)

04. **Equipment And Resources To Operate**. The applicant's qualifications by reason of equipment or resources to operate. (3-1-86)

05. **Previous Record**. The applicant's previous record. (3-1-86)

06. **Accessibility Of Area**. The accessibility of the area and use by the general public, the commercial use already licensed in the area, the particular terrain, and normal weather conditions during the season of operation. (3-1-86)

07. **Area Requested**. The total amount of area requested, giving due consideration to the effect such license would have upon the environment, the amount of game available to be harvested, the probable impact on the area should additional licenses be issued, and the number of persons who can be adequately served in the area. (3-1-86)

08. **Operating Plan**. The adequacy and acceptability of the proposed operating plan. (3-1-86)

a. The applicant's knowledge of financial and business management needs and practices. (3-1-86)

b. The applicant's ability to manage and direct personnel and guests. (3-1-86)

09. **Name**. The name registered as a d.b.a. (doing business as), or the name of the business entity, registered with the Secretary of State. ( )

022. ISSUANCE OF AN OUTFITTER LICENSE.
When the Board issues an outfitter license, said license shall specify the activity(ies) for which the applicant is licensed, designate specific operating area(s) for each activity, and be based on an operating plan acceptable to the Board. In order to safeguard the health, safety, and welfare of the public and for the conservation of wildlife resources, the Board may place a limit on the number of outfitter licenses issued within an operating area. An outfitter may not operate in an area for which there is no landowner or land manager ~~*signoff*~~ statement where applicable. The outfitter shall operate only under the names licensed by the Board and under no other names. An outfitter business that is a corporation, partnership, LLC or LLP must have a Designated Agent in order to be licensed and to operate. ~~*(3-15-02)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

024. STANDARDS FOR NON-USE.
~~*Prior to the renewal of a license, the Board shall review the outfitter's use reports for the preceding three (3) years to determine whether the operation falls within a nonuse category as defined in Subsection 024.01. If the outfitter falls within a nonuse category, a "notice of nonuse" may be issued to the outfitter. The notice shall include the activity(ies) and operating area(s) deemed to be in nonuse, an explanation of how the determination was made, and the hearing date on which the Board will consider whether the license or any part thereof should not be renewed because of nonuse.*~~ An outfitter license is a publicly issued license enabling the holder to provide outfitted and guided services to the public. Because many outfitters operate on public lands and waters, there is an expectation that these services be provided adequately and that the public's natural resources are utilized appropriately. It is important to determine that a business is and will be viable before a new license can be issued to a buyer. This is done by determining whether the

outfitter is providing, or attempting to provide, the public service intended. It is recognized that there are various factors outside the control of an outfitter that may affect an outfitter's business operation. This rules establishes the process used by the Board to monitor the use of outfitter assigned activities and operating areas, to determine the causes for outfitter inactivity, and to fairly administer identified remedies when this service is inadequately provided or the resource is inadequately used. The Board will prioritize the need for action on non-use based on, among other factors, interest or demand for the particular activity or area. ~~*(3-1-86)*~~( )

01. ~~***Nonuse****. For the purpose of this section shall mean zero (0) use of an outfitter's licensed activity(ies) for any two (2) of the three (3) preceding years as reported by the licensee in his annual report to the Board.*~~ **Requirement**. The Board shall annually review the outfitter's use reports for the preceding three (3) years to determine whether any licensed activity or operating area fall within non-use. If the outfitter falls within non-use, a "notice of non-use" may be issued to the outfitter. ~~*(3-1-86)*~~( )

02. ~~***Waiver****. Upon a showing of good cause, the Board may waive compliance with the nonuse standard.*~~ **Definitions**. ~~*(3-1-86)*~~( )

a. Non-use. When an outfitter is making zero or negligible use of major licensed activities for any two (2) of the three (3) preceding years unless the lack of use is due to an act of nature or because of state or federal agency restrictions on hunting or fishing that limit the ability of the outfitter to seek and accommodate clients;( )

b. Zero use. No recorded use by an outfitter of their licensed area or activities; ( )

c. Negligible use. An unreasonable lack of use as determined by the Board for any one (1) or more of the particular activities in the assigned operating area. Typically, use may be determined by comparison of use levels for the same activity(s) in similar operating areas. Other factors in determining use are found in Subsection 024.04. ( )

03. **Process**. ( )

a. Outfitters are required to submit use reports each year during the license renewal. ( )

b. A "notice of non-use" may be issued to an outfitter who appears to be in non-use. The notice shall include the activity(s) and operating area(s) that appear to be in non-use and an explanation of how the determination was made. The outfitter will be given the opportunity to correct the use records by supplying staff with evidence of use, prior to a hearing being scheduled. If adequate proof of use is not provided, the matter will be scheduled for a hearing. ( )

c. When it is determined by the Board that any activity or operating area has had zero use or negligible use, certain requirements may be imposed by the Board up to and including revocation of some or all of the outfitter's operating areas and activities. ( )

04. **Examples of Acceptable Use**: ( )

a. Paying clients participating in activities occurring within a designated operating area; ( )

b. Donated trips; ( )

c. Outfitter initiated applications for controlled hunts in their licensed operating area; ( )

d. Outfitter initiated applications for trophy species; and ( )

e. Use in conformance with a current and accepted operating plan. ( )

05. **Required Records**. Outfitters may be required to submit client records that include the name, address, and date of activity of individual clients or groups for a period of three (3) consecutive years. ( )

06. **Non-Use During a Sale**. Board staff shall review all full or partial business sales for non-use. If it

is determined a major activity or operating area has had zero or negligible use, the Board may review the sale and the issuance of a license may be denied. In some instances the Board may approve the sale with notification to the buyer that use must be established within the following two (2) out of the next three (3) years or the area or activity may be removed from their license. ( )

07. **Waiver of Compliance**. The Board may waive compliance with the non-use standard upon a showing of good cause. Waivers of non-use may be issued when the lack of use is a result of an act of nature, or by state or federal agency seasonal restrictions on hunting or fishing that limit the ability of the outfitter to seek and accommodate clients. Waivers may also be considered when personal circumstances such as illness or injury limit the ability of the outfitter to seek and accommodate clients. Non-use waivers must be applied for prior to the beginning of the license year or immediately upon the advent of extenuating circumstances. If a federal permit holder is requesting zero or negligible use, the request for a waiver must be accompanied by a Land Manager's Statement. ( )

(BREAK IN CONTINUITY OF SECTIONS)

028. OUTFITTER BUSINESS PURCHASE, LICENSE CONSIDERATIONS.

01. ~~***Transferability**. An outfitter license is not transferable.*~~ **General Issues With Buying or Selling an Outfitter Business**. ~~*(3-15-02)*~~( )

a. Selling an Outfitter Business. ( )

i. An outfitter may sell his business, however, if only a portion of the business is proposed for sale, the remaining portion(s) must all be viable as determined by the Board when applicable. Remaining business portions must also be determined to be acceptable. An outfitter selling a portion of his business must be prepared to submit an outfitter major amendment request, and the buyer must submit either a new outfitter application or a major amendment application. ( )

ii. Individuals authorized to sell business. The licensed outfitter or an authorized agent must initiate the sale process by notifying the Board of the pending sale prior to the sale. ( )

b. An Outfitter License is not Transferable. The acquisition of an outfitting business from a licensed outfitter does not require the Board to transfer the operating area(s) of the licensee to the purchaser or to issue an outfitter license. An applicant who has negotiated a purchase agreement with a licensee may be given priority for a license if all other outfitter license requirements are met. ( )

c. Licenses have no Sale Value. The Board may request a list of tangible assets (things of material value) and intangible assets (non-material, i.e. client lists, etc.) and their associated value. This review will ensure that the business assets are part of the sales agreement. ( )

02. ~~***Issuance to Purchaser**. The purchase of an outfitting business from a licensed outfitter does not require the Board to transfer the operating area(s) of the licensee to the purchaser or to issue to him an outfitter license; however, an applicant who has negotiated a purchase agreement with a licensee may be given priority for a license if he meets all other outfitter requirements.*~~ **Transfer of Title**. A transfer of title to the business covered by a state license shall result in termination of the license. In that event, the party who acquires title to the business must submit an application for a license. The issuance of a new state license to the party who acquires title to the business shall be at the sole discretion of the Board. ~~*(3-15-02)*~~( )

03. **Change in Control**. Controlling interest means the entity in control of the business or corporation. If the licensee is a corporation, change of control means the sale or transfer of a controlling interest of the corporate stock. NOTE: The sale or transfer of a controlling interest of the corporate stock is considered the same as a business sale. In this type of business sale, the corporate stock shares are the tangible assets being sold and are evaluated as such. If the licensee is a partnership, change of control means the sale or transfer of a controlling interest or the greater of the assets. If the licensee is an individual, change of control means the sale or transfer of the business to

another party. Change in control also means a change in the business entity from individual to a partnership or corporation, etc. where the original individual no longer owns a majority of the business. If the cumulative transfer of stock shares, or other interest, by a corporation, partnership or sole proprietor over a period of time results in changing the controlling interest, the new controlling interest shall be required to apply for a new license. NOTE: An exception to this may be the death of an outfitter. In this case, the heir(s) must apply for a minor amendment and will be given priority consideration for the license. Any change in control of the business entity may result in cancellation of the state license. Prior to the exchange, the party acquiring control of the business must submit an application for a state license with the Board. The applicant may not operate until the state license has been issued. ( )

0~~3~~4. **Notification to Clients**. When an existing operation is acquired by another outfitter, all clients who have booked with the original outfitter must be promptly notified. Each client must be satisfied with the new arrangements or his advance payment must be refunded. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

030. OUTFITTER WAITING LISTS.
When there are more outfitter applications for ~~*river operations*~~ an outfitter operating area than the maximum number of licenses allowing such activity, or when an ~~*outfitter applicant*~~ individual wishes to be ~~*licensed*~~ considered in an area to which another outfitter has historically been licensed, the Board shall maintain a list of such ~~*applicants*~~ individuals for notification of an available opening. ~~*The initial application must be complete except for bond and license fee.*~~ If there is no waiting list for an area, the Board may proceed with the license application or may employ a competitive application process. ~~*(5-1-95)*~~( )

01. ~~***Qualification****. General outfitter qualifications as outlined in the Act and Rules.*~~ **Waiting List**. The waiting list will be maintained for each individual river, lake and reservoir outlined in Section 059 and for each specific IDFG unit listed in IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho". ~~*(3-1-86)*~~( )

02. ~~***Experience****. Experience in an outfitting business.*~~ **Outfitter Application or Outfitter Amendment Form**. A new outfitter application or outfitter amendment form must be completed and a fee submitted for each individual river, lake and reservoir and for each specific IDFG unit that the individual desires. The individual must indicate all activities for which they wish to be considered on the application form. ~~*(3-1-86)*~~( )

03. ~~***Business Experience****. Other business experience or training.*~~ **New Outfitter Waiting List Application Fee**. The Board will charge the individual wishing to be placed on a waiting list fifteen percent (15%) of the new outfitter application fee for each area for which they wish to be considered. This fee is nonrefundable but shall be credited should the individual's application be selected for licensure within the time period outlined in Subsection 030.04. ~~*(3-1-86)*~~( )

04. ~~***Financial Resources****. Financial resources available to operate the proposed business.*~~ **Length of Time Name Is on Waiting List**. A name on the waiting list shall be maintained for a period of two (2) years or until December 31 of the second year that the name is placed on the list, whichever comes first. ~~*(3-1-86)*~~( )

05. ~~***Equipment Resources****. Equipment resources available to operate the proposed business.*~~ **When Available Outfitting Opening Occurs**. When, or if, an available opening does occur and public announcement is made, the Board shall use the waiting list for direct notification by mail of interested parties, and shall select a qualified candidate from those who apply. Any person on the list who remains interested in obtaining a license following notification of availability must re-apply by submitting all necessary forms and fees during the open period as announced by the Board in order to have his application considered. ~~*(3-1-86)*~~( )

06. ~~***Adequacy****. Adequacy and acceptability of the proposed operating plan for use of the requested operating area.*~~ **When an Operating Area Is Relinquished by the Licensee**. If an existing operating area (hunting, boating, or other) is relinquished by the licensee, the Board (if it deems it advisable to relicense the area) shall publicize the area's availability and accept written applications for a thirty (30) day period of time from the date of

public notice from those persons wishing to be licensed to the area. The Board shall then consider the qualifications of all applicants and license the area to the candidate determined to be most qualified. Criteria to be used in making this selection shall include~~, but shall not be limited to, the following:~~ those criteria used to consider new outfitter applications or those criteria used to consider existing outfitters who wish to amend their licenses. ~~(5-1-95)~~(____)

07. Availability. ~~*In compliance with the above criteria, t*~~The Board shall determine the availability of operating areas for relicensing by the beginning of each license year. ~~(3-1-86)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

034. GUIDE APPLICATION REQUIREMENTS - GENERAL.
To be complete, an application for a guide license must: (4-1-92)

01. First Aid Card. Be accompanied by an affidavit by the employing outfitter that the applicant will have and produce upon request a valid first aid card while guiding. ~~(3-10-03)~~(____)

02. Signatures. Have the signature of the applicant and of the licensed outfitter(s) who wishes to employ the applicant as a guide, who shall certify that the applicant: (4-1-92)

a. Is qualified to perform the type of guiding activity(ies) for which ~~*he*~~ the applicant seeks licensing; i.e., hunting, boating, skiing, or other as may be applicable. ~~(4-1-92)~~(____)

b. Has extensive, first-hand knowledge of the operating area(s) and water(s) in or on which ~~*he*~~ the applicant will be guiding. ~~(4-1-92)~~(____)

c. If the ~~*guide*~~ applicant is land based, ~~*the guide*~~ is able to read and understand a map and compass or operate a global positioning system (GPS) or other computerized map system. ~~(3-30-01)~~(____)

d. Is clean and well-mannered with a desire to please those whom ~~*he*~~ the applicant is called upon to serve. ~~(4-1-92)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

044. SKIING, NON-HAZARDOUS AND HAZARDOUS TERRAIN OUTFITTER, DESIGNATED AGENT, SKI GUIDE AND SKI GUIDE TRAINEE.

01. Applications. (____)

a. An outfitter, designated agent, or guide must submit an outfitter or a guide application with current outfitter operating plan, if required, ski resume, avalanche training certificates, appropriate fees and proof of first aid ~~*card*~~ training. (____)

b. The Board will then send this information to the Technical Advisory Committee (TAC) for evaluation. The TAC is a five (5) member body of qualified backcountry ski outfitters and ski guides appointed by the Executive Director and confirmed by the Board to advise the Board on non-hazardous and hazardous terrain skiing. (____)

c. The TAC will designate or determine the scope of the outfitting operation and whether guiding principally in non-hazardous or hazardous terrain. ~~*and*~~ The TAC will then recommend to the Board whether or not the Board should license the outfitter or guide as either Level I Ski Operator (non-hazardous terrain, principally sub-alpine or skiing operations in forests) or a Level II Ski Operator (hazardous terrain with a high degree of avalanche exposure). Designated agents and ~~G~~guides are licensed to fill job duties of the respective outfitters based upon terrain

and services of the guide rendered. ~~*(12-1-03)T*~~(____)

02. Designations and Qualifications for ~~*Guides*~~ Outfitters, Designated Agents, Guides and Trainees Are as Follows: ~~*(12-1-03)T*~~(____)

~~*01.*~~**a.** Level I ski guide (non-hazardous terrain). Is qualified to lead ski tours in the outfitter's operating area. One (1) year training as a ski guide assistant in a non-hazardous backcountry setting. Level I Ski Guides may work in hazardous terrain as a Level II Ski Guide Trainee under the supervision of a Level II Ski Guide. Level I Ski Guides are required to have: (12-1-03)T

~~*a.*~~i. Standard First Aid training as per guide licensing in Idaho; (12-1-03)T

~~*b.*~~ii. Level I field-based avalanche training consisting of a twenty-four (24) hour curriculum submitted and an instructor roster; (12-1-03)T

~~*c.*~~iii. Knowledge of Outfitters Scope of Operation including logistics, services, terrain; and (12-1-03)T

~~*d.*~~iv. A letter of reference from the employing outfitter. (12-1-03)T

~~*02.*~~**b.** Level II ski guide (hazardous terrain). Has in-depth ski guiding experience on hazardous terrain and has the following qualifications: (12-1-03)T

~~*a.*~~i. Two (2) winter seasons training with Licensed Level II Ski Outfitter or Guide or equivalent work experience with another Level II ski operation which conduct services principally in hazardous or avalanche terrain; (12-1-03)T

~~*b.*~~ii. Advanced First Aid, WFR, or EMT of a minimum of forty-eight (48) hours; (12-1-03)T

~~*c.*~~iii. Level 1 and Level II field-based avalanche training consisting of at least forty-eight (48) hours curriculum with a submitted instructor roster; (12-1-03)T

~~*d.*~~iv. Knowledge of the Outfitters Scope of Operation including logistics, services, terrain; and (12-1-03)T

~~*e.*~~v. A letter of reference from the employing outfitter. (12-1-03)T

03. Outfitters. Outfitters who conduct winter ski-based operations may be designated as: (12-1-03)T

a. Level I: self-propelled, with snowcat, or with snowmobile assisted including day skiing, hut skiing in non-hazardous terrain; (12-1-03)T

b. Level II: self-propelled including day skiing, hut skiing, multi-day expeditions, in hazardous terrain; or (12-1-03)T

c. Level II skiing operations with snowcats, helicopters, or ski from out of bounds from ski areas. (12-1-03)T

04. Outfitters Plan of Operation. A detailed Outfitters Plan of Operation is required which includes a plan for snowpack, terrain and avalanche safety assessment, additional transport utilized (i.e., snowmobiles, snowcats, helicopters) and instruction and training plans of guides working around related equipment. Additional safety and training standards for guides must be detailed in the operating plan. (12-1-03)T

05. Designated Agent. The Designated Agent must be a working Guide with the appropriate level of licensing for the operation and a minimum of five (5) years working at that level of guiding as to the scope of the operation. (12-1-03)T

06. Ski Guide Trainees. Trainees may be selected for employment by the outfitter and are not required

to have a license. A trainee may only assist a licensed guide's direct supervision and trainees may not provide guided services to clients. Trainees must have thirty (30) days experience with a licensed ski guide in the outfitter's operating area and must meet all other guide requirements of Section 044 prior to submitting a guide application. (12-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

053. CONTROLLED HUNTS OUTSIDE OUTFITTER'S OPERATING AREA.

01. Requirements to Conduct a Controlled Hunt Outside Operating Area. An outfitter wishing to conduct a controlled hunt outside his licensed area with a client with a controlled hunt permit must: (3-30-01)

a. Obtain written permission from all outfitters whose licensed area(s) will be directly involved in the hunt or obtain a finding from the Board that it is appropriate for a proposed hunt to take place in another specified area outside the outfitter's operating area; ~~(3-30-01)~~( )

b. Obtain written permission from all applicable landowners or land managers; (3-30-01)

c. Obtain approval from the Outfitters and Guides Licensing Board to conduct the hunt by satisfying the following criteria: (3-30-01)

i. Must be licensed for the controlled hunt species; and (3-30-01)

ii. Send a written request to the Board for special one-time hunt approval, to include the hunter name and address, hunting license, tag and permit numbers, controlled hunt number, and dates of hunt. (3-30-01)

d. Submit ~~*a ten-dollar ($10)*~~ an outfitter minor amendment fee for each hunt. ~~(3-30-01)~~( )

02. Authorization by Board. Upon approval the Board will issue a letter authorizing the one-time hunt. This notification will include the name and address of the hunter(s), controlled hunt number, hunter(s) license, tag and permit numbers. No compensation or remuneration shall be permitted between outfitters participating in the conduct of a controlled hunt on another outfitter's area, unless the outfitter supplies a service for that compensation. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

059. RIVER, LAKE AND RESERVOIR POWER AND FLOAT OUTFITTER LIMITS.

01. Licensable Waters -- River Sections BL1 through Salmon River -- Table. The following rivers and streams or sections that lie totally or partially within the state of Idaho shall be open to commercial boating operations by outfitters and guides. All other rivers and streams or sections that lie totally or partially within the state of Idaho shall be closed to commercial boating by outfitters and guides.

River/Section	Maximum No. Power	Maximum No. Float
(BL1) Blackfoot River - Morgan Bridge to Trail Creek Bridge	none	2

River/Section	Maximum No. Power	Maximum No. Float
(BO1) Boise River, South Fork - Danskin Bridge to the Neal Bridge EXCEPT on weekends or holidays. ~~(~~Each outfitter may use only one (1) boat for fishing only with a maximum of two (2) fisherman.~~)~~ No overnight camping or walk-and-wade fishing allowed.	none	2
(BO2) Boise River - Downstream from the west side of the Garden City municipal limits to the east side of the Caldwell municipal limits. ~~(~~Each outfitter may use at any time a maximum of four (4) boats for boating activities.~~)~~ The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitters operating plan.	none	2
(CF1) Clark Fork River - Montana stateline to Lake Pend Oreille (boating closing date September 30)	4 outfitters for either power or float or combination thereof	
(CL1) Clearwater River - Lowell to the Upper Bridge at Kooskia. ~~(~~Each outfitter may use at any one time a maximum of (a) three (3) power boats or three (3) float boats or combination of three (3) boats thereof if licensed for both for fishing, and (b) five (5) boats for other boating activities per license. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan~~)~~.	none	5
(CL2) Clearwater River - The Upper Bridge at Kooskia to the Orofino Bridge. ~~(~~Each outfitter may use at any one time a maximum of (a) three (3) power boats or three (3) float boats or combination of three (3) boats thereof if licensed for both for fishing, and (b) five (5) boats for other boating activities per license. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan~~)~~.	6	10
(CL3) Clearwater River - The Orofino Bridge to the Railroad Bridge at Lewiston. ~~(~~Each outfitter may use at any one time a maximum of (a) three (3) power boats or three (3) float boats, or combination of three (3) boats thereof, if licensed for both for fishing, and (b) five (5) boats for other boating activities per license. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitters operating plan~~)~~.	10	10
*** (NFCL) North Fork Clearwater River** - Kelly Forks Bridge downstream to backwaters of Dworshak Reservoir	none	4

River/Section	Maximum No. Power	Maximum No. Float
(CDNF) Headwaters of North Fork Coeur d' Alene - Including tributaries (Independence and Tee Pee Creeks) upstream from Devils Elbow Campground. Three (3) walk and wade only licenses. Allow only one (1) guide per license and up to two (2) clients per guide at one time. Limited to one hundred twenty (120) use days per day.	none	none
(CD1) Coeur d'Alene River - Devil's Elbow to South Fork confluence (boating closing date June 30) There is no limit on float guides or boats. Fishing limit is one (1) float boat per license with a maximum of two (2) clients at a time. Two (2) additional Walk and Wade licenses can be issued. Walk and wade limited to one (1) guide per license with a maximum of two (2) clients at a time.	none	~~5~~1
(CD2) Coeur d'Alene River - South Fork confluence downstream to Cataldo Mission Boat Ramp. The float boat closing date is June 30. There is no limit on float guides or boats. Fishing limit is one (1) float boat per license with a maximum of two (2) clients at a time. Walk and wade limited to one (1) guide per license with a maximum of two (2) clients at a time. The walk and wade activities must be associated with float boating.	none	1
(CD3) Lateral (Coeur d'Alene chain) Lakes - Connected by the Coeur d' Alene river. Cataldo Mission Boat Ramp to Highway 97 Bridge. A limit of one (1) power boat per license with a maximum of two (2) clients at a time or a limit of one (1) guide per license and two (2) float tubes at a time or two (2) clients walking and wading. The walk and wade activities must be associated with the power boating.	3	none
*** (JB1) Jarbidge/Bruneau Rivers**	none	4
(KO1) Kootenai River - Montana stateline to Canada boundary	5	5
(LCL1) Little North Fork Clearwater River - Mouth of Canyon Creek to first bridge on the Little North Fork Clearwater River. Fishing only. ~~(~~Each outfitter may use only two (2) boats per day with a maximum of two (2) fishermen per boat.~~)~~	none	2
*** (LO1) Lochsa River**	none	5
(MO1) Moyie River - Canada boundary to Bonners Ferry Municipal Dam (boating closing date July 20)	none	5

River/Section	Maximum No. Power	Maximum No. Float
* **(OW1) Owyhee River** - Nevada stateline to Oregon stateline or South Fork to confluence with Owyhee River ~~(~~and continuing on to a take-out point~~)~~.	none	6
(PN1) Payette River, North Fork - Payette Lakes Outlet to Hartsell Bridge. Restrictions: NO FISHING ALLOWED. Four (4) boat or ten (10) canoe limit per trip, and only two (2) trips per day per outfitter.	none	2
(PN1A) Payette River, North Fork - Cascade City Park, 1/4 mile south of Cascade on Highway 55 to Cabarton. Restrictions: Catch and release for TROUT ONLY, other species F & G rules apply. No stopping by commercial groups from 1/4 mile above to 1/4 mile below heron nesting trees. Four (4) boat or ten (10) canoe limit per trip, and only two (2) trips per day per outfitter.	none	2
(PN2) Payette River, North Fork - Cabarton to Smiths Ferry Bridge	none	5
(PS1) Payette River, South Fork - Grandjean to Deadwood River	none	5
* **(PS2) Payette River, South Fork** - Deadwood River to Banks	none	5
(PA1) Payette River - Banks to Black Canyon Dam	none	5
(**PO1) Pend Oreille River**	5	5
(PR1) Priest River - Dickensheet Campground to Priest River City	none	5

(____)

02. Licensable Waters -- Salmon River Through Snake River -- Table. The following rivers and streams or sections that lie totally or partially within the state of Idaho shall be open to commercial boating operations by outfitters and guides. All other rivers and streams or sections that lie totally or partially within the state of Idaho shall be closed to commercial boating by outfitters and guides.

River/Section	Maximum No. Power	Maximum No. Float
*##**(MF1) Salmon River, Middle Fork** - Boundary Creek to Indian Creek	none	27
*## **(MF2) Salmon River, Middle Fork** - Indian Creek to Cache Bar on the Salmon River	none	27

River/Section	Maximum No. Power	Maximum No. Float
(SA1) Salmon River - First bridge across Salmon River above Redfish Lake Creek to Torrey's Bar	none	6
(SA2) Salmon River - Torrey's Bar to first Highway 93 bridge above Challis. ~~(~~Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are a part of an outfitter's operating plan~~)~~.	none	5
(SA3) Salmon River - First Highway 93 bridge above Challis to Kilpatrick River access. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are a part of an outfitter's operating plan.	none	6
(SA4A) Salmon River - Kilpatrick River access to North Fork - License period from May 1 to September 30. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.	5	11
(SA4B) Salmon River - Kilpatrick River access to North Fork - License period from October 1 to April 30. Each power boat outfitter may use at any one time a maximum of one (1) boat and each float boat outfitter may use at any one time a maximum of three (3) boats.	2	8
(SA5) Salmon River - North Fork to Corn Creek	3	9
***##(SA6) Salmon River** - Corn Creek to Spring Bar Boat Ramp with no outfitter fishing below Vinegar Creek from September 15 through March 31 except that on a case-by-case basis, outfitter fishing may occur when permitted by the BLM and with the notification to and concurrence of the Board Executive Director.	14	31
*** (SA7A) Salmon River** - Vinegar Creek to Hammer Creek - License period from March 15 to October 15. No power boating is allowed from the Saturday before Memorial Day through Labor Day from 10:30 a.m./Mountain Time to 5:00 p.m./Mountain Time daily between the Riggins City Boat Dock and Lucile.	10	26

River/Section	Maximum No. Power	Maximum No. Float
* **(SA7B) Salmon River** - Power boats from Vinegar Creek to Spring Bar Boat Ramp and float boats from Vinegar Creek to Island Bar Boat Ramp, open from September 15 to March 31 only. Each float boat outfitter may use at any one time a maximum of three (3) boats for fishing, or two (2) additional boats for fishing when permitted by the BLM and with the notification to and concurrence of the Board Executive Director; and each power boat outfitter may use at any one time a maximum of two (2) boats for fishing, or one (1) additional boat for fishing when permitted by the BLM and with the notification to and concurrence of the Board Executive Director.	6	12
* **(SA7C) Salmon River** - Riggins City Park Boat Ramp to Hammer Creek. Three (3) designated outfitters may utilize float boats to fish from the Riggins City Boat Dock to Hammer Creek during the period from September 15 to March 31.	none	3
*##**(SA8) Salmon River** - Hammer Creek to Heller Bar or Lewiston on the Snake River	15	35
* **(SE1) Selway River** - Paradise Campground to Selway Falls	none	4
(SE2) Selway River - Selway Falls to the mouth of the Selway River at Lowell. ~~(~~Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments to these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.~~)~~	none	5

(____)

03. Licensable Waters -- Snake River through Teton River -- Table. The following rivers and streams or sections that lie totally or partially within the state of Idaho shall be open to commercial boating operations by outfitters and guides. All other rivers and streams or sections that lie totally or partially within the state of Idaho shall be closed to commercial boating by outfitters and guides.

River/Section	Maximum No. Power	Maximum No. Float
(SH1) Snake River, Henry's Fork - Henry's Lake Outlet to Hatchery Ford. (Each outfitter may use at any one time a maximum of (a) eight (8) boats for fishing ~~(~~No more than three (3) of these boats may be used at any one time on any of the following river reaches: Henry's Lake Outlet to Island Park Dam, Island Park Dam to Last Chance, Last Chance to Osborn Bridge, and Osborn Bridge to Hatchery Ford), and (b) five (5) boats for other boating activities. The Board may approve adjustments to these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan~~)~~.	none	7

River/Section	Maximum No. Power	Maximum No. Float
(SH2) Snake River, Henry's Fork - Mesa Falls to St. Anthony. ~~(~~Each outfitter may use at any one time a maximum of (a) eight (8) boats for fishing~~,~~ ~~(~~no more than three (3) of these boats may be used at any one time on any one of the following river reaches: Mesa Falls to Warm River, Warm River to Ashton Dam, and Ashton Dam to St. Anthony~~)~~, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan~~)~~.	none	8
(SH3) Snake River, Henry's Fork - St. Anthony to confluence with South Fork of Snake River. ~~(~~Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan~~)~~.	none	4
(SS1) Snake River - South Fork - Palisades Dam to confluence with Henry's Fork. No more than four (4) boats per section/per day may be used by an outfitter at any one time on any of the following river reaches: (a) Palisades Dam to Swan Valley Bridge; (b) Swan Valley Bridge to Black Canyon (Exception: Not more than eight (8) boats will be permitted in Section (b) on the same day, provided that no more than four (4) of said boats are in this Section after 11:00 a.m.); (c) Black Canyon to Poplar (Kelly Canyon); and (d) Poplar to the confluence with Henry's Fork. Restrictions: No outfitter may have more than twelve (12) boats on the SS1 in any one (1) day. Further, the lower boundary of Section (a) (Palisades Dam to Swan Valley Bridge) shall overlay Section (b) to the Conant takeout (Swan Valley Bridge to Black Canyon), and Section (b) shall overlay Section (c) to the Cottonwood access. Supply boats which do not carry clients are exempt from these restrictions.	5	6
(SN1) Snake River - Henry's Fork confluence downstream to Gem State Power Plant	3	3
(SN2) Snake River - Gem State Power Plant downstream to headwaters of American Falls Reservoir	3	3
(SN3) Snake River - American Falls Dam to Massacre Rocks State Park	3	3
(SN4) Snake River - Massacre Rocks State Park to Milner Dam	3	3
*** (SN5) Snake River** - Milner Dam to Star Falls	none	3

River/Section	Maximum No. Power	Maximum No. Float
*** (SN6) Snake River** - Star Falls to Twin Falls	none	5
(SN7) Snake River - Twin Falls to Lower Salmon Falls Dam	3	3
(SN8) Snake River - Lower Salmon Falls Dam to Bliss Dam	3	5
(SN9) Snake River - Bliss Dam to headwaters of C.J. Strike Reservoir	5	5
(SN10) Snake River - C.J. Strike Dam to Walter's Ferry	5 outfitters for either power or float or combination thereof	
(SN11) Snake River - Walter's Ferry to headwaters of Brownlee Reservoir	5	none
*** (SN12) Snake River** - Hells Canyon Dam to Pittsburg Landing	18	15
*** (SN13) Snake River** - Hells Canyon Dam to Pittsburg Landing, ~~(~~two (2) one-day float trips only~~)~~	none	2
(SN14) Snake River - Pittsburg Landing to Heller Bar or Lewiston	19	15
(SN15) Snake River - Washington/Oregon stateline to Lewiston	Limitations pending. (This section is set aside for future rules of fishing only outfitters)	
(SJ1) St. Joe River - Spruce Tree Campground to St Joe City Bridge. St. Joe City Bridge to Lake Coeur d'Alene	none 2	2 none
(SM1) St. Maries River	5	5
(TE1) Teton River - Upper put-in to Cache Bridge, ~~(~~motors not to exceed 10 hp~~)~~	5 outfitters for either power or float or combination thereof	

River/Section	Maximum No. Power	Maximum No. Float
(TE2) Teton River - Cache Bridge to Harrop Bridge, ~~(~~motors not to exceed 10 hp~~)~~	6 outfitters for either power or float or combination thereof	
(TE3) Teton River - Harrop Bridge to confluence with Snake River, ~~(~~motors not to exceed 10 hp~~)~~	none	5

* Classified rivers
Floatboat and powerboat outfitters on these sections shall be considered within their area of operations when hiking from the river or fishing in tributaries away from the river, but shall not include overnight activities. Conflicts with land-based outfitters shall be handled on a case-by-case basis. ~~(3-20-04)~~(____)

0~~2~~4. Other -- Table. The following lakes and reservoirs or portions thereof that lie totally or partially within the state of Idaho shall be open to fishing by outfitters with the following limitations:

Lake or Reservoir	Maximum No. of Operators	Maximum No. Boats per Operator per Lake or Reservoir
Lake Coeur d'Alene	8	1
Dworshak Reservoir	7	2
Hayden Lake	1	2
Henry's Lake	8	2
Island Park Reservoir	7	2
Magic Reservoir	3	2
Palisades Reservoir	10	2
Lake Pend Oreille	11	1
Priest Lake	5	1
American Falls Reservoir	3	2
C.J. Strike Reservoir	4	2
Brownlee Reservoir	5	2
Oxbow Reservoir	3	2
Hells Canyon Reservoir	3	2

(4-1-92)

0~~3~~5. Other Lakes and Reservoirs. All other Idaho lakes and reservoirs shall be limited to two (2) outfitters with a maximum of two (2) boats (float or power) per outfitter. (4-1-92)

IDAPA 35 - STATE TAX COMMISSION

35.01.06 - HOTEL/MOTEL ROOM AND CAMPGROUND SALES TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0106-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2004.

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

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

Rule 010 - The term “travel and convention” is used several times in the hotel/motel room and campground sales tax rules, yet the term is undefined. The amendment will state that the “travel and convention tax” is the tax imposed by Section 67-4718, Idaho Code.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2004.

DATED this 28th day of July, 2004.

Jim Husted, Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7530

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0106-0401

010. DEFINITIONS (RULE 010).

01. Campground Defined. Campground means a person, partnership, trustee, receiver, or other association, regularly engaged in the business of renting, for a consideration, or which holds itself out as being in the business of renting, for a consideration, any area, space or place for camping, parking campers, travel trailers, motor

homes or tents when such areas, spaces or places are to be rented for the purpose of providing an individual or individuals a place to sleep. (7-1-93)

02. Hotel or Motel Defined. The words hotel or motel means any person, partnership, corporation, trustee, receiver, or other association, regularly engaged in the business of furnishing rooms for use or occupancy, whether personal or commercial, in return for a consideration or which holds itself out as being regularly engaged in such business. (7-1-93)

a. Furnishing rooms for a consideration includes rooms provided for personal occupancy and rooms provided for meeting, convention, or other commercial purposes. (7-1-93)

b. The rental of condominiums or townhouses is subject to tax unless exempted under the provisions of ~~*ISTC*~~ Rule 016 of these rules. The rental of rooms by a public or private educational institution is subject to tax, unless exempted under the provisions of ~~*ISTC*~~ Rule 016 of these rules. The rental of rooms by hospitals, nursing homes, or similar institutions to nonpatients is subject to tax, unless exempted under the provisions of ~~*ISTC*~~ Rule 016 of these rules. ~~*(7-1-93)*~~( )

03. Travel and Convention Tax Defined. Travel and convention tax means the tax imposed by Section 67-4718, Idaho Code. ( )

IDAPA 35 - STATE TAX COMMISSION

35.01.10 - IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0110-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-3624, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2004.

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

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

Rule 016 – Cigarette distributor's are not allowed to sell cigarettes made by manufacturers not listed on the Attorney General's directory pursuant to Section 39-8403, Idaho Code. The amended rule will allow cigarette distributors to claim a credit for cigarettes purchased from manufacturers that were recently removed from the directory, if the manufacturer was listed at the time the cigarettes were purchased. Also, the rule will specify that credits shall be reduced by the stamper's allowance provided for by Section 63-2509, Idaho Code.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2004.

DATED this 28th day of July, 2004.

Jim Husted, Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7530

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0110-0401

016. WHOLESALER'S CREDIT CLAIMS FOR UNMARKETABLE STAMPS (RULE 016).

01. Destroyed Stamps. On and after July 1, 1989, stamps destroyed by the manufacturer as a result of

the return of stale or otherwise ~~*unsalable*~~ unmarketable cigarettes may be redeemed by the wholesaler for credit against future tax due if: ~~*(7-1-93)*~~(____)

a. The manufacturer provides an affidavit to the Commission indicating that said stamped cigarettes were received from an Idaho licensed wholesaler and detailing the number and package type received. (7-1-93)

b. The wholesaler provides to the Commission a returned goods receipt obtained from the manufacturer's representative verifying the number of packages, the package type, and the date the cigarettes were returned and a bill of lading traceable to the returned goods receipt. The credit must be claimed on the wholesaler's cigarette tax return and all required documentation must be attached. (7-1-93)

02. Stale and ~~*Unsalable*~~ Unmarketable Cigarettes. When stamps are to be destroyed by a wholesaler as a result of stale or otherwise ~~*unsalable*~~ unmarketable cigarettes that cannot be returned to the manufacturer, a credit will be allowed against future tax only if: ~~*(7-1-93)*~~(____)

a. The wholesaler notifies the Commission in writing at least ten (10) working days prior to destruction. The notice must include a complete description of the number of packages, the package type, and the time and manner the cigarettes and stamps will be destroyed. (7-1-93)

b. The Commission reserves the right to observe the destruction of all cigarette stamps and further reserves the right to delay the destruction until such time as a mutual appointment can be arranged for witnessing such destruction. (7-1-93)

03. Unused, Unfit or Damaged Stamps. Stamps that are unused, unfit, or damaged may be returned to the Commission by the wholesaler for credit. (7-1-93)

04. Manufacturers Removed From Directory. It is unlawful for a wholesaler to affix stamps to a package of cigarettes manufactured by a manufacturer or belonging to a brand family not included in the directory of certified manufacturers and brands published by the Idaho Attorney General. See Section 39-8403, Idaho Code. It is possible for a wholesaler to affix stamps to cigarettes manufactured by a manufacturer that is later removed from the directory. The cigarettes would then become unmarketable. In such a case a wholesaler may apply for a credit by following the procedures described in Subsection 016.02 of this rule. No credit will be allowed if the cigarettes are purchased after the manufacturer or brand family has been removed from the directory. (____)

05. Credits and Refund. All credits and refunds of cigarette tax will be reduced by the amount of the compensation provided for by Section 63-2509, Idaho Code. (____)

IDAPA 35 - STATE TAX COMMISSION

35.01.11 - IDAHO UNCLAIMED PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0111-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 14-539, 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 15, 2004.

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

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

Rule 021 - The Unclaimed Property rules do not provide any details on the necessary documentation required by the heirs of a deceased person to establish that the heirs have a right to claim the property pursuant to Section 14-524, Idaho Code. The proposed new rule will clarify the necessary documentation for an heir to make such a claim.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2004.

DATED this 28th day of July, 2004.

Jim Husted, Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7530

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0111-0401

021. PROPERTY HELD FOR DECEASED OWNERS (RULE 021).
If the listed owner is deceased, the claimant must provide a copy of the death certificate. Other required documentation includes, but is not limited to: ( )

01. Property Valued at Five Thousand Dollars or More. For property valued at five thousand dollars

($5,000) or more, a certified copy of letters of administration or letters testamentary naming claimant as the personal representative of the listed owner, or a certified copy of the decree of distribution of the estate of the listed owner, determining claimant's entitlement to receive unclaimed property. If a court did not order the distribution of the estate, the administrator will consider other documentation provided it is sufficient to establish the identity of the claimant as the rightful heir of the owner. ( )

02. **Property Valued at Less than Five Thousand Dollars**. For property valued at less than five thousand dollars ($5,000), a signed affidavit executed by the claimant, stating that: ( )

a. The claimant is entitled to receive unclaimed property; ( )

b. The reason for entitlement to such property; i.e., the exact relationship with the listed owner and the basis of the entitlement; ( )

c. That there has been no probate of the estate of the deceased owner; ( )

d. That no such probate is contemplated; and ( )

e. That claimant will indemnify the state for any loss, including attorney fees, should another claimant assert a prior right to the property. ( )

02~~1~~2. -- 999. (RESERVED).

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.06 - RULES GOVERNING ALLOWABLE VEHICLE SIZE

DOCKET NO. 39-0306-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Section(s) 40-312(1) and 49-1011, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2004.

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 rule-making:

This change allows awnings to be excluded when measuring the overall width of recreational vehicles.

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

There is no fee or charge imposed or increased with this rule-making.

NEGOTIATED RULE-MAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because this rulemaking has been proposed at the request of the recreational vehicle industry.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Frew, Port of Entry Manager, 208-334-8694.

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 22, 2004.

DATED this 28th day of July, 2004.

Linda L. Emry, Management Assistant
Budget, Policy, Intergovernmental Relations
Idaho Transportation Department
3311 West State Street
P O Box 7129, Boise ID 83707-1129
Phone - 208-334-8810
FAX - 208-334-8195

THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0306-0401

001. TITLE AND SCOPE.

01. Title. This rule shall be known as IDAPA 39.03.06 "Rules Governing Allowable Vehicle Size," IDAPA 39, TITLE 03, Chapter 06. ( )

02. **Scope**. This rule ~~*is promulgated to*~~ shall define and regulate the size of vehicles not specifically addressed in Section 49-1010, ~~*of the*~~ Idaho Code, ~~*or to*~~ and authorize vehicle sizes in excess of those specified in Section 49-1010, Idaho Code, in order to comply with federal requirements. ~~*(10-2-89)*~~(____)

002. WRITTEN INTERPRETATIONS.
There are no written interpretations for this chapter. (____)

003. ADMINISTRATIVE APPEALS.
Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". (____)

004. INCORPORATION BY REFERENCE.
There are no documents incorporated by reference in this chapter. (____)

005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS – PHONE NUMBERS

01. **Street and Mailing Address**. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P O Box 7129, Boise ID 83707-1129. (____)

02. **Office Hours**. Daily office hours are 7:00 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays. (____)

03. **Telephone and FAX numbers**. The central office may be contacted during office hours by phone at 208-334-8420 or by fax at 208-334-8419. (____)

006. PUBLIC RECORDS ACT COMPLIANCE.
All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. (____)

00~~2~~7. -- 009. (RESERVED).

010. DEFINITIONS.
Refer to ~~*Rule*~~ IDAPA 39.03.01, "Rules Governing Definitions," for definitions of the terms used in this rule. ~~*(10-2-89)*~~(____)

011. -- 099. (RESERVED).

100. ALLOWABLE TOLERANCE, LEGAL OR PERMITTED SIZE LIMITS.

01. **Determination of Vehicular Dimensions**. Determination of vehicular length and/or width as defined by Idaho Code or by Board regulation shall be exclusive of those external devices or appurtenances whose function is related to safe and efficient operation. (10-2-89)

02. **Appurtenances**. Rearview mirrors, turn signal lamps, splash and spray suppressant devices, awnings on recreational vehicles, ~~*and*~~ load induced tire bulge, and other noncargo carrying appurtenances shall be excluded from the calculation of allowable width. Front mounted refrigeration units, energy conservation devices, bolsters, mechanical fastening devices, hydraulic lift gates, external front mounted side curtain rollers, and other noncargo carrying appurtenances or devices shall be excluded from a determination of allowable length. ~~*(1-03-92)*~~(____)

03. **Other Appurtenances**. Other appurtenances not listed above may not extend beyond three (3) inches on each side or end of a vehicle or load. Other appurtenances may include, but shall not be limited to, clearance lights, door handles, handholds, window fasteners, door and window trim, moldings, and load securement devices. (10-2-89)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

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

October 4, 2004, 4 p.m.
Department of Environmental Quality, Conference Room B
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 Department of Environmental Quality (DEQ) announced this negotiated rulemaking in the March 3, 2004 issue of the Idaho Administrative Bulletin to review, and revise as necessary, the structure and efficiency of the air quality permitting rules to modernize, update, and clarify appropriate portions. Since this rulemaking has the potential to be a very lengthy process, the negotiating committee anticipates submitting several proposed rule dockets in order to accomplish its rulemaking objectives. The proposed rule being submitted under this docket is the first of these proposed rules.

This proposed rule removes certain criteria for permit to construct exemptions to align those provisions with Environmental Protection Agency statements.

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 November 2004 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2005 session of the Idaho Legislature if approved by the Legislature.

INTENT: In proposing a State Implementation Plan (SIP) approval of Idaho's permit to construct (PTC) exemption rules, EPA stated:

EPA has carefully reviewed the list of categorically exempt sources and the “below regulatory concern” levels in Sections 221, 222.01 and 222.02 and believes that these categories and levels are consistent with what has been approved elsewhere for purposes of exempting de minimis sources from minor NSR requirements. As a result, Idaho's requirement for self-modeling as an additional exemption criteria only further narrows exemption provisions which would be approvable even without the modeling provision.

67 Fed. Reg. 52666, 52670 (Aug. 13, 2002). In the final rule, EPA stated that it “did not base its approval of the minor new source review exemption provisions on this modeling requirement”. 68 Fed. Reg. 2217, 2218 (Jan. 16, 2003).

As a result of EPA's statements, DEQ is proposing to remove the modeling requirement located at IDAPA 58.01.01.220.01.a.iii.

Although DEQ is proposing to remove the modeling requirement from the PTC exemption rules, it retains the legal authority pursuant to IDAPA 58.01.01.401.03 to require a source to obtain an air quality permit to ensure compliance with applicable rules, including the National Ambient Air Quality Standards (NAAQS).

Pursuant to Section 110 of the Clean Air Act, the federal government provides States with the primary responsibility to establish minor air quality permitting programs to ensure the States' ambient air attains and maintains the NAAQS. The federal government does not prescribe how states meet the NAAQS. Thus, this State's minor permitting program

is not "broader in scope or more stringent than federal law or regulations". Idaho Code § 39-107D. That said, as noted above, EPA did state that the exemptions would be approvable even without the modeling provision; hence, DEQ proposes removal of this provision.

EPA noted the modeling provision was not required because the below regulatory concern levels and listed categories are consistent with what has been approved elsewhere for purposes of exempting de minimis sources. DEQ does not intend to change the PTC exemption's below regulatory concern level in subsequent rulemakings; however, by way of negotiated rulemaking, it may propose to add source categories that fit the de minimis source qualification to the current Section 222 list.

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.

FEE SUMMARY: There are no fees associated with this proposed rulemaking.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, March 3, 2004, Vol. 04-3, page 42.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Martin Bauer at (208) 373-0440 or mbauer@deq.state.id.us.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rulemaking. DEQ will consider all written comments received by the undersigned on or before October 4, 2004.

DATED this 28th day of July, 2004.

Paula J. Wilson
Environmental Quality Section
Attorney General's Office
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pwilson@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET 58-0101-0401

220. GENERAL EXEMPTION CRITERIA FOR PERMIT TO CONSTRUCT EXEMPTIONS.

01. General Exemption Criteria. Sections 220 through 223 may be used by owners or operators to exempt certain sources from the requirement to obtain a permit to construct. Nothing in these sections shall preclude an owner or operator from choosing to obtain a permit to construct. For purposes of Sections 220 through 223, the term source means the equipment or activity being exempted. No permit to construct is required for a source that satisfies all of the following criteria, in addition to the criteria set forth at Sections 221, 222, or 223: (4-5-00)

a. The maximum capacity of a source to emit an air pollutant under its physical and operational design without consideration of limitations on emission such as air pollution control equipment, restrictions on hours of operation and restrictions on the type and amount of material combusted, stored or processed would not: (4-5-00)

i. Equal or exceed one hundred (100) tons per year of any regulated air pollutant. (4-5-00)

ii. Cause an increase in the emissions of a major facility that equals or exceeds the significant emissions rates set out in the definition of significant at Section 006. (4-5-00)

~~*iii. Cause or significantly contribute to a violation of an ambient air quality standard, based upon the applicable air quality models, data bases, and other requirements of 40 CFR Part 51, Appendix W (Guideline on Air Quality Models). No demonstration under this subsection is required for those sources listed at Subsection 222.02.* *(4-5-00)*~~

b. Combination. The source is not part of a proposed new major facility or part of a proposed major modification. (4-5-00)

02. Record Retention. Unless the source is subject to and the owner or operator complies with Section 385, the owner or operator of the source, except for those sources listed in Subsections 222.02.a. through 222.02.g., shall maintain documentation on site which shall identify the exemption determined to apply to the source and verify that the source qualifies for the identified exemption. The records and documentation shall be kept for a period of time not less than five (5) years from the date the exemption determination has been made or for the life of the source for which the exemption has been determined to apply, which ever is greater, or until such time as a permit to construct or an operating permit is issued which covers the operation of the source. The owner or operator shall submit the documentation to the Department upon request. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

222. CATEGORY II EXEMPTION.
No permit to construct is required for the following sources. (4-5-00)

01. Exempt Source. A source that satisfies the criteria set forth in Section 220 and that is specified below: (4-5-00)

a. Laboratory equipment used exclusively for chemical and physical analyses, research or education, including, but not limited to, ventilating and exhaust systems for laboratory hoods. To qualify for this exemption, the source shall: (5-1-94)

i. Comply with Section 223. (4-5-00)

ii. Have potential emissions that are less than one percent (1%) of the applicable radionuclides standard in 40 CFR Part 61, Subpart H. (4-5-00)

b. Environmental characterization activities including emplacement and operation of field instruments, drilling of sampling and monitoring wells, sampling activities, and environmental characterization activities. (4-5-00)

c. Stationary internal combustion engines of less than or equal to six hundred (600) horsepower and which are fueled by natural gas, propane gas, liquefied petroleum gas, distillate fuel oils, residual fuel oils, and diesel fuel; waste oil, gasoline, or refined gasoline shall not be used. To qualify for this exemption, the source must be operated in accordance with the following: (5-1-94)

i. One hundred (100) horsepower or less -- unlimited hours of operation. (5-1-94)

ii. One hundred one (101) to two hundred (200) horsepower -- less than four hundred fifty (450) hours per month. (5-1-94)

iii. Two hundred one (201) to four hundred (400) horsepower -- less than two hundred twenty-five (225) hours per month. (5-1-94)

iv. Four hundred one (401) to six hundred (600) horsepower -- less than one hundred fifty (150) hours per month. (5-1-94)

d. Stationary internal combustion engines used exclusively for emergency purposes which are operated less than two hundred (200) hours per year and are fueled by natural gas, propane gas, liquefied petroleum gas, distillate fuel oils, residual fuel oils, and diesel fuel; waste oil, gasoline, or refined gasoline shall not be used. (4-5-00)

e. A pilot plant that uses a slip stream from an existing process stream not to exceed ten percent (10%) of that existing process stream or which satisfies the following: (4-5-00)

i. The source shall comply with Section 223. For carcinogen emissions, the owner or operator may utilize a short term adjustment factor of ten (10) by multiplying either the acceptable ambient concentration or the screening emissions level, but not both, by ten (10). (4-5-00)

ii. The source shall have uncontrolled potential emissions that are less than one percent (1%) of the applicable radionuclides standard in 40 CFR Part 61, Subpart H. (4-5-00)

iii. The exemption for a pilot plant shall terminate one (1) year after the commencement of operations and shall not be renewed. (4-5-00)

~~***f.*** *Any other source specifically exempted by the Department. A list of those sources unconditionally exempted by the Department will be maintained by the Department and made available upon written request.* *(4-5-00)*~~

02. Other Exempt Sources. A source that satisfies the criteria set forth in Section 220 and that is specified below: (4-5-00)

a. Air conditioning or ventilating equipment not designed to remove air pollutants generated by or released from equipment. (5-1-94)

b. Air pollutant detectors or recorders, combustion controllers, or combustion shutoffs. (5-1-94)

c. Fuel burning equipment for indirect heating and for heating and reheating furnaces using natural gas, propane gas, liquified petroleum gas exclusively with a capacity of less than fifty (50) million btu's per hour input. (5-1-94)

d. Other fuel burning equipment for indirect heating with a capacity of less than one million (1,000,000) btu's per hour input. (5-1-94)

e. Mobile internal combustion engines, marine installations and locomotives. (5-1-94)

f. Agricultural activities and services. (5-1-94)

g. Retail gasoline, natural gas, propane gas, liquified petroleum gas, distillate fuel oils and diesel fuel sales. (5-1-94)

h. Used Oil Fired Space Heaters which comply with all the following requirements: (7-1-97)

i. The used oil fired space heater burns only used oil that the owner or operator generates on site, that

is derived from households, such as used oil generated by individuals maintaining their personal vehicles, or on-specification used oil that is derived from commercial generators provided that the generator, transporter and owner or operator burning the oil for energy recovery comply fully with IDAPA 58.01.05.015, "Rules and Standards for Hazardous Waste"; (7-1-97)

(1) For the purposes of Subsection 222.02.h., "used oil" refers to any oil that has been refined from crude oil or any synthetic oil that has been used and, as a result of such use, is contaminated by physical or chemical impurities. (4-5-00)

(2) For the purposes of Subsection 222.02.h., "used oil fired space heater" refers to any furnace or apparatus and all appurtenances thereto, designed, constructed and used for combusting used oil for energy recovery to directly heat an enclosed space. (4-5-00)

ii. Any used oil burned is not contaminated by added toxic substances such as solvents, antifreeze or other household and industrial chemicals; (7-1-97)

iii. The used oil fired space heater is designed to have a maximum capacity of not more than one half (0.5) million BTU per hour; (4-5-00)

iv. The combustion gases from the used oil fired space heater are vented to the ambient air through a stack equivalent to the type and design specified by the manufacturer of the heater and installed to minimize down wash and maximize dispersion; and (7-1-97)

v. The used oil fired space heater is of modern commercial design and manufacture, except that a homemade used oil fired space heater may be used if, prior to the operation of the homemade unit, the owner or operator submits documentation to the Department demonstrating, to the satisfaction of the Department, that emissions from the homemade unit are no greater than those from modern commercially available units. (7-1-97)

03. Any Other Source Specifically Exempted by the Department. A list of those sources unconditionally exempted by the Department will be maintained by the Department and made available upon written request. All sources exempted by the Department shall: (4-5-00)

a. Be analyzed by the Department and determined to meet the requirements of Subsections 220.01.a.i. and 220.01.a.ii. (4-5-00)

b. Be analyzed by the Department and determined not to cause or significantly contribute to a violation of any ambient air quality standard. (4-5-00)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapter 1, Title 39, Idaho Code, and Chapter 21, Title 37, Idaho Code. Proposed Rulemaking

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 September 15, 2004. If no such written request is received, a public hearing will not be held.

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 Department of Environmental Quality (DEQ) has initiated rulemaking to clarify language in various sections of the rules where interpretation is difficult or where the rules fail to accommodate accepted practices. This rulemaking also makes corrections to cross-reference citations and addresses other minor housekeeping issues. Specifically, the proposed rule addresses the following issues:

1) Broadens the language dealing with the use of disinfectants in public water systems and brings requirements into line with current science.

2) Improves language in sections that have posed interpretive difficulties, such as applicability of separation distances between main pipelines, certain requirements for well houses and other enclosures, clarification of language requiring plan and specification review for new or modified water systems, and other minor language changes to make the rules easier to read and understand.

3) Minor modifications to language regarding contracting for operator services. These modifications are necessary for implementation of the Drinking Water and Wastewater Professionals Licensing Act, Senate Bill 1279, wherein the Legislature transferred authority for the licensure of drinking water and wastewater operators from DEQ to a Governor appointed Drinking Water and Wastewater Professional Board and the Idaho Bureau of Occupational Licenses.

The proposed rule has been drafted to enhance ease of use by regulators, by water systems and their consultants, and by DEQ staff. The proposed changes will also avoid unnecessary restrictions on water system practices. Regulated public water systems and their customers, consulting engineers who design and oversee construction of public water works, and organizations that represent these groups may be interested in this rulemaking.

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 November 2004 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2005 session of the Idaho Legislature if approved by the Legislature.

IDAHO CODE SECTION 39-107D STATEMENT: The engineering standards for design, construction, and operation of public water systems regulate activities that are not regulated by the federal government. These standards were promulgated to fulfill the requirements Section 39-118, Idaho Code, and pre-date the Safe Drinking Water Act. This rulemaking proposes only to update and clarify long-standing administrative rules. The changes made in this rulemaking are no more stringent than the applicable federal regulations.

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

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held during a negotiation conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812 -815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, June 2, 2004, Vol. 04-6, pages 47 and 48.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tom John at (208) 373-0191 or tjohn@deq.state.id.us.

Anyone may submit written comments on this proposed rulemaking by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before September 29, 2004.

Dated this 21st day of July, 2004.

Paula J. Wilson
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pwilson@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0108-0401

002. INCORPORATION BY REFERENCE.
Any reference in these rules to requirements, procedures, or specific forms contained in any section or subsection of the Code of Federal Regulations (CFR), Title 40, Parts 141 and 143 shall constitute the full adoption by reference of that section or subsection, including any notes and appendices therein, unless expressly provided otherwise in these rules. Any reference in these rules to procedures, methods, standards, or construction criteria contained in a published technical manual shall constitute the full adoption by reference of the part of the technical manual that pertains to the procedure, method, standard, or construction criterion as it appears in the manual. (3-15-02)

01. Precedence. In the event of conflict or inconsistency between the language in these rules and that found in any document incorporated by reference, these rules shall prevail. (5-3-03)

02. Availability of Specific Referenced Material. Copies of specific documents adopted by reference throughout these rules are available in the following locations: (12-10-92)

a. All federal regulations: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, Telephone (202)783-3238, or U.S. Government Bookstore, Room 194, Federal Bldg., 915 Second Ave., Seattle, WA 98174, (206) 553-4270; and (7-1-97)

b. All documents herein incorporated by reference: Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502. (7-1-97)

c. Recommended Standards for Water Works: a ~~*committee*~~ report of the Water Supply Committee of the Great Lakes -- Upper Mississippi River Board of ~~*Department of*~~ State and Provincial Public Health and Environmental ~~*Health*~~ Managers, published by Health Education Services, P.O. Box 7~~*823*~~126, Albany, New York 12224, ~~*1997*~~ 2003, Telephone (518) 439-7286. ~~*(3-30-01)*~~(____)

d. Manual of Individual and Non-Public Water Supply Systems (EPA 570/9-91-004), published by the U.S. Environmental Protection Agency, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.20402, Telephone (202) 782-3238. (5-3-03)

e. U.S. Department of Commerce, National Bureau of Standards Handbook, No. 69, "Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure" as amended in 1963, NCRP Publications, P.O. Box 20175, Washington, D.C. 20014. (12-10-92)

f. Rules of the Idaho Water Resources Board, IDAPA 37.03.09, "Well Construction Standards Rules," July 1993, available at the Idaho Department of Water Resources, 1301 North Orchard, P.O. Box 83720, Boise, Idaho 83720-0098, Telephone (208) 327-7900. (7-1-97)

g. ~~*USEPA Guidance Manual, Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems Using Surface Water Sources, March 1991 Edition, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, Telephone (202) 782-3238.*~~ ANSI/NSF Standard 44-2002e -- 2004, Residential Cation Exchange Water Softeners, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. ~~*(12-10-92)*~~(____)

h. ANSI/NSF Standard 53-200~~*1*~~2e -- 200~~*1*~~3, Drinking Water Treatment Units -- Health Effects, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) ~~*827-6800*~~ 769-8010. ~~*(5-3-03)*~~(____)

i. ANSI/NSF Standard 55-2002 -- 2002, Ultraviolet Microbiological Water Treatment Systems, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. (____)

~~*i*~~**j.** ANSI/NSF Standard 58-200~~*0a*~~3 -- 200~~*0*~~4, Reverse Osmosis Drinking Water Treatment Systems, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) ~~*827-6800*~~ 769-8010. ~~*(5-3-03)*~~(____)

~~*j*~~**k.** American Water Works Association (AWWA) Standards, Edition effective July, 200~~*2*~~4, available from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, Telephone (800) 926-7337. ~~*(5-3-03)*~~(____)

~~*k*~~**l.** ANSI/NSF Standard 60-2000a -- 2000, Drinking Water Treatment Chemicals -- Health Effects, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) ~~*827-6800*~~ 769-8010. ~~*(5-3-03)*~~(____)

~~*l*~~**m.** ANSI/NSF Standard 61-2000a -- 2000, Drinking Water System Components -- Health Effects, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) ~~*827-6800*~~ 769-8010. ~~*(5-3-03)*~~(____)

~~*m*~~**n.** "Cross Connection Control Manual," December 1995 Edition, available from Pacific Northwest Section of the American Water Works Association, P.O. Box 19581, Portland, OR, 97280-0581, Telephone (503) 246-5845. (5-3-03)

~~***02. Federal Regulations****. 40 CFR 141.2, revised as of July 1, 2001, is herein incorporated by reference, except for the definition of the terms action level, disinfection, noncommunity water system, and person.*~~ ~~*(3-15-02)*~~

003. DEFINITIONS.

The definitions set forth in 40 CFR 141.2, revised as of July 1, 2002, are herein incorporated by reference except for the definition of the terms "action level," "disinfection," "noncommunity water system," and "person". (5-3-03)

01. **ABC**. The abbreviation for "Association of Boards of Certification for Operating Personnel," an international organization representing water utility and pollution control certification boards. (4-5-00)

02. **Action Level**. The concentration of lead or copper in water that determines, in some cases, whether a water system must install corrosion control treatment, monitor source water, replace lead service lines, or undertake a public education program. (12-10-92)

03. **Administrator**. The Administrator of the United States Environmental Protection Agency. (4-5-00)

04. **Annual Samples**. Samples that are required once per calendar year. (12-10-92)

05. **Aquifer**. A geological formation of permeable saturated material, such as rock, sand, gravel, etc., capable of yielding an economic quantity of water to wells and springs. (5-3-03)

06. **Available**. Based on system size, complexity, and source water quality, a certified operator must be on site or able to be contacted as needed to initiate the appropriate action in a timely manner. (4-5-00)

07. **Average Daily Demand**. The volume of water used by a system on an average day based on a one (1) year period. (12-10-92)

08. **Backflow**. The reverse from normal flow direction in a plumbing system or water system caused by back pressure or back siphonage. (12-10-92)

09. **Board**. The Idaho Board of Environmental Quality. (5-3-03)

10. **Capacity**. The capabilities required of a public drinking water system in order to achieve and maintain compliance with these rules and the requirements of the federal Safe Drinking Water Act. It is divided into three (3) main elements: (4-5-00)

a. Technical capacity means the system has the physical infrastructure to consistently meet drinking water quality standards and treatment requirements and is able to meet the requirements of routine and emergency operations. It further means the ability of system personnel to adequately operate and maintain the system and to otherwise implement technical knowledge. Certification and training of the operator(s) is required, as appropriate, for the system size and complexity. (4-5-00)

b. Financial capacity means the financial resources of the water system, including an appropriate budget, rate structure, cash reserves sufficient for future needs and emergency situations, and adequate fiscal controls. (4-5-00)

c. Managerial capacity means that the management structure of the water system embodies the aspects of water treatment operations, including, but not limited to; (4-5-00)

i. Short and long range planning; (4-5-00)

ii. Personnel management; (4-5-00)

iii. Fiduciary responsibility; (4-5-00)

iv. Emergency response; (4-5-00)

v. Customer responsiveness; (4-5-00)

vi. Source water protection; (4-5-00)

vii. Administrative functions such as billing and consumer awareness; and (4-5-00)

viii. Ability to meet the intent of the federal Safe Drinking Water Act. (4-5-00)

11. **Certificate**. Documentation of competency issued by the Director stating that the person (to be certified) has met requirements for a specific classification of the certification program. (4-5-00)

12. **Community Water System**. A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents. (12-10-92)

13. **Composite Correction Program (CCP)**. A systematic approach to identifying opportunities for improving the performance of water treatment and implementing changes that will capitalize on these opportunities. The CCP consists of two (2) elements: (4-5-00)

a. Comprehensive Performance Evaluation (CPE). A thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation, and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. The CPE must consist of at least the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report. (4-5-00)

b. Comprehensive Technical Assistance (CTA). The implementation phase that is carried out if the CPE results indicate improved performance potential. During the CTA phase, the system must identify and systematically address plant-specific factors. The CTA consists of follow-up to the CPE results, implementation of process control priority setting techniques, and maintaining long term involvement to systematically train staff and administrators. (4-5-00)

14. **Compositing of Samples**. The mixing of up to five (5) samples by the laboratory. (4-5-00)

15. **Confining Layer**. A nearly impermeable subsurface stratum which is located adjacent to one (1) or more aquifers and does not yield a significant quantity of water to a well. (5-3-03)

16. **Confirmation Sample**. A sample of water taken from the same point in the system as the original sample and at a time as soon as possible after the original sample was taken. (12-10-92)

17. **Connection**. Each structure, facility, or single family residence which is connected to a water system, and which is or could be used for domestic purposes, is considered a single connection. Multi-family dwellings and apartment, condominium, and office complexes are considered single connections unless individual units are billed separately for water by the water system, in which case each such unit shall be considered a single connection. (10-1-93)

18. **Consumer**. Any person served by a public water system. (12-10-92)

19. **Consumer Confidence Report (CCR)**. An annual report that community water systems must deliver to their customers. The reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner. (4-5-00)

20. **Contaminant**. Any physical, chemical, biological, or radiological substance or matter in water. (12-10-92)

21. **Continuing Education Unit (CEU)**. An alternate unit (to semester or quarter systems) of formal credit assignment to post-secondary training activities, which is based upon regionally or nationally established and recognized education criteria. (4-5-00)

22. **Cross Connection**. Any actual or potential connection or piping arrangement between a public or a consumer's potable water system and any other source or system through which it is possible to introduce into any part of the potable water system used water, water from any source other than an approved public water system, industrial fluid, gas or substance other than the intended potable water with which the system is supplied. Cross connections include bypass arrangements, jumper connections, removable sections, swivel or change-over devices and other temporary or permanent devices which, or because of which "backflow" can or may occur. (10-1-93)

23. **Department**. The Idaho Department of Environmental Quality. (12-10-92)

24. **Director**. The Director of the Department of Environmental Quality or his designee. (12-10-92)

25. **Disinfection**. Introduction of chlorine or other agent or process approved by the Department, in sufficient concentration and for the time required to kill or inactivate pathogenic and indicator organisms. (5-3-03)

26. **Disinfection Profile**. A summary of daily Giardia lamblia inactivation through the drinking water treatment plant. The procedure for developing a disinfection profile is contained in 40 CFR 141.172 and 40 CFR 141.530-141.536. (5-3-03)

27. **Distribution System**. Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s) and/or treatment facility(ies) to the consumer. Chlorination may be considered as a function of a distribution system. (3-16-04)

28. **Drinking Water System**. All mains, pipes, and structures through which water is obtained and distributed, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use. (12-10-92)

29. **DWIMS**. Idaho Department of Environmental Quality Drinking Water Information Management System. Replaced by SDWISS April 2001. (3-15-02)

30. **Enhanced Coagulation**. The addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment. Conventional filtration treatment is defined in 40 CFR 141.2. (5-3-03)

31. **Enhanced Softening**. The improved removal of disinfection byproduct precursors by precipitative softening. (4-5-00)

32. **Equalization Storage**. Storage of finished water in sufficient quantity to compensate for the difference between a water system's maximum pumping capacity and peak daily usage. ( )

3~~2~~3. **Exemption**. A temporary deferment of compliance with a maximum contaminant level or treatment technique requirement which may be granted only if the system demonstrates to the satisfaction of the Department that the system cannot comply due to compelling factors and the deferment does not cause an unreasonable risk to public health. (12-10-92)

3~~3~~4. **Fee Assessment**. A charge assessed on public drinking water systems based on a rate structure calculated by system size. (10-1-93)

3~~4~~5. **Filter Profile**. A graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed. (4-5-00)

3~~5~~6. **GAC10**. Granular activated carbon filter beds with an empty bed contact time of ten (10) minutes based on average daily flow and a carbon reactivation frequency of every one hundred eighty (180) days. (4-5-00)

3~~6~~7. **Groundwater System**. A public water system which is supplied exclusively by a groundwater

source or sources. (12-10-92)

3~~7~~8. Groundwater Under the Direct Influence of Surface Water. Any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as Giardia lamblia or Cryptosporidium, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the State. The State determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation. (5-3-03)

3~~8~~9. Haloacetic Acids (Five) (HAA5). The sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid) rounded to two (2) significant figures after addition. (4-5-00)

~~39~~40. Health Hazards. Any condition which creates, or may create, a danger to the consumer's health. Health hazards may consist of, but are not limited to, design, construction, operational, structural, collection, storage, distribution, monitoring, treatment or water quality elements of a public water system. See also the definition of Significant Deficiency, which refers to a health hazard identified during a sanitary survey. (5-3-03)

4~~0~~1. Inorganic. Generally refers to compounds that do not contain carbon and hydrogen. (12-10-92)

4~~1~~2. Laboratory Certification Reciprocity. Acceptance of a laboratory certification made by another state. Laboratory reciprocity may be granted to laboratories outside of Idaho after application, proof of home state certification, and EPA performance evaluation results are submitted and reviewed. Reciprocity must be renewed after a time specified by the Idaho Laboratory Certification Officer to remain valid. (4-5-00)

4~~2~~3. Log. Logarithm to the base ten (10). (12-10-92)

4~~3~~4. Maximum Daily Consumption Rate. The average rate of consumption for the twenty-four (24) hour period in which total consumption is the largest on record. (12-10-92)

4~~4~~5. Maximum Hourly Demand. The greatest volume of water used in any hour during a one (1) year period. (12-10-92)

4~~5~~6. Maximum Residual Disinfectant Level (MRDL). A level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a public water system is in compliance with the MRDL, when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a public water system is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two (2) consecutive daily samples exceed the MRDL. MRDLs are enforceable in the same manner as maximum contaminant levels under Section 1412 of the Safe Drinking Water Act. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in 40 CFR 141.65, operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections. (4-5-00)

4~~6~~7. Maximum Residual Disinfectant Level Goal (MRDLG). The maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants. (4-5-00)

4~~7~~8. Method Detection Limit (MDL). The lowest concentration which can be determined to be greater than zero with ninety-nine percent (99%) confidence, for a particular analytical method. (12-10-92)

4~~8~~9. New System. Any water system that meets, for the first time, the definition of a public water

system provided in Section 1401 of the federal Safe Drinking Water Act (42 U.S.C. Section 300f). This includes systems that are entirely new construction and previously unregulated systems that are expanding. (4-5-00)

~~49~~50. **Noncommunity Water System**. A public water system that is not a community water system. A non-community water system is either a transient noncommunity water system or a non-transient noncommunity water system. (4-5-00)

5~~0~~1. **Nontransient Noncommunity Water System**. A public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. (12-10-92)

5~~1~~2. **Nuclear Facility**. Factories, processing plants or other installations in which fissionable material is processed, nuclear reactors are operated, or spent (used) fuel material is processed, or stored. (12-10-92)

5~~2~~3. **Operator Certifying Entity**. An organization that contracts with the Department to provide public drinking water operator certification services. (4-5-00)

5~~3~~4. **Operating Experience**. The number of years spent at a drinking water system in performance of duties. (4-5-00)

5~~4~~5. **Operating Shift**. That period of time during which water system operator decisions that affect public health are necessary for proper operation of the system. (4-5-00)

5~~5~~6. ~~*Operator/*~~**Owner/Purveyor of Water/Supplier of Water**. The person, company, corporation, association, or other organizational entity which holds legal title to the public water system, who provides, or intends to provide, drinking water to the customers and/or is ultimately responsible for the public water system operation. ~~*(4-5-00)*~~(____)

5~~6~~7. **Operator Reciprocity**. Means on a case by case basis the acceptance of certificates issued by other certification programs, which satisfy the state of Idaho requirements for operator certification. (4-5-00)

5~~7~~8. **Peak Hourly Flow**. The highest hourly flow during any day. (12-10-92)

5~~8~~9. **Person**. A human being, municipality, or other governmental or political subdivision or other public agency, or public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent or other legal representative of the foregoing or other legal entity. (12-10-92)

~~59~~60. **Pesticides**. Substances which meet the criteria for regulation pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, and any regulations adopted pursuant to FIFRA. For example, pesticides include, but are not limited to insecticides, fungicides, rodenticides, herbicides, and algaecides. (12-10-92)

6~~0~~1. **Public Notice**. The notification of public water system consumers of information pertaining to that water system including information regarding water quality or compliance status of the water system. (12-10-92)

6~~1~~2. **Public Drinking Water System**. A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system". ~~*(4-5-00)*~~(____)

~~*a. In General. A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes (1) any*~~

~~*collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public drinking water system is either a "community water system" or a "noncommunity water system".* (4-5-00)~~

~~***b.*** *Connections.* (4-5-00)~~

~~*i.* *In General. For purposes of paragraph a. of this Subsection, a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if:* (5-3-03)~~

~~*(1)* *The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);* (4-5-00)~~

~~*(2)* *The Director determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or* (4-5-00)~~

~~*(3)* *The Director determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.* (4-5-00)~~

~~*ii.* *Irrigation Districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public drinking water system if the system or the residential or similar users of the system comply with paragraphs b.i.(2) and b.i.(3) of this Subsection.* (5-3-03)~~

~~***c.*** *Transition Period. A supplier of water that would be a public drinking water system only as a result of modifications made to the definition of a public drinking water system by the Safe Drinking Water Act Amendments of 1996 shall not be considered a public drinking water system for purposes of the Safe Drinking Water Act until the date that is two (2) years after the date of enactment of the Safe Drinking Water Act Amendments of 1996. If a supplier of water does not serve fifteen (15) service connections (as set forth in paragraphs a. and b. of this Subsection) or twenty-five (25) people at any time after the conclusion of the two (2) year period, the supplier of water shall not be considered a public drinking water system.* (5-3-03)~~

6~~2~~3. **Public Water System/Water System/System**. Means "public drinking water system". (4-5-00)

6~~3~~4. **Reciprocity**. A system by which certificates issued by any other certification program are recognized as valid and equal to Idaho's Certification Program provision. (4-5-00)

6~~4~~5. **Repeat Compliance Period**. Any subsequent compliance period after the initial compliance period. (12-10-92)

6~~5~~6. **Responsible Charge (RC)**. Responsible Charge means, active, daily on-site and/or on-call responsibility for the performance of operations or active, on-going, on-site and on-call direction of employees and assistants. (4-5-00)

6~~6~~7. **Responsible Charge Operator**. An operator of a public drinking water system, designated by the system owner, who holds a valid certificate at a class equal to or greater than the drinking water system classification, who is in responsible charge of the public drinking water system. (3-16-04)

6~~7~~8. **Sampling Point**. The location in a public water system from which a sample is drawn. (12-10-92)

6~~8~~9. **Sanitary Defects**. Any faulty structural condition which may allow the water supply to become contaminated. (12-10-92)

~~69~~70. **Sanitary Survey**. An onsite review of the water source, facilities, equipment, operation and

maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water. The sanitary survey will include, but is not limited to the following elements: (4-5-00)

a. Source; (4-5-00)

b. Treatment; (4-5-00)

c. Distribution system; (4-5-00)

d. Finished water storage; (4-5-00)

e. Pumps, pump facilities, and controls; (4-5-00)

f. Monitoring and reporting and data verification; (4-5-00)

g. System management and operation; and (4-5-00)

h. Operator compliance with state requirements. (4-5-00)

7~~0~~1. **SDWIS-State**. An acronym that stands for "Safe Drinking Water Information System-State Version". It is a software package developed under contract to the U.S. Environmental Protection Agency and used by a majority of U.S. states to collect, maintain, and report data about regulated public water systems. See also the definition of DWIMS. (5-3-03)

7~~1~~2. **Significant Deficiency**. As identified during a sanitary survey, any defect in a system's design, operation, maintenance, or administration, as well as any failure or malfunction of any system component, that the Department or its agent determines to cause, or have potential to cause, risk to health or safety, or that could affect the reliable delivery of safe drinking water. See also the definition of Health Hazards. (5-3-03)

73. **Special Irrigation District**. An irrigation district in existence prior to May 18, 1994 that provides primarily agricultural service through a piped water system with only incidental residential or similar use where the system or the residential or similar users of the system comply with the exclusion provisions in Section 1401(4)(B)(i)(II) or (III) of the Safe Drinking Water Act. ( )

7~~2~~4. **Spring**. A source of water which flows from a laterally percolating water table's intersection with the surface or from a geological fault that allows the flow of water from an artesian aquifer. (12-10-92)

7~~3~~5. **Substitute Responsible Charge Operator**. An operator of a public drinking water system who holds a valid certificate at a class equal to or greater than the drinking water system classification, designated by the system owner to replace and to perform the duties of the responsible charge operator when the responsible charge operator is not available or accessible. (3-16-04)

7~~4~~6. **Surface Water System**. A public water system which is supplied by one (1) or more surface water sources or groundwater sources under the direct influence of surface water. Also called subpart H systems in applicable sections of 40 CFR Part 141. (4-5-00)

7~~5~~7. **Specific Ultraviolet Absorption (SUVA)**. SUVA means Specific Ultraviolet Absorption at two hundred fifty-four (254) nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wave length of two hundred fifty-four (254) nm (UV254) (in $m^{=1}$) by its concentration of dissolved organic carbon (DOC) (in mg/l). (4-5-00)

7~~6~~8. **Total Organic Carbon (TOC)**. Total organic carbon in mg/l measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two (2) significant figures. (4-5-00)

7~~7~~9. **Transient Noncommunity Water System**. A noncommunity water system which does not

regularly serve at least twenty-five (25) of the same persons over six (6) months per year. (10-1-93)

~~7~~8**0**. **Treatment Facility**. Any place(s) where a public drinking water system or nontransient noncommunity water system alters the physical or chemical characteristics of the drinking water. Chlorination may be considered as a function of a distribution system. (4-5-00)

~~79~~8**1**. **Turbidity**. A measure of the interference of light passage through water, or visual depth restriction due to the presence of suspended matter such as clay, silt, nonliving organic particulates, plankton and other microscopic organisms. Operationally, turbidity measurements are expressions of certain light scattering and absorbing properties of a water sample. Turbidity is measured by the Nephelometric method. (12-10-92)

8~~0~~**2**. **Uncovered Finished Water Storage Facility**. An uncovered tank, reservoir, or other facility that is used to store water that will undergo no further treatment except residual disinfection. (5-3-03)

8~~1~~**3**. **Unregulated Contaminant**. Any substance that may affect the quality of water but for which a maximum contaminant level or treatment technique has not been established. (12-10-92)

8~~2~~**4**. **Validated Examination**. An exam that is independently reviewed by subject matter experts to ensure that the exam is based on an operator job analysis and is relevant and related to the classification of the system or facility. (3-16-04)

8~~3~~**5**. **Variance**. A temporary deferment of compliance with a maximum contaminant level or treatment technique requirement which may be granted only when the system demonstrates to the satisfaction of the Department that the raw water characteristics prevent compliance with the MCL or requirement after installation of the best available technology or treatment technique and the determent does not cause an unreasonable risk to public health. (12-10-92)

8~~4~~**6**. **Very Small Public Drinking Water System**. A Community or Nontransient Noncommunity Public Water System that serves five hundred (500) persons or less and has no treatment other than disinfection or has only treatment which does not require any chemical treatment, process adjustment, backwashing or media regeneration by an operator (e.g. calcium carbonate filters, granular activated carbon filters, cartridge filters, ion exchangers). (4-5-00)

8~~5~~**7**. **Volatile Organic Chemicals (VOCs)**. VOCs are lightweight organic compounds that vaporize or evaporate easily. (10-1-93)

8~~6~~**8**. **Vulnerability Assessment**. A determination of the risk of future contamination of a public drinking water supply. (12-10-92)

8~~7~~**9**. **Waiver**. (12-10-92)

a. For the purposes of these rules, except Sections 550 through 552, “waiver” means the Department approval of a temporary reduction in sampling requirements for a particular contaminant. (10-1-93)

b. For purposes of Sections 550 through 552, “waiver” means a dismissal of any requirement of compliance. (12-10-92)

c. For the purposes of Section 010, “waiver” means the deferral of a fee assessment for a public drinking water system. (10-1-93)

d. For purposes of Subsection 559.02 (Professional Growth Requirement), “waiver” means the deferral of the continuing education units (CEU) required for operator certification renewal for any certified operator deployed out of state or country due to active military service, when such deployment makes it impossible for the operator to accrue the required units by the certification renewal date (March 1). (3-16-04)

~~88~~9**0**. **Water for Human Consumption**. Water that is used by humans for drinking, bathing for purposes of personal hygiene (including hand-washing), showering, cooking, dishwashing, and maintaining oral hygiene. In

common usage, the terms "culinary water", "drinking water," and "potable water" are frequently used as synonyms. (5-3-03)

~~*8*~~**91.** **Water Main**. A pipe within a public water system which is under the control of the system operator and conveys water to two (2) or more service connections. The collection of water mains within a given water supply is called the distribution system. (5-3-03)

9~~0~~2. **Water Distribution Operator**. The person who is employed, retained, or appointed to conduct the tasks associated with routine day to day operation and maintenance of a public drinking water distribution system in order to safeguard the public health and environment. (3-16-04)

9~~1~~3. **Water Treatment Operator**. The person who is employed, retained, or appointed to conduct the tasks associated with routine day to day operation and maintenance of a public drinking water treatment facility in order to safeguard the public health and environment. (3-16-04)

94. **Well House**. A structure containing important water system components, such as a well, hydropneumatic tank, booster pump, pump controls, flow meter, distribution line, or a treatment unit. Well houses are often called pump houses in common usage, even though in modern construction these structures may not contain either a well or a pump. These terms are used interchangeably in national standards and trade publications. ( )

(BREAK IN CONTINUITY OF SECTIONS)

300. FILTRATION AND DISINFECTION.

01. General Requirements. 40 CFR 141.70, revised as of July 1, 2002, is herein incorporated by reference. Each public water system using a surface water source or ground water source directly influenced by surface water shall be operated by personnel, as specified in Sections 553 and 554, who have met state requirements for licensing of water system operators. ~~*(5-3-03)*~~( )

~~***a.*** *Each community and nontransient noncommunity system using a surface water source or ground water source directly influenced by surface water shall be operated by personnel as specified in 40 CFR 141.70(c) and Sections 553 through 562 of these rules.* *(4-5-00)*~~

~~***b.*** *Each transient water system using a surface water source or ground water source directly influenced by surface water shall be operated by personnel as specified in 40 CFR 141.70(c). Such personnel must:* *(4-5-00)*~~

~~*i.* *Be certified as Drinking Water System Operators pursuant to the requirements of Sections 553 through 562; or* *(4-5-00)*~~

~~*ii.* *Be certified as qualified to operate the water system by the Department. The Department may certify an individual as qualified to operate the water system if:* *(12-10-92)*~~

~~*(1)* *The individual operated the system on or before December 31, 1992; and* *(12-10-92)*~~

~~*(2)* *The Department determines that the system has not been modified after December 31, 1992; or* *(4-5-00)*~~

~~*(3)* *The Department determines that the compliance history of the system is acceptable; and* *(12-10-92)*~~

~~*(4)* *The individual passes any field evaluation of operating and record keeping procedures required by the Department; and* *(4-5-00)*~~

~~*(5) Upon thirty (30) days notice, personnel operating the system shall attend periodic training sessions as required by the Department.* *(12-10-92)*~~

02. Criteria for Avoiding Filtration. 40 CFR 141.71, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

03. Disinfection. 40 CFR 141.72 is herein incorporated by reference. (10-1-93)

a. In addition to the disinfection requirements in 40 CFR 141.72, each system with a surface water source or groundwater source directly influenced by surface water shall maintain a minimum of at least two-tenths (0.2) parts per million of chlorine in the treated water after an actual contact time of at least thirty (30) minutes at maximum hourly demand before delivery to the first customer. (12-10-92)

b. The Department may allow a system to utilize automatic shut-off of water to the distribution system whenever total disinfectant residual is less than two-tenths (0.2) mg/l rather than provide redundant disinfection components and auxiliary power as required in 40 CFR 141.72(a)(2). An automatic water shut-off may be used if the system demonstrates to the satisfaction of the Department that, at all times, a minimum of twenty (20) psi pressure and adequate fire flow can be maintained in the distribution system when water delivery is shut-off to the distribution system and, at all times, minimum Giardia lamblia and virus inactivation removal rates can be achieved prior to the first customer. (12-10-92)

c. Each system which provides filtration treatment must provide disinfection treatment such that filtration plus disinfection provide at least ninety-nine and nine tenths percent (99.9%) inactivation and/or removal of Giardia lamblia cysts and ninety-nine and ninety-nine one hundredths percent (99.99%) inactivation and/or removal of viruses as specified in 40 CFR 141.72 and Section 300. However, in all cases the disinfection portion of the treatment train shall be designed to provide not less than five tenths (0.5) log Giardia inactivation, irrespective of the Giardia removal credit awarded to the filtration portion of the treatment train. (5-3-03)

i. Each system which provides filtration treatment shall submit engineering evaluations and/or other documentation as required by the Department to demonstrate ongoing compliance with Subsection 300.03.c.(7-1-97)

ii. The Department will establish filtration removal credit on a system-by-system basis. Unless otherwise demonstrated to the satisfaction of the Department, the maximum log removal and/or inactivation credit allowed for filtration is as follows:

Maximum Log Removal		
Filtration Type	**Giardia**	**Viruses**
Conventional	2.5	2.0
Direct	2.0	1.0
Slow sand	2.0	2.0
Diatomaceous earth	2.0	1.0
Membrane	3.0	1.0
Alternate technology	2.0	0

(5-3-03)

iii. Filtration removal credit shall be granted for filtration treatment provided the system is; (12-10-92)

(1) Operated in accordance with the Operations Plan specified in Subsection 552.06.a.; and (12-10-92)

(2) The system is in compliance with the turbidity performance criteria specified under 40 CFR 141.73; and (12-10-92)

(3) Coagulant chemicals must be added and coagulation and flocculation unit process must be used at all times during which conventional and direct filtration treatment plants are in operation; and (12-10-92)

(4) Slow sand filters are operated at a rate not to exceed one-tenth (0.1) gallons per minute per square foot; and (12-10-92)

(5) Diatomaceous earth filters are operated at a rate not to exceed one and one-half (1.5) gallons per minute per square foot. (12-10-92)

04. Filtration. 40 CFR 141.73, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

05. Analytical and Monitoring Requirements. 40 CFR 141.74, revised as of July 1, 1999, is herein incorporated by reference. (4-5-00)

a. Each public water system which provides filtration treatment shall monitor as follows: (12-10-92)

i. Each day the system is in operation, the purveyor shall determine the total level of inactivation of Giardia lamblia cysts and viruses achieved through disinfection based on CT99.9 values provided in 40 CFR 141.74(b)(3) (Tables 1.1 through 1.6, 2.1 and 3.1). (12-10-92)

ii. At least once per day, the system shall monitor the following parameters to determine the total inactivation ratio achieved through disinfection: (12-10-92)

(1) Temperature of the disinfected water at each residual disinfectant concentration sampling point; and (12-10-92)

(2) If using chlorine, the pH of the disinfected water at each chlorine residual sampling point. (12-10-92)

(3) The disinfectant contact time, "T," must be determined each day during peak hourly flow. Disinfectant contact time, "T," in pipelines used for Giardia lamblia and virus inactivation shall be calculated by dividing the internal volume of the pipe by the peak hourly flow rate through that pipe. Disinfectant contact time, "T," for all other system components used for Giardia lamblia and virus inactivation shall be determined by tracer studies or equivalent methods. (12-10-92)

(4) The residual disinfectant concentrations at each residual disinfectant sampling point at or before the first customer, must be determined each day during peak hourly flow, or at other times approved by the Department. (12-10-92)

iii. The purveyor may demonstrate to the Department, based on a Department approved on-site disinfection challenge study protocol, that the system is achieving disinfection requirements specified in Subsection 300.03 utilizing CT99.9 values other than those specified in 40 CFR 141.74(b)(3) (Tables 2.1 and 3.1) for ozone, chlorine dioxide, and chloramine. (10-1-93)

iv. The total inactivation ratio shall be calculated as follows: (12-10-92)

(1) If the system applies disinfectant at only one (1) point, the system shall determine the total inactivation ratio by either of the two (2) following methods: (12-10-92)

(a) One inactivation ratio (CTcalc/CT99.9) is determined at/or before the first customer during peak hourly flow; or (12-10-92)

(b) Sequential inactivation ratios are calculated between the point of disinfectant application and a point at or before the first customer during peak hourly flow. The following method must be used to calculate the total inactivation ratio: (12-10-92)

(i) Step 1: Determine (CTcalc/CT99.9) for each sequence. (12-10-92)

(ii) Step 2: Add the (CTcalc/CT99.9) values for all sequences. The result is the total inactivation ratio. (12-10-92)

(2) If the system uses more than one point of disinfectant application at or before the first customer, the system must determine the CT value of each disinfection sequence immediately prior to the next point of disinfectant application during peak hourly flow. The sum of the (CTcalc/CT99.9) values from all sequences is the total inactivation ratio. (CTcalc/CT99.9) must be determined by the methods described in 40 CFR 141.74(b)(4)(i)(B). (12-10-92)

v. Log removal credit for disinfection shall be determined by multiplying the total inactivation ratio by three (3). (12-10-92)

vi. The Department may reduce the CT monitoring requirements specified under Section 300, for any system which demonstrates that the required inactivation levels are consistently exceeded. Reduced CT monitoring shall be allowed only where the reduction in monitoring will not endanger the health of consumers served by the water system. (12-10-92)

b. Residual disinfectant concentrations for ozone must be measured using the Indigo Method, or automated methods may be used if approved as provided for in 40 CFR 141.74(a)(5) and Subsection 300.05. Automated methods for ozone measurement ~~*will be allowed*~~ must be approved by the Department~~ *provided they are listed as "Recommended" in the USEPA Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems using Surface Water Sources, Appendix D, as set forth in Subsection 002.02.g., and provided they are calibrated on a schedule approved by the Department using the Indigo Method*~~. ~~*(12-10-92)*~~(____)

c. As provided for in 40 CFR 141.74(b), the Department may specify interim monitoring requirements for systems notified by the Department or U.S. Environmental Protection Agency that filtration treatment must be installed. Until filtration is installed, systems shall conduct monitoring for turbidity and disinfectant residuals as follows unless otherwise specified by the Departments; (12-10-92)

i. Disinfectant residual concentrations entering the distribution system shall be measured at the following minimum frequencies, and samples must be taken at evenly spaced intervals throughout the workday.

Minimum Frequencies	
Population	**Samples/day**
Less than 500	1
501 - 1000	2
1,001 - 2,500	3
Greater than 2501	4

(12-10-92)

ii. Turbidity shall be measured at least once per day at the entry point to the distribution system. (12-10-92)

iii. The Department may, at its discretion, reduce the turbidity monitoring frequency for any noncommunity system which demonstrates to the satisfaction of the Department: (12-10-92)

(1) A free chlorine residual of two-tenths (0.2) part per million is maintained throughout the distribution system; (12-10-92)

(2) The water source is well protected; (12-10-92)

(3) The total coliform MCL is not exceeded; and (12-10-92)

(4) No significant health risk is present. (12-10-92)

d. The Department may allow systems with surface water sources or groundwater sources under the direct influence of surface water, to substitute continuous turbidity monitoring for grab sample monitoring as specified in 40 CFR 141.74(b)(2) and 40 CFR 141.74(c)(1) and Subsection 300.05. The Department may allow continuous turbidity monitoring provided the continuous turbidimeter is operated, maintained, standardized and calibrated per the manufacturers recommendations. For purposes of determining compliance with turbidity performance criteria, discrete values must be recorded every four (4) hours water is supplied to the distribution system. (10-1-93)

e. The Department may allow systems using both a surface water source(s), or groundwater source(s) under the direct influence of surface water, and one (1) or more groundwater sources, to measure disinfectant residual at points other than the total coliform sampling points, as specified in 40 CFR 141.74(b)(6)(i) and 40 CFR 141.74(c)(3)(i) and Subsection 300.05. The Department may allow alternate sampling points provided the system submits an acceptable alternate monitoring plan to the Department in advance of the monitoring requirement. (10-1-93)

f. The Department may allow a reduced turbidity monitoring frequency for systems using slow sand filtration or technology other than conventional, direct, or diatomaceous earth filtration, as specified in 40 CFR 141.74(c)(1) and Subsection 300.05. To be considered for a reduced turbidity monitoring frequency, a system must submit a written request to the Department in advance of the monitoring requirement. (12-10-92)

06. Reporting and Recordkeeping. 40 CFR 141.75, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)

a. As provided in 40 CFR 141.75(a), revised as of July 1, 2001, and Section 300, the Department may establish interim reporting requirements for systems notified by the Department or U.S. Environmental Protection Agency that filtration treatment must be installed as specified in 40 CFR 141.75(a), revised as of July 1, 2001, and as referred to in Subsection 300.06. Until filtration treatment is installed, systems required to install filtration treatment shall report as follows: (3-15-02)

i. The purveyor shall immediately report to the Department via telephone or other equally rapid means, but no later than the end of the next business day, the following information: (12-10-92)

(1) The occurrence of a waterborne disease outbreak potentially attributable to that water system; (12-10-92)

(2) Any turbidity measurement which exceeds five (5) NTU; and (12-10-92)

(3) Any result indicating that the disinfectant residual concentration entering the distribution system is below two-tenths (0.2) mg/l free chlorine. (12-10-92)

ii. The purveyor shall report to the Department within ten (10) days after the end of each month the system serves water to the public the following monitoring information using a Department-approved form: (12-10-92)

(1) Turbidity monitoring information; and (12-10-92)

(2) Disinfectant residual concentrations entering the distribution system. (12-10-92)

iii. Personnel qualified under Subsection 300.01 shall complete and sign the monthly report forms submitted to the Department as required in Subsection 300.06. (12-10-92)

b. In addition to the reporting requirements in 40 CFR 141.75(b), revised as of July 1, 2001, pertaining to systems with filtration treatment, each public water system which provides filtration treatment must report the level of Giardia lamblia and virus inactivation and/or removal achieved each day by filtration and disinfection. (3-15-02)

07. Recycle Provisions. 40 CFR 141.76, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

a. The Department shall evaluate recycling records kept by water systems pursuant to 40 CFR 141.76 during sanitary surveys, comprehensive performance evaluations, or other inspections. (5-3-03)

b. The Department may require a system to modify recycling practices if it can be shown that these practices adversely affect the ability of the system to meet surface water treatment requirements. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

550. DESIGN STANDARDS FOR PUBLIC DRINKING WATER SYSTEMS.

01. System Design. Unless otherwise specified by the Department, the design of new drinking water systems, or modifications to existing, public drinking water systems shall be in conformance with "Recommended Standards for Water Works, A Report of the Water Supply Committee of the Great Lakes-Upper Mississippi River Board of ~~*Department Sanitary Engineers*~~ State and Provincial Public Health and Environmental Managers," as set forth in Subsection 002.02.c. ~~*and with recommended changes and additions to this document as found in the "USEPA Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems Using Surface Water Sources," as set forth in Subsection 002.02.g.*~~ ~~*(7-1-97)*~~(____)

02. Materials. Unless otherwise authorized by the Department on a site-specific basis, ~~*M*~~materials ~~*which*~~ that are used to construct public drinking water systems and ~~*which*~~ have water contact surfaces must comply with applicable AWWA standards and be certified by an accredited ANSI certification body to meet ANSI/NSF ~~*s*~~Standard ~~*61 or NSF standard*~~ 53, ~~*or*~~ 58, or 61 ~~*unless otherwise approved by the Department on a site-specific basis*~~. Corrosion control shall be taken into account during all aspects of public water system design. ~~*(5-3-03)*~~(____)

03. Wells. Any supplier of water for a public water system served by one (1) or more wells shall ensure that the following requirements are met: (12-10-92)

a. Prior to drilling, the site of a PWS well must be approved in writing by the Department. The Department shall require the supplier of water to submit a well site evaluation report that takes into account the proposed size, depth, and location of the well. The evaluation may include, but is not limited to the following types of information: (5-3-03)

i. An evaluation of the potability and quality of anticipated groundwater. (5-3-03)

ii. Identification of the known aquifers and the extent of each aquifer, based on the stratigraphy, sedimentation, and geologic structure beneath the proposed well site. (5-3-03)

iii. An estimate of hydrologic and geologic properties of each aquifer and confining layers. (5-3-03)

iv. Prediction of the sources of water to be extracted by the well and the drawdown of existing wells, springs, and surface water bodies that may be caused by pumping the proposed well. This prediction may be based on analytical or numerical models. (5-3-03)

v. Demonstration of the extent of the capture zone of the well, based on the well's design discharge and on aquifer geology, using estimates of hydraulic conductivity and storativity. (5-3-03)

vi. Description of potential sources of contamination within five hundred (500) feet of the well site. (5-3-03)

b. Each well shall be located a minimum of fifty (50) feet from any potential source of contamination and no closer to specified sources of contamination than set forth in Subsection 900.01; in vulnerable settings, the Department may require engineering or hydrologic analysis to determine if the required setback distance is adequate to prevent contamination; (5-3-03)

c. Each well shall comply with the minimum Well Construction Standards and with the permitting requirements of the Idaho Water Resources Board, as set forth in Subsection 002.02.f.; except that no public water system well shall have less than fifty-eight (58) feet of annular seal of not less than two (2) inches thickness, unless: (5-3-03)

i. It can be demonstrated to the Department's satisfaction that there is a confining layer at lesser depth that is capable of preventing unwanted water from reaching the intake zone of the well; or (5-3-03)

ii. The best and most practical aquifer at a particular site is less than fifty-eight (58) feet deep; or; (5-3-03)

iii. The Department specifies a different annular seal depth based on local hydrologic conditions. (5-3-03)

d. All tools, bits, pipe, and other materials to be inserted in the borehole must be cleaned and disinfected in accordance with the Well Construction Standards and permitting requirements of the Idaho Water Resources Board, as set forth in Subsection 002.02.f. This applies to new well construction and repair of existing wells. (5-3-03)

e. Upon completion of a groundwater source, and prior to its use as drinking water, the following information and data must be submitted by the water system to the Department: (5-3-03)

i. A copy of all well logs; (12-10-92)

ii. Results of test pumping, as specified in Subsection 550.03.f.; (5-3-03)

iii. As constructed plans showing at least the following: (12-10-92)

(1) Annular seal, including depth and sealant material used and method of application; (5-3-03)

(2) Casing that meets the requirements set forth in Section 3.2.5.4 of Recommended Standards for Water Works, including weights and thicknesses specified in Table 1 of that publication; (5-3-03)

(3) Casing perforations, results of sieve analysis used in designing screens installed in sand or gravel aquifers, gravel packs; and (5-3-03)

(4) Pump location; and (12-10-92)

(5) For community water systems, a permanent means for measuring water level. All equipment required for conducting water level measurements shall be purchased and made available to the water system operator at the time well construction is completed. (5-3-03)

iv. Other information as may be specified by the Department. (12-10-92)

v. Sampling results for iron, manganese, corrosively, and other secondary contaminants specified by the Department. Other monitoring requirements are specified in Subsection 551.01. (5-3-03)

f. Test pumping. Upon completion of a groundwater source, test pumping shall be conducted in

accordance with the following procedures to meet the specified requirements: (12-10-92)

i. The well shall be test pumped at the desired yield (design capacity) of the well for at least twenty-four (24) consecutive hours after the drawdown has stabilized. Alternatively, the well may be pumped at a rate of one hundred fifty percent (150%) of the desired yield for at least six (6) continuous hours after the drawdown has stabilized. In either case, if the drawdown does not stabilize, the pumping must continue for at least seventy-two (72) consecutive hours. The field pumping equipment must be capable of maintaining a constant rate of discharge during the test. Discharge water must be piped an adequate distance to prevent recharge of the well during the test. If the well fails the test protocol, the well design shall be re-evaluated and submitted to the Department for approval. (5-3-03)

ii. Fifteen (15) minutes after the start of the test pumping, the sand content of a new well shall not be more than five (5) parts per million. Sand production shall be measured by a centrifugal sand sampler or other means acceptable to the Department. If sand production exceeds five (5) ppm, the well shall be screened gravel packed, and re-developed. (5-3-03)

iii. The following data shall be provided: (5-3-03)

(1) Static water level in the well prior to test pumping; (5-3-03)

(2) Well yield in gpm and duration of the pump test, including a discussion of any discrepancy between the desired yield and the yield observed during the test; (5-3-03)

(3) Water level in the well recorded at regular intervals during pumping; (5-3-03)

(4) Profile of water level recovery from the pumping level projected to the original static water level. (5-3-03)

(5) Depth at which the test pump was positioned in the well; (5-3-03)

(6) Test pump capacity and head characteristics; (5-3-03)

(7) Sand production data. (5-3-03)

(8) Any available results of analysis based on the drawdown and recovery test pertaining to aquifer properties, sustained yield, and boundary conditions affecting drawdown. (5-3-03)

iv. The Department may allow the use of other pump test protocols that are generally accepted by engineering firms with specialized experience in well construction, by the well drilling industry, or as described in national standards (such as ANSI/AWWA A100-97), as long as the minimum data specified in Subsection 550.03.d.iii. are provided. The Department welcomes more extensive data about the well, such as step-drawdown evaluations used in determining well capacity for test pumping purposes, zone of influence calculations, and any other information that may be of use in source protection activities or in routine water system operations. (5-3-03)

g. A smooth-nosed sample tap shall be provided on the discharge piping from every well at a point where pressure is maintained but prior to any treatment. Any threaded taps installed in the wellhouse must be equipped with an appropriate backflow prevention device. (5-3-03)

h. The discharge line shall be equipped with the necessary valves and appurtenances to allow a well to be pumped to waste at the design capacity of the well via an approved air gap at a location prior to the first service connection; ~~(5-3-03)~~( )

i. A pressure gauge shall be provided at all installations; (12-10-92)

j. A totalizing flow meter shall be installed on the discharge line of each well. An accessible check valve shall be installed above ground in the discharge line of each well; (5-3-03)

k. All wells except flowing artesian wells shall be vented, with the open end of the vent screened and

terminated downward at least eighteen (18) inches above the ~~*floor of the pump house*~~ final ground surface. ~~*(12-10-92)*~~(____)

l. The following requirements apply to well casings and seals: (12-10-92)

i. Casings shall extend a minimum of ~~*twelve*~~ eighteen (1~~2~~8) inches above the ~~*finished*~~ final ground surface and, if the well is located within a well house, ~~*six*~~ twelve (~~6~~12) inches above the well house floor. ~~*(12-10-92)*~~(____)

ii. Wells shall be cased and sealed in such a manner that surface water cannot enter the well. (12-10-92)

iii. A watertight seal shall be provided at the top of the well casing, and shall not allow water to enter the well. (12-10-92)

iv. Wells completed in unconsolidated water bearing formations shall be constructed to prevent caving of the walls of the well and sand pumping. Screens and/or gravel packs shall be provided where fine grained materials such as sands are being developed as the source of water. (12-10-92)

m. The following requirements apply to well houses as defined in Section 003, unless it can be shown that some or all of these requirements are not needed to protect the combination of system components in a given structure: ~~*(12-10-92)*~~(____)

i. Well houses shall be protected from flooding and be adequately drained. The floor surface shall be at least six (6) inches above the final ground surface. An electrically powered ventilation fan or automated air flow system shall be provided to remove excess heat and moisture during peak summer temperatures. If the well operates year round, a thermostatically regulated heater shall also be installed to prevent moisture buildup during cold weather. In all cases, measures must be taken to minimize corrosion of metallic and electrical components. ~~*(5-3-03)*~~(____)

ii. Well houses shall be provided with a locking door or access to prohibit unauthorized entrance. Plans and specifications for well houses must provide enough detail to enable the reviewing engineer to determine that the facility is secure, safe, accessible, and that it conforms to electrical and plumbing codes. (5-3-03)

iii. Well houses shall be kept clean and in good repair and shall not be used to store toxic or hazardous materials. (12-10-92)

iv. Floor drains shall not be connected to sewers, storm drains, chlorination room drains, or any other source of contamination. (12-10-92)

v. Sumps for well house floor drains shall not be closer than thirty (30) feet from the well. (12-10-92)

vi. Pitless adapters or pitless units: (12-10-92)

(1) Shall be of the type marked approved by the National Sanitation Foundation or Pitless Adapter Division of the Water Systems Council. (12-10-92)

(2) Shall be designed, constructed and installed to be watertight including the cap, cover, casing extension and other attachments. (12-10-92)

(3) Shall be field tested for leaks before being put into service. The procedure outlined in "Manual of Individual and Non-Public Water Supply Systems," as set forth in Subsection 002.02.d., or other procedure approved by the Department shall be followed. (5-3-03)

n. Wells shall not be located in pits. Exceptions to Subsection 550.03.l. will be granted by the Department if the well was constructed prior to November 5, 1964, and the installation is constructed or reconstructed in accordance with the requirements of the Department to provide watertight construction of pit walls and floors, floor drains and acceptable pit covers. (12-10-92)

o. A well lot shall be provided for wells constructed after November 1, 1977. The well lot shall be owned in fee simple by the supplier of water or controlled by lease with a term of not less than the useful life of the well and be large enough to provide a minimum distance of fifty (50) feet between the well and the nearest property line. (12-10-92)

p. New community water systems served by ground water and constructed after July 1, 1985, or existing community water systems served by ground water that are substantially modified after July, 2002, shall have a minimum of two (2) sources if they are intended to serve more than twenty-five (25) homes or equivalent. ~~*The second source shall be capable of producing at least eight hundred (800) gallons per day per service connection.*~~ With any source out of service, the remaining source or sources shall be capable of providing either the peak hour demand of the system or maximum daily pumping demand plus equalization storage. The Department shall consider a system to be "substantially modified" when there is a combined increase of twenty-five percent (25%) or more above the system's existing configuration in the following factors: ~~*(5-3-03)*~~(____)

i. Population served or number of service connections; (5-3-03)

ii. Length of water mains; (5-3-03)

iii. Peak or average water demand per connection. (5-3-03)

q. No pesticides, herbicides, or fertilizers shall be applied to a well lot without prior approval from the Department. (12-10-92)

r. No pesticides, herbicides, fertilizers, portable containers of petroleum products, or other toxic or hazardous materials shall be stored on a well lot, except that: (5-3-03)

i. An internal combustion engine to drive either a generator for emergency standby power or a pump to provide fire flows, and an associated fuel tank, may be placed on the well lot. (5-3-03)

ii. A propane or natural gas powered generator is preferable to reduce risk of fuel spillage. (5-3-03)

iii. If a diesel or gasoline-fueled engine is used, the fuel tank and connecting piping must be approved by the Underwriter's Laboratory, Inc., double-walled, meet the requirements of the local fire jurisdiction, and include both spill prevention and overfill protection features. The tank must be above ground and may be contained within the structural base of the generator unit. A ~~*certified*~~ licensed water system operator shall be present during filling of the tank following a period of usage, or during periodic extraction and replacement of outdated fuel. ~~*(5-3-03)*~~(____)

iv. Should the internal combustion engine be located within the well house, the floor of the well house shall be constructed so as to contain all petroleum drips and spills so that they will not be able to reach the floor drain(s). Engine exhaust shall be directly discharged outside the well house. (5-3-03)

v. A spill containment structure shall surround all fuel tanks and be sized to contain at least one hundred ~~*fifty*~~ ten percent (1~~5~~10%) of the fuel tank volume. The Department may require additional containment capacity in settings where accumulation of snow, ice, or rain water could be expected to diminish the usable capacity of the structure. ~~*(5-3-03)*~~(____)

04. Springs. For new spring sources, the Department may require a site evaluation report as set forth for wells in Subsection 550.03.a. Any supplier of water for a public water system served by one (1) or more springs shall ensure that the following requirements are met: (5-3-03)

a. Springs shall be housed in a permanent structure and protected from contamination including the entry of surface water, animals, and dust; (12-10-92)

b. A sample tap shall be provided; (12-10-92)

c. A flow meter or other flow measuring device shall be provided; and (12-10-92)

d. The entire area within a one hundred (100) foot radius of the spring box shall be owned by the supplier of water or controlled by a long term lease, fenced to prevent trespass of livestock and void of buildings, dwellings and sources of contamination. Surface water and drainage ditches shall be diverted from this area. (5-3-03)

05. Surface Sources and Groundwater Sources Under the Direct Influence of Surface Water. (10-1-93)

a. Design Criteria. (12-1-92)

i. The system shall ensure that filtration and disinfection facilities for surface water or groundwater directly influenced by surface water sources are designed, constructed and operated in accordance with all applicable engineering practices designated by the Department. (12-10-92)

ii. Filtration facilities (excluding disinfection) shall be designed, constructed and operated to achieve at least two (2) log removal of Giardia lamblia cysts and one (1) log removal of viruses, except as allowed under Subsection 550.05.b.iii.; and (10-1-93)

iii. Disinfection facilities shall be designed, constructed and operated so as to achieve at least one half (0.50) log inactivation of Giardia lamblia cysts; and (10-1-93)

(1) Two (2) log inactivation of viruses if using conventional and slow sand filtration technology; or (12-10-92)

(2) Three (3) log inactivation of viruses if using direct and diatomaceous earth filtration technology; or (12-10-92)

(3) Four (4) log inactivation of viruses if using alternate filtration technology. (12-10-92)

(4) Four (4) log inactivation of viruses if filtration treatment is not used. (10-1-93)

iv. Higher levels of disinfection than specified under Subsection 550.05.a.iii. may be required by the Department in order to provide adequate protection against giardia and viruses. (10-1-93)

v. For plants constructed after December 31, 1992, each filter unit must be capable of filter to waste. (12-10-92)

vi. For plants constructed prior to December 31, 1992, each filter unit must be capable of filter to waste unless the system demonstrates through continuous turbidity monitoring or other means acceptable to the Department that water quality is not adversely affected following filter backwashing, cleaning or media replacement. (12-10-92)

vii. For conventional, direct, membrane, and diatomaceous earth filtration technology, equipment must be provided to continuously measure the turbidity of each filter bed. (5-3-03)

viii. Equipment must be provided and operated for continuous measurement of disinfectant residual prior to entry to the distribution system, unless the system serves fewer than three thousand three hundred (3,300) people. (12-10-92)

ix. Diatomaceous earth filtration facilities shall include an alternate power source with automatic startup and alarm, or be designed in a manner to ensure continuous operation. (12-10-92)

b. Filtration technology. (12-10-92)

i. The purveyor shall select a filtration technology acceptable to the Department. (12-10-92)

ii. Conventional, direct, membrane, slow sand and diatomaceous earth filtration technologies are

generally acceptable to the Department on a case-by-case basis. (5-3-03)

iii. Alternate filtration technologies may be acceptable if the purveyor demonstrates all of the following to the satisfaction of the Department: (12-10-92)

(1) That the filtration technology: (12-10-92)

(a) Is certified and listed by the National Sanitation Foundation (NSF) under Standard 53, Drinking Water Treatment Units - Health Effects, as achieving the NSF criteria for cyst reduction; or (12-10-92)

(b) Removes or inactivates at least ninety-nine (99%) percent (two (2) logs) of Giardia lamblia cysts or Giardia lamblia cyst surrogate particles in a challenge study acceptable to the Department. (12-10-92)

(2) Using field studies or other means acceptable to the Department, that the filtration technology: (12-10-92)

(a) In combination with disinfection treatment, consistently achieves at least ninety-nine and nine tenths percent (99.9%) (three (3) logs) removal or inactivation of Giardia lamblia cysts and ninety-nine and ninety-nine hundredths percent (99.99%) (four (4) logs) removal or inactivation of viruses; and (5-3-03)

(b) Meets the turbidity performance requirements of 40 CFR 141.73 (b). (12-10-92)

c. Pilot Studies. The system shall conduct pilot studies in accordance with the following requirements for all proposed filtration facilities and structural modifications to existing filtration facilities, unless the Department modifies the requirements in writing: (12-10-92)

i. The system shall obtain the Department's approval of the pilot study plan before the pilot filter is constructed and before the pilot study is undertaken. (12-10-92)

ii. The design and operation of the pilot study shall be overseen by a licensed professional engineer. (12-10-92)

iii. The system's pilot study plan shall identify at a minimum: (12-10-92)

(1) The objectives of the pilot study; (12-10-92)

(2) Pilot filter design; (12-10-92)

(3) Water quality and operational parameters to monitor; (12-10-92)

(4) Amount of data to collect; and (12-10-92)

(5) Qualifications of the pilot plant operator. (10-1-93)

iv. The system shall ensure that the pilot study is: (12-10-92)

(1) Conducted to simulate conditions of the proposed full-scale design; (12-10-92)

(2) Conducted for at least twelve (12) consecutive months or for a shorter period upon approval by the Department; (5-3-03)

(3) Conducted to evaluate the reliability of the treatment system to achieve applicable water quality treatment criteria specified for filtration systems in 40 CFR 141.72 and 40 CFR 141.73; and (12-10-92)

(4) Designed and operated in accordance with good engineering practices documented in references acceptable to the Department. (12-10-92)

d. New systems constructed after July 1, 1985, are required to install redundant disinfection components as required to maintain constant application of disinfectant whenever water is being delivered to the distribution system. (5-3-03)

06. Distribution System. Any supplier of water for a public water system shall ensure that the distribution system complies with all of the following requirements: (12-10-92)

a. The distribution system shall be protected from contamination and be designed to prevent contamination by steam condensate or cooling water from engine jackets or other heat exchange devices. (12-10-92)

b. All pumps connected directly to the distribution system shall be designed in conjunction with a water pressure relief valve of type, size, and material approved by the Department unless the Department approves another method that will prevent excessive pressure development. (5-3-03)

c. All source pumps and booster pumps connected directly to the distribution system shall have an instantaneous and totalizing flow meter~~s~~ unless deemed unnecessary by the Department in a particular application. The Department may require larger water systems to provide a means of automatically recording the total water pumped. ~~(5-3-03)~~( )

d. Booster pumps must comply with the following: (12-10-92)

i. In-line booster pumps shall maintain an operating pressure that is consistent with the requirements specified in Subsection 552.01, and shall be supplied with an automatic cutoff when intake pressure is less than or equal to five (5) psi. (5-3-03)

ii. Booster pumps ~~*located on*~~ with a suction line~~s~~ directly connected to any storage reservoirs shall be ~~*supplied with*~~ protected by an automatic cutoff ~~*when pressure is equal to or less than two and one-half (2.5) psi*~~ to prevent pump damage and avoid excessive reservoir drawdown. ~~(12-10-92)~~( )

iii. Buildings enclosing booster pump stations shall be provided with an electrically powered ventilation fan or automated air flow system to remove heat and moisture during peak summer temperatures. If the facility is operated year round, a thermostatically regulated heater shall be installed to prevent moisture buildup during cold weather. (5-3-03)

e. Pipe materials and standards will comply with the following: (12-10-92)

i. Pipe, packing and jointing materials shall be manufactured, installed and tested in conformance with the current standards of the American Water Works Association, as set forth in Subsection 002.02.~~*j*~~k., or other standards approved in writing by the Department. ~~(7-1-97)~~( )

ii. Pipe shall be manufactured of materials resistant internally or externally to corrosion, and not imparting tastes, odors, color or any contaminant into the system. (12-10-92)

iii. All distribution system appurtenances shall comply with AWWA Standards, as set forth in Subsection 002.02.~~*j*~~k. ~~(5-3-03)~~( )

f. Fire hydrants shall not be connected to water mains smaller than six (6) inches in diameter, and fire hydrants shall not be installed unless fireflow volumes are available. If fire flow is not provided, water mains shall be no less than three (3) inches in diameter. Any departure from this minimum standard shall be supported by hydraulic analysis and detailed projections of water use. (5-3-03)

g. Water and non-potable water mains shall be separated by a horizontal distance no less than ten (10) feet. In any instance where such separation is not achievable, the following standards shall be met: (5-3-03)

i. The water and non-potable water mains shall be separated by at least six (6) horizontal feet measured between the outside walls of the pipes, and the ~~*sewer*~~ non-potable main shall be constructed to water main standards; and ~~(5-3-03)~~( )

ii. The water main shall be a minimum of eighteen (18) inches above the ~~*sewer*~~ non-potable water main. ~~*(12-10-92)*~~(____)

h. The requirements for vertical separation of water and ~~*sewer*~~ non-potable water mains are as follows: ~~*(5-3-03)*~~(____)

i. At any point where the non-potable water and water mains cross, they shall be separated by a vertical distance of no less than eighteen (18) inches. (5-3-03)

ii. At any point where the non-potable water main crosses above the water main, the non-potable water main shall be supported to prevent settling. (5-3-03)

iii. At any point where the non-potable water and water mains cross, the water main shall be centered at the crossing so that the joints will be an equal distance and as far as possible from the non-potable water main. (5-3-03)

iv. If the ~~*water main is below the non-potable water main*~~ eighteen (18) inch vertical separation cannot be maintained, the non-potable water main shall be constructed of materials conforming to water main standards ~~*if the eighteen (18) inch vertical separation cannot be maintained*~~. ~~*(5-3-03)*~~(____)

v. In lieu of constructing or reconstructing the non-potable water main either the non-potable water main or water main may be ~~*encased with*~~ protected by a sleeving material acceptable to the Department for a distance of ten (10) horizontal feet on both sides of the crossing. ~~*(5-3-03)*~~(____)

~~***i.*** *All other pipelines which carry nonpotable liquids shall meet the minimum separation requirements of Subsections 550.06.g. and 550.06.h.* *(5-3-03)*~~

~~***j***~~**i.** A minimum horizontal distance of twenty-five (25) feet shall be maintained between a subsurface sewage disposal system and any water distribution pipe. (12-10-92)

~~***k***~~**j.** All dead end water mains shall be equipped with a means of flushing and shall be flushed at least semiannually at a water velocity of five (5) feet per second. (5-3-03)

~~***l***~~**k.** Leaking water mains shall be repaired or replaced upon discovery and disinfected in accordance with American Water Works Association standards as set forth in Subsection 002.02.~~*j*~~k. ~~*(7-1-97)*~~(____)

~~***m***~~**l.** Water mains shall be separated by at least five (5) feet from buildings, industrial facilities, and other permanent structures. (5-3-03)

~~***n***~~**m.** All new public water systems shall include a meter vault at each service connection. A lockable shut-off valve shall be installed in the meter vault. (5-3-03)

~~***o***~~**n.** All new public water systems that are constructed where topographical relief may affect water pressure at the customers' premises shall provide the Department with an analysis which demonstrates that the pressure at each designated building site will be at least forty (40) psi, based on dynamic pressure in the main, as set forth in Subsections 552.01.b.i. and ii., plus a static compensation from the elevation of the main to the elevation of each building site. (5-3-03)

i. If forty (40) psi cannot be provided at each designated building site, the Department may require that reasonable effort be made to provide notification to existing and potential customers of the expected pressure. (5-3-03)

ii. The Department will not authorize a service connection at any designated building site where analysis indicates that pressure will be less than twenty (20) psi static pressure (or twenty-six point five (26.5) psi for two (2) story buildings). (5-3-03)

07. Cross Connection. There shall be no connection between the distribution system and any pipes, pumps, hydrants, or tanks whereby unsafe water or other contaminating materials may be discharged or drawn into a public water system. (5-3-03)

a. All suppliers of water for community water systems shall implement a cross connection control program to prevent the entrance of toxic or hazardous substances to the system. The program will include: (5-3-03)

i. An inspection once a year of all facilities listed in Subsection 900.02 (Table 2) to locate cross connections and determine required suitable protection. For new connections, suitable protection must be installed prior to providing water service. (5-3-03)

ii. Required installation and operation of adequate backflow prevention assemblies. A ~~*list of minimum recommended devices*~~ selection chart for various facilities, fixtures, equipment, and uses of water is provided in Subsection 900.02 (Table 2). ~~*(5-3-03)*~~( )

iii. Annual inspections and testing of all installed backflow prevention assemblies by a tester ~~*certified by the Department, or*~~ licensed by a ~~*certifying*~~ licensing authority recognized by the Department. ~~*Testers are to be re-certified every two (2) years.*~~ ~~*(5-3-03)*~~( )

iv. Discontinuance of service to any facility where suitable backflow protection has not been provided for a cross connection. (12-10-92)

v. If double check valves and/or reduced pressure principle backflow prevention assemblies and/or pressure vacuum breakers are used, they must pass a performance test conducted by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research ~~*or*~~ and meet the American Water Works Association C-510 or C-511 standard, or ~~*another equal test*~~ an equivalent standard approved by the Department. ~~*(5-3-03)*~~( )

vi. If atmospheric vacuum breakers and pressure vacuum breakers are used, they shall be marked approved by the International Association of Plumbing and Mechanical Officials (IAPMO) or by the American Society of Sanitation Engineers (ASSE). (10-1-93)

vii. Resilient seated shutoff valves shall be used after the effective date of these rules when double check valves, reduced pressure backflow prevention assemblies, and pressure vacuum breakers are installed. (5-3-03)

b. All suppliers of water for non-community water systems shall ensure that cross-connections do not exist or are isolated from the potable water system by an approved backflow prevention assembly. Backflow prevention assemblies shall be inspected for functionality on a regular basis by a certified tester, as specified in Subsection 550.07.a.iii. (5-3-03)

08. Water Storage. Storage reservoirs shall be constructed and maintained so that the following requirements are met: (12-10-92)

a. All storage reservoirs shall be protected from flooding; (12-10-92)

b. Stored water shall be protected from contamination; (12-10-92)

i. No public water supply storage tank shall be located within five hundred (500) feet of any municipal or industrial wastewater treatment plant or any land which is spray irrigated with wastewater or used for sludge disposal. (5-3-03)

ii. No storage tank or clear well located below ground level is allowed within fifty (50) feet of a sanitary sewer or septic tank. However, if the sanitary sewer is constructed to water main standards, the minimum separation distance is ten (10) feet. (5-3-03)

c. All storage reservoirs shall have watertight roofs or covers and be sloped so that water will drain; (12-10-92)

d. Manholes shall be fitted with an overlapping watertight locked cover and be at least four (4) inches above the surface of the roof. At least two (2) manholes located above the water line shall be provided where space permits. (5-3-03)

e. Overflows ~~*and drains*~~ shall ~~*have free fall discharges which are screened and shall not be connected to a sewer (storm or sanitary);*~~ be downturned, discharge to daylight, and be provided with either: ~~*(12-10-92)*~~(____)

i. A twenty-four (24) mesh noncorrodible screen installed within the pipe when practical, or; (____)

ii. An expanded metal screen installed within the pipe plus a weighted flapper valve, or; (____)

iii. An equivalent system acceptable to the Department. (____)

f. Drains shall discharge to daylight in a way that will preclude the possibility of backflow to the reservoir and, where practical, be provided with an expanded metal screen installed within the pipe that will exclude rodents and deter vandalism. (____)

~~*f*~~**g.** Any vent shall extend twelve (12) inches above the roof and be constructed and screened to exclude rain, snow, birds, animals, insects, dust and other potential sources of contamination; (12-10-92)

~~*g*~~**h.** The bottom of any reservoir located below the ground surface shall be constructed a minimum of four (4) feet above the high groundwater table; and (12-10-92)

~~*h*~~**i.** There shall be a minimum distance of fifty (50) feet between any buried or partially buried storage reservoir and any sanitary sewers, storm sewers, or any other source of contamination. The area around ground level reservoirs shall be graded in a manner that will prevent standing water within ten (10) feet. (5-3-03)

~~*i*~~**j.** Hydroneumatic (pressure) tanks shall be acceptable for small water systems serving up to one hundred fifty (150) homes. (5-3-03)

~~*j*~~**k.** Removable silt stops shall be provided to prevent sediment from entering the reservoir discharge pipe. (5-3-03)

~~*k*~~**l.** All unused subsurface storage tanks shall be removed and backfilled, or abandoned by extracting residual fluids and filling the structure with sand or fine gravel. (5-3-03)

09. Disinfection. Any supplier of water for a public water system shall ensure that new construction or modifications to an existing system will be flushed and disinfected in accordance with American Water Works Association Standards, as set forth in Subsection 002.02.~~*j*~~k., prior to being placed into service. ~~*(7-1-97)*~~(____)

10. Violations. Any failure to comply with any provision contained in Section 550 shall be considered a design or construction defect. (12-10-92)

551. CONSTRUCTION REQUIREMENTS FOR PUBLIC WATER SYSTEMS.

01. Engineering Report. For all new water systems or modifications to existing water systems, an engineering report shall be submitted for the Department's review and approval prior to or concurrent with the submittal of plans and specifications as required in Subsection 551.04. This report shall provide the following information: (12-10-92)

a. A general description and location of the project; (12-10-92)

b. The estimated design population of the project; (12-10-92)

c. Design data for domestic, irrigation, fire fighting, commercial and industrial water uses, including

maximum hourly, maximum daily, and average daily demands; (12-10-92)

d. Storage requirements; (12-10-92)

e. Pressure ranges for normal and peak flow conditions; (12-10-92)

f. A computer analysis of the hydraulics of the distribution system if requested by the Department; any analysis of an existing distribution system shall be properly calibrated. (5-3-03)

g. Adequacy, quality and availability of sources of water. A water system that is to be served by a separate non-potable irrigation system must provide documentation of legal water rights sufficient to ensure that the irrigation system will not compete with or in any way diminish the source of water for the potable water system. (5-3-03)

h. For a community system, results of analysis for total coliform, inorganic chemical contaminants, organic chemicals, and radionuclide contaminants set forth in Subsections 050.01, 050.02, 050.05, 100.01, 100.03, 100.04, 100.05, and 100.06, unless analysis is waived pursuant to Subsection 100.07. (5-3-03)

i. For a nontransient noncommunity system, results of analysis for total coliform and inorganic and organic chemical contaminants listed in Subsections 050.01, 050.02, 100.01, 100.03, 100.04, unless analysis is waived pursuant to Subsection 100.07. (5-3-03)

j. For a transient noncommunity system, results of a total coliform, nitrite, and nitrate analysis listed in Subsections 050.01, 100.01 and 100.03. (5-3-03)

k. For any system supplied by surface water or groundwater under the direct influence of surface water, results of turbidity analysis listed in Subsection 100.02. (12-10-92)

l. For all new groundwater sources, including but not limited to wells, springs, and infiltration galleries, systems shall supply information as required by the Department to determine if these sources are under the direct influence of the surface water. (12-10-92)

m. Potential sources of contamination to proposed sources of water; (12-10-92)

n. Mechanisms for protection of the system from flooding; (12-10-92)

o. In addition to the items listed in Subsections 551.01.a. through 551.01.n., the following information must be provided for proposed surface water sources and groundwater sources under the direct influence of surface water: (12-10-92)

i. Hydrological and historical low stream flow data; (12-10-92)

ii. A copy of the water right from the Idaho Department of Water Resources; (12-10-92)

iii. Anticipated turbidity ranges, high and low; and (12-10-92)

iv. Treatment selection process and alternative evaluations. (12-10-92)

p. In addition to the items listed in Subsections 551.01.a. through 551.01.n., the following information must be provided for a proposed groundwater source: (12-10-92)

i. A site evaluation report as required in Subsection 550.03.a. for wells and Subsection 550.04 for springs; (5-3-03)

ii. Dimensions of the well lot; and (12-10-92)

iii. Underground geological data and existing well logs. (12-10-92)

02. Ownership. Documentation of the ownership and responsibility for operating the proposed system shall be made available to the Department prior to or concurrent with the submittal of plans and specifications as required in Subsection 551.04. The documentation must show organization and financial arrangements adequate to assure construction, operation and maintenance of the system according to these rules. Documentation shall also include the name of the water system, the name, address, and phone number of the supplier of water, the system size, and the name, address, and phone number of the system operator. (10-1-93)

03. Connection to an Existing System. If the proposed project is to be connected to an existing public water system, a letter from the purveyor must be submitted to the Department stating that they will be able to provide services to the proposed project. This letter must be submitted prior to or concurrent with the submittal of plans and specifications as required in Subsection 551.04. (12-10-92)

04. Review of Plans and Specifications. (12-1-92)

a. Prior to construction of new public drinking water systems, new drinking water systems designed to serve ten (10) or more service connections, or modifications of existing public water systems, plans and specifications must be submitted to the Department for review, and approved. The minimum review requirements are as follows: ~~(5-3-03)~~(____)

i. Plans and specifications shall be submitted by an Idaho registered professional engineer and bear the imprint of the engineer's seal; except that the Department will accept the seal of an Idaho registered professional geologist on the following: (5-3-03)

(1) Well or spring source site evaluation reports, as specified in Subsections 550.03.a. and 550.04. (5-3-03)

(2) Plans and specifications for well construction and results of field inspection and testing, as specified in Subsections 550.03.e. and f. (5-3-03)

ii. Plans shall provide topographical data; (12-10-92)

iii. Plans shall show location of sources or potential sources of contamination. If a separate, non-potable irrigation system is to be provided, the irrigation system shall be fully documented in the plans and specifications; (5-3-03)

iv. Plans shall require all new equipment, piping, and appurtenances to meet American Water Works Association standards, as set forth in Subsection 002.02.~~j~~k. Used materials shall be approved by the Department prior to installation, and shall have been used previously only in the delivery of potable water; and ~~(7-1-97)~~(____)

v. Plans shall specify that the project is to be disinfected prior to use in accordance with American Water Works Association standards, as set forth in Subsection 002.02.~~j~~k. ~~(7-1-97)~~(____)

b. During construction or modification, ~~no~~ the Department must be notified of any substantial deviation ~~can be made~~ from the approved plans. ~~without t~~The Department's prior written approval~~; and~~ is required before any substantial deviation is allowed. ~~(12-10-92)~~(____)

c. Within thirty (30) days after the completion of construction, the water system shall submit to the Department plans and specifications prepared and stamped by an Idaho registered professional engineer responsible for supervision of construction observation on behalf of the owner. These plans and specifications shall depict ~~significant deviations in~~ the actual construction and illustrate alterations or modifications performed, based on as-built drawings provided by the contractor and field observations made by observer(s) under the direction of the professional engineer. ~~(5-3-03)~~(____)

d. If actual construction of the water system does not deviate from the originally approved plans and specifications, the water system may submit a written statement to this effect, prepared and stamped by an Idaho registered professional engineer. This statement shall be based on as-built drawings provided by the contractor and

field observations made by observer(s) under the direction of the professional engineer. (5-3-03)

05. Exception. A District Health Department may exclude noncommunity water systems from the Department's plan and specification review if the District has reviewed the project and will inspect it during construction. (5-3-03)

06. Construction. No construction shall commence until all of the necessary approvals have been received from the Department. (12-10-92)

07. Source. Before a public water system uses a new source of water to provide water to consumers, the source shall be approved by the Department. (12-10-92)

08. Well Abandonment. Any water supply well that will no longer be used must be abandoned by sealing the borehole carefully to prevent pollution of the groundwater, eliminate any physical hazard, conserve aquifer yield, maintain confined head conditions in artesian wells, and prevent mixing of waters from different aquifers. The objective of proper well abandonment procedures is to restore, as far as possible, the original hydrogeologic conditions. The services of a licensed well driller are required. Instructions for abandoning various types of wells may be obtained from the Idaho Department of Water Resources. (5-3-03)

552. OPERATING CRITERIA FOR PUBLIC WATER SYSTEMS.

01. Quantity and Pressure Requirements. (12-1-92)

a. Minimum Quantity. The capacity of a public drinking water system shall in no instance be less than eight hundred (800) gallons per day per residence, plus irrigation flows. (5-3-03)

b. Minimum Pressure. (12-1-92)

i. Any public water system shall be capable of providing sufficient water during maximum hourly demand conditions (including fire flow) to maintain a minimum pressure of twenty (20) psi throughout the distribution system, as measured at the service connection or along the property line adjacent to the consumer's premises. (5-3-03)

ii. Any public water system constructed or significantly modified after July 1, 1985, shall maintain a minimum pressure of forty (40) psi throughout the distribution system, at peak hour flow during peak day of the year, excluding fire flow, measured at the service connection or along the property line adjacent to the consumer's premises. (5-3-03)

(1) Existing water systems that are planning to expand their service area shall meet the criteria in Subsections 552.01.b.i. and 552.01.b.ii. in the new service area. Such systems should upgrade pressure standards in the existing system at the same time as the expansion occurs. (5-3-03)

(2) Compliance with these requirements by water systems that do not have a meter vault or other point of access at the service connection or along the property line adjacent to the consumer's premises where pressure in the distribution system can be reliably measured shall be determined by measurements within the consumer's premises, or at another representative location acceptable to the Department. (5-3-03)

iii. Any public water system shall keep static pressure within the distribution system below one hundred (100) psi and should ordinarily keep static pressure below eighty (80) psi. Pressures above one hundred (100) psi shall be controlled by pressure reducing devices installed in the distribution main. The Department may approve the use of pressure reducing devices at individual service connections on a case by case basis, if it can be demonstrated that higher pressures in portions of the distribution system are required for efficient system operation. (5-3-03)

iv. When pressures within the system are known to have fallen below twenty (20) psi, the water system must provide public notice and disinfect the system. (5-3-03)

c. Fire Flows. Any public water system designed to provide fire flows shall ensure that such flows are compatible with the water demand of existing and planned fire fighting equipment and fire fighting practices in the area served by the system. (5-3-03)

d. Irrigation Flows. (12-1-92)

i. Any public water system constructed after November 1, 1977, shall be capable of providing water for uncontrolled, simultaneous foreseeable irrigation demand, which shall include all acreage that the system is designed to irrigate. (5-3-03)

(1) The Department must concur with assumptions regarding the acreage to be irrigated. In general, an assumption that no outside watering will occur is considered unsound and is unlikely to be approved. (5-3-03)

(2) An assumption of minimal outside watering, as in recreational subdivisions, may be acceptable if design flows are adequate for maintenance of "green zones" for protection against wildland fire. (5-3-03)

ii. The requirement of Subsection 552.01.d.i. may be modified by the Department if: (5-3-03)

(1) A separate irrigation system is provided; or (12-10-92)

(2) The supplier of water can regulate the rate of irrigation through its police powers, and the water system is designed to accommodate a regulated rate of irrigation flow. The Department may require the water system to submit a legal opinion addressing the enforceability of such police powers. (5-3-03)

iii. If a separate nonpotable irrigation system is provided for the consumers, all mains, hydrants and appurtenances shall be easily identified as nonpotable. The Department must concur with a plan to ensure that each new potable water service is not cross-connected with the irrigation system. (5-3-03)

02. Additives. No chemical or other substance shall be added to drinking water, nor shall any process be utilized to treat drinking water, unless specifically approved by the Department. All chemicals shall conform to applicable American Water Works Association Standards as set forth in Subsection 002.02.~~j~~k., and be listed as approved under ANSI/NSF standard 60 or 61, as set forth in Subsections 002.02.~~k~~l.i. and 002.02.~~l~~m.
~~(7-1-97)~~(____)

03. Groundwater. (12-10-92)

a. Public water systems constructed after July 1, 1985, and supplied by groundwater, shall treat water within the system by disinfection if the groundwater source is not protected from contamination. (12-10-92)

b. The Department may, in its discretion, require disinfection for any existing public water system supplied by groundwater if the system consistently exceeds the MCL for coliform, and if the system does not appear adequately protected from contamination. Adequate protection will be determined based upon at least the following factors: (12-10-92)

i. Location of possible sources of contamination; (12-10-92)

ii. Size of the well lot; (12-10-92)

iii. Depth of the source of water; (12-10-92)

iv. Bacteriological quality of the aquifer; (12-10-92)

v. Geological characteristics of the area; and (12-10-92)

vi. Adequacy of development of the source. (12-10-92)

04. Operating Criteria. The operating criteria for systems supplied by surface water or groundwater

under the direct influence of surface water shall be as follows: (12-10-92)

a. Each system must develop and follow a water treatment operations plan acceptable to the Department, by July 31, 1993, or within six (6) months of installation of filtration treatment, whichever is later. For a maximum of twelve (12) months, this may be a draft operations plan based on pilot studies or other criteria acceptable to the Department. After twelve (12) months the plan shall be finalized based on full scale operation. (12-10-92)

b. The purveyor shall ensure that treatment facilities are operated in accordance with good engineering practices such as those found in the Recommended Standards for Water Works, A Report of the Water Supply Committee ~~*Report*~~ of the Great Lakes - Upper Mississippi River Board of ~~*Department*~~ Public Health and Environmental Managers as set forth in Subsection 002.02.c., or other equal standard designated by the Department. ~~*(12-10-92)*~~(____)

c. New treatment facilities shall be operated in accordance with Subsection 552.04.b., and the system shall conduct monitoring specified by the Department for a trial period specified by the Department before serving water to the public in order to protect the health of consumers served by the system. (12-10-92)

05. ~~***Disinfection****. Where chlorine is used as a disinfectant:*~~ **Chlorination**. Systems that regularly add chlorine to their water are subject to the provisions of Section 320. Systems using surface water or ground water under the direct influence of surface water, are subject to the disinfection requirements of Section 300 and Subsection 550.05. ~~*(12-10-92)*~~(____)

a. Systems using only ground water that add chlorine for the purpose of disinfection, as defined in Section 003, are subject to the following requirements: (____)

~~*a*~~i. Chlorinator capacity shall be such that ~~*a free chlorine residual of at least two (2) parts per million can be attained in the water after a contact time of thirty (30) minutes*~~ the system is able to demonstrate that it is routinely achieving four (4) logs (ninety-nine point ninety-nine percent) (99.99%)) inactivation of viruses. The required contact time will be specified by the Department. This condition must be attainable even when the maximum hourly demand coincides with anticipated maximum chlorine demands. ~~*(12-10-92)*~~(____)

ii. A detectable chlorine residual shall be maintained throughout the distribution system. (____)

~~***b.*** *A minimum of at least two-tenths (0.2) ppm free chlorine shall be maintained in the treated water after an actual contact period of at least thirty (30) minutes at maximum hourly demand before delivery to the first consumer.*~~ ~~*(10-1-93)*~~

~~*c*~~iii. Automatic proportioning chlorinators are required where the rate of flow is not reasonably constant. (12-10-92)

~~*d*~~iv. Analysis for free chlorine residual shall be made at least daily and records of these analyses shall be kept by the supplier of water for at least ~~*five*~~ one (~~*5*~~1) year~~*s*~~. The frequency of measuring free chlorine residuals shall be sufficient to detect variations in chlorine demand or changes in water flow. ~~*(12-10-92)*~~(____)

~~*e*~~v. A separate and ventilated room for gas chlorination equipment shall be provided. (12-10-92)

~~*f*~~vi. The Department may, in its discretion, require a treatment rate higher than that specified in Subsection 552.05.~~*b*~~a.i. ~~*(12-10-92)*~~(____)

~~*g*~~vii. When chlorine gas is used, chlorine leak detection devices and safety equipment shall be provided in accordance with the 1992 Recommended Standards for Water Works, as set forth in Subsection 002.02.c. (12-10-92)

b. Systems using only ground water that add chlorine for the purpose of maintaining a disinfectant residual in the distribution system, when the source(s) is not at risk of microbial contamination, are subject to the following requirements: (____)

i. Automatic proportioning chlorinators are required where the rate of flow is not reasonably constant. ( )

ii. Analysis for free chlorine residual shall be made at a frequency that is sufficient to detect variations in chlorine demand or changes in water flow. ( )

c. Systems using only ground water that add chlorine for other purposes, such as oxidation of metals or taste and odor control, when the source(s) is known to be free of microbial contamination, must ensure that chlorine residual entering the distribution system after treatment is less than four (4.0) mg/L. The requirements in Subsection 552.05.b.ii. also apply if the system maintains a chlorine residual in the distribution system. ( )

06. Fluoridation. (12-1-92)

a. Commercial sodium fluoride, sodium silico fluoride and hydrofluosilicic acid which conform to the applicable American Water Works Association Standards are acceptable as set forth in Subsection 002.02.~~j~~k. Use of other chemicals shall be specifically approved by the Department. ~~(4-5-00)~~( )

b. The accuracy of chemical feeders used for fluoridation shall be plus or minus five percent (5%) of the intended dose. (12-10-92)

c. Fluoride compounds shall be stored in covered or unopened shipping containers. Storage areas shall be ventilated. (12-10-92)

d. Provisions shall be made to minimize the quantity of fluoride dust. (12-10-92)

e. Daily records of flow and amounts of fluoride added shall be kept. An analysis for fluoride in finished water shall be made at least weekly. Records of these analyses shall be kept by the supplier of water for five (5) years. (12-10-92)

(BREAK IN CONTINUITY OF SECTIONS)

560. CONTRACTING FOR SERVICES.
~~*Water systems that do not have a certified public drinking water system operator may contract with a certified public drinking water system operator or with a public drinking water system having certified operators to provide supervision. The contracted public drinking water system operator or contracted entity shall employ an operator certified at the classification equal to or greater than the classification of the treatment or distribution system.*~~ Public water systems may contract with persons to provide responsible charge operators and substitute responsible charge operators. Proof of such contract shall be submitted to the Department prior to the contracted person performing any services at the public water system. ~~(3-16-04)~~( )

~~***01. Supervision**. For supervision required in this rule to be sufficient, the contracted certified water system operator or contracted entity shall:* (4-5-00)~~

~~***a.** Be available on twenty-four (24) hour call and able to respond onsite upon request.* (4-5-00)~~

~~***b.** Report the results of analyses or measurements that indicate maximum contaminant levels have been exceeded or that minimum treatment levels are not maintained and report the results of these analyses to the operator, owner, purveyor or supplier of water.* (4-5-00)~~

~~***c.** Recommend corrective action when the results of analyses or measurements indicate maximum contaminant levels have been exceeded or minimum treatment levels are not maintained.* (4-5-00)~~

~~***d.** Recommend that all elements of routine operation and maintenance of the water system are*~~

~~*completed in accordance with accepted public health practice and these rules.*~~ ~~*(4-5-00)*~~

~~***02.*** ***Proof of Contract****. Proof of the contract shall be submitted to the Department.*~~ ~~*(4-5-00)*~~

(BREAK IN CONTINUITY OF SECTIONS)

900. TABLES

01. Table 1 - Minimum Distances From a Public Water System Well.

Minimum Distances from a Public Water System Well	
Sewer line	50 feet
Individual home septic tank	100 feet
Individual home disposal field	100 feet
Individual home seepage pit	100 feet
Privies	100 feet
Livestock	50 feet
Canals, streams, ditches, lakes, ponds and tanks used to store nonpotable substances	50 feet

(12-10-92)

02. Table 2 - Selection Chart for Minimum Backflow Prevention Services.

SELECTION CHART FOR MINIMUM BACKFLOW PREVENTION DEVICES					
FACILITY~~Y~~IES, FIXTURES, EQUIPMENT, OR USE OF WATER	ATMOSPHERIC TYPE VACUUM BREAKER	PRESSURE TYPE VACUUM BREAKER	DOUBLE CHECK VALVE ASSEMBLY	REDUCED PRESSURE BACKFLOW PREVENTER	AIR GAP
Animal Watering	X	X		X	X
Aspirators, harmful substance	X	X		X	X
Autopsy Equipment	X	X		X	
Autoclaves				X	
Boiler Feeds without harmful chemicals			X		
Boiler Feeds with harmful chemicals ~~*(unharmful)*~~			~~*(X)*~~	X	X
Bed Pan Washers	X	X			
Cuspidors, Open Outlet	X	X			
Cuspidors, Valved Outlet		X			
Dairies and Farms -- ~~*(*~~high risk~~*)*~~				X	X
Dairies and Farms -- ~~*(*~~low risk~~*)*~~			X	X	X
Dishwashers	X	X			X

SELECTION CHART FOR MINIMUM BACKFLOW PREVENTION DEVICES					
FACILIT~~Y~~IES, FIXTURES, EQUIPMENT, OR USE OF WATER	**ATMOSPHERIC TYPE VACUUM BREAKER**	**PRESSURE TYPE VACUUM BREAKER**	**DOUBLE CHECK VALVE ASSEMBLY**	**REDUCED PRESSURE BACKFLOW PREVENTER**	**AIR GAP**
Domestic Water Booster Pump on service lines			X	X	
Garbage Can Washers		X			X
Heat Exchangers with transfer fluids			X	X	
High Rise Buildings, 3 stories or more, bldgs. on hill			X	X	
Irrigation Systems, such as cemeteries, golf courses, playgrounds, parks, estates, ranches, schools, and residential uses ~~(~~with chemicals added~~)~~	~~X~~	~~X~~	~~X~~	~~(X)~~	~~(X)~~
Irrigation Systems, such as cemeteries, golf courses, playgrounds, parks, estates, ranches, schools, and residential uses without chemicals added	X	X	X		
Laundries with under rim or bottom-fill inlets, dry cleaning, and dye works	X	X		X	X
Mobile Home and RV Parks with nonapproved waste valves		X	X	X	
Mobile Home and RV Parks with below ground level service line termination				X	
Fixing Tees with steam and water used with harmful substances ~~(unharmful)~~			~~(X)~~	X	
Fixing Tees with steam and water used without harmful substances			X		
Private Water Sources which are unmonitored				X	
Radiator-Vats				X	X
Slaughter Houses ~~(unable to eliminate or prevent cross connection)~~				X	
Car Washes using soaps and waxes ~~(recycling water)~~			X	X	
Chemical Plants				X	X
Dockside Watering Facilities, Marinas	X		X	X	X
Film Laboratories				X	X
Food Processing Plants ~~(unable to eliminate or prevent cross connections~~			X	X	X
Fertilizer Plants ~~(unable to eliminate or prevent cross connections)~~				~~(X)~~	X
Hospitals handling harmful substances ~~(unable to eliminate or prevent cross connections)~~				X	
Lab Sink using toxics (unharmful)	X	X	X	X	

SELECTION CHART FOR MINIMUM BACKFLOW PREVENTION DEVICES					
FACILIT~~Y~~IES, FIXTURES, EQUIPMENT, OR USE OF WATER	ATMOSPHERIC TYPE VACUUM BREAKER	PRESSURE TYPE VACUUM BREAKER	DOUBLE CHECK VALVE ASSEMBLY	REDUCED PRESSURE BACKFLOW PREVENTER	AIR GAP
Meat Packing Plants ~~(unable to eliminate or prevent cross connections)~~				X	
Medical Bldgs, clinics, laboratories, etc. ~~(unable to eliminate or prevent cross connections)~~				X	
Nonpotable Water				X	X
Oil Refinery and Petroleum Storage Facilities ~~(unable to eliminate or prevent cross connections)~~				X	
Sanitariums ~~(unable to eliminate or prevent cross connections)~~	X	X		X	
Sewage Piping or Plants ~~(unable to eliminate or prevent cross connections)~~				X	X
Tank Truck Fill Station				X	X
Mortuaries ~~(unable to eliminate or prevent cross connections)~~				X	
~~Mortuary body washing hoses (installed at service connection)~~	~~X~~	~~X~~		~~(X)~~	
Hoses that could be in contact with animal waste	X	X			
Shampoo Sprays	X	X			
Sterilizers				X	
Steam Cookers using low health risk substance			X		
Steam Cookers using ~~harmful~~ high health risk substance ~~(unharmful)~~			~~X~~	X	
Swim Pools, Hot Tubs, private or semiprivate	X	X		X	X
Swim Pools direct connection	X	X		X	X
Urinals	X			X	
Water Cooling or Heating Coils		X		X	
Water Closets	X			X	

X - indicates suitable protection to be required by the public water system. For facilities with multiple options, the public water system will determine the lowest degree of protection that is acceptable. ~~(5-3-03)~~(____)

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LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT
TO PROPOSE OR PROMULGATE
NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

IDAPA 02 - DEPARTMENT OF AGRICULTURE
PO Box 790, Boise, ID 83701

02-0301-0401, Rules Governing Pesticide Management Plans for Ground Water Protection. New chapter establishes a process for responding to pesticide detection in ground water. Comment by: 9/22/04.

02-0403-0401, Rules Governing Animal Industry. Updates and clarifies the rules regulating the disease Trichomoniasis; makes technical corrections. Comment by: 9/22/04.

02-0415-0401, Rules Governing Beef Cattle Animal Feeding Operations. Implements the provisions of HB 682 regarding nutrient management plans; updates referenced materials; makes technical corrections. Comment by: 9/22/04.

02-0426-0401, Rules Governing Livestock Marketing. New chapter details the requirements for Public Livestock Markets. Comment by: 9/22/04.

02-0601-0401, Rules Governing the Pure Seed Law. Adds an administrative fee of $2 per test to allow companies to view and obtain official test results over the Internet; allows for an exemption from an Idaho Seed Dealer's License for a dealer who sells, offers for sale, exposes for sale or delivers seed only in packages of less than 8 ounces. Comment by: 9/22/04.

02-0612-0401, Rules Pertaining to the Idaho Fertilizer Law. HB 548 authorizes a civil penalty assessment for specialty fertilizers deficient in nutrients and decreases the overall index value to 97%. Comment by: 9/22/04.

02-0626-0401, Rules Governing Seed Potato Crop Management Areas. Defines the geographical boundaries for a new management area in Elmore County. Comment by: 9/22/04.

IDAPA 12 - DEPARTMENT OF FINANCE
PO Box 83720, Boise, ID 83720-0031

12-0108-0401, Rules Pursuant to the Idaho Securities Act. Chapter repeal. Comment by: 9/22/04.

12-0108-0402, Rules Pursuant to the Uniform Securities Act (2004). New chapter implements the new Act that governs the registration of securities and investment professionals, exemptions from the registration requirements, fraud and liabilities in securities transactions, and administrative and judicial review procedures. Comment by: 9/22/04.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
PO Box 83720, Boise, ID 83720-0036

*****16-0201-0401, Health Professional Loan Repayment Program***. Chapter repeal. Comment by: 9/22/04.

16-0211-0401, Immunization Requirements for Children Attending Licensed Day Care Facilities in Idaho and 16-

0215-0401, Immunization Requirements for Idaho School Children. Adds a fifth dose of diphtheria, tetanus and a-cellular pertussis vaccine and a second dose of mumps, measles and rubella vaccine to the immunization requirements to both rule chapters. Comment by: 9/22/04.

16-0309-0403, Rules Governing the Medical Assistance Program. Removes requirements for service coordination that are now outlined in IDAPA 16.03.17. Comment by: 9/22/04.

16-0322-0401, Rules for Licensed Residential and Assisted Living Facilities. Removes requirement for facilities to carry liability insurance. Comment by: 9/22/04.

16-0411-0401, Rules Governing Developmental Disabilities and 16-0417-0401, Rules Governing Residential Habilitation Agencies. Changes to both chapters revise definitions for "service coordination" and "service coordinator" to conform with IDAPA 16.03.17 and delete the obsolete term "targeted service coordinator". Comment by: 9/22/04.

16-0411-0402, Rules Governing Developmental Disabilities. Increases education requirements for Developmental Specialists serving children under age three. Comment by: 9/22/04.

IDAPA 18 - DEPARTMENT OF INSURANCE
PO Box 83720, Boise, ID 83720-0043

18-0150-0401, Adoption of the 2003 International Fire Code. Updates the 2003 Code that is incorporated by reference. Comment by: 9/22/04.

IDAPA 19 - STATE BOARD OF DENTISTRY
708½ W. Franklin St., Boise, ID 83702

19-0101-0402, Rules of the Idaho State Board of Dentistry. Incorporates by reference the American Dental Hygienists' Association's Code of Ethics and specifies that a violation constitutes unprofessional conduct that may be grounds for disciplinary action; identifies 3 additional areas of specialty dental practice (oral and maxillofacial radiology, oral and maxillofacial pathology and dental public health) to be recognized and licensed by the Board and includes them in the Board's specialty advertising standards. Comment by: 9/22/04.

IDAPA 23 - STATE BOARD OF NURSING
PO Box 83720, Boise, ID 83720-0061

23-0101-0401, Rules of the Idaho Board of Nursing. Statutory changes require criminal background checks, eliminate APPN supervision, clarify examination requirements for multi-State licensure, and require peer review as a condition of renewal or reinstatement of APPN licensure. Comment by: 9/22/04.

IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD
1365 N. Orchard, Suite 172, Boise, ID 83706

25-0101-0401, Rules of the Outfitters and Guides Licensing Board. Numerous changes clarify and update the following: definitions; waiting lists; operational license requirements; sales of outfitter businesses; annual license fee requirements; standards for non-use; and requirements for conducting controlled hunts outside outfitter's operating area. Adds sales of "lifetime" activities to unethical/unprofessional conduct; adds license codes; requires documentation for loans or transfers; updates outfitter limits for licensable waters. Comment by: 9/22/04.

IDAPA 35 - IDAHO STATE TAX COMMISSION
PO Box 36, Boise, ID 83722-0410

35-0106-0401, Hotel/Motel and Campground Sales Tax Administrative Rules. Defines the "travel and convention tax" imposed by Section 67-4718, Idaho Code. Comment by: 9/22/04.

35-0110-0401, Idaho Cigarette and Tobacco Products Tax Administrative Rules. Allows cigarette distributors to claim a credit for cigarettes purchased from manufacturers that were recently removed from the Attorney General's

directory, if the manufacturer was listed at the time the cigarettes were purchased. Comment by: 9/22/04.

35-0111-0401, Idaho Unclaimed Property Tax Administrative Rules. Clarifies what documentation is required for the heir of a deceased person to make a claim establishing the right to claim the property. Comment by: 9/22/04.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
PO Box 7129, Boise ID 83707-1129

39-0306-0401, Rules Governing Allowable Vehicle Size. Excludes awnings when measuring the overall width of recreational vehicles. Comment by: 9/22/04.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
1410 N. Hilton, Boise, ID 83706-1255

*****58-0101-0401, Rules Governing the Control of Air Pollution in Idaho***. Removes certain criteria for permit to construct exemptions to align those provisions with EPA statements. Comment by: 10/4/04.

58-0108-0401, Idaho Rules for Public Drinking Water Systems. Broadens language on use of disinfectants in public water systems; clarifies language regarding separation distances between main pipelines, requirements for well houses and other enclosures and language requiring plan and specification review for new or modified water systems; modifies language for "operator services" to implement the Drinking Water and Wastewater Professionals Licensing Act. Comment by: 9/29/04.

****PUBLIC HEARINGS HAVE BEEN SCHEDULED FOR THESE DOCKETS.**

Please refer to the Idaho Administrative Bulletin, **September 1, 2004, Volume 04-9** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact names.

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CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

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This index tracks the history of all agency rulemakings from 1993 to the present. It includes all rulemaking activities on each chapter of rules and includes negotiatied, temporary, proposed, pending and final rules, public hearing notices and vacated rulemaking notices.

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